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EAVESDROPPING HAS BEEN DEFINED as any form of "surreptitious fact finding which may intrude upon individual privacy."[1] Actually, eavesdropping is a catch-all term that covers all sorts of surveillance, from overhearing with the naked ear words spoken by another, to monitoring the conversations and movements of others by highly scientific and sophisticated electronic devices.[2] It includes listening to conversations of others, wire-tapping, and "bugging."[3] The essence of eavesdropping is that words spoken by one are overheard by another without the knowledge and authorization of the speaker. The Supreme Court of the United States has distinguished eavesdropping from electronic reproduction of conversations where the recording person is one of the parties to the conversation and is either a government agent[4] or an informer.[5] The rationale is that the agent or informer is merely making a mechanical reproduction of a conversation to which he was a part in order to prove his own credibility.[6] The subject of eavesdropping, wire-tapping, and electronic surveillance has induced many legal writers to comment on the law and urge legislative changes.[7] This paper will

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[1] Note, Electronic Surveillance and the Right of Privacy, 27 Mont. L. Rev. 173 (1966).

[2] For a complete presentation of the various types of electronic eavesdropping and the uses to which they are put see Dash, Knowlton, and Schwartz, The Eavesdroppers (1959); also see Breton, The Privacy Invaders (1964). A machine is presently being developed that will relay information concerning the location, communications, activities, and physical condition of the person under surveillance, Note, Anthropotelemetry, Dr. Schwitzgebel's Machine, 80 Harv. L. Rev. 403 (1966).

[3] Swire, Eavesdropping and Electronic Surveillance: An Approach for a State Legislature, 4 Harv. J. on Leg. 23 (1966); Dash, Knowlton, and Schwartz, *op. cit. supra*, n. 2.

[4] Lopez v. United States, 373 U.S. 427 (1963); Osborn v. United States, 385 U.S. 323 (1966).

[5] On Lee v. United States, 343 U.S. 747 (1952); Hoffa v. United States, 385 U.S. 293 (1966).

[6] United States v. Dennis, 183 F.2d 201 (2d Cir. 1950), aff'd 341 U.S. 494 (1950).

[7] In the last two years legal writers have been prolific on the subject of wire-tapping and eavesdropping. A non-exhaustive list is: Schwartz, The Wire-tapping Problem Today, 2 Crim. L. Bull. 3 (Dec. 1966), 3 Crim. L. Bull. 3 (J.-F. 1967); Electronic Surveillance and the Right of Privacy, *supra* n. 1; Sullivan, Wire-tapping and Eavesdropping: A Review of the Current Law, 18 Hast. L. J. 59 (1966); Westin, Science, Privacy, and Freedom: Issues and Proposals for the 1960's, 66 Colum. L. Rev. 1003 (1966); Templar, Admissibility of Evidence Secured by Eavesdropping Device, 5 Washburn L. J. 174 (1966); Note, Eavesdropping Orders and the Fourth Amendment, 66 Colum. L. Rev. 355 (1966); Note, Electronic Surveillance and the Right of Privacy, *supra* n. 1; Swire *op. cit. supra* n. 3; Barton, Law-Enforcement Wire-tap Policy in

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analyze the constitutional aspects of eavesdropping as well as the common law concerning eavesdropping as it exists today.

Eavesdropping and the Constitution

Eavesdropping at one time was a common law crime.[8] No such clear common law crime exists in the United States today, but because of the widespread use of electronic surveillance by law enforcement officers[9] and the recent demands for individual constitutional rights,[10] grave constitutional issues have arisen. The Self-Incrimination Clause of the Fifth Amendment[11] is, perhaps, one area of the Constitution that may apply to eavesdropping,[12] because the accused is making incriminating statements without having been provided with adequate safeguards to protect his Fifth Amendment rights.[13] Another area of the Constitution that may apply is the Due Process Clause of the Fourteenth Amendment,[14] where evidence obtained in an unlawful and outrageous manner cannot be used.[15] The Supreme Court, however, traditionally has handled the issue under the search and seizure provisions of the Fourth Amendment,[16] which seems to be the proper area of the Constitution,[17] since eavesdropping usually is a search for evidence.

