

CIA'S DILEMMA IN PROTECTING MILITARY SECRETS

By Robert McNeill

WASHINGTON

A CIA Director William J. Casey's wrath at publishers and broadcasters who report on U.S. deciphering of other nations' coded radio traffic is a 1986 version of a World War II dilemma.

The difference is that Casey seems determined to take his case to court, a course the government rejected as counterproductive in a 1942 case because a public trial might have caused disclosure of even more secret information.

Casey may have considered this factor when he backed away from his initial suggestion that Newsweek and Time magazines, The New York Times, The Washington Post and The Washington Times be prosecuted for publishing stories saying the United States was reading Libya's coded radio transmissions.

5 But when NBC correspondent James Polk, reporting May 19 on the Baltimore spy trial of Ronald W. Pelton, made reference to U.S. submarines eavesdropping inside Soviet harbors, Casey called for prosecution under a 1950 law prohibiting disclosures of "communications intelligence."

The Washington Post on Wednesday backed away under CIA pressure from similar disclosures in the Pelton case, printing a story without details of what Pelton may have compromised.

Casey's feud with the media recalls Navy Secretary Frank Knox's case against the Chicago Tribune, New York Daily News and Washington Times-Herald in the second world war.

In 1942, just after the U.S. Navy reversed the course of the Pacific war with its devastating defeat of the Japanese Imperial Fleet at the Battle of Midway, a Tribune war correspondent, Stanley Johnson, disclosed a military secret.

Stationed aboard ship in the Pacific, but writing under a Washington dateline, Johnson reported that the Americans learned in advance the Japanese plan to invade Midway.

Johnson's story did not say so, but the implication was clear: Such knowledge could have been obtained only by code-breakers eavesdropping on Japanese radio traffic, which indeed was the case.

Knowing their naval code was broken, the Japanese would be expected to instantly install a new code, drastically different from the old one and requiring perhaps months, even years, for U.S. cryptographers to decipher.

The 1986 version of this 1942 episode is doubtless far less critical, but in Casey's view disclosure of U.S. decoding of Libyan transmissions was a serious setback to anti-terrorist efforts. As for eavesdropping by U.S. submarines, Casey said it is his "statutory obligation to protect intelligence sources and methods."

In 1942, Johnson's Tribune story, also printed in the New York Daily News and Washington Times-Herald, went unnoticed by the Japanese, which was miraculous. But in 1986 the Libyans took notice and changed their code, which was expected.

Confidential

On June 9, 1942, two days after Johnson's story was printed, Knox called for prosecution under the Espionage Act, and in August a grand jury was convened in Chicago.

But there the matter ended. The government dropped the case lest a trial produce sensitive testimony that would damage not only U.S. intelligence gathering, but also that of the British.

Up to a point, Casey's actions parallel those of Knox. At first he suggested, in private, that the newspapers and magazines be prosecuted under the 1950 law creating the CIA, which protects such secret operations from the public eye.

Then, in a speech to the American Jewish Committee May 16, he backed off, saying the disclosures about Libyan radio surveillance were "spilled milk," but that future offenders should be taken to court. And so he requested to the Justice Department in the NBC case three days later.

"The media, like everyone else, must adhere to the law," Casey said. "... All of us have responsibilities to balance in carrying out its mission."

The gist of Casey's language seemed to be that publishers and broadcasters should protect national security by refraining from making public information that aids U.S. adversaries.

Such has been the tack used in the past by the United States, which unlike Great Britain cannot conduct closed trials and has no "in defense of the realm" laws requiring news media compliance with certain national defense policies.

As British historian Ronald Lewin wrote in "The American Magic," an account of U.S. code-breakers in World War II, the open U.S. society "can suffer terribly from self-inflicted wounds."

Lewin also noted two other unprosecuted press disclosures of information that could have damaged the U.S. World War II effort:

-The Washington Post reported that Marines captured a code that provided them with the time a Japanese landing force would reinforce Guadalcanal.

-Time magazine reported the United States had decoded messages from an underground radio station in South America that implicated Nazi spies in Argentina, Chile, Peru, Colombia, Mexico and the United States.

U.S. intelligence services in World War II were so fearful that the Japanese would learn of their code-breaking capability that they were tormented for days after P-38s shot down the Japanese bomber carrying Adm. Isoroku Yamamoto, the Japanese fleet commander, over Bougainville in 1943.

Navy cryptographers had decoded a Japanese radio message announcing Yamamoto's itinerary for an inspection trip in the Solomon Islands. Army pilots were advised of his route and timetable and Yamamoto died in a fiery jungle crash.

Intelligence officials across the Pacific were haunted by speculation that such a dramatic coup would be leaked by some euphoric local commander or staff officer unable to restrain himself.

Refined

But Yamamoto's death was belatedly announced by the Japanese themselves. Americans who knew about the radio interception kept quiet and the Japanese never suspected Yamamoto was the victim of a precisely timed aerial ambush until the full story was told at war's end.

But for voluntary restraint, probably the most striking cryptography case in the second world war was that of Gov. Thomas E. Dewey of New York, the Republican candidate opposing President Franklin D. Roosevelt in 1944.

Dewey had evidence the Army had broken "Purple," the Japanese diplomatic code, and had read Tokyo's most secret communications for a considerable time before the sneak attack on Pearl Harbor.

Gen. George Marshall, Army chief of staff, heard that Dewey might use this information to charge Roosevelt with negligence in failing to head off the Pearl Harbor attack. Such a campaign ploy would have revealed to the world the United States was reading the Purple Code.

Marshall knew that any attempt by Roosevelt to persuade Dewey to renounce the issue would be considered a political maneuver, so he took it upon himself as head of the Army. At first Dewey suspected Marshall's motives and assumed the general was Roosevelt's agent.

But during tedious negotiations through an emissary, Army Col. Carter Clarke, Marshall convinced Dewey he was acting without FDR's knowledge, and that disclosure of Purple Code deciphers would do enormous damage to the Allied war effort both in Asia and Europe. Dewey then reluctantly forswore a potential campaign issue that almost certainly would have bolstered his presidential race.

In World War II, the U.S. population was solidly united against the Axis powers and the press willingly accepted war theater censorship. Even private letters from servicemen overseas were censored and few complained.

Combat zone press censorship worked well through the Korean War, but was abandoned during the Vietnam War. To what extent publishers and broadcasters can be expected to voluntarily withhold leaked or purloined military secrets today is problematical.

But as Casey said in backing down from his suggested prosecution of the two magazines and three newspapers, he would not rule out court action:

"I would not, therefore, at this time favor action for these past offenses," Casey told the American Jewish Committee. "But I strongly believe that if we are to protect our security as a nation and the safety of our citizens in this age of international terrorism and intercontinental missiles, the law now on the books ... dealing with communications intelligence, must now be enforced."

All such cases pose a dilemma for government: prosecute and face the possibility of being trapped during a public trial into revealing even more secret information, or let the matter drop.