


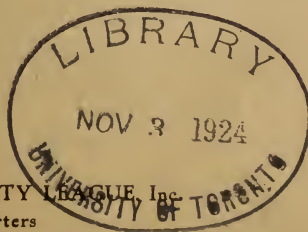
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Some Suggestions on the Perils of Espionage

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SOME SUGGESTIONS ON THE PERILS OF ESPIONAGE

Mr. President, Ladies and Gentlemen:

In stimulating and assisting our nation to examine and appraise its ability to resist armed aggression, and in prescribing a policy designed to supply adequate means of national defense—which, I take it, are, succinctly stated, the functions of this patriotic assemblage—we are apt, while providing against the danger of open frontal onslaught, to ignore the peril, at least equally ominous, of surreptitious attack from within. Passive physical preparedness may be sufficient protection against overt hostile force, but affirmative and vigorous measures are essential at all times to checkmate the insidious activities of espionage; for the spy performs his task in times of peace as well as in time of war.

It is a narrow, though commonly accepted,

conception of the spy which portrays him as an erratic adventurer setting forth in war to discover and ferret out the military moves and plans of the enemy. Indeed, it may be doubted that such a description was ever sufficiently comprehensive, since the spy has in all periods of history operated in times of peace and his machinations have been employed in diplomatic, political and civil life. At all events, the work of the secret service agent of today is not melodramatic. It is rather a prosaic and intensely systematic, businesslike occupation. Romance has been eliminated from espionage, as it has from war by science and military organization.

Ultimately the most sanguine must realize that the foreign spy is in our midst, that he is part of a thoroughly trained and organized army, that even in comfortable times of blissful peace he is preparing for the successful prosecution of a destructive war against us, and, that through his subterranean operations he is attempting to undermine the machinery of our diplomatic activities.

To deny these facts is to ignore the records and teachings of history from the earliest times. Even the Old Testament mentions the spy. The story of Joshua, the leader of Israel's hosts, and of the excellent organization of informers which he controlled, lingers in the mind of the most casual reader of the Bible. It will be remembered how the warlike successor of Moses was assisted in the capture of the walled city of Jericho by two spies, who entered the city in advance and were concealed and protected in their activities by inhabitants whose services they had enlisted. David and Absalom, too, employed the spy, and many will recall that passage in Genesis in which Joseph's brothers, when he accused them of having come to Egypt to spy upon the land, answered him, saying: "We are true men, thy servants are not spies." In the New Testament, also, we read of the spy, when the High Priests, having Christ under suspicion, sent forth spies who should feign friendship with him for the purpose of eliciting information.

Moreover, those who have read the classi-

cal writers will remember that leaders like Alexander, Mithridates, Scipio, Hannibal, Pompey and Caesar laid the foundations for successful campaigns and for political achievements upon information previously supplied them by commissioned spies. And, turning from the realm of war to the industries and commerce of peace, we are told that Crassus owed his wealth and power to the army of spies which he controlled.

One of the most formidable spirits of antiquity, Mithridates, King of Pontus, was himself the chief spy of his army, and as Pliny tells us, for the purpose of his work, made himself master of some twenty-five languages and dialects, by means of which, together with fitting disguises, he was able to penetrate every region of Asia Minor. It is said that he spent seven years wandering through and spying out the countries which he eventually conquered and for the possession of which he waged a lifelong war against the power of Rome.

The scope, character and utility of the activities of espionage, among the ancients, are

authoritatively established by the Greek historian, Polyænus, who has furnished posterity with a compilation of some nine hundred stratagems which were available in civil and political life, as well as in warfare.

Hannibal could never have performed his amazing march across the Alps, had it not been for an organization of spies who prepared the way by ruse and diplomacy for the advance of his hordes. Of him, Polybius writes :

“For years before he undertook his campaign against Rome he had sent his agents into Italy and they were observing everyone and everything. He charged them with transmitting to him exact and positive information regarding the fertility of the Trans-Alpine plains and the Valley of the Po; their populations; their military spirit and preparations and, above all, their disposition toward the Government of Rome.”

The modern system of organized secret service was founded by Frederick the Great. He was wont to boast that his spies exceeded his cooks in the proportion of one

hundred to one. Under Frederick the Great this body of secret agents became, not an auxiliary of the army, but an organized, modernized, specialized force, having its own autonomy and its own chief.

In general, every one will concede the advantage derived by a foreign enemy from advance information regarding the strength of the various units of our national defense and the method and facility of their operation. But it is only after examination and study of the intricacies and efficiency of the highly developed spy systems of the Great Powers that there follows a full realization of the colossal force which may be wielded through the clandestine discovery of information regarding the nation attacked and through the surreptitious co-operation from within of spies in direct contact with the internal machinery of defense.

