



Department of Justice

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ADDRESS

BY

THE HONORABLE WILLIAM B. SAXBE
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE CITY CLUB OF CLEVELAND

12:30 P.M.
FRIDAY, JUNE 28, 1974
CLEVELAND, OHIO

IT IS ALWAYS NICE TO BE BACK IN OHIO AND I AM DELIGHTED
THAT YOU INVITED ME TO APPEAR ONCE AGAIN AT THE CITY CLUB.

I HAVE ALWAYS ENJOYED MY PREVIOUS VISITS WITH YOU AND
I LOOK FORWARD TO ANOTHER FRANK EXCHANGE IN THE QUESTION-AND-
ANSWER SESSION THAT WILL FOLLOW MY PREPARED REMARKS THIS AFTERNOON.

SINCE BECOMING ATTORNEY GENERAL SIX MONTHS AGO, A NUMBER
OF ISSUES MUCH ON THE NATION'S MIND HAVE OCCUPIED MY ATTENTION.

BUT FEW OF THEM ARE THE OBJECT OF SUCH INTENSE PUBLIC
CONCERN AS THE MATTER I WISH TO DISCUSS WITH YOU TODAY.

THE SUBJECT IS ELECTRONIC SURVEILLANCE--A TERM WHICH
INCLUDES WIRETAPPING AND THE USE OF MICROPHONES TO OVERHEAR
OR RECORD CONVERSATIONS.

ELECTRONIC SURVEILLANCE IS NOT A NEW CONCERN. MORE THAN 45 YEARS AGO, WHEN HE DISSENTED IN A SUPREME COURT DECISION IN A NOTED CASE, JUSTICE LOUIS BRANDEIS SAID:

"THE MAKERS OF OUR CONSTITUTION...CONFERRED...THE RIGHT TO BE LET ALONE—THE MOST COMPREHENSIVE OF RIGHTS AND THE RIGHT MOST VALUED BY CIVILIZED MEN."

IN THE INTERVENING YEARS, THE ADVENT OF NEW TECHNOLOGY HAS MADE POSSIBLE A RANGE OF SURVEILLANCE ACTIVITIES FAR BEYOND THE TAPPING OF A TELEPHONE LINE.

WITH THAT TECHNOLOGY HAVE COME THE WIDESPREAD MANUFACTURE AND AVAILABILITY OF SURVEILLANCE DEVICES—ALONG WITH A WILLINGNESS ON THE PART OF MANY PERSONS TO EMPLOY THEM.

WE SEE, AT THE SAME TIME, SPREADING CONCERNS AMONG LARGE SECTIONS OF THE PUBLIC THAT THEY OR THEIR FAMILIES MAY BE THE SUBJECTS OF WIRETAPPING OR BUGGING.

I AM CERTAIN WE ALL KNOW DECENT, LAW-ABIDING PEOPLE WHO HAVE ADMITTED A MOMENT OF UNEASINESS--IF NOT A TWINGE OF FEAR--WHEN THEY HEAR CLICKS OR SUSPICIOUS BACKGROUND NOISE ON THEIR TELEPHONES.

THE POSSIBILITY OF BIG BROTHERS EAVESDROPPING ON OUR THOUGHTS AS WELL AS OUR ACTIONS HAS SEEPED INTO THE NATIONAL CONSCIOUSNESS IN SUBSTANTIAL WAYS. AND SOME OF THE EVENTS RELATED TO WATERGATE HAVE INCREASED PUBLIC FEARS ON THE SUBJECT.

YOU ARE CONCERNED ABOUT IT. I AM CONCERNED ABOUT IT. AND SO IS THE DEPARTMENT OF JUSTICE.

BUT THOSE OF US WHO WORK IN THE DEPARTMENT HAVE MORE THAN A CONCERN. WE HAVE A RESPONSIBILITY THAT WE FEEL VERY STRONGLY TO PROSECUTE PERSONS WHO VIOLATE THE LAW THROUGH ILLEGAL ELECTRONIC SURVEILLANCE. AND WE HAVE AN EQUALLY DEEP RESPONSIBILITY TO MAKE CERTAIN THAT THE SURVEILLANCE CONDUCTED BY THE DEPARTMENT FOR LAW ENFORCEMENT AND NATIONAL SECURITY REASONS IS BOTH LEGAL AND PROPER.

