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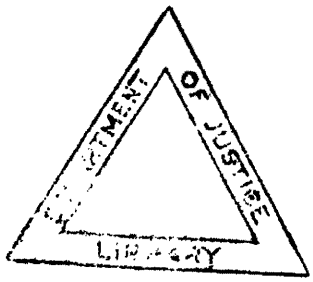

ADDRESS

by

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ATTORNEY GENERAL OF THE UNITED STATES

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It is a high honor to participate in this nationally known and respected lecture series under the auspices of one of our country's greatest institutions of learning. It is heartening, too, to one who has so recently become a public official, to see the interest which this University continuously has shown in the proper functioning of our Federal Government - and tonight, specifically, in one of the oldest arms of our Government, the office of Attorney General.

The Department of Justice, administered by the Attorney General, carries on day-to-day operations which have an intimate and sometimes vital bearing upon your welfare and safety. It is the largest law office in the world, with 1600 attorneys, and a total of 30,000 employees, including the FBI, the Prison System, the Office of Alien Property and the Immigration Service.

What do all these Department of Justice people do? Coming from a background of private law practice, I have been constantly surprised at the nature and scope of the Department's activities. Select a day at random and this is what you may see the staff doing. They may be picking up a pair of spies in Vienna and returning them to the United States for trial. The FBI may be investigating a kidnapping case that has shocked the country, or may be hunting for dangerous fugitives from justice. The Solicitor General may be arguing the validity of segregation in the schools under the Fourteenth Amendment, in the Supreme Court. Another Division is engaged in adjusting civil claims growing out of a mid-air collision between a Navy plane and a commercial airliner. Some may be studying the difficult problems of juvenile delinquency, while others are leaving to handle a grand jury investigation of politicians who tried to sell their influence. Still others may be in the midst of a deportation proceeding to deport an alien racketeer or Communist or the trial of a big-time gangster on a charge of income-tax evasion. Some

are in the Library working on an opinion involving Indian claims or Federal title to a water power project or a Naval base in the Philippines, while others are up on Capitol Hill testifying before a Congressional committee on proposed legislation. Still others are engaged in preparing a legal opinion for the President, or studying recommendations to the President for one of the thirty newly created Federal judgeships. These are far from a complete catalogue of the necessary work that is routine in the Department of Justice; it may give you some concrete idea of what the Department may be doing at any particular time.

From what has been said, it should be plain -- I hope it is, that to do its job the Department needs a high-caliber staff. Its personnel must be competent; they must be of unimpeachable loyalty and integrity. This Administration has taken your recent actions as an unmistakable expression of your views that these are the kind of people you want in the Department of Justice. It is not aware of any good reasons for failing to abide by those views, and it believes they had a firm foundation in fact.

It is pertinent to quote from an informed judgment concerning conditions which were prevalent in the Department of Justice during the late Administration. This is how the subcommittee of the United States Congress which was instructed to investigate the Department of Justice described the situation:

> "For a number of years past the Department of Justice has been weakened by the tenure in high posts of persons whose administrative and professional competence was dubious. At lower levels, though there are many fine public servants, unwarranted emphasis has been placed on conformity and political regularity,

rather than initiative and professional contributions to the work of the Department."

A year ago in appearing before the Senate Judiciary Committee which was considering my nomination as Attorney General, I gave my solemn pledge that every effort would be made to eradicate these deplorable conditions, unworthy of the great traditions of the Department of Justice. I stated the intention to raise the professional standards of the Department to a high level by making certain that its personnel consisted of men and women of the utmost integrity and competence. This pledge has been honored. You may be assured that the past year has been devoted to the job of making the Department of Justice an organization in which you can have complete confidence. Today no one can justifiably say that key positions in the Department are filled by men whose "administrative and professional competence is dubious," and that at lower levels the emphasis is "on conformity and political regularity rather than initiative and professional contributions to the work of the Department." This new condition has been accomplished by staffing the top positions in the Department with men of the highest professional standards who keenly understand the heavy responsibilities of their office and also that it is a great honor to serve their country. They are all able lawyers who have interrupted successful careers as private practitioners. They come from all parts of the country.