It is said, for example, that the Prussian invasion of Austria and the defeat of Sadowa were planned two years in advance of the war by Stieber, the famous chief of the German secret service. He himself, disguised as a

peddler, and his agents, both male and female, by every conceivable ingenious device, traversed the country, made the most careful topographical plans of the entire region and prepared the way, in the minutest detail, for the contemplated invasion. Similarly, in 1868, it is said, Stieber penetrated the confines of France with an army of spies numbering in excess of thirty thousand. Thousands of these agents were placed at fixed posts throughout the country, where they were periodically inspected and supervised by intinerant secret service officers. Their discipline was equal to that of a regular military force. This myriad of spies, in size equal to an army corps, not only prepared the way, but two years later, by active, though secret, co-operation, actually assisted in the successful incursion into France which resulted in the capitulation of Paris. Stieber loved to boast that his achievements had saved thousands of German lives and had assured Prussian victory. Indeed, one cannot read the story of that arch spy's exploits without being convinced that Stieber, rather than

Von Moltke won those strategic victories of 1866 and 1870, which founded the modern German Empire.

So minute was the system which he devised that he is said to have had a card catalogue and index of every officer of the French army, revealing a complete history of the man, his temperament, disposition and characteristics, his vices and weaknesses, his possible venality and his relationships, if any, with the underworld.

The ordinary layman does not appreciate the value of advance intelligence of the personal characteristics of the commanding officers of an opposing army, yet it is a fact that the foremost masters of the military science have always relied in great part on such information. This was notably the case with Napoleon. The style of attack and the theory of campaign adopted by him were always formulated with a view to meeting the particular type of mentality with which he was compelled to join battle. And this information was supplied to him by his spies.

That it is erroneous to consider the activities of espionage even in former years, as confined to the specific work of "spying" in the narrow, military sense of that term, is demonstrated by the services rendered to Napoleon by Schulmeister, the Corsican's principal secret agent. Schulmeister was a genius in his way. If there was a nobleman whose political aspirations ran counter to the ambition of Schulmeister's master, the famous spy was able to stage a human drama, enmesh his victim in a web of incriminating circumstances, and lead him quite involuntarily into the commission of acts justifying his summary execution as a traitor. It was Schulmeister himself, who, in the guise of a patriotic Austrian, insinuated himself into the good graces and won the confidence of the Austrian commander, Mack, and actually convinced him that he, Schulmeister, had organized throughout France an army of secret service agents who were spying upon that country for the benefit of Austria; whereas, in fact, the agents to whom Schulmeister referred were,

like Schulmeister himself, the loyal secret service of the French Government. Schulmeister caused to be printed what purported to be French newspapers recording supposed insurrections against Napoleon's régime and alleged defections in the French army. By means of this and other deceptions he led General Mack to believe that Napoleon had, in order to protect himself at home, withdrawn to the capitol of France the major portion of the forces which had theretofore been in touch with the Austrian army. Mack seized upon this information and rushed forth to destroy what he thought was the small remaining remnant of the Emperor's army, only to find himself suddenly surrounded on all sides by a wall of steel. This was the prologue of the battle of Austerlitz. Suspicion centered upon Schulmeister, but he did not waver. Even after the defeat of Mack he had the temerity to enter into a council of war held by the leading officers of the Austrian army, and to suggest and effect the adoption of new plans supposedly designed to retrieve Mack's defeat,

but, which, in fact, merely led the Austrians blindly into the disaster at Austerlitz.

The momentous consequences involved in the work of the spy in times of peace and the power of the secret service agent to alter the course of international diplomatic events are strikingly illustrated by Stieber's achievement on the event of the visit of the Czar of Russia to Napoleon III in France, some years before the Franco-Prussian War. Napoleon's invitation to the Czar was a step in his plan to bring about an alliance between Russia and France. Had this been effected, there probably would never have been a Franco-Prussian war. And Bismarck knew it. Accordingly, he arranged for the King of Prussia to visit Napoleon III at the same time. While they were in Paris, Stieber discovered and reported to Bismarck that a young Pole had planned the assassination of the Czar in the course of his procession along the streets of that city. Instead of ordering the arrest of the assassin, Bismarck, according to the story, directed Stieber to watch the Pole and to permit him to

fire his pistol, but to deflect the bullet so that the Czar would come to no harm. This program was carried out; the assassination was attempted but failed. The Russian Monarch, terrified at the incident, was aroused against the French Government because of its supposed laxity in protecting him when a visitor. Furthermore the jury which tried the would-be assassin permitted him to escape with but a light punishment. All of which widened the gap between Russia and France, and, as Bismarck foresaw, checkmated any attempt on Napoleon's part to bring the two nations together.