OUR ENFORCEMENT ACTIVITY AGAINST ILLEGAL SURVEILLANCE IS PROBABLY LITTLE KNOWN TO THE PUBLIC. BUT IT IS SOMETHING THEY SHOULD KNOW ABOUT FOR TWO VERY IMPORTANT REASONS--FOR THEIR OWN RELATIVE PEACE OF MIND AND SO THEY CAN RESPONSIBLY ASSIST OUR EFFORTS TO PROSECUTE THOSE WHO VIOLATE THE LAW.

THE MAIN STATUTE WHICH GIVES THE DEPARTMENT ENFORCEMENT AUTHORITY IS PART OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT, WHICH WAS ENACTED BY CONGRESS IN 1968.

TO BEGIN WITH, THE ACT IMPOSES UPON THE FEDERAL, STATE, AND LOCAL GOVERNMENTS THE REQUIREMENT THAT THEY OBTAIN A COURT ORDER BEFORE CONDUCTING ELECTRONIC SURVEILLANCE RELATING TO ALLEGED CRIMINAL VIOLATIONS. ON THE OTHER HAND, THERE IS NO REQUIREMENT OF A COURT ORDER IN NATIONAL SECURITY CASES WHICH ARE HANDLED BY THE FBI. I WILL ELABORATE ON THAT LATER.

IN ADDITION, THE ACT FORBIDS ELECTRONIC SURVEILLANCE OF ANY KIND BY PRIVATE CITIZENS--EXCEPT WHERE THE INDIVIDUAL IS HIMSELF A PARTY TO THE CONVERSATION. HOWEVER, THE LAW ALSO FORBIDS THE POSSESSION OR USE--EXCEPT BY GOVERNMENT OFFICIALS--OF A WIDE VARIETY OF ELECTRONIC SURVEILLANCE DEVICES. THUS, EVEN THAT TYPE OF LAWFUL, ONE-PARTY SURVEILLANCE BY PRIVATE CITIZENS IS INHIBITED.

FURTHER SAFEGUARDS ARE IMPOSED BY A BAN ON FIRMS MANUFACTURING THE SURVEILLANCE DEVICES UNLESS THEY ARE UNDER CONTRACT TO A LAW ENFORCEMENT AGENCY. AND FINALLY, THERE ARE PROHIBITIONS AGAINST THE SALE AND ADVERTISING OF A BROAD RANGE OF SURVEILLANCE EQUIPMENT.

BY RECITING SOME OF THE ACT'S PROVISIONS, I DO NOT MEAN TO SUGGEST THAT THE MERE EXISTENCE OF A STATUTE HAS SOLVED ILLEGAL SURVEILLANCE OR RELATED VIOLATIONS. NO STATUTE DOES THAT--WHETHER IT CONCERNS BANK ROBBERY OR THE SALE OF NARCOTICS.

HOWEVER, THE 1968 ACT DID PROVIDE A STARTING POINT FOR ATTACKING THE PROBLEMS. THE JUSTICE DEPARTMENT HAS MADE A PROMISING BEGINNING IN THE NATURE AND THE LEVEL OF ITS PROSECUTIONS. BUT THE UNVARNISHED FACT IS THAT, AS WITH ANY LAW ENFORCEMENT PROBLEM, WE CAN AND MUST DO A BETTER JOB. I PLAN TO MAKE CERTAIN THAT THE NECESSARY RESOURCES ARE AVAILABLE.

IN FISCAL 1969, THE FIRST YEAR OF THE STATUTE, A TOTAL OF SEVEN CASES WERE BROUGHT AGAINST EIGHT DEFENDANTS. BY FISCAL 1972, THE NUMBER HAD RISEN TO 23 CASES AND 38 DEFENDANTS. WE EXPECT THAT CASES IN THE CURRENT FISCAL YEAR WILL BE THE HIGHEST TO DATE. IN ALL, THERE HAVE BEEN 86 CASES BROUGHT AGAINST 122 DEFENDANTS FROM JUNE OF 1968 TO LAST JANUARY.