Although the Fourth Amendment does not expressly create a right of privacy, it was decided early that the search and seizure provisions

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the United States, 2 Crim. L. Bull. 15 (J.-F. 1966); Reubhausen & Brim, Privacy and Behavioral Research, 65 Colum. L. Rev. 1184 (1965); Kent, Wiretapping: Morality and Legality, 2 Hous. L. Rev. 3 (1965); Note, Eavesdropping and the Constitution: A Reappraisal of the Fourth Amendment Framework, 50 Minn. L. Rev. 378 (1965); Comment, Do We Have to Live With Eavesdropping?: A Legislative Proposal, 38 So. Cal. L. Rev. 622 (1965); Aspen, Court-Ordered Wiretapping: An Experiment in Illinois, 15 De Paul L. Rev. 15 (1965); Electronic Eavesdropping—The Inadequate Protection of Private Communication, 40 St. John's L. Rev. 59 (1965); Semerjian, Proposals on Wiretapping in Light of Recent Senate Hearings, 45 B. U. L. Rev. 216 (1965); The Wiretapping-Eavesdropping Problem, A Symposium, 44 Minn. L. Rev. 813 (1960).

[8] IV Blackstone, Commentaries § 168.

[9] Dash, Knowlton, and Schwartz, *op. cit. supra,* n. 2.

[10] American Civil Liberties Union, The Wiretapping Problem Today (1965 rev. ed.).

[11] ". . . nor shall [any person] be compelled in any criminal case to be a witness against himself. . . ."

[12] Boyd v. United States, 116 U.S. 616 (1886).

[13] McNabb v. United States, 318 U.S. 332 (1943).

[14] ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

[15] Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920); Rochin v. California, 342 U.S. 165 (1952); see dissenting opinion in Irvine v. California, 347 U.S. 128 (1954).

[16] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

[17] Eavesdropping and the Constitution: A Reappraisal of the Fourth Amendment Framework, *supra* n. 7.

impliedly create such a right.[18] To safeguard this right of privacy[19] the Fourth Amendment is to be liberally construed.[20] To fit the eavesdropping problem into the Fourth Amendment, it was necessary for the Court to construe the search and seizure provisions so that not only the expressed items of persons, houses, papers, and effects were protected, but also unexpressed items such as spoken words. In *Wong Sun v. United States,*[21] the court clearly stated that verbal statements are protected by the Fourth Amendment.

The principal factor that has determined constitutionality of the wire-tapping and eavesdropping cases has been trespass into a constitutionally protected area.[22] The first case to be decided was *Olmstead v. United States*[23] where federal prohibition agents tapped the telephone wires of several suspects. The taps were installed on telephone wires outside the homes of the suspects, and the Court held that since there was no physical invasion of the premises, there was no violation of the search and seizure provisions of the Fourth Amendment. The majority stated that wire-tapping, absent a trespass, was not protected by the Fourth Amendment, because one who uses wires that go all over the world logically must expect that his message may not be private. Justices Brandeis and Holmes, each of whom wrote a separate dissent, felt that the case was clearly within the protection of the Fourth Amendment and that evidence so obtained should be disallowed. Despite the Holmes-Brandeis dissents and many others since,[24] *Olmstead* is still the law today.

Perhaps the most blatant trespass occurred in *Irvine v. California*[25] when police obtained access to the defendant's home without his knowledge, and installed a microphone. Not being able to hear clearly, they re-entered the home twice, once to change the microphone to the bedroom and again to change it to the closet. These actions clearly were a violation of the Fourth Amendment because the requisite trespass was present, although the Court was not ready to apply the protective provisions of the Fourth Amendment to the states.

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[18] Boyd v. United States, *supra* n. 12.

[19] United States v. Lefkowitz, 285 U.S. 452 (1932).

[20] Gouled v. United States, 255 U.S. 298 (1921); Byars v. United States, 273 U.S. 28 (1927); Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931); Grau v. United States, 287 U.S. 124 (1932).

[21] 371 U.S. 471 (1963).

[22] Annot., 97 A.L.R.2d 1283 (1964).

[23] 277 U.S. 438 (1928).

[24] Goldman v. United States, 316 U.S. 129 (1942); Schwartz v. Texas, 344 U.S. 199 (1952); On Lee v. United States, *supra* n. 5; Irvine v. California, *supra* n. 15; Lopez v. United States, *supra* n. 4; Osborn v. United States, *supra* n. 4; see concurring opinion of Mr. Justice Douglas in Berger v. New York, 387 U.S. ____ (1967).

[25] Irvine v. California, *supra* n. 15.

