Department of Justice

STATEMENT

by

ATTORNEY GENERAL RAMSEY CLARK

on

RIGHT OF PRIVACY ACT OF 1967
(S. 928)

Before the

SUBCOMMITTEE ON ADMINISTRATIVE
PRACTICE AND PROCEDURE OF THE
SENATE JUDICIARY COMMITTEE

March 20, 1967

We cared enough for our privacy to prohibit unreasonable searches and seizures and unrestricted warrants in the Bill of Rights. For privacy is after all the foundation of freedom and the source of individualism and personality. But as Justice Brandeis observed nearly four decades ago ". . . general warrants are but puny instruments of tyranny and oppression when compared to wiretapping." Still we permit the most insidious invasion of privacy - the electronic surveillance.

Privacy has always been a rare commodity, but never so rare as in our times. Never, therefore, has it been more important that we cherish privacy. The sheer numbers in our lives, our urban living, and our immense and growing technological capacities burden and further threaten privacy. They compel us to seek ways of being alone and being let alone - of solitude - and the chance to be ourselves.

John Stuart Mill said "the worth of a state, in the long run, is the worth of the individuals composing it." When the state demeans its citizens, or permits them to demean each other however beneficent the particular purpose, it will only find that it has limited opportunities for individual fulfillment and for national accomplishment.

Public safety will not be found in wiretapping. Security is to be found in excellence in law enforcement, in courts and in corrections. That excellence has not been demonstrated to include wiretapping.

Nothing so mocks privacy as the wiretap and electronic surveillance. They are incompatible with a free society and justified only when that society must protect itself from those who seek to destroy it.

Recent proposals have been advanced to authorize limited wiretapping and eavesdropping under judicial supervision. Constitutional challenges to such state legislation are now presented to the Supreme Court in the case of Berger v. New York. Before this session of the Congress expires, the Supreme Court may well decide some of the constitutional issues. But even if the practice withstands this constitutional test, it should be stopped by statute.

Only the most urgent need can justify wiretapping and other electronic surveillance. Proponents of authorization have failed to make a case--much less meet the heavy burden of proof our values require. Where is the evidence that this is an efficient police technique? Might not more crime be prevented and detected by other uses of the same manpower without the large scale, unfocussed intrusions on personal privacy that electronic surveillance involves?

The proposed Right of Privacy Act would establish a blanket prohibition against the interception of wire communications. Wire communications involve the interstate communications network, and it has long been clear that Congress has plenary power in this area. The statutory ban would close a major gap in existing law, by making clear that interception alone or divulgence alone would be a crime. Section 605 of the Communications Act of 1934 (47 U.S.C. 605) prohibits "interception and divulgence" and has long been subject to the interpretation that interception alone is not an offense.

The bill also deals with eavesdropping. Like wiretapping, eavesdropping involves a pervasive invasion of the privacy of conversations. Its incidents, as this subcommittee has dramatically demonstrated in previous hearings, range far beyond the overhearing of telephone conversations. The sophisticated electronic devices presently available and aggressively promoted on the market are capable of intruding into almost any conversation anywhere. Such devices, highly portable and easily concealed, can be secreted in the innermost reaches of a person's home. They indiscriminately record his most private conversations. They can be used to overhear conversations even where there has been no physical trespass on private premises.

It is therefore essential that any enactment contain, as does the bill before the subcommittee, a comprehensive ban on the use of electronic, mechanical, or other devices for the purpose of eavesdropping. The disclosure or use of information obtained by eavesdropping is and must also be proscribed.

The prohibitions against wiretapping and eavesdropping apply only when none of the parties to the conversation has consented to the activity. Quite different practical and legal considerations come into play when one of the parties to the conversation has authorized the surveillance. The use of electronic devices in such circumstances has consistently been upheld by the Supreme Court against constitutional attack.

In addition to the broad prohibitions against the use of wiretapping and eavesdropping devices, the statute will reach the sources of supply of these devices. It contains specific prohibitions against the manufacture, shipment, or advertisement of devices whose design renders them primarily useful for the purpose of wire interception or eavesdropping. This section will eliminate many objectionable devices now readily obtained on the market, such as the spike microphone, the cuff link microphone, the martini olive transmitter, and other devices whose design indicates that their primary purpose is to facilitate the surreptitious overhearing of private conversations. The section will not affect the manufacture or

shipment of simple induction coils, tape recorders, or other innocent electronic equipment even though they may be adaptable to wiretapping or bugging uses. It should be noted, however, that the bill prohibits the advertisement even of legitimate devices, whenever the advertisement promotes the use of the devices for wiretapping or eavesdropping.

Only wiretapping and eavesdropping directly related to and necessary for the protection of the security of the Nation is excepted from the prohibitions contained in the bill. Even in this narrow area, however, no information obtained as a result of such measures will be admissible in evidence in judicial or administrative proceedings. Other use or disclosure of such information is prohibited except as essential to national security. The national security exception is a necessary provision in the statute; the evidentiary restrictions, however, will serve an important function in confining such activity to the extremely narrow bounds that are appropriate.

This bill is far-reaching and comprehensive. When enacted, it will afford major protection to a fundamental right of all Americans. Legislation to safeguard the right of privacy is long overdue.