AN INTEGRAL PART OF ANY ENFORCEMENT EFFORT IS PUBLIC EDUCATION AND--IN RETURN--THE FULL COOPERATION OF THE PUBLIC. WE WANT CITIZENS TO LET US KNOW WHEN THEY SUSPECT ILLEGAL SURVEILLANCE IS BEING CONDUCTED. WE ALSO WANT THEM TO TELL US ABOUT THE SALE OR ADVERTISING OF ELECTRONIC DEVICES WHICH MAY BE ILLEGAL.

MORE THAN HALF OF THE DEPARTMENT'S PROSECUTIONS IN THIS FIELD RESULT FROM CITIZEN COMPLAINTS. WE WANT THOSE COMPLAINTS TO KEEP FLOWING IN, AND AT AN INCREASED RATE. WE DO NOT WANT ANYONE TO ADOPT A VIGILANTE MENTALITY. BUT WE DO WANT RESPONSIBLE CITIZEN EFFORTS TO REPORT POSSIBLE VIOLATIONS OF THE LAW.

IT IS APPARENT THAT DESPITE ENFORCEMENT EFFORTS SOME MANUFACTURE AND SALE OF DEVICES WHICH ARE PRIMARILY USEFUL FOR INTERCEPTION OF COMMUNICATIONS STILL GO ON. WE KNOW OF TRANSMITTERS HIDDEN IN A CIGARETTE PACKAGE AND A TIE CLASP. AND THERE ARE BRIEFCASES SPECIALLY FITTED WITH CONCEALED TAPE RECORDERS, ACTIVATION SWITCHES, AND MICROPHONES.

THE PUBLIC OFTEN ASKS WHAT IT CAN DO TO HELP FIGHT CRIME. IN THE CASE OF SUSPECTED ELECTRONIC SURVEILLANCE, ALL THEY HAVE TO DO IS TO CONTACT THE NEAREST OFFICE OF THE FEDERAL BUREAU OF INVESTIGATION. OR THE NEAREST UNITED STATES ATTORNEY'S OFFICE. OR STATE OR LOCAL AUTHORITIES.

WE WANT THESE COMPLAINTS--AND I CAN ASSURE YOU THAT THE DEPARTMENT'S RECEPTION WILL BE CORDIAL AND THE ACTION WILL BE SWIFT. THERE IS JUST NO WAY THAT THE FEDERAL AND STATE GOVERNMENTS CAN FIND ALL OF THE FIRMS THAT ARE MAKING OR SELLING ILLEGAL EQUIPMENT WITHOUT THE PUBLIC'S HELP.

GREATER LEVELS OF COOPERATION ALSO MUST BE ESTABLISHED WITH STATE AND LOCAL GOVERNMENTS IN THE PROSECUTION OF ILLEGAL SURVEILLANCE. MORE THAN HALF OF THE STATES NOW HAVE LAWS SIMILAR TO THE FEDERAL STATUTES. THEY DESERVE VIGOROUS ENFORCEMENT. AND IN THOSE STATES WHERE NO LAWS EXIST, THEY SHOULD BE PROMPTLY ENACTED.

TO DATE, THE BULK OF THE CASES INVESTIGATED BY THE DEPARTMENT INVOLVE ILLEGAL SURVEILLANCE IN INDUSTRIAL ESPIONAGE MATTERS AND DOMESTIC RELATIONS CASES. THERE HAVE BEEN INSTANCES WHERE PRIVATE DETECTIVES, SOMETIMES IN LEAGUE WITH ATTORNEYS, HAVE PARTICIPATED IN WIRETAPPING OR BUGGING TO GATHER EVIDENCE FOR DIVORCE ACTIONS OR SETTLEMENTS.

