UNITED STATES OF AMERICA	)	
	)	
v.	)	**GOVERNMENT'S TARGETED**
	)	**BRIEF ON "REASON TO BELIEVE"**
Manning, Bradley E.	)	**ELEMENT IN 18 U.S.C. § 793(e)**
PFC, U.S. Army,	)	
HHC, U.S. Army Garrison,	)	**<u>Enclosure 1</u>**
Joint Base Myer-Henderson Hall	)	
Fort Myer, Virginia 22211	)	**29 March 2013**

Encl 1 to
APPELLATE EXHIBIT 509
PAGE REFERENCED:_____
PAGE____OF____ PAGES

Calendar No. 418

80TH CONGRESS, 1st Session | SENATE | REPORT No. 427

INTERNAL SECURITY OF THE UNITED STATES

MAY 27 (legislative day, MAY 23), 1949.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 595]

The Committee on the Judiciary, to whom was referred the bill (S. 595) relating to the internal security of the United States, having considered the same, report favorably thereon with an amendment in the nature of a substitute, and recommend that the bill, as amended, do pass.

AMENDMENT

Strike all after the enacting clause and insert the following:

That title 18, United States Code, section 793, be, and the same is hereby, amended to read as follows:

"(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

"(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

"(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this chapter; or

"(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

"(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

"(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of his trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy."

SEC. 2. An indictment for any violation of title 18, United States Code, section 792, 793, or 794, may be found at any time within ten years next after such violation shall have been committed. This section shall not authorize prosecution, trial, or punishment for any offense now barred by the provisions of existing law.

SEC. 3. The Act of June 8, 1938 (52 Stat. 631; 22 U. S. C. 611–621), entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", as amended, is hereby further amended as follows:

(a) Strike out the word "and" at the end of section 1 (c) (3), insert the word "and" at the end of section 1 (c) (4), and add the following subsection immediately after section 1 (c) (4):

"(5) any person who has knowledge of or has received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, unless such knowledge, instruction, or assignment has been acquired by reason of civilian, military, or police service with the United States Government, the governments of the several States, their political subdivisions, the District of Columbia, the Territories, the Canal Zone, or the insular possessions, or unless such knowledge has been acquired solely by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party or

unless, by reason of employment at any time by an agency of the United States Government having responsibilities in the field of intelligence, such person has made full written disclosure of such knowledge or instruction to officials within such agency, such disclosure has been made a matter of record in the files of such agency, and a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security."

(b) Add the following subsection immediately after section 8 (d):

"8. (e) Failure to file any such registration statement or supplements thereto as is required by either section 2 (a) or section 2 (b) shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary."

SEC. 4. (a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, water-front facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the National Military Establishment, any Department or agency of which said Establishment consists, or any officer or employee of said Establishment, Department or agency, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both.

(b) Every such regulation or order shall be posted in conspicuous and appropriate places.

(c) In time of war, or national emergency as proclaimed by the President, the provisions of this section may be extended by Presidential proclamation to include such property and places as the President may therein designate in the interest of national security.

(d) If any provision of this section or the application of such provision to any circumstance shall be held invalid, the validity of the remainder of this section and the application of such provision to other circumstances shall not be affected thereby.

PURPOSE OF AMENDMENT

In general, the purpose of the amendment is to make the bill, as introduced, conform to the concern of the sponsor and subcommittee about the deletion of certain subject matter and to the changes necessitated by the evidence brought out in the hearings. The quantum and complexity of the individual amendments warranted the entire rewriting of the legislation that it may be reported with one amendment in the nature of a substitute.

Specifically, the amendment accomplishes the following (taken in chronological order of sections and subsections):

Section 1, subsection (a)

The words "or Air Force" have been inserted following the words "Army or Navy" on line 17, page 2, of the bill as introduced. The purpose of this amendment is to include places in which anything is being prepared or constructed for the Air Force, as well as places in which anything is being prepared or constructed for the Army and Navy. The reason for this is that the Air Force has become a separate entity since the original enactment of the espionage statutes.

Following the word "which" found on page 2, line 18, of the bill as introduced there has been inserted the words "prohibited place". The purpose of this second amendment in subsection (a) is purely for clarity indicating to what the word "which" refers.

Section 1, subsection (b)

No change from the bill as introduced.

Section 1, subsection (c)

No change from the bill as introduced.