And these activities of Stieber were not merely the work of an opportunist. It was an integral part of his system to attempt to undermine the industrial and financial foundations of his country's rivals—to create unrest, to foment industrial disorders and to promote class antipathies through political and industrial agitation. It was he who devised the scheme of producing these results, through literary propaganda, the method which it is

claimed is so extensively used by the great secret service systems of our own times. In 1893 Count Caprivi signed an appropriation amounting to about twenty thousand dollars "for providing foreign pamphlets and publications useful to the policy of the Empire." This amount was later increased to one hundred thousand dollars. It is claimed that the recent epidemic of industrial strikes in France, Russia and England was fomented by paid agitators, working in behalf of the German authorities. It is an established fact, moreover, that during industrial strikes in France before the war, funds to support the families of the strikers were received in large amounts from foreign countries. .

Turning now to our own country, we hear many stories of the ease with which Confederate secret service men obtained important information from the various Federal Departments in the Civil War. As to the battle of Bull Run, it is said that a certain Mrs. Greenhow procured from a Northern politician news of the advance of the Federal troops. Female

spies overran the departmental offices taking advantage of every opportunity to learn secret intelligence or to steal maps and plans. Several of them set up their homes close to the War Office, and there entertained young departmental secretaries. Belle Boyd was the most famous of these Confederate spies. Perley Moore, in *The Chautauquan* of 1887, says :

“They smuggled the information they obtained in the linings of honest looking coats and hid army secrets in the mysteries of innocent looking bustles ; they burned signal lights from garret windows and crossed the Potomac below Alexandria at dead of night and with muffled oars. At one time the Government had caught and hived over a dozen of these busy Confederate bees in a house at Washington, where, in a few days, they beguiled the young officers charged with guarding them and carried on their vocations as before.”

These historical facts entertainingly narrated with many more of great interest in a

recent work by Hamil Grant,*—point unerringly to espionage as an everpresent peril demanding our earnest consideration.

Naturally, any estimate of the extent to which foreign espionage is actually carried on in our country today must be, at least for us laymen, a matter of mere conjecture. The consciousness of danger from this source varies with the temperament of the individual. Some there are who think the peril is negligible, just as these same persons insist that military and naval resources are unnecessary to insure the integrity of our territory and the vindication of our national rights and honor. Others accept with credulity extravagant reports of the existence within our boundaries of organized alien forces ready, at a word from a foreign chancellery, to spring to arms and capture our principal cities.

The sane view, I believe, takes a middle ground and assumes the presence here of

* Spies and Secret Service—The story of espionage, its main systems and chief exponents. By Hamil Grant. London, G. Richards, Limited, 1915.

See also The German Spy System in France. Translated from the French of Paul Lanoir by an English officer. London, Mills and Boon, Ltd., 1914.

secret service agents of the Great Powers, agents organized and directed with more or less system toward the discovery of all important facts relating to the political, industrial, naval and military conditions of the country. From time to time our daily papers tell us of the apprehension here or there of a foreigner having in his possession plans of some fortification, or of the mysterious disappearance from the Bureau of Naval Construction at Washington of the wiring or other plans connected with the construction of a great battleship. And how many of such incidents fail to reach the light of publicity?

There results, therefore, a deepening conviction that this condition must be met by something in the nature of investigation and correction. But how far in this direction shall we go? In the first place, whether or not we espouse the cause of the pacifists or of the exponents of preparedness, it would seem to be a fundamental truth that, unless we adopt a policy of complete disarmament, we must safeguard the present existing defenses of the

country against the covert aggression of espionage. Further, even the advocates of disarmament will not question the urgency of veiling from the scrutiny of the outside world the secret operations of our Government, particularly those of the Department of State.

But this is not all. Besides preventing the discovery of data concerning military affairs and state secrets, we must prepare to meet the danger of the actual destruction by spies of the instrumentalities of our Government and of their positive interference with every kind of internal measure designed for national protection. In this field moreover, we must not only protect our fortresses and our battleships from mysterious destruction by fire or high explosives; we must also safeguard our national highways and means of communication—our railroads, telegraph and telephone systems, and our wireless apparatus. We must also protect all plants, factories, mills and mines engaged in or available for the production of military or naval ordnance, ammunition, stores or supplies of any kind

and those, as well, which in time of war may be indirectly connected with the military efficiency of the nation. In other words, our system of defense against espionage must embrace three broad departments:

1. The protection of the instrumentalities and operations of the Government itself, its navy and army, its forts, arsenals and navy yards, its military, naval and state secrets.

2. The protection of all plants and factories not owned by the Government and directly engaged in the manufacture or production for the Government of ammunition, arms, explosives and other articles used in the conduct of warfare.