THE PUBLIC SHOULD BE AWARE THAT THERE ARE MORE WAYS TO
BREAK THE LAW THAN BY SIMPLY INSTALLING A TAP OR MICROPHONE.
FOR INSTANCE, LOANING THE EQUIPMENT TO A HUSBAND OR WIFE TO
BUG AN ERRANT MATE IS ALSO AGAINST THE LAW. DIVULGING INFORMATION
WHICH HAS BEEN ILLEGALLY INTERCEPTED IS ALSO A FELONY.

IN THE EVENT ANYONE DOUBTS HOW SURVEILLANCE CAN CREEP
INTO OUR DAILY LIVES, LET ME BRIEFLY RECOUNT A CASE THE
DEPARTMENT BROUGHT RECENTLY AGAINST AN AUTOMOBILE DEALERSHIP
IN MARYLAND.

WE RECEIVED A REPORT THAT THE FIRM HAD INSTALLED MICROPHONES
IN THE BOOTHS WHICH SALESMEN USED TO DISCUSS AUTOMOBILE PURCHASES
WITH CUSTOMERS. AFTER DISCUSSING THE PRICE OF THE CAR, THE
SALESMAN WOULD LEAVE THE BOOTH AND THEN SECRETLY LISTEN TO A
HUSBAND AND WIFE DISCUSS--IN PRIVATE, THEY THOUGHT--HOW THEY FELT
ABOUT BUYING THE CAR.

A COURT ORDER WAS SUBSEQUENTLY OBTAINED AND IN THE FBI RAID THAT FOLLOWED, AGENTS SEIZED MICROPHONES IN SEVEN SALES BOOTHS AND A LISTENING DEVICE IN THE OFFICE OF A COMPANY OFFICIAL.

AFTER A CRIMINAL INFORMATION WAS FILED, THE COURT ACCEPTED A PLEA OF NO CONTEST FROM THE FIRM--OVER OUR STRENUOUS OBJECTIONS-- AND IMPOSED A \$7,500 FINE. IN PRONOUNCING SENTENCE, THE COURT SAID THERE WAS REASON TO BELIEVE THAT THIS TYPE OF ILLEGAL EAVESDROPPING WAS WIDESPREAD.

I CITE THIS EXAMPLE TO SHOW HOW ILLEGAL ELECTRONIC SURVEILLANCE --OR, AS SOME TERM IT, THE BIG EAR--CAN BE A PART OF WHAT WE FEEL ARE THE MOST INNOCUOUS AND ROUTINE ACTIVITIES. BUT THERE ARE EVEN MORE SINISTER ASPECTS OF THIS TYPE OF ACTIVITY WHICH WE ARE INVESTIGATING.

ONE SUCH CONCERN CENTERS ON ILLEGAL SURVEILLANCE BY LAW ENFORCEMENT AGENCIES THEMSELVES. AT PRESENT, THE DEPARTMENT OF JUSTICE IS CONDUCTING SEVERAL MAJOR INVESTIGATIONS TO DETERMINE IF STATE OR LOCAL AUTHORITIES HAVE CARRIED OUT ILLEGAL WIRETAPPING AND MICROPHONE INTERCEPTIONS. THERE ALSO ARE MAJOR INVESTIGATIONS UNDERWAY OF POSSIBLE ILLEGAL SALE OR MANUFACTURE OF LISTENING DEVICES.

IT IS IMPOSSIBLE TO ACCURATELY GAUGE THE EXTENT OF ILLEGAL ELECTRONIC SURVEILLANCE IN THE NATION, SINCE IT IS AN ACTIVITY THAT BY ITS VERY NATURE IS CLANDESTINE.

HOWEVER, WE DO HAVE A FEW YARDSTICKS, AND I WOULD LIKE TO MENTION SOME OF THEM TO YOU.

FOR ONE THING, OUR SPECIALISTS IN THE CRIMINAL DIVISION FEEL THAT THE DEPARTMENT'S EFFORTS IN ENFORCEMENT AND IN THE EDUCATION OF THE PUBLIC AND MANUFACTURERS HAVE MADE SUBSTANTIAL INROADS.

THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY RECENTLY REPORTED THAT IT HAD RECEIVED ABOUT 10,000 REQUESTS LAST YEAR FROM CUSTOMERS WHO WANTED THEIR PHONE LINES CHECKED BECAUSE THEY THOUGHT THEY WERE BEING TAPPED. ALL 10,000 REQUESTS WERE INVESTIGATED, THE COMPANY SAID. AND IN 163 CASES--LESS THAN 2 PERCENT OF THE COMPLAINTS--IT WAS FOUND THAT LISTENING DEVICES EITHER WERE OR HAD BEEN ATTACHED. WHATEVER THE NUMBER OF ILLEGAL ELECTRONIC SURVEILLANCES MAY BE, WE FEEL THAT EVEN ONE IS PLAINLY ONE TOO MANY.

THE ONLY FACTUAL INDICATOR OF THE AMOUNT OF PERMISSIBLE ELECTRONIC SURVEILLANCE OCCURRING IN THE UNITED STATES COMES FROM REPORTS WHICH THE 1968 STATUTE REQUIRES THAT ALL LAW ENFORCEMENT AGENCIES FILE ANNUALLY ON THE NUMBER OF COURT-APPROVED ELECTRONIC SURVEILLANCES THEY HAVE CARRIED OUT.

STATISTICS RELEASED BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS SHOW THAT THERE WERE COURT ORDERS ISSUED FOR A TOTAL OF 864 WIRETAP AND MICROPHONE INSTALLATIONS BY FEDERAL, STATE, AND LOCAL AGENCIES IN CALENDAR YEAR 1973.

OF THAT TOTAL, ONLY 130 WERE CARRIED OUT BY THE FEDERAL GOVERNMENT. THE REMAINDER WERE IN 17 STATES AND THE DISTRICT OF COLUMBIA--INCLUDING 334 IN NEW YORK STATE AND 215 IN NEW JERSEY.

I WANT TO CALL PUBLIC ATTENTION TO THE SMALL NUMBER OF FEDERAL WIRETAPS AND BUGS APPROVED BY THE COURTS UNDER TITLE III. THE PRACTICE IS OF MUCH SMALLER SCOPE, I WOULD IMAGINE, THAN MOST PEOPLE SUSPECT. AND IT OBVIOUSLY SHOWS A CONCERTED EFFORT TO BE RESTRAINED AND RESPONSIBLE.

AND IT SHOULD BE NOTED THAT THE NUMBER OF FEDERAL INSTALLATIONS UNDER TITLE III IS GOING DOWN INSTEAD OF UP. IN 1971, FOR INSTANCE, THERE WERE 285 COURT AUTHORIZATIONS ISSUED FOR FEDERAL CASES. BY 1972, IT HAD DECLINED TO 206. AND IT CONTINUED TO DROP SHARPLY TO 130 LAST YEAR. COMPARE THAT WITH THE 70,000 WIRETAPS THE FRENCH GOVERNMENT HAD IN OPERATION LAST YEAR.

I THINK THESE STATISTICS CLEARLY SHOW THAT THE FEDERAL GOVERNMENT IS NOT ENGAGED IN ANY SORT OF MASS ELECTRONIC EAVESDROPPING AND SNOOPING. SOME MIGHT EVEN CONTEND THAT OUR POLICY IS TOO RESTRAINED, GIVEN THE NATURE AND EXTENT OF CRIME IN THE UNITED STATES.

BUT I AM CONVINCED THAT WE ARE STEERING A PROPER COURSE— AND USING ELECTRONIC SURVEILLANCE ONLY IN THOSE CASES WHERE IT IS ABSOLUTELY NECESSARY.

MOST OF THE WIRETAPPING AND BUGGING AUTHORIZATIONS UNDER TITLE III OF THE SAFE STREETS ACT ARE FOR ILLEGAL GAMBLING AND NARCOTICS CASES. ON OCCASION, HOWEVER, COURT APPROVAL ALSO HAS BEEN OBTAINED TO INVESTIGATE IN SUCH CRIMES AS KIDNAPPING, EXTORTION, AND CARGO THEFT.