Section 1, subsection (d)

Following the word "which" found on page 3, line 17, of the bill as introduced there has been inserted the words "information the possessor has reason to believe". The purpose of this amendment is to require some degree of scienter in order to constitute a violation of the subsection insofar as the unlawful transmission of "information" is concerned.

Following the word "nation" found on page 3, line 19, of the bill as introduced there was deleted all down to and including the word "transmit" found on line 20 of the same page of the bill as introduced and was inserted in lieu thereof the following:

willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted.

The purpose of this amendment is to include the delivery, as well as communication or transmission of the items included in the subsection, and also to include those persons who would cause such communication, delivery, or transmission as well as those who actually communicate, deliver, or transmit such items.

Section 1, subsection (e)

The same amendment is made following the word "nation" on page 4, line 5, of the bill as introduced as made in the second amendment in section 1, subsection (d), immediately above.

Section 1, subsection (f)

Following the word "model" found on page 4, line 14, of the bill as introduced there has been inserted the words "instrument, appliance,". The purpose of this amendment is merely to add instruments and appliances among the items enumerated in the subsection.

On page 4, line 21, of the bill as introduced the word "actually" has been deleted. The purpose of this amendment is merely to eliminate the word "actually" as superfluous.

On page 4, line 22, of the bill as introduced the word "thereof" has been deleted, and there has been inserted in its place the words "of such loss, theft, abstraction, or destruction". The purpose of this amendment is merely for clarity and does not change the substance of the subsection.

Section 1, subsection (g)

On page 5, line 1, of the bill as introduced there has been deleted the word "the" and inserted in lieu thereof the words "any of the foregoing". The purpose of this amendment is merely for clarity and does not change the substance of the subsection.

Since the remaining sections of the bill as introduced and sections of the substitute amendment are not comparable because of considerable change in the sectional numeration, the following changes will be considered by page and line reference to the bill as introduced.

On page 5 of the bill as introduced, section 2 has been deleted en toto. The purpose of this amendment is to delete a section which appears superfluous, inasmuch as the prosecution of all Federal offenses is under the direction of the Attorney General.

On page 5, line 11, of the bill as introduced, the numeral "3" har been struck and the numeral "2" inserted in lieu thereof. The purpose of this amendment is merely to renumber the section.

On page 5, line 13, of the bill as introduced, the words "without regard to any statute of limitations." have been deleted, and there has been inserted in lieu thereof the words "within 10 years next after such violation shall have been committed." The purpose of this amendment is to provide a statute of limitations of 10 years with respect to the prosecution of espionage violations, rather than removing such violations from the statute of limitations entirely as originally proposed.

On page 5, line 17, of the bill as introduced, the numeral "4" has been struck and the numeral "3" inserted in lieu thereof. The purpose of this amendment is merely to renumber the section.

In addition to certain minor technical amendments, the following has been added to line 9, page 6, after changing the semicolon to a comma:

the governments of the several States, their political subdivisions, the District of Columbia, the Territories, the Canal Zone, and the insular possessions, or unless such knowledge has been acquired solely by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party

The purpose of this amendment is to include within the proviso or exception those enumerated therein in the belief that there should be no intention to include such parties nor would their inclusion contribute to the internal security of the country.

Following the word "party" in the amendment immediately above there has been added the additional words as follows:

or less, by reason of employment at any time by an agency of the United States Government having responsibilities in the field of intelligence, such person has made full written disclosure of such knowledge or instruction to officials within such agency, such disclosure has been made a matter of record in the files of such agency, and a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security.

The purpose of this amendment is merely to add another category of persons who would not be required to register under the section.

On page 6, line 12, in the bill as introduced, there has been deleted everything after the word "file" down through and including the word "and" on line 13 and there has been inserted in lieu thereof the following: "any such registration statement or supplements thereto as is required by either section 2 (a) or." The purpose of this amendment is merely for clarity and does not change the substance of the section.

On page 6, line 17 of the bill as introduced, delete section 5 in toto. The wire-tapping provision has been stricken since the sponsor and your committee experienced concern both as to the advisability of enacting such a section and as to the propriety of joining it with amendments to the espionage laws. After some consultation it was decided to introduce a bill in the nature of a substitute which omitted wire-tapping and on which the hearings were held.

On page 8 of the bill as introduced, commencing with and including line 23, strike out the remainder of the bill and insert the following in lieu thereof:

SEC. 4. (a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, water-front facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the National Military Establishment, any Department or agency of which said Establishment consists, or any officer or employee of said Establishment, Department, or agency, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse, or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both.

(b) Every such regulation or order shall be posted in conspicuous and appropriate places.

