Sec. - 3

22 October 1959

MEMORANDUM FOR THE RECORD

SUBJECT: Amendment of the Espionage Laws

1. On 14 October 1959 at the suggestion of Mr. Houston, I met with Mr. Kinney and Mr. John Davitt of the Internal Security Division, the Department of Justice, to discuss the possibility of utilizing section 783(b) of Title 50, United States Code, as a model for a revised espionage statute. The idea was to draft an espionage statute specifically applicable to Government employees which made the communication of classified information a prohibited act. Section 783(b) reads in part:

> "It shall be unlawful for any officer or employee of the United States . . . to communicate in any manner or by any means, to any other persons whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization . . ., any information of a kind which shall have been classified by the President (or the head of any . . . agency . . .) as affecting the security of the United States, knowing or having reason to know that such information has been so classified . . . ."

2. Messrs. Kinney and Davitt agreed that the general lines of section 783(b) could be used as a pattern for legislation to prohibit the disclosure of classified information to unauthorized persons. Mr. Davitt pointed out, however, that it was the Department's opinion that such problems which make prosecution difficult under the espionage laws also pertain here. The difficulties of describing classified information in an open court are not solved by a statute such as 783(b). Because most unauthorized communications of classified information are in the form of oral statements or photographs, in order to prove a violation, it would be necessary to compare in the courtroom the statement allegedly made by the violator or the photograph passed with the classified document from which it was taken.

3. As a possible method of accomplishing new espionage legislation Mr. Davitt suggested that C.I.A. formulate a legislative proposal and submit it through the Armed Services Committee. Such a proposal

should be presented as a complement to the present legislation which gives the Director responsibility for the protection of intelligence sources and methods, and according to Mr. Davitt would bring the attention of Congress to the specific problem of security and the necessity thereof in intelligence work. Legislative language along the following lines might be appropriate:

> "An employee of the Central Intelligence Agency who communicates in any manner any information classified as affecting the security of the United States by the Director of Central Intelligence on categories listed below without the authority of the Director of Central Intelligence shall be guilty of a felony."

"Unauthorized persons" and "categories" would then be described. It was agreed that the proposed statute should be of the malum prohibitum type with no intent element necessary. While this proposed statute might not eliminate all the weaknesses of the present statute, it would be valuable as a deterrent.

4. Mr. Kinney stated that the Espionage Unit of the Internal Security Division has developed 3 or 4 amendments to the Espionage Act, but to date has been successful only in presenting one proposed amendment to the Congress to eliminate the jurisdictional limitations by the repeal of section 791. Having passed the House as H.R. 1992, the bill is now being considered by at least two Committees of the Senate: the Judiciary Committee and the Internal Security Committee. In discussing this amendment informally with Messrs. Kinney and Davitt there was doubt expressed whether this amendment would be any more effective than the present section 791 in prosecutions for violation of espionage laws committed in foreign countries. If the bill becomes law, authority for jurisdiction of offenses committed outside the United States would depend upon one case, Bowman v. U.S. (260 U.S. 94) which was a case involving fraud committed upon the United States within the territorial waters of Brazil by a U.S. citizen.

5. In general they were pessimistic about the possibility of a successful prosecution under any espionage law because of the reluctance of Government agencies to divulge classified information in an open court. They commented that a prosecution, whether won or lost, would provide valuable guidance on the attitude of the courts in espionage cases, and felt that if a case were lost then legislation to correct the Espionage Act would have a better chance of passage in Congress. They intimated that there should be closer liaison

between this Agency and Justice whenever an unauthorized disclosure case came up so that Justice would be better able to inform C.I.A. on the possibilities of prosecution under the Espionage Laws.

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