LET ME EXPLAIN A LITTLE OF OUR INTERNAL REVIEW POLICY SO YOU CAN SEE THAT THESE CASES INVOLVING ELECTRONIC DETECTION ARE NOT CONSIDERED LIGHTLY.

WHEN AN INVESTIGATIVE AGENCY BEGINS TO CONSIDER SUCH A REQUEST, IT IS SUBJECTED TO A THOROUGH REVIEW WITHIN THAT AGENCY. IF THE AGENCY HEAD APPROVES IT, THE REQUEST IS FORWARDED, ALONG WITH A MEMORANDUM OF JUSTIFICATION, TO A SPECIAL UNIT IN OUR CRIMINAL DIVISION. THE MATERIAL MUST BE ACCOMPANIED BY AN AFFIDAVIT AND A DRAFT COURT ORDER.

A STAFF ATTORNEY WITHIN THE SPECIAL UNIT THEN REVIEWS THE MATERIAL AND FORWARDS IT TO THE HEAD OF THE UNIT FOR HIS STUDY. IF APPROVAL IS GIVEN AT THAT POINT, THE REQUEST MOVES ALONG TO THE CHIEF OF A LARGER SECTION WITHIN THE CRIMINAL DIVISION.

IF THE SECTION CHIEF APPROVES, THEN THE MATTER IS GIVEN TO THE ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE CRIMINAL DIVISION FOR HIS PERSONAL REVIEW.

ASSUMING THE REQUEST SURVIVES ALL OF THOSE STEPS, IT IS THEN BROUGHT TO MY OFFICE, AND A MEMBER OF MY STAFF SCRUTINIZES IT CLOSELY. AND FINALLY, IT COMES TO ME.

BUT THAT IS NOT THE END OF THE REVIEW PROCESS. THE DEPARTMENT THEN HAS TO GO INTO COURT AND ARGUE OUR CASE BEFORE A FEDERAL JUDGE. THE JUDGE HAS TO MAKE DETERMINATIONS OF PROBABLE CAUSE--INCLUDING THE LIKELIHOOD THAT THE SUSPECTED OFFENSE WILL BE COMMITTED AND THAT THE REQUESTED ELECTRONIC SURVEILLANCE WILL INTERCEPT COMMUNICATIONS RELATING TO THE OFFENSE. IN 1973, NO FEDERAL APPLICATION WAS REJECTED BY THE COURTS.

WE ALSO MUST CONVINCING THE COURT THAT NORMAL INVESTIGATIVE PROCEDURES WOULD BE UNLIKELY TO SUCCEED OR, IF USED, WOULD UNDULY JEOPARDIZE THE LIVES OF OUR INVESTIGATIVE AGENTS.

IF SURVEILLANCE IS APPROVED, IT IS LIMITED BY LAW TO 30 DAYS. BEYOND THE INITIAL PERIOD, WE HAVE TO GO BACK TO COURT AND SEEK THE JUDGE'S PERMISSION FOR AN EXTENSION. FROM AN ADMINISTRATIVE STANDPOINT, HOWEVER, THE DEPARTMENT INTERNALLY IMPOSES AN EVEN MORE STRICT CONTROL. WE LIMIT OUR ORIGINAL REQUESTS FOR TITLE III SURVEILLANCES TO 20 DAYS OR LESS, AND DETERMINE WITHIN THAT PERIOD OF TIME IF THE SURVEILLANCE IS PRODUCTIVE AND WOULD JUSTIFY AN APPLICATION FOR AN EXTENSION. IF THE INVESTIGATIVE AGENCY WANTS AN EXTENSION, IT MUST MAKE A SHOWING OF PROOF TO THE DEPARTMENT'S ATTORNEYS ALL OVER AGAIN. ONLY IF THE AGENCY MEETS THAT BURDEN DO WE THEN GO BACK INTO COURT TO SEEK THE ADDITIONAL TIME.

