

OCSigO Q32 Legis.

S. S.
File copy

WAR DEPARTMENT
OFFICE OF THE CHIEF SIGNAL OFFICER
WASHINGTON

April 13, 1933

MEMORANDUM FOR: Assistant Chief of Staff, G-2.

The following remarks with reference to Senate Report No. 21 accompanying H.R. 4220 (copy attached) are submitted for consideration and whatever action is deemed advisable.

1. The bill as amended by the Senate Committee on Foreign Relations may be sketched out as follows:

- | | | | |
|--|---|---|---|
| (1) Whoever, by virtue of his employment by the United States, shall obtain from another | (4) any official diplomatic code | (7) shall willfully, without authorization or competent authority, publish or furnish to another any such code or matter | (9) shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. |
| or | or | or | |
| (2) (whoever) having custody of or access to | (5) any matter prepared in any such code | (8) shall willfully, without authorization or competent authority, publish or furnish to another Any matter which was obtained while in process of transmission between any foreign government and its diplomatic mission in the United States. | |
| or | or | | |
| (3) (whoever) having had custody of or access to | (6) which purports to have been prepared in any such code | | |

2. The defects in the amended bill are:

3. The wording is not perfectly clear as to the connection between clause (1) and clauses (4) to (9). If read consecutively, the wording is: "Whoever, by virtue of his employment by the United States,

shall obtain from another any official diplomatic code . . . shall willfully, without authorization or competent authority, publish . . . shall be fined . . ." There are three "shall's" in this sentence and it is by no means clear which are coordinate, or what is specifically intended.

b. The bill covers only codes and code messages. It should cover codes, ciphers, code messages, cipher messages.

c. The bill covers only diplomatic matter. How about naval and military matter?

d. As regards clause (3), the bill covers only matter in transit between a foreign government and its diplomatic mission in the United States. It does not cover matter in transit between a foreign government and its diplomatic mission in other countries, and would specifically exclude messages such as those shown on pages 271-277 in "The American Black Chamber", on which pages there are shown messages purported to have passed between Tokio and London, Tokio and Paris, as well as between Tokio and Washington. The seriousness of this restrictive application, if unintentional, is apparent; if intentional, it should be given very careful consideration in connection with the present and immediate purpose of the legislation.

e. The bill does not cover secret written correspondence in plain language.

f. Does the word "furnish" also cover disclosure by word of mouth, lectures both public and private?

g. The following wording is submitted for consideration:

"That whoever being or having been in the employ of the United States shall willfully, without authorization or competent authority, disclose, publish, or furnish to others any official code or cipher of a foreign government, or any official secret communication exchanged between officials of a foreign government, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

h. If it were desired to cover all persons within the jurisdiction of the United States, whether or not they are now or were ever employed by the United States, the clause "being or having been in the employ of the United States" can be deleted. It is conceivable that a telegraph, cable, or radio operator might obtain or solve certain messages and publish them, to the embarrassment of the government.

5. It is believed that the draft bill suggested in paragraph 3, if enacted, together with existing statutes on similar subjects (United States Code, title 50, sections 31 and 32; title 18, paragraph 234, Criminal Code, section 128; title 18, paragraph 235, Criminal Code, section 129) would take care of the whole situation in an adequate manner so far as the War Department is concerned.

6. The present memorandum, dealing with Senate Report No. 21, should be considered as superseding a memorandum to you on the same subject, dated April 5, 1933, the latter dealing with the bill as reported out of the House Committee on the Judiciary.

For the Chief Signal Officer:

J. H. Van Horn,
Lt. Colonel, Signal Corps,
Executive.

Attached:

Copy of Senate Report No. 21.