3. The protection of agencies and instrumentalities, the integrity of which in time of war would become of vital importance to the country. This class includes all factories, plants, mines, mills and other agencies in which any materials are or could be produced which would be necessary in time of war, such as clothing, foodstuffs and steel rails, and also includes all instrumentalities for trans-

porting troops and war supplies and for transmitting information, such as railroads, telegraph and telephone lines and wireless apparatus.

The President of the United States has himself recently directed attention to the importance of incorporating and amalgamating our privately owned industries into the machinery of national defense and of making them an integral part of that system by requesting the heads of the various national engineering and scientific societies to undertake the work of "collecting data for use in organizing the manufacturing resources of the country for the public service in case of emergency.' It is said that in the State of New Jersey alone there are eight hundred factories, shops and mills which produce articles that would be needed by the Government in the event of war. This projected systematization of our industries will make it possible rapidly to mobilize these vitally necessary auxiliaries of the national defense. But constant maintenance of the maximum potential value of these ele-

ments of defense requires assiduous protection against espionage.

The guarding of these plants and factories involves not only the prevention of their actual physical destruction, and the maintenance of secrecy as to their processes and capacity, but also the duty of securing them against paralysis produced by the fomenting of labor strikes and the enticement of workmen.

Some four or five years before the present great European war a Frenchman, Paul Lanoir, wrote a book warning his countrymen against the German spy system. He declared that there were then over thirty thousand trained German spies within the confines of France and that it was the design of this organization not only to ferret out and report state secrets and the details of the military establishments of France, but also completely to cripple French industries through the production of strikes and labor troubles. It was claimed that the German spy system planned to cripple the railroad and manufacturing industries of France.

That such a plan was not actually consummated in the present war is some proof that Lannoir's statements were exaggerated, but it is also possible that the attempt was made and failed because of the spontaneous patriotism of the French people. In this country, because of our lack of a homogeneous native population, such an attempt might have greater prospects of success. It would, therefore, not seem to be an excess of caution for us to consider also the adoption of methods for the prevention or abortion of disturbances of this nature.

It was my initial purpose when I undertook the preparation of this paper to devote myself entirely to a consideration of what legislative measures should be adopted to bring about the results which I have outlined. But the more seriously I consider the subject the more forcibly are there brought to my mind the comparative futility and impotency of punitive legislation as compared with administrative measures looking toward the prevention of the activities of espionage. The spy enters

upon his undertaking with full notice of the hazards of his venture. He accepts the risks, whatever they are. He is willing, if need be, to pay the penalty of death. He is not deterred, in peace, by provisions of penal law any more than he is restrained, in war, by the danger of summary execution. Therefore, besides punishing the offense, let us make it, as far as may be, impossible of commission.

How, then, are we to meet the problem? By three remedies: (1) The adoption of a policy of greater secrecy in connection with matters of national defense and of greater care in the protection of national secrets; (2) the adoption and development of a system of counter-espionage, in other words, a secret service engaged as a specialty in the occupation of watching and spying upon spies, and (3) punitive legislation.

I cannot express in terms too emphatic my conviction of the necessity of rigorous measures for the enforcement of secrecy in these matters of vital national concern. I firmly believe that this Government cannot too jealous-

ly guard the data concerning its military, naval and state affairs. I would recommend a law prohibiting the publication or discussion of any facts or data concerning the national defense except such as are expressly issued for publication by the proper departments of the Government. Unfortunately today no very ingenious system of espionage is required for the discovery of the details of our armed strength. The spy, if he can read English, can find almost all that he desires to know by a perusal of the *Congressional Record* alone.

Within a week I have read that the Secretary of the Navy was compelled to submit to a committee of Congress a confidential report filed in his office, demonstrating, from the standpoint of one possessed of the most intimate knowledge on the subject, the vulnerability of our coast and naval defense, and setting forth at length how a hostile force could penetrate our protective barriers, land upon our shores, and seize our important cities. It is no answer to say that foreign governments are already familiar with the facts; for their fa-

miliarity, if it exists, is due largely to the laxity with which our secrets have been handled in the past. Nor is it a sound objection that it is impossible to maintain secrecy with respect to weapons of defense because, by their nature, they are inevitably subject to some degree of scrutiny. Were not France and England, in spite of their systems of espionage, surprised in the present war by the Germans' 42-centimeter guns, their sea-going submarines and their gas bombs? Of course, if it be our policy to court peace at any price, it may be entirely useless to remedy conditions. But, if we are warranted in assuming that there may at any time arise such a crisis in our national affairs as shall require recourse to arms, we must draw a cordon of secrecy over those few instrumentalities of defense upon which we shall be constrained to rely, and to veil with some secrecy the sinews and nerves by which the force is to be used.

What a blunder it is to permit persons not officially connected with our fortresses and battleships to use them for holiday excursions!

