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ADDRESS

BY

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It is both an honor and a pleasure to be here tonight. I like young people. I'm conditioned to them. We have four of them in the family at home. Then, too, it's always a pleasure to come to North Carolina. The pleasure of getting away from the desk in Washington for a few brief hours in your beautiful land of the long leaf pine has been doubled by the opportunity for visiting briefly with some old acquaintances and, I hope, new friends at supper a short time ago.

Each time I visit here, I am impressed with the great progress the Old North State is making. You are beginning to reap dividends from your earnest endeavors to broaden your economy, to attract new and varied industry from silverware to celanese and from sewing machines to shirtmakers. Your state looks awake, it looks alive.

This Student Forum is typical of the spirit of free inquiry which is a tradition of this oldest of state universities. There are, of course, any number of reasons why young people come to such colleges as this. There are some fathers who send their boys to college because, at that age, they can't stand to have them around the house. Other young people go to learn a particular profession. The fortunate ones, I believe, are those who go to learn how to learn, and who carry that spirit of inquiry and study and understanding of both the rights and duties of freedom throughout their life.

That is the true spirit of this university and its very capable faculty. That is the spirit of Liberty which is embedded so firmly in your state's history.

I've learned something of North Carolina's history on this trip; and I hardly need remind you that your own history has been one of a proud, almost fierce, independence. A year before the Declaration of Independence you had your own Declaration at Mecklenberg. Your forefathers said then that to win and maintain their freedom, "We solemnly pledge to each other our mutual cooperation, our lives, our fortunes and our most sacred honor." You observe the signing of the Mecklenberg Declaration as a legal holiday. And, just 10 days from today, you will observe another traditional legal holiday in the spirit of the Old North State. That will be the anniversary of the Halifax Resolution. It was adopted in 1776 and instructed the delegates from North Carolina to the Continental Congress to vote for the Declaration of Independence. The Halifax Resolution was a protest against tyranny. It was a protest, as it stated, against the usurping of power over persons and properties without limit or control.

Unfortunately, the Declaration of Independence, The Revolutionary War and two World Wars did not automatically guarantee our freedom from tyranny for all time--and I'm referring to both tyranny from abroad and the home-grown varieties of tyranny. Freedom is an ideal. It is an ideal for which we must struggle constantly.

To protect it, we must ever be on our guard.

Now, let me stress that word "be"-- be ever on our guard. Your own state motto--"Esse Quam Videri" -- "to be rather than to seem" -- makes the point I would like to make. There is a great deal of

difference between posing as a guardian of our liberty -- of seeming to guard freedom -- and of actually being on guard.

We in the Department of Justice at Washington have a unique opportunity both to observe the constant struggle to maintain our freedoms and to participate in that struggle.

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.

Tonight I have selected for discussion one of our current problems of great public interest. It is controversial because it involves drawing a line between individual freedom and government responsibility -- it is the subject of wiretapping.

Why the current interest in wiretapping legislation? It is primarily because of our recent experience and disclosures of successful Communist espionage penetration in our Government and by betrayal of our vital secrets.

Let's 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 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."

Then, in 1941, 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 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."

Every Attorney General over the last 22 years has favored and authorized wiretapping by Federal officers in security cases. Moreover, this policy, adhered to by my predecessors, was carried on with the full knowledge, consent and approval of Presidents Roosevelt and Truman.

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.

When will the enemy strike next? Who will be his next victim? What Government secret will be stolen? Where are Communist fugitives hiding? All these questions have been discussed freely over the telephone by Communist conspirators who were safe in the knowledge their own words could never be used against them in court.

These enemy agents will not speak--at least the truth--in court. Federal agents are forbidden from testifying to what they heard over the phone. So, your Department of Justice has been blocked from proving its cases and sending all of these spies and traitors to jail where they belong. The result is that many of the persons responsible for these grave misdeeds are still at large.

I am happy to say that the Congress now is taking a long, hard look at this situation. The members are acting upon proposed legislation to strike the shackles from our Federal prosecutors and allow them to use in court all the evidence they can obtain against those who would use our freedoms to destroy those freedoms.

Now, wiretapping long has been a matter of public concern, challenge and raging controversy. 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 a "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.

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 witness may testify to every word of his own telephone conversation with a defendant, and his testimony may even be distorted by an imperfect memory or character. 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 have not been admissible.

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 law will not permit the use of wiretap 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 wiretap evidence 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 had been obtained with the approval of the Attorney General.

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.

It also is 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.

J. Edgar Hoover, the Director of the Federal Bureau of Investigation, 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, Mr. Hoover has insisted that the technique be conducted under

strict supervision of higher authority exercised separately in respect to each specific instance.

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 Mr. Hoover 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 need not be wedded to a law of its own making which time has shown is unworkable and actually detrimental to both 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." Congress should properly move to plug a serious gap in enforcement so that those guilty of espionage and related offenses no longer can escape punishment.

A recent editorial framed the question in these practical words: "We've got wiretapping now. Why not use it where it will do the most good -- against our national enemies?"

The aim of the proposal pending in Congress is to strike a fair balance between the rights of the individual and the duties of our government to protect the way of life which insures those rights.

Two schools of thought have been heard. 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 proposal to require an order by a Federal judge to permit wiretapping on a showing that there is reasonable cause for the order, was 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 crystallized to that requirement of a court order as a condition to federal wiretapping to gain evidence. 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.

Unquestionably, secrecy is essential for the success of wiretapping. There is 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 wiretap evidence 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 were 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. He also was concerned with the loss of precious time involved in obtaining a court order and with a belief 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.

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

First, the Attorney General is the cabinet officer primarily responsible for the enforcement of Federal law. 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.

Subversives and spies are unquestionably hoping that Congress again will argue to a hopeless stalemate on this proposition. But I feel confident that Congress will reflect fully the great unity and

strength of this nation and act without further delay. I trust that Congress will not permit unabated use of the wires for treachery and intrigue. I know that Congress, with our security and safety at stake, will give our regular enforcement agencies another badly-needed shovel to dig out those persons whose very philosophy runs so counter to our heritage. I promise you that such a new law will be used only to strengthen and protect that heritage of freedom.