(c) In time of war, or national emergency as proclaimed by the President, the provisions of this section may be extended by Presidential proclamation to include such property and places as the President may therein designate in the interest of national security.

(d) If any provision of this section or the application of such provision to any circumstance shall be held invalid, the validity of the remainder of this section and the application of such provision to other circumstances shall not be affected thereby.

The purpose of this amendment is to combine sections 6 and 7 of the bill as introduced into one section, covering the protection of both water and air facilities, rather than having a separate section for each facility. The amendment also makes it clear that, except in time of war or national emergency, the provisions of the section shall apply only to military property. Section 8 of the bill has been deleted as superfluous.

STATEMENT

The bill was introduced at the request of the Attorney General of the United States and has been drafted to carry out the recommendations of the Interdepartmental Intelligence Committee, composed of representatives of Military Intelligence and the Federal Bureau of Investigation of the Department of Justice. The recommendations reflect conclusions which were unanimously reached by the Interdepartmental Intelligence Committee, after a thorough study of the provisions and inadequacies of existing law, beginning in 1945, and are based on the needs and experiences of the investigative agencies during both World War II and peacetime.

The first section of the substitute amendment would amend the fourth paragraph of title 18, United States Code, section 793 (subsec. 1 (d) of the bill), to provide that only those who have lawful possession of the items relating to national defense enumerated therein shall be subject to its provisions. This is proposed in view of the fact that a refusal to deliver such items in response to a proper demand therefor is an element of an offense under existing law, whereas it is deemed advisable that those who have unauthorized possession of such items should be subject to the provisions of a

separate subsection, as hereinafter explained, and required to surrender them to the proper authorities regardless of the demand therefor.

The first section of the substitute amendment would also amend the fourth paragraph of title 18, United States Code, section 793 (subsec. 1 (d) of the bill) to include "information relating to the national defense, which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation" among the items of which the unauthorized transmission or retention would be unlawful. The phrase "which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation" would modify only "information relating to the national defense" and not the other items enumerated in the subsection. It is deemed advisable to broaden the subsection to include such information, in order to render the law more effective against unauthorized transmissions and retentions which may not come within the existing specifically enumerated items but which are considered nonetheless dangerous to the national security.

The first section of the substitute amendment would amend title 18, United States Code, section 793, to provide (subsec. 1 (e) of the bill) that those who have unauthorized possession of the items enumerated therein must surrender possession thereof to the proper authorities regardless of a demand therefor. Existing law provides no penalty for the unauthorized possession of such items unless a demand for them is made by the person entitled to receive them. The dangers surrounding the unauthorized possession of the items enumerated in this statute are self-evident, and it is deemed advisable to require their surrender in such a case, regardless of demand, especially since their unauthorized possession may be unknown to the authorities who would otherwise make the demand. In summary, the only difference between subsection 1 (d) and subsection 1 (e) of title 18, United States Code, section 793, if amended as indicated, would be that a demand by the person entitled to receive the items would be a necessary element of an offense under subsection 1 (d) where the possession is lawful, whereas such a demand would not be a necessary element of an offense under subsection 1 (e) where the possession is unauthorized.

The first section of the substitute amendment would amend title 18, United States Code, section 793, by adding a provision (subsec. 1 (f) (2)) to provide for the punishment of those who are entrusted with the items relating to national defense enumerated therein and who have knowledge of, but fail to report, the loss, theft, abstraction, destruction, or unlawful transmission of such items. The danger of such an item, e. g., a code book or plan of operation, being lost, stolen, or compromised by the enemy or prospective enemy, needs no emphasis. As an illustration, it is now common knowledge that our compromise of an enemy coding system was an important factor in our defense and operations against the enemy in the early and vital stages of World War II. It is not unreasonable to assume that the advantage would be reversed should an enemy compromise a coding system of the United States. The existing law provides no penalty for the failure to report such knowledge by those entrusted with the above items.

The first section of the substitute amendment (subsec. 1 (g)) would amend title 18, United States Code, section 793, to provide a penalty, identical to the penalty provided for a conspiracy to violate section 794, for a conspiracy to violate section 793. There appears to be no reason why a conspiracy to violate section 793 should not be similarly punishable as a conspiracy to violate section 794.

The first section of the substitute amendment would designate the several paragraphs of title 18, United States Code, section 793, as subsections "(a)" through "(g)" for purposes of convenient reference.