In the case of *On Lee v. United States,*[26] no trespass was found when an informer entered the defendant's laundry with a hidden radio transmitter and a federal agent outside listened to the conversation. The informer hadn't trespassed because he had the implied consent of the defendant. The federal agent hadn't trespassed since his listening post was outside the building.

Physical penetration was the test in *Silverman v. United States.*[27] Police inserted a microphone ("spike-mike") through a common wall until it made contact with the heating ducts, thus establishing effective eavesdropping in the house next door. Because the physical penetration constituted a trespass, the evidence was not admissible. The Court also said that trespass is not to be determined by local law, but by the actual intrusion into a *Constitutionally protected area.* In other cases the lowering of a microphone into a ventilator[28] and the penetration of a thumb tack[29] have been held to be trespasses under the authority of *Silverman.*

The difference between trespass and legal eavesdropping is clearly illustrated in the case of *Goldman v. United States.*[30] Federal agents obtained access to the defendant's office and installed a listening device. When the listening device failed to work the agents used a detectaphone which when pressed against a wall could pick up sounds from the room on the other side of the wall. The Court held that the evidence was admissible because there was no trespass as to the detectaphone. The Court said that if the first device had worked, there would have been a trespass as to evidence obtained by it, and the evidence so obtained would have been inadmissible.

Thus, the constitutional interpretation is that evidence obtained from wire-tapping or eavesdropping is admissible unless there is an unauthorized trespass, or physical invasion into a constitutionally protected area.[31] What then is a constitutionally protected area? A business office, a store, a hotel room, an occupied taxicab, a home, all have been held to be constitutionally protected areas,[32] while such places as public lavatories[33] and barns[34] are not within the protection. Electronic surveil-

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[26] *Supra* n. 5.

[27] 365 U.S. 505 (1961).

[28] Cullins v. Wainwright, 328 F.2d 481 (5th Cir. 1964); cert. denied 379 U.S. 845 (1964).

[29] Clinton v. Virginia, 377 U.S. 158 (1964), affirming *per curiam* 204 Va. 275, 130 S.E.2d 437 (1963).

[30] Goldman v. United States, *supra* n. 24.

[31] Annot., *supra* n. 22.

[32] Lanza v. New York, 370 U.S. 139 (1962).

[33] Smayda v. United States, 352 F.2d 251 (9th Cir. 1965); cert. denied 382 U.S. 981 (1966).

[34] Eversole v. State, 106 Tex.Crim.App. 567, 294 S.W. 210 (1927).

lance of prisoners in confinement is beyond the protection,[35] but it has not yet been decided whether the privileged communications between a lawyer and his client are protected even though they are overheard in a place that is normally not within the protection. The Supreme Court recently remanded one case[36] and refused *certiorari* on another,[37] so that the lower courts could give a full determination to this problem. Another court refused to compel the lawyer to testify to the authenticity of the conversation in a collateral proceeding.[38]

Evidence obtained from an unreasonable search and seizure cannot be used in federal courts.[39] As to state courts, the Supreme Court expounded what it thought to be the final rule in *Wolf v. Colorado*[40] when it refused to apply the Fourth Amendment to the states. Later decisions[41] upheld the *Wolf* decision until 1961, when the course was changed abruptly by *Mapp v. Ohio*,[42] which held that evidence obtained in violation of the Fourth Amendment was inadmissible not only in federal courts, but also in state courts. Subsequent decisions have made it clear that the Fourth Amendment now applies to the states by reason of the Due Process Clause of the Fourteenth Amendment.[43]

Wire-Tapping and the Communications Act of 1934

Shortly after the decision in *Olmstead v. United States*,[44] Congress passed Section 605 of the Communications Act of 1934.[45] Although Section 605 was passed only a few years after *Olmstead*, it seems clear that the primary intent of Congress was not to ban wire-tap evidence in criminal cases, but merely to prohibit wire-tapping in general.[46] The applicable part of Section 605 is as follows:

> . . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. . . .[47]

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35 Lanza v. New York, *supra* n. 33; annot., *supra* n. 23.

36 Black v. United States, 385 U.S. 26 (1966).

37 Davis v. United States, 384 U.S. 953 (1966).

38 In re Lanza, 4 App. Div.2d 252, 164 N.Y.S.2d 534 (1957).

39 Weeks v. United States, 232 U.S. 383 (1914).

40 338 U.S. 25 (1949).

41 Stefanelli v. Minard, 342 U.S. 117 (1951); Irvine v. California, *supra* n. 15.

42 367 U.S. 643 (1961).

