

For Nation's Spies, the War Has Never Had an Ending

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WASHINGTON, Nov. 10—For most Americans, World War II ended on Aug. 15, 1945. Though the United States would send troops into foreign battle twice in the next 30 years it would never return to the war footing of the early 1940's.

News
Analysis

Now an 11-month Congressional investigation of the nation's intelligence agencies has disclosed that for the spies and counterspies, World War II never really ended.

On May 21, 1940, in the face of the armed might of Germany and Japan, President Franklin D. Roosevelt issued a secret memorandum to the Attorney General stating that he believed electronic surveillance would be proper under the Constitution where "grave matters involving the defense of the nation" existed.

He authorized the Attorney General, and thus the Federal Bureau of Investigation, "to secure information by listening devices [directed at] the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including spies."

It was drastic action, but a world war loomed.

With a signature scribbled on a letter from his Attorney General, Tom C. Clark, President Truman carried the practice into peacetime in July, 1946. Mr. Clark had told the President that there was "an increase in subversive activities."

The F.B.I. used this authority for 24 years of bugging and wiretapping without a court

order. It placed some 6,000 wiretaps and 1,500 secret microphones. Since the microphones were usually put on private premises, each placement constituted a break-in. The current Attorney General, Edward H. Levi, last week gently dubbed them "trespassory microphone surveillances."

Range Noticed by Hoover

The wiretapping and bugging were sharply reduced in the mid-1960's. J. Edgar Hoover, the director of the F.B.I., was one of those who noticed the political atmosphere had changed.

Cables are not a dissimilar case. During World War II the military censored every overseas communication leaving or entering the United States. It was war, and every serviceman knew that his letter or telegram was probably going to be read by someone else.

In 1947, two years after the war ended, James V. Forrestal, then Secretary of Defense, persuaded the three major cable companies to give the Government secretly copies of overseas cables of certain targets of foreign intelligence. Presumably the targets were Soviet bloc nations.

Between 1947 and 1975 this practice, expanded and abetted by technology, enabled the National Security Agency to monitor virtually every overseas cable communication. International telephone calls have also been eavesdropped upon. Members of the senate Select Committee on Intelligence, which has been investigating the practice, believe the entire operation violates the Fourth Amendment of the Constitution and

sections of the Federal Communications Act.

Mail opening, another wartime practice that brought few outcries, was secretly continued by the F.B.I. and Central Intelligence Agency for two decades after World War II.

The men who manned United States Intelligence Agencies from the days of the Berlin airlift to the antiwar riots by and large believed that the nation was in an undeclared conflict with Soviet communism.

Cold War Recalled

"You know there was a cold war," one retired C.I.A. intelligence officer remarked in a recent interview. "I know. I fought in it and my friends died in it."

The various intelligence agencies have, in general, relied upon what they believed to be the President's powers to suspend civil liberties in national emergencies as the justification for their domestic surveillance programs. Indeed, the wiretap law of 1968, which ran into constitutional problems in the courts, set out this proposition.

"Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government."

This was the atmosphere in 1968 as cities burned in racial rioting and antiwar groups participated in civil disturbance.

Both Presidents Johnson and Nixon pressed the intelligence agencies to find out if civil

disturbance was secretly supported by the Russians. The cold war was clearly still on.

There are indications that next year, when the Senate and House debate new laws for the intelligence agencies, a significant part of the issue will be whether in this time of detente the United States is still in a war.

At one point in a public hearing last week, Senator Frank Church of Idaho, the Democratic chairman of the intelligence committee, posed one position:

"I think we should recognize the distinction between war and peace, and it poses the question whether this country in peacetime wants to live always under the customs of war."

Senator John G. Tower of Texas, the Republican vice chairman, quickly responded with the other side:

"I think to make a fine distinction on a matter of war and peace ignores the fact that we are confronted in this world by a very powerful adversary that would not hesitate to resort to military means to achieve its political objectives, powerful adversary that itself through its clandestine activities and overt activities generates military activity all over the world to accomplish political ends . . ."

"So I think that we cannot draw this in strict terms of war and peace, in terms of whether or not the United States is actually at war. We are in effect in a war of sorts. That is a war of preservation of the climate in this world where national integrity will be respected."