OTHER LIMITATIONS ALSO ARE PLACED ON THE SCOPE OF THE SURVEILLANCE. WE MUST SPECIFY TO THE COURT THE EXACT LOCATION-- EVEN DOWN TO THE PARTICULAR ROOM OR TELEPHONE. AND IN ADDITION, WE TAKE GREAT PRECAUTIONS TO AVOID OVERHEARING INNOCENT THIRD PARTIES OR EVEN CONVERSATIONS OF THE ALLEGED OFFENDER WHICH ARE NOT RELATED TO THE ALLEGED OFFENSE. ON TOP OF EVERYTHING ELSE, THE LAW REQUIRES THAT THOSE NAMED IN A COURT ORDER BE NOTIFIED WITHIN 90 DAYS OF THE FACT THAT AN ELECTRONIC SURVEILLANCE HAD BEEN CONDUCTED.

YOU MIGHT WELL ASK, AS MANY PERSONS DO, WHETHER ELECTRONIC SURVEILLANCE PRODUCES ANYTHING OF VALUE. I BELIEVE THE ANSWER TO BE AN UNQUESTIONABLE YES. DURING 1973, A TOTAL OF 322 ARRESTS STEMMED FROM FEDERAL SURVEILLANCES. WIRETAPPING DOES NOT GUARANTEE PROSECUTORIAL SUCCESSES, BUT FOR CERTAIN KINDS OF OFFENSES, IT HAS NO SUBSTITUTE.

THIS IS PARTICULARLY TRUE IN ORGANIZED CRIME CASES--INCLUDING GAMBLING--WHERE THE TELEPHONE IS THE ESSENTIAL CONDUIT FOR CARRYING OUT ILLICIT ACTIVITIES.

I DON'T HAVE TO RECOUNT FOR YOU TODAY THE GRAVITY OF THE PROBLEMS POSED TO THIS COUNTRY BY ORGANIZED CRIME. OR THE TERRIBLE TOLL IT EXACTS THROUGH PUBLIC CORRUPTION, THROUGH NARCOTICS TRAFFIC, AND THROUGH OTHER ACTIVITIES WHICH DEVASTATE WHOLE SEGMENTS OF OUR SOCIETY. ELECTRONIC SURVEILLANCE IS AN INDISPENSABLE TOOL FOR PENETRATING THEIR ILLEGAL FORTRESSES.

LET ME SAY AGAIN, HOWEVER, THAT OUR POLICY ON ELECTRONIC SURVEILLANCE UNDER TITLE III OF THE ACT IS RESTRAINED AND THE NUMBER OF LISTENING DEVICES IS MODEST. BUT WE SHOULD BE UNDER NO DELUSION CONCERNING THEIR IMPORTANCE.

THE SAME BASIC POINTS ALSO CAN BE MADE IN REGARD TO THE DEPARTMENT'S POLICY IN ELECTRONIC SURVEILLANCE IN CASES RELATING TO THE NATIONAL SECURITY.

FOR MANY YEARS, IT WAS THE FEDERAL GOVERNMENT'S POSITION THAT IT COULD GATHER THROUGH ELECTRONIC MEANS--AND WITHOUT COURT APPROVAL-- INTELLIGENCE ON ACTIVITIES DIRECTED BY FOREIGN NATIONS AS WELL AS ON ACTIVITIES BY DOMESTIC GROUPS OR INDIVIDUALS WHICH MIGHT POSE A THREAT TO THE NATION'S SECURITY.

IN A LANDMARK DECISION IN 1972, THE SUPREME COURT HELD THAT COURT PERMISSION HAD TO BE OBTAINED BEFORE ELECTRONIC SURVEILLANCE COULD BE USED AGAINST PURELY DOMESTIC ORGANIZATIONS EVEN THOUGH THEY WERE CONSIDERED A THREAT TO THE SECURITY OF THE COUNTRY.

THE GOVERNMENT RETAINS ITS POWER TO CARRY OUR ELECTRONIC SURVEILLANCE IN MATTERS, HOWEVER, STILL RELATING TO FOREIGN THREATS, UNDER THE GUIDELINES OF THE 1968 ACT WHICH AUTHORIZED IT:

"...TO PROTECT THE NATION AGAINST ACTUAL OR POTENTIAL ATTACK OR OTHER HOSTILE ACTS OF A FOREIGN POWER; TO OBTAIN FOREIGN INTELLIGENCE INFORMATION DEEMED ESSENTIAL TO THE SECURITY OF THE UNITED STATES; TO PROTECT NATIONAL SECURITY INFORMATION AGAINST FOREIGN INTELLIGENCE ACTIVITIES...."