It is with a feeling of pride that I refer to an article by Dean Erwin N. Griswold of Harvard Law School in a recent issue of Nation's Business. In discussing the Department of Justice, Dean Griswold said that the change in administration came when the Department was at one of its low points, some of its lawyers were of doubtful competence and others thoroughly competent,

were discouraged. Dean Griswold said that some improvement had taken place under my immediate predecessor, whose time was all too short. There was plainly need for a complete change of direction, not merely in the top personnel, but in their over-all outlook. Dean Griswold then went on to say, and I quote:

> "Attorney General Brownell took charge with a sure and firm hand. This was made plain when he named excellent lawyers as Assistant Attorneys General and as heads of the several divisions in the Department. These men quickly won each other's respect, and demonstrated capacity for team-work. The atmosphere in the Department was cleared up within a few months. The restoration of morale was dramatic. The Department began functioning once again like a first-class law office. This was a great contribution to the administration of Government," Dean Griswold said.

Tonight I have selected for discussion, one of our current problems of great public interest, the subject of wiretapping.

Wiretapping has been a matter of public concern, challenge and raging controversy for more than twenty-five years. Since it invades the privacy of the individual, it presents a problem that touches each of us. Everyone agrees that unrestrained and unrestricted wiretapping by private persons for private gain is "dirty business" which should be stopped. Many persons believe that even if properly controlled and authorized, it is an intolerable instrument of tyranny, impinges on the liberties of the people and should not be sanctioned anywhere in a free country. To many other persons, when conducted by law enforcement officers under strict official supervision in

cases involving national security and defense, as well as other heinous crimes such as kidnapping, it is an essential and reasonable adjustment between the rights of the individual and the needs and interests of society.

In our search for a new solution to this old problem, we are aided somewhat by recent experience and disclosures of successful Communist espionage penetration in our Government and by betrayal of our vital secrets.

Lets look back over the years and consider some of the losses we suffered to espionage agents of the Soviet.

Our biggest loss, we all know, was in the atomic field. The sordid story has been told in our courts.

Two of the principals were Julius and Ethel Rosenberg. They obtained from David Greenglass data on the locations, security measures and names of leading scientists of the Los Alamos atomic experimental station. In a later and fuller report, Greenglass provided Julius Rosenberg with a sketch of a lens mold used in the atomic experiment. Then he gave him a sketch of the cross-section of the atomic bomb and a 10-page exposition of it.

Later, to Harry Gold, Greenglass gave, among other things, a sketch of the lens mold, showing the basic principles of implosion.

There is no way of evaluating this loss in terms of dollars. But one doesn't need scientific training to realize what this betrayal saved the Russians in time and effort in their own atomic research program.

Atomic secrets were not the only secrets which the Rosenbergs got for the Russians. For instance, Julius admitted to Greenglass that he had stolen a proximity fuse from a factory and given it to Russia.

Then there was another facet to this web of espionage. Gold conspired with Alfred Dean Slack to obtain information relative to a highly-secret as well as highly-powered explosive material, known as RDX. He not only passed a sample of this explosive -- fruit of American research -- to Gold, but also the details on how it was made.

More recently, two spies, both veterans of our own armed forces, conspired with a member of the Soviet Embassy in Washington to obtain various information concerning aircraft, defense plants and other data within the United States. These men, both of whom subsequently pleaded guilty and were given long prison terms, did manage, while overseas, to pass on to Russian intelligence agents information relating to the number of personnel, disposition, equipment, arms and morale of the United States Army and Air Force in European countries. Yet it is precisely at such a time as this when popular opinion and passion run so high, that we must be most careful that reason and justice prevail and that the law alone shall provide the test by which evidence is obtained and men are tried. Only in this way may we avoid totalitarian techniques and tactics in preserving our democratic ideals and freedom.

In 1934 Congress enacted the Federal Communications Act. Section 605 provided in part that "no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance * * * of such intercepted communication to any person."

The question soon arose as to whether mere interception by Federal agents of messages was forbidden by Section 605. The Attorney General at that time took the view that what the law prohibited was both interception and divulgence, and that mere report of the intercepted message to public officials by FBI or other Federal Agents did not constitute divulgence.

Repeatedly thereafter, the position was taken by the Department of Justice that Section 605 was designed to prevent unauthorized persons from intercepting radiograms or telephone conversations, and to penalize telegraph and telephone operators who divulge the contents of messages, rather than to bar Federal agents from obtaining necessary information in the public interest.