43 Ker v. California, 374 U.S. 23 (1963).

44 *Supra* n. 23.

45 48 Stat. 1064 (1934), 47 U.S.C.A. § 605.

46 Sullivan, *op. cit. supra* n. 7.

47 47 U.S.C.A. § 605, Communications Act of 1934 also provides in part: ". . . no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or

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The term "intercept" means to take or seize the message before it reaches its destination.[48] Parties to a telephone communication alternately are senders and receivers.[49] This would indicate that to have consent to intercept a telephone call, one would need the authorization of both parties.

There is no violation of Section 605 when one overhears words spoken into a telephone and does not hear the other half of the conversation.[50] The Supreme Court in the case of *Rathbun v. United States*[51] held that when one of the parties to a telephone conversation authorizes another to listen to the conversation by means of an extension telephone, there is no violation of Section 605 so long as the extension is not specifically installed for the purpose of eavesdropping. The Court said that a telephone communication itself is not privileged, and one party cannot force the other to communicate in secrecy merely by using the telephone. Every person who is a party to a telephone conversation assumes the risk that the other party may have an extension phone and may allow another to overhear the conversation.

One authority claims that Section 605 prohibits all wire-tapping,[52] but the Attorney General of the United States has taken the position that Section 605 prohibits wire-tapping only when it is accompanied by divulgence of the contents of the communication.[53] He has contended that disclosure within the Department of Justice is not divulgence of the contents within the meaning of Section 605,[54] and it is on this basis that the Federal Bureau of Investigation has conducted wire-taps when expressly authorized by the Attorney General.[55]

Section 605 is personal to the parties to the communication[56] and when recordings of conversations of others were played back to witnesses to persuade them to testify, testimony so procured was admissible.[57] Although the express sanctions of Section 605 are criminal, it has been held that the Section also creates a civil right.[58]

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publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto. . . ."

48 United States v. Yee Ping Jong, 26 F.Supp. 69 (W.D. Penn. 1939).

49 United States v. Polakoff, 112 F.2d 888 (2d Cir. 1940).

50 Goldman v. United States, *supra* n. 24.

51 355 U.S. 107 (1957).

52 Swire, *op. cit. supra* n. 7.

53 Katzenbach, An Approach to the Problems of Wiretapping, 32 F.R.D. 107 (1963).

54 *Ibid.*

55 Sullivan, *op. cit. supra* n. 7.

56 Goldstein v. United States, 316 U.S. 114 (1942).

57 *Ibid.*

58 Reitmeister v. Reitmeister, 162 F.2d 691 (2d. Cir. 1947).

Most of the cases have been concerned with the applicability of Section 605 to the states. Section 605 applies to intrastate commerce as well as interstate commerce because it is necessary to control one to control the other[59] and because intrastate messages are sent over interstate wires.[60] It is clear that evidence obtained in violation of Section 605 is inadmissible in federal courts[61] when the violation is committed by federal officers.[62] It also is inadmissible in federal court when the offense is committed by state officers acting pursuant to state law.[63] Evidence discovered from information obtained from an unlawful wiretap likewise is inadmissible.[64]

The courts consistently have refused to apply the federal rule of inadmissibility of evidence to the states. In *Schwartz v. Texas,*[65] the Supreme Court of the United States held that Section 605 applies only to the exclusion of evidence in federal court proceedings and not in state court proceedings because it was not the intent of Congress to impose a rule of evidence on the states. It said that Section 605 can be enforced against state officers by imposing the penalty provided in Section 501[66] for infractions. Thus, the rule is that evidence obtained by violating Section 605 is admissible in state courts, but not in federal courts[67] unless a trespass is committed that would make it a violation of the Fourth Amendment.[68]

The Federal Communications Commission recently banned the use of monitoring devices unless all the parties to the conversation have knowledge of the devices and have given their consent to the use of them.[69] This regulation applies only when radio waves are used and does not apply to the operations of law enforcement agencies conducted under lawful authority.[70]

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[59] Weiss v. United States, 308 U.S. 321 (1939).

[60] Reitmeister v. Reitmeister, *supra* n. 58.

[61] United States v. Bernava, 95 F.2d 310 (2d Cir. 1938).

[62] Nardone v. United States, 302 U.S. 379 (1937).

[63] Benanti v. United States, 355 U.S. 96 (1957); Weiss v. United States, *supra* n. 59.

[