Section 2 of the substitute amendment would provide that an indictment for the violation of section 792, 793, or 794 of title 18, United States Code, could be found within 10 years after the commission of such violation. Under existing law (18 U. S. C. 3282), the statute of limitations with respect to a violation of section 792, 793, or 794 in peacetime is only 3 years. A violation of section 794 during war constitutes a capital offense and is therefore not subject to the statute of limitations (18 U. S. C. 3282). In view of the fact that a violation of section 792, 793, or 794 during either peace or war may not be detected, or the identity of the violator discovered, until more than 3 years after the violation was committed, e. g., until hostilities cease and the records of the enemy are accessible, it is considered advisable to amend the existing law so that the prosecution of an espionage violation may be instituted within 10 years after the commission of the violation. Such an amendment would also permit the prosecution and consequent public disclosures of such offenses to be held in abeyance, for strategical purposes, pending the detection and apprehension of other offenders who may also be involved in the same or affiliated espionage ring. The amendment, of course, because of the constitutional bar against ex post facto criminal laws, would not authorize the prosecution or punishment of an offense which is already barred by existing law.

Section 3 (a) of the substitute amendment would amend the Foreign Agents Registration Act of June 8, 1938, as amended (22 U. S. C. 611–621), by adding a subsection 1 (c) (5) immediately after subsection 1 (c) (4) (22 U. S. C. 611 (c) (4)) to require the registration of persons who have knowledge of, or have received instruction or assignment in, the espionage, counterespionage, or sabotage service or tactics of a foreign government or a foreign political party, unless such knowledge or instruction has been acquired by reason of civilian, military, or police service with the United States Government or the governments of the several States, or unless such knowledge has been acquired solely by reason of academic or personal interest not under the supervision of, or in preparation for, service with the government of a foreign country or a foreign political party, or unless, by reason of employment by an intelligence agency of the United States Government, such person has made full disclosure of such knowledge or instruction to officials within such agency.

Under existing law, a person trained by a foreign government for purposes of espionage or sabotage is immune to prosecution provided there is no substantial evidence of his having violated the espionage laws, and he is in no way obliged to divulge either his intentions or the very useful information which is peculiarly within his knowledge, information which if acquired by our counterintelligence agencies could spell the difference between success and catastrophe in counter-

acting the plans and tactics of an enemy. Examples of those who would come within this category are those whose operations may defy detection and those who may be dispatched to this country for purposes of espionage or sabotage and who either postpone their operations until an opportune time or, for fear of apprehension or other reason, abandoned their mission. The amendment would serve a threefold purpose, namely, to discourage further the unknown presence of potential spies and saboteurs; to provide a basis for the prosecution of unregistered potential spies and saboteurs before they committ an act of espionage or sabotage; and to assist this Government in its counterintelligence work by acquiring the information regarding foreign espionage and sabotage systems and tactics that would be disclosed by those who elected to register rather than run the risk of prosecution for not so registering.

Section 3 (b) of the substitute amendment would amend the Foreign Agents Registration Act by adding the subsection 8 (e) immediately after subsection 8 (d) (22 U. S. C. 618 (d)) to provide that a failure to file a registration statement or supplements thereto as required by sections 2 (a) or 2 (b) (22 U. S. C. 612 (a) (b)) shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitations or other statute to the contrary. The purpose of this subsection is to permit the prosecution of an offender at any time during the period he continues to disregard the statute and not merely within a 3-year period from the time that he first became subject to the law and should have registered but failed to do so.

Section 4 of the substitute amendment would provide a maximum penalty of a $5,000 fine and 1 year imprisonment for the willful violation of regulations or orders promulgated by the Secretary of Defense respecting the protection of military property. A si ilar law, respecting the protection of vessels and waterfront facilities, approved July 9 1943 (50 App. U. S. C. 1312), existed during World War II, but exp red by reason of its own provision on June 30, 1947. The section is deemed advisable in order to provide protection for military property from both accidental and deliberate danger. The section would also provide that in time of war, or national emergency as proclaimed by the President, the provisions may be extended by Presidential proclamation to include such property and places as the President may designate in the interest of national security.

The entire bill as amended by your committee has been drafted to serve the needs of the departments of Justice, the Army, the Air Force, and the Navy in the successful discharge of their responsibility to protect and improve the internal security of the Nation. The swift and more devastating weapons of modern warfare, coupled with the treacherous operations of those who would weaken our country internally, preliminary to and in conjunction with external attack, have made it imperative that we strengthen and maintain an alert and effective vigilance.

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