Should it be necessary to point out that these units, of fabulous cost, are designed for serious, not for frivolous, purposes, and that these purposes can be entirely frustrated if the public is to make free with them? Perhaps I am misinformed as to the degree of scrutiny with which the unidentified public may examine our fortifications, but there have been at least two instances which have recently come within my personal ken where civilians were admitted to our fortifications and were permitted to explore without restriction. In one case, in Fortress Monroe, a visitor, not knowing the impropriety of his action, took various photographs of the great disappearing guns and of other parts of the fortress and was allowed to depart with these interesting data in his pocket. The superiority and effectiveness of the disappearing guns are, I understand, due to the fact that the enemy does not know their exact location, and therefore cannot train its fire upon them. It would, therefore, seem to be no trivial matter for a stranger to obtain the precise position of such guns and a permanent

plan of the fortress in the form of an accurate photograph.

I am not unaware that the policy of the military authorities in granting the public easy access to our instrumentalities of defense is designed to promote and inspire patriotism among the people. Moreover, a disclosure, to a certain extent, of military facts, statistics and data is necessary for an intelligent discussion in Congress of the advisability and amount of appropriations of money and of the use to which such appropriations shall be put. This may be one of the flaws in the democratic form of government, but I have no doubt that, if our public men would but subordinate politics to patriotism, the most intimate and delicate affairs of State, as well as of the military organizations, could be discussed and acted upon by our Government without undue publicity.

Similarly, an unexceptionably strict system of secrecy should obtain in the executive offices of our military and naval establishments, and also in the Department of State. All em-

ployees should, before appointment to office, be subjected to a most rigid examination both as to their personal qualifications and as to their antecedents and connections. It may be a harsh suggestion, but I would favor a rule that in all bureaus where there are handled documents, plans or specifications, the removal of which would be useful to possible enemies of the country, all employees and visitors should be regularly and thoroughly searched. This suggestion may at first blush seem hard upon honest and patriotic citizens, but, as I view it, an honest, patriotic Government employee should submit with alacrity to a rule which is a protection to him and to his country against the activity of possible treacherous persons about him.

Closely akin to these measures for the protection of our national secrets, is my second recommendation: The establishment of a highly specialized system of counter-espionage; that is to say, a force of specially trained men whose sole business shall be to spy upon spies. Today such activity

as is directed to this end seems to be included within the general labors of our resourceful and versatile secret service agents. But no general investigator, however varied his accomplishments, can acquire or develop the qualifications and efficiency of one who devotes himself entirely and exclusively to the detection of espionage. What I propose is that there shall be a separate bureau,—preferably one connected with the Department of War,—all of the energies of which shall be directed to the discovery, observation and restraint of foreign spies, so that as nearly as possible the movements of each of them may at all times be known and his apprehension, if necessary, made a matter of comparative facility.

Such a system, in one form or another, exists in practically every European country. In England it seems to have met with signal success. In a statement issued by the English Home Office for the press, on Friday, October 9, 1914, the results attained are outlined at length. The Secretary says in part:

"It was clearly ascertained five or six years ago that the Germans were making great efforts to establish a system of espionage in this country, and in order to trace and thwart these efforts a Special Intelligence Department was established by the Admiralty and the War Office, which has ever since acted in the closest co-operation with the Home Office and the metropolitan police and the principal provincial police force. In 1911, by the passing of the Official Secrets Act, the law with regard to espionage, which had hitherto been confused and defective, was put on a clear basis and extended so as to embrace every possible mode of obtaining and conveying to the enemy information which might be useful in war.

"The Special Intelligence Department, supported by all the means which could be placed at its disposal by the Home Secretary, was able in three years, from 1911 to 1914, to discover the

ramifications of the German secret service in England. In spite of enormous efforts and lavish expenditure of money by the enemy, little valuable information passed into their hands. The agents, of whose identity knowledge was obtained by the Special Department, were watched and shadowed without in general taking any hostile action or allowing them to know that their movements were watched. When, however, any actual step was taken to convey plans or documents of importance from this country to Germany, the spy was arrested, and in such case evidence sufficient to secure his conviction was usually found in his possession. . . .

"At the same time steps were taken to mark down and keep under observation all the agents known to be engaged in the traffic, so that when any necessity arose the police might lay hands on them at once; and accordingly, on August 4, before the declaration

of war, instructions were given by the Home Secretary for the arrest of twenty known spies, and all were arrested. This figure does not cover a large number (upward of 200) who were noted and under suspicion or to be kept under special observation. The great majority of these were interned at or soon after the declaration of war."

A body of trained men, in close touch with alien spy organizations, would perform invaluable service to our nation. They might assure the defense of the country when otherwise it might be covertly crippled from within, or, through the advantage of advance information, successfully attacked from without. They might frustrate the intrigues and duplicity of hostile diplomacy, and, by safeguarding our secrets of state, save the country from embroilments with other nations.