In 1937, Section 605 had its first test before the Supreme Court in Nardone v. United States. Conviction of the defendants who were liquor smugglers, was reversed upon the ground that Section 605 rendered inadmissible in criminal proceedings in the Federal court wiretap evidence even when obtained by Federal officers. In the opinion by Mr. Justice Roberts, the court concluded that "Congress may have thought it less important that some offenders should go unwhipped of justice than that officers should resort to methods deemed inconsistent with ethical standards and destructive of personal liberty."

In 1939, Section 605 was extended by the Supreme Court to apply not only to ban direct wiretap evidence but also evidence obtained from intercepted leads, the "fruit of the poisonous tree"; and to intrastate as well as interstate telephone conversations.

None of these decisions rendered by the Supreme Court held that wiretapping by Federal officers, in and of itself was illegal, absent divulgence. This may have accounted for the continued adherence to the position taken by the Justice Department until 1940 that mere interception of wire communications is not prohibited by Section 605 so long as there is no subsequent public divulgence of the contents of the interception.

In 1940, Attorney General Jackson revised the policy once again, ordered that the wiretapping technique was no longer to be used and that cases based on such evidence were not to be prosecuted. Attorney General Jackson's action, which was one of short duration, appears to have been based on the opinion that interception of conversations was illegal under Section 605 of the Communications Act. This view was altered soom thereafter when President Roosevelt in a confidential memorandum to Attorney General Jackson authorized the limited use of wiretapping in security cases, kidnapping and extortion.

In 1941, Attorney General Jackson said:

> "Experience has shown that monitoring of telephone communications is essential in connection with investigations of foreign spy rings. It is equally necessary for the purpose of solving such crimes as kidnapping and extortion. In the interest of national defense as well as of internal safety, the interception of communications should in a limited degree be permitted to Federal law enforcement officers."

In 1942, Attorney General Francis Biddle, testifying before the House Committee on the Judiciary, was asked whether he believed that wiretapping should end when the emergency expired. Mr. Biddle replied:

"I personally think wiretapping is important to discover those types of subversive crimes that I do not believe will be ended when the emergency is ended. So I do not think it should be limited to the emergency."

From 1945 to 1949, Attorney General Clark favored interception of communications in cases vitally affecting the domestic security or where human life was in jeopardy. In 1949, he said:

"It seems incongruous that existing law should protect our enemies and hamper our protectors."

In 1951 and again in 1952, Attorney General McGrath declared that he fully supported a wiretap law because the Department of Justice has been seriously hampered in fulfilling its statutory duty of prosecuting those who violate the Federal defense and security laws. In 1952, Attorney General McGranery was of the same opinion.

Thus, you can see that except for a short period during 1940, every Attorney General over the last twenty-two years has favored and authorized wiretapping by Federal Officers in security cases and other heinous crimes such as kidnapping. Moreover, this policy adhered to by my predecessors has been taken with the full knowledge, consent and approval of Presidents Roosevelt and Truman.

Although monitoring of telephone communications by the FBI upon authority of the Attorney General and under specific safeguards to the individual has been established practice for many years, yet the rule in the Federal court since the first Nardone decision in 1937 has been that evidence obtained through this technique is inadmissible to establish the

guilt of the accused. This rule of evidence persists, not because of any provision or right contained in the Constitution, but solely because of Section 605 in the Federal Communications Act.

Under Section 605, as construed by the Supreme Court, the wiretaps might disclose that the accused has stolen and peddled important bomb secrets, or that he was plotting the assassination of a high Government official, or that he was about to blow up a strategic defense plant or commit some other grave offense, but neither the information obtained thereby, nor other information or clues to which the wiretaps indirectly led, could be introduced to convict this defendant. Indeed, if either all the evidence or any part of the vital evidence was obtained through this means, the defendant would go scot-free.

It was this loophole in our Federal law of evidence that led to reversal of the conviction in the Coplon case, though Judge Learned Hand, speaking for the Court of Appeals, refused to dismiss the indictment because the "guilt is plain."

Everyone agrees that invasion of privacy is repugnant to all Americans. But how can we possibly preserve the safety and liberty of everyone in this nation unless we pull Federal prosecuting attorneys out of their strait-jackets and permit them to use intercepted evidence in the trial of security cases and other heinous offenses such as kidnapping?

