

19 June 1944

MEMORANDUM for Col. W. Preston Corderman

Consideration of memorandum submitted by Lt. Col. Cook concerning federal statutes making certain communication intelligence activities illegal and of the proposed Navy amendment to Act of 19 June 1934, as amended, raises the following points:

(1) Although army regulations authorizing a specified activity have as a rule the force and effect of law, when in conflict with any duly enacted federal legislation they are null and void, thus the fact that Army Regulation 105-5 authorizes intercept activity "in time of war" and against "enemy" communications does not protect personnel so engaged from penalties incurred under statutes protecting communications and diplomatic code.

(2) It is suggested that the proposed Navy amendment is unnecessarily detailed in making an exception to the prohibited practice of interception. An alternate phraseology follows: "and, Provided further that this Section shall not apply to measures taken by duly constituted authorities responsible for the national defense."

(3) It is noted that no exception has been made to the provisions of the Act of 10 June 1933 dealing with diplomatic codes. It is suggested that similar clause may be inserted in that Act at the end of the Act.

(4) This proposed change to the Navy proposed amendment will have the added advantage of providing the protection for our activities, since it will not be necessary to prove military necessity.

Floyd W. Tomkins, Jr.
1st Lt., Signal Corps
Legal Assistance Officer