As I have already stated, the remedy by punitive legislation against the activities of espionage must be, at the best, comparatively ineffective. Nevertheless, with the enforce-

ment of a policy of secrecy and with the aid of an active system of counter-espionage, a drastic and thoroughgoing set of legislative measures should be adopted, so that no possible means of protection may be omitted.

Although the existing laws go further than is ordinarily believed toward the punishment of espionage and its related activities, they are far from being sufficiently comprehensive. Treason and misprison of treason are defined and made punishable, but treason is unfortunately limited to levying war against the United States or adhering to their enemies, giving them aid and comfort (U. S. Const., Art. 3, Sec. 3; Federal Penal Code, Secs. 1 and 2). We have also on our statute books provisions for the punishment of correspondence with foreign governments "with an intent to influence the measures or conduct of any foreign government . . . in relation to any disputes or controversies with the United States, or to defeat the measures of the government of the United States" (Fed. Penal Law, Sec. 5); for the punishment of seditious conspiracy "to

overthrow, put down or to destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder or delay the execution of any law of the United States, or by force to seize, take or possess any property of the United States contrary to the authority thereof" (id. Sec. 6). The Federal Penal Code punishes also the recruiting of soldiers or sailors within the United States to engage in armed hostility against the United States, and it likewise punishes enlistment for such a purpose (id., Secs. 6 and 7). There are further provisions punishing the act of falsely pretending to be an officer of the United States, and of concealing or embezzling any arms, stores, money or other property of the United States, and punishing bribery and attempted bribery of any officer or official or employee of the United States (id., Secs. 32, 35 and 39). By Section 42 of the Federal Penal Code it is, moreover, made criminal to entice, procure or assist in desertion from the army or navy.

A most suggestive provision of the Penal Code, to the principle of which I shall hereafter have occasion again to advert, punishes with a fine of not more than \$50 or imprisonment for not more than three months, or both, the act of enticing any artificer or workman "retained or employed in any arsenal or armory to depart from the same during the continuance of his engagement or to avoid or break his contract with the United States."

Sec. 43. But this provision is limited to plants actually owned and operated by the United States. Physical injury to fortifications or other military or naval works is punished with a fine of not more than \$5,000 or imprisonment for not more than five years, or both (*id.*, Sec. 44). Similarly, injury to telegraph, telephone or cable systems is punishable by a fine of not more than \$1,000 or imprisonment for not more than three years, or both, but only when such systems are *operated* or *controlled* by the United States (*id.*, Sec. 60). Arson of buildings or works, *the property of the United States*, is punishable by a fine of

not more than \$5,000 and imprisonment for not more than twenty years (*id.* Sec. 286).

With the exceptions of the sections punishing injury to the military or naval works or other property of the United States, and those relating to the enticement of desertion or the enticement of workmen from Federal shops, these penal provisions, over which I have cursorily passed, are not directed specifically or intentionally to the prevention or punishment of the acts which are embraced within the meaning of the word "espionage." It is only because the spy frequently finds it necessary, in order to accomplish his purpose, to resort to the commission of what we may call an ordinary crime, that he brings himself within the purview of those more or less general provisions.

Before the year 1909 there seems to have been no statute, aside of course from the articles of war, for the punishment of spying as such. In that year there was enacted what is now Sec. 45 of the Federal Penal Code, punishing with fine and imprisonment the unlaw-

ful entry upon any fort, military reservation or army post. Finally, in 1911, there was passed a law entitled "An act to prevent the disclosure of national defense secrets" (Act of March 3, 1911, Chap. 226; 36 Stat. at L. 1084), now Section 45a and 45b of the Federal Penal Code. These two sections attempt to cover the entire subject of obtaining unlawful information respecting the national defense. The first punishes any person who—

(1) "For the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel or enters any navy yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office or other place connected with the national defense, owned or constructed or in process of construction by the United States, or in the possession or under the control of the United States or any of its authorities or agents";

(2) "When lawfully or unlawfully

upon any vessel or in or near any such place, without proper authority, obtains, takes or makes, or attempts to obtain, take or make any document, sketch, photograph, photographic negative, plan, model or knowledge or anything connected with the national defense to which he is not entitled";

(3) "Without proper authority receives or obtains, or undertakes or agrees to receive or obtain from any person any such document, sketch, photograph, etc., knowing the same to have been so obtained, taken or made";

(4) "Having possession of or control over any such document, sketch, photograph, etc., willfully and without proper authority, communicates or attempts to communicate the same to any person not entitled to receive it, or to whom the same ought not in the interest of the national defense be communicated at that time"; or

(5) "Being lawfully intrusted with

any such document, sketch, photograph, etc., willfully and in breach of his trust, so communicates or attempts to communicate the same."