Let us not delude ourselves any longer. We might just as well face up to the fact that the Communists are subversives and conspirators working fanatically in the interests of a hostile foreign power. Again and again they have demonstrated that an integral part of their policy is the internal disruption and destruction of this and other free governments of the world. That they penetrated our diplomatic corps was shown by the lesson learned from Alger Hiss and others. That they had even greater success in atomic espionage and in stealing crucial secrets was shown by the lesson learned from Klaus Fuchs, the Rosenbergs and others. That they wove their interlocking web of intrigue in the State, Treasury, Labor and Agriculture Departments, on Capitol Hill, in national defense and in the U.N. is shown by many others now in the Communist Hall of Infamy.

It is almost impossible to "spot" them since they no longer use membership cards or other written documents which will identify them for what they are. As a matter of necessity, they turn to the telephone to carry on their intrigue. The success of their plans frequently rests upon piecing together shreds of information received from many sources and many nests. The participants in the conspiracy are often dispersed

and stationed in various strategic positions in government and industry throughout the country. Their operations are not only internal. They are also of an international and intercontinental character. "Thousands of diplomatic, military, scientific and economic secrets of the United States have been stolen by Soviet agents in our government and other persons closely connected with the Communists." When the enemy will strike next, who will be its next victim, what valuable Government secret will be the subject of a new theft, where a leading fugitive conspirator is being concealed, are all matters Communist agents can freely talk about over the telephone today without fear that they may ever be confronted in a criminal proceeding with what they said.

Moreover, if you get a Communist or fellow-subversive on the witness stand, you cannot expect him to tell the truth of his own treachery or that of his confederates. It is his duty as a Communist to lie under oath; to throw every obstacle in the way of conviction of these fellow party members; to defend these members by all possible means; and to refuse to give testimony for the state in any form.

Since these enemy agents will not talk in court or speak the truth, and since Federal agents are forbidden from testifying to what they heard over the phone, the Department of Justice is blocked from proving its case and sending these spies and espionage agents to jail where they belong. The result is that many of the persons responsible for these grave misdeeds are still at large.

Now you would not think of releasing a mad dog to prey on our children. You would put him away where he could no no future harm. So, too, it is not enough merely to uproot and dismiss the disloyal from Government or out of other sensitive positions in industry or commerce. They should be tried fairly with all the constitutional safeguards to an accused that our law provides. But if the evidence establishes their guilt, be it

from their overt actions or from the lips of their confederates, or from intercepted evidence obtained by Federal officers as authorized, these wrongdoers too should be put away where they will no longer continue to prey on the liberty and freedom of this Nation. The mere fact that they have cleverly resorted to the telephone and telegraph to carry out their treachery should no longer serve as a shield to punishment. The rule of evidence which has protected them all these years should now be abolished.

Surely this Nation need not wait until it has been destroyed before learning who its traitors are and bringing them to justice.

There is evidence in the hands of the Department as the result of [illegible] investigations conducted by the FBI which would prove espionage in certain of these cases. If the law is changed so as to admit evidence obtained through wire tapping, the Department will be in a position to proceed with a reexamination of these cases to determine which shall be prosecuted.

We turn now to the contentions raised by the opponents to pending bills authorizing wiretapped evidence to be admitted in the Federal courts.

There is, of course, one group of persons who will oppose these pending bills only because they will seal the fate of many spies and subversives who have heretofore found refuge in our existing wiretap law. Unquestionably, these persons will loudly deplore the need of any change in the law; they will piously predict dire results to the freedom they themselves are seeking to destroy; and they will sttempt to engage the aid of unsuspecting liberal forces in order to keep the hands of enforcement officials tied. These are typical tactics of our internal enemies with which we are all familiar. Aware of them, we may be on our guard.

We must be careful, however, not to confuse these persons with loyal statesmen, lawyers, judges and others who sincerely believe that the country stands to lose more than to gain from admitting wire-tapped evidence in Federal criminal cases. It would be a sad day in America if a person becomes suspect merely because he does not see eye-to-eye with us on how best to resolve the ever-present conflict between the rights of society on the one hand, and the rights of the individual on the other.