THE INTERNAL REVIEWS FOR NATIONAL SECURITY SURVEILLANCE REQUESTS ALSO ARE VERY STRINGENT WITHIN THE DEPARTMENT. THERE ARE NINE DIFFERENT CHECKS IN THE FBI ALONE BEFORE THE REQUEST CAN ARRIVE AT THE DIRECTOR'S DESK. FURTHER REVIEW IS THEN CONDUCTED WITHIN THE JUSTICE DEPARTMENT BEFORE THE REQUEST COMES TO ME. AMONG THE DOCUMENTATION WE REQUIRE IS A PRECISE EXPLANATION OF THE NATURE OF THE ACTIVITY ABOUT WHICH WE NEED THE INFORMATION, AS WELL AS THE EXACT SITE AND THE TIME NECESSARY TO GATHER THE NEEDED INFORMATION. STEPS ALSO ARE TAKEN TO PROTECT THE RIGHTS OF INNOCENT THIRD PARTIES WHO MIGHT BE BRIEFLY AND INADVERTENTLY OVERHEARD.

FOR THE RECORD, LET ME STATE THAT THE TERM "NATIONAL SECURITY" WILL NOT BE EMPLOYED BY THE DEPARTMENT OF JUSTICE DURING MY TIME AS ATTORNEY GENERAL AS SOME SORT OF EASILY-OBTAINED HUNTING LICENSE. SAFEGUARDS MUST BE OF THE HIGHEST CALIBER AND--AS IN ANYTHING WE DO--THE YARDSTICKS OF FAIRNESS MUST BE ADHERED TO DOGGEDLY.

PRUDENCE DICTATES THAT I CANNOT PUBLICLY DIVULGE THE NUMBER OF ELECTRONIC SURVEILLANCE CASES RELATING TO THE NATIONAL SECURITY. BUT I WANT TO ASSURE YOU--AND THE NATION--THAT THE NUMBER IS VERY, VERY MODEST.

AGAIN, HOWEVER, LET ME EMPHASIZE THAT COMPELLING NEEDS EXIST TO GUARD AGAINST ESPIONAGE AND OTHER ACTIVITIES OF COMPARABLE GRAVITY.

ELECTRONIC SURVEILLANCE IN THE NATIONAL SECURITY AREA IS AN EFFECTIVE MEANS OF ACQUIRING VITALLY-NEEDED INFORMATION. DURING THE LAST SIX MONTHS, FOR EXAMPLE, THE DIRECTOR OF THE FBI HAS ADVISED ME OF 10 SPECIFIC INSTANCES WHERE INFORMATION OF VITAL IMPORTANCE TO THE SECURITY OF THIS COUNTRY WAS OBTAINED.

WITHOUT TRYING TO CONJURE UP BOGEY-MEN, WE SHOULD ALL BE AWARE THAT THE NATION HAS HAD ENEMIES IN THE PAST--AND HAS THEM TODAY. LACK OF PROPER INTELLIGENCE INFORMATION HAS CONTRIBUTED TO GRIEVOUS SUFFERING IN INSTANCE AFTER INSTANCE IN RECENT DECADES. AND WHILE WE CONSTANTLY STRIVE FOR PEACE, WE SHOULD NOT BE FOOLISH ENOUGH TO IGNORE REASONABLE STEPS TO ENSURE THE SAFETY OF OUR PEOPLE.

JUSTICE OLIVER WENDELL HOLMES ONCE SAID THAT WIRETAPPING
WAS DIRTY BUSINESS. I WON'T ARGUE THE POINT, BUT I WILL SIMPLY
SUGGEST THAT SOMETIMES IT IS A LAST RESORT OF DECENT MEN STRIVING
TO PROTECT OUR FREEDOM AGAINST ACTIVITIES THAT ARE FAR, FAR
DIRTIER.

THANK YOU.