The punishment for any of the above offenses is imprisonment for not more than one year, or a fine of not more than \$1,000, or both.

Section 45b provides that anyone who has committed an offense under the preceding section, and who communicates or attempts to communicate to any foreign government any of the documents or information so obtained or intrusted to him, shall be imprisoned for not more than ten years.

As I have already indicated, the existing laws, even with the specially added provisions to which I have just referred, are entirely inadequate to meet or cope with the activities of espionage. The entire body or system of legislation is unsound in principle and deficient in scope.

In the first place, the sections relating to the surreptitious obtaining of information concerning the national defense do not recognize any distinction whatever between the procure-

ment of such information by an alien spy in the employ of a foreign government and the communication or betrayal of such secrets by a citizen or by an official of the government to whom they have been intrusted. Manifestly there is a great moral and ethical distinction between these two acts. The former, though injurious to our national interests, involves little or no turpitude, for the alien resident owes us legally but a qualified allegiance and morally little if any duty. The latter is a flagrant violation of a sacred obligation, if not literally of the oath of allegiance to the nation. My first suggestion, therefore, is that our legislation on this subject should differentiate between such acts, even if of the same character, when committed by aliens and when committed by citizens. When done by an alien, the act should be punishable as one of espionage; when perpetrated by a national, it should be punishable as treachery. We cannot without a constitutional amendment make such an act, especially when committed in times of peace, an act of treason, because the constitutional

definition of treason is exclusive. But there would seem to be no reason why Congress cannot classify such acts and give them the name of treachery. Furthermore, I believe that the punishment of such treachery should be more severe in the case of an official, who would thereby commit a breach of an express trust, than in the case of a citizen who has no connection with the national defense.

In the second place, in the case of persons intrusted with the safeguarding of national secrets or property, the legislature should constitute a crime negligence in permitting such secrets to fall into the possession of unauthorized persons, or such property to be damaged, destroyed or illegally removed. An official or employee of the United States should be held to a more strict accountability than that merely for positive wrongdoing or breach of trust. Such an official should, on the contrary, be charged affirmatively with the safety of the secrets or property committed to his care. He must exercise the highest degree of diligence for their pro-

tection, and his failure so to do should be punishable as a crime. Without such a rigid system we can never be assured that our national interests will not suffer by laxity and negligence, even if not by positive treachery.

In the next place, I believe that the theory of punishing misprison of treason should be extended so as to apply to acts of espionage and treachery as above defined. In other words, the law should, in my judgment, make it criminal for a person within the United States, having knowledge or reasonable ground to believe that such an offense is about to be or has been committed, not to make prompt report to the proper officers.

To recapitulate the foregoing suggestions, they are :

1. The differentiation between espionage and treachery.

2. The creation of an offense which, for brevity, we may call misprison of espionage or misprison of treachery.

3. The creation of an offense of criminal negligence in the guarding of the secrets or the physical property of the United States.

There still remains to be considered the kind of activities against which the laws on this subject shall be directed; in other words, the scope and extent of the legislation to be constructed in conformity with these legal principles. As already stated, our laws today protect against physical injury the fortifications and property actually owned by the United States. They also safeguard, to the extent which I have pointed out, the secrets directly connected with the national defense. On the other hand, our legislation fails entirely to protect the secrets, documents and archives of the Department of State, and the factories, mines, railroads and other privately owned properties which, in the event of war, would be most intimately connected with the national defense. There must, therefore, be an enlargement of the scope of the statutes which punish the obtaining of information concerning the national defense and which punish physical injury to forts, factories and armories of the United States, the enticement of desertion from the army or navy, and the enticement of

workmen or artisans from the arsenals or factories of the United States.

In the first place, all governmental records should be included within the purview of the statute relating to the improper procurement of information—the secrets of the Department of State and the data about to be collected with respect to the organization of the national resources, as well as all military and naval secrets. In the second place, we must punish any interference with privately owned plants, factories, mills, mines, railroads or other enterprises engaged, or which have been or may be engaged in the construction, manufacture or transportation of any arms or ammunition or stores for the army or navy, and also any interference with our privately operated telegraph and telephone lines and wireless systems. With the completion of the planned systematization of our manufacturing and industrial resources, it should be possible to draft a law defining with sufficient particularity the agencies of this character relating to the national defense. But if such a statute

is found inadvisable, I would suggest a provision of penal law prohibiting in general terms any interference with plants, factories or other enterprises connected with the national defense, and authorizing the Secretary of War to designate from time to time such plants, factories and enterprises as, by reason of their activities or the adaptability of their machinery or other features, are in fact connected with the national defense. These agencies so designated by public proclamation would then come automatically within the intentment and purview of the statute. Further, with respect to such plants, any statute on the subject should punish not only actual physical injury, but also any interference with the sources of supply, either of materials or implements or of labor. In thus forbidding interference with labor, the suggested law would be an enlargement of the present provision relating to the enticement of workmen from Federal factories and arsenals. Of course, any statute designed to effect this purpose would be carefully framed so as to condemn not the

ordinary industrial strikes, but only interference with labor when brought about with the intent to embarrass or to defeat the measures of the government of the United States.