What Chief Justice Warren recently said needs frequent reminder:

> "When men are free to explore all avenues of thought, no matter what prejudices may be aroused, there is a healthy climate in the nation. * * *
>
> The founding fathers themselves were not orthodox either in thought or expression. They recognized both the right and value of dissent in their generation."

And Chief Justice Hughes speaking for the Supreme Court has said:

> "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need * * * for free political discussion to the end that government may be responsive to the will of the people, and that changes, if desired, may be made by peaceful means."

In sum, the principal reasons for opposition by this latter group to the pending bills are that wiretapping is still "dirty business"; that we should not fight Communist spies by imitating their methods; that wiretaps will be used to harm innocent persons; that privacy will be invaded, and

people will be apprehensive about using the phone; and that the authority conferred upon Federal officers to wiretap may be abused. While these arguments are persuasive on their face, they do not stand up on analysis.

First, consider the claim that intercepted evidence should not be admissible in Federal courts because wiretapping is "dirty business".

Unquestionably, this is a strong argument. Inherently, we people have little liking for eavesdropping of any kind. Fair play and freedom mean so much to us. Wiretap snooping reminds us of the methods employed by the Nazi Gestapo and the Soviet OGPU.

Yet while some of these people would ban such evidence, they seem to be unaware that the law presently admits evidence which is obtained by informers; by eavesdroppers at someone's keyhole or window or party line; by an officer concealed in a closet; by installation of a recording device on the adjoining wall of a man's hotel or office; by transmitters concealed on an agent's person; by authorized search and seizure. Moreover, under the law, a Government witness may testify to every word of his telephone conversation with a defendant, and his testimony may even be distorted by an imperfect memory or character. Yet the Federal court would not admit an exact transcription of an intercepted conversation in the form of a phonograph recording. And the Supreme Court only recently held that although evidence is unlawfully seized, it is admissible in a Federal criminal proceeding to establish that the defendant lied.

There is little, if anything, to distinguish between these approved methods of obtaining and admitting evidence, and wiretaps which are not admissible. In these modern times, society would be severly handicapped unless it could resort to these methods to combat crime and to protect

itself from internal enemies.

In his monumental work on evidence, Professor Wigmore, an outstanding authority in the field, has dealt with the argument that wiretap evidence should be inadmissible because it is unethical and dirty business. His answer is:

> "But so is likely to be all apprehension of malefactors. Kicking a man in the stomach is 'dirty business', normally viewed, but if a gunman assails you and you know enough of the French art of savatage to kick him in the stomach and thus save your life, is that dirty business for you?"

Professor Wigmore advocates legislation which would permit wiretapping by Federal law enforcement agencies with the approval of the highest official of the department.

Re-evaluation of the critical situation today makes it clear that authorized wiretapping under careful restrictions in cases involving our national security is not "dirty business" at all, but a common sense solution by Congress which will protect the liberty and security of all the people from those who wish to see it impaired.

Prior to the invention of the telephone and telegraph, you could track a criminal down by shadowing him and checking his contacts. These days, most spies, traitors, and espionage agents are usually far too clever and devious in their operations to allow themselves to be caught walking down the street with their accomplices. Trailing them or trapping them is difficult unless you can tap their messages. Convicting them is practically impossible unless you can use these wiretaps in court. And it is, of course, "too late to do anything about it after sabotage, assassinations and 'fifth column' activities are completed."

It is therefore neither reasonable nor realistic that Communists should be allowed to have the free use of every modern communication device to carry out their unlawful conspiracies, but that law enforcement agencies should be barred from confronting these persons with what they have said over them.

Some opponents to wiretapping also claim that they are concerned with the protection of innocent persons who through no fault of their own may have become enmeshed with spies and subversives.

This argument has no real validity. The proposed laws will not permit the use of this evidence against innocent persons. Its use will be confined solely to criminal proceedings initiated by the Government against those criminals who seek to subvert our country's welfare. No innocent person

would be hurt by legislation authorizing wiretaps to be admissible against our internal enemies. No intercepted evidence could ever be made public until a grand jury had indicted the accused for espionage, sabotage or related crimes. Even upon a trial, no conversation or evidence obtained by wiretap could be introduced in court until a Federal judge had concluded that it was relevant, material and obtained with the approval of the Attorney General.