The necessity of such legislation must be manifest. In times of peace a shoe factory or a plant engaged in the manufacture of clothing, having especially developed facilities for the production of army stores and supplies, may not have a single Government contract, and would therefore be at the mercy of a system of spies intent upon the demoralization of its labor force or the actual physical destruction of its machinery. If the Secretary of War were empowered to designate such a plant as one connected with the national defense, this factory could be protected by the Federal Secret Service and by the system of counter-espionage of which I have proposed.

Without some comprehensive scheme of this character for the protection of our industrial auxiliaries of national defense, the nation will always be vulnerable. If a thoroughly organized system of espionage is to be able to

destroy or to entice workmen from our privately owned ammunition plants and from our copper mines, and to foment strikes and industrial disorders in our railroads and to cripple our means of communication, we shall be utterly at the mercy of a foreign enemy, no matter how strong or well protected from secret scrutiny may be the actual military and naval arms of the Government.

There will, of course, occur to the mind of the lawyer the query as to how far Congress may go in the direction of my suggestions without transcending its constitutional limitations. In my opinion, the exigencies of the situation would warrant a constitutional amendment if such a step were necessary. In so far as legislation is required in order to protect privately owned means of transportation and communication, the interstate commerce clause of the Constitution is ample to empower Congress to enact the necessary measures. With respect to the other proposed fields and subjects of legislation, it is pertinent to consider the following powers expressly conferred upon Congress by the Constitution:

"12. To raise and support armies,
. . . ;

"13. To provide and maintain a
navy;

"14. To make rules for the govern-
ment and regulation of the land and
naval forces;

"15. To provide for calling forth the
militia;

"16. To provide for organizing,
arming, disciplining the militia;

"17. To exercise exclusive legisla-
tion in all cases whatsoever over such
district . . . as may . . . become
the seat of government of the United
States; and to exercise like authority
over all places purchased by consent of
the legislature of the state in which the
same shall be, for the erection of forts,
magazines, arsenals, dock yards and
other needful buildings; and

"18. To make all laws which shall
be necessary and proper for carrying

into execution the foregoing powers and all other powers vested by this constitution in the government of the United States or in any department or officer thereof." (Constitution, Art. 1, Sec. 8.)

In addition to these express powers, the Government of the United States, like any government, has inherently the power to maintain and preserve its own integrity. These special powers and this general power are clearly sufficient to authorize the enactment of legislation covering the subjects which I have enumerated.

The only suggestion which, in my opinion, would raise even a debatable constitutional point is that relating to the protection of privately owned plants and factories which are or can be used for the national defense. In so far as the statute may be able specifically to mention or accurately to define plants then in use for the manufacture or construction of supplies necessary for national defense, I can see no constitutional objection, for without the

right to protect the agents engaged in the production of munitions or supplies of war, the Government would not be able to "provide and maintain a navy" or to "raise and support armies." With respect to a general provision covering factories and plants to be designated from time to time by the Secretary of War, there may be some question, but I think that upon study such a provision will be found to be constitutional. The possible objection would be that an attempt to vest such a power in the Secretary of War is unconstitutional in permitting an executive officer to exercise the function of legislation. But this ground does not appeal to my reason. The legislature defines the offense as interference with a plant connected with the national defense, and it places upon the Secretary of War merely the duty of proclaiming the existence of the facts with respect to such factories or plants as are in truth connected with the national defense. There is some precedent for such a law. In the case of our reciprocity treaties, the President is authorized by proclamation to declare

the existence of such a state of facts as will bring into effect a reduction of our tariff rates. Again, in the case of the administration of our immigration laws, administrative officers are invested with the power of determining whether incoming aliens are or are not desirable citizens, and the decisions of the immigration officers are not reviewable by the courts, but are conclusive, except where there has been such flagrant abuse of discretion that it can be said that the officials have entirely failed to attempt a compliance with the law. .

In making these cursory observations on espionage and its dangers to our country, I do not wish to be understood as sounding an alarm. I do wish to establish in your minds the fact that, in a general scheme of preparedness, security against the spy is quite as essential as a sufficiency of resources for war ; that only by such security can we derive and maintain the maximum benefit from our expenditures for defense, and that such security can be obtained only by constant vigilance and activity even in times of peace. National protection against es-

pionage is but one feature of a protective system. Nevertheless, it is so intimately related to every possible department of national defense that it requires at least equally serious consideration.