Testifying in recent hearings on wiretapping, Miles F. McDonald, former Assistant United States Attorney and District Attorney of Kings County, New York, said the following on this point:

> "I have never seen any case where an innocent person was harmed by a wiretap order, and I have been at the business for 14 years. If you do not give the people the right to tap a wire, you are just giving the enemies of our country the right to a secret dispatch case that you cannot possible find out about. * * * You are giving to the enemy every bit of technological progress."

Opponents of wiretapping also charge that it encourages invasion of the individual's privacy; that the principle is wrong; that it violates the spirit if not the language of the First Amendment safeguarding freedom of speech, in that people are made fearful of using the telephone; that a person would have to mind his speech over the phone lest a wiretapper would be waiting for him "to put his foot into his mouth."

It would be just as reasonable to claim that people are afraid of walking in the street because policemen carry clubs and guns.

Contrary to general impression, authorizing the introduction of intercepted evidence in the Federal court would not interfere in any way with telephone privacy. As the law stands now, it does not stop people from tapping

wires. It is still useful to those who make private use of it for personal gain. What has been stopped is the use of such evidence to enforce the laws against criminals. As Mr. Justice Jackson observed while Attorney General, the decisions only protect those engaged in incriminating conversations from having them reproduced in court. These decisions merely lay down rules of evidence. He said:

> "Criminals today have the free run of our communications systems, but the law enforcement officers are denied even a carefully restricted power to confront the criminal with his telephonic and telegraphic footprints."

It is also claimed that even controlled restricted monitoring of the wires should not be permitted since the authority may be abused by irresponsible and indiscriminate use of it.

This apprehension is entirely understandable. Unfortunately, wiretapping has been brought into disrepute because of widespread abuse of it by private peepers, in marital investigations; by snoopers in labor, business and political rivalries; and by some unscrupulous local enforcement officers, in shaking down racketeers, gamblers and keepers of disorderly houses. The stigma and taint which has accompanied improper use of wiretapping for private gain has contributed in large measure to the distrust and distaste which many people now have for lawful use of it by Federal officers in the public interest.

The fact that the technique has been abused by private persons and some local enforcement officers for private benefit affords no reason for believing that it will be abused by the Federal Bureau of Investigation. Experience demonstrates that the Federal Bureau of Investigation has never abused the wiretap authority. Its record of "nonpartisan, nonpolitical, tireless and efficient service over the years gives ample assurance that the innocent will not suffer in the process of the Bureau's alert protection of the Nation's safety." Mr. Hoover, himself, opposes wiretapping as an

investigative function except in connection with crimes of the most serious character such as offenses endangering the safety of the nation or the lives of human beings. In addition he has insisted that the technique be conducted under strict supervision of higher authority exercised separately in respect to each specific instance.

As President Franklin D. Roosevelt said in answer to the same objection:

> "This power may, of course, be abused; abuse is inherent in any governmental grant of power. But to prevent that abuse [wiretapping] so far as it is humanly possible to do so, I would confine such legislation to the Department of Justice and to no other Department."

And the Supreme Court has declared in this connection:

> "It is always easy to conjure up extreme and even oppressive possibilities in the exertion of authority. * * * Congress which creates and sustains these agencies may be trusted to correct whatever defects experience may reveal."

So too, should abuse ever arise in the administration of the wiretapping laws, then as has happened with other Federal laws, Congress may be counted on to withdraw or restrict the power so that the abuse is ended, and the public protected.

The answer to all these fears is summed up by the forceful statement which J. Edgar Hoover, Director of the FBI, once made:

> "I dare say that the most violent critic of the FBI would urge the use of wiretapping techniques if his child were kidnapped, and held in custody. Certainly there is as great a need to utilize this technique to protect our country from those who would enslave us and are engaged in treason, espionage, and subversion and who, if successful, would destroy our institutions and democracy."

Surely Congress is not wedded to a law of its own making which passage of time has shown to be unworkable and detrimental both to the individual and the common good. What Judge Learned Hand once said respecting another law is apt here: "There no doubt comes a time when a statute is so obviously oppressive and absurd that it can have no justification in any same polity." In light of new conditions and its experience, Congress may properly curb abuse of the existing law; "plug" up a serious gap in enforcement so that those guilty of espionage and related offenses will no longer escape punishment; and thereby remove the roadblock that now exists between society and its security. A recent editorial framed the question in these words:

> "We've got wiretapping now. Why not use it where it will do the most good - against our national enemies?"

This is the aim of the various proposals pending in Congress. These proposals seek to strike a fair balance between the rights of the individual and society in permitting intercepted communications to be admissible in Federal criminal proceedings under certain safeguards and in specific cases involving the Nation's security and defense, as well as kidnapping.

The authors of these bills represent two different schools of thought. One believes that the technique should be resorted to only after court permission; the other after authorization of the Attorney General alone.

The objections to vesting authority to permit wiretapping in the Attorney General are that he should not be allowed to police his own actions; that the authority may be abused when Government prosecutors turn out to be overzealous; that the court is more likely to be objective and curb indiscriminate wiretapping than the Attorney General; and that wiretapping is somewhat like a search into the privacy of an individual's affairs, and as in the case of a search, requires supervision by the courts.

The provision requiring an order by a Federal judge permitting wiretapping on a showing that there is reasonable cause for the order is patterned after a similar law in force in the State of New York for several years.

During the hearings on some of these bills, important objections were crystalized to the requirement of a court order as a condition to wiretapping. It was claimed that greater secrecy, uniformity, speed, and better supervision by Congress over the administration of wiretapping could be secured if no court order was necessary, and that abuse of the technique would be avoided by requiring the approval of the Attorney General alone.

Unquestionably, secrecy is essential for the success of wiretapping. It has been wisely said that "three men can keep a secret only if two men die." There is indeed strong danger of leaks if application is made to a court, because in addition to the judge, you have the clerk, the stenographer, and some other officer like a law assistant or bailiff who may be apprised of the nature of the application.

It was also pointed out that court consideration and permission would make for lack of uniformity. There are about two hundred and twenty-five different Federal District Judges, each of whom would have their own measure of what constitutes "reasonable cause." These differences among various judges would make for considerable confusion as well as uneven and patchwork application of the wiretapping law.

Another objection to the requirement of the court order was that it would be difficult for members of the Congress to exercise any supervision over so many Federal judges to determine whether they are properly discharging their duty under the law. It would make it far easier for Congress to watch the situation without going too far afield, if the authority were centralized in the Attorney General. This was also the view of Mr. Justice Jackson while

Attorney General in opposing the search warrant procedure which would authorize over two hundred Federal judges to permit wiretapping. He was not only concerned with the loss of precious time involved in obtaining a court order, but felt that probable publicity and filing of charges against persons as a basis for wiretapping before investigation was complete might easily result in great injury to such persons. He too concurred in the opinion that "a centralized responsibility of the Attorney General can easily be called in question by the Congress, but you cannot interrogate the entire judiciary.

There are still other considerations which seem to support the bills to permit wiretapping upon authority of the Attorney General rather than by the court.

First, the Attorney General is the cabinet officer primarily responsible for the protection of the national security. This duty, of course, extends throughout the entire United States, and is not limited to any particular district or area of the country. He is the officer of the Government in the best position to determine the necessity for wiretapping in the enforcement of the security laws. Because the Attorney General is charged with the responsibility of law enforcement, he should be given the authority to use his judgment and discretion within constitutional limits to obtain evidence necessary to protect our national security.

Second, security cases do not lend themselves to investigations on a limited area basis. They often extend through numerous judicial districts. In that connection, it should be recalled that the Gold espionage network extended from New York to New Mexico, covering many points in between. The Attorney General, whose responsibility of law enforcement is nation-wide, is more likely to have a better over-all picture of the need for granting

the authority to wiretap than a judge in any one district. For these reasons, a bill permitting designated Government agents to wiretap upon authority of the Attorney General in security cases where secrecy and speed are so vital, would, in my opinion, be most effective in achieving these aims.

Subversives, spies and the espionage agents are unquestionably hoping that Congress will engage in such a heated squabble on this issue as again to end up in hopeless stalemate as it has in the past. I know that Congress at this critical time will not permit treachery and intrigue to flourish and to continue unabated over the wires free from punishment. I feel confident that Congress will fully reflect the great unity and strength of the entire country and take the necessary action without delay. It will do so without regard to partisanship as it has so often done in the past, when the people's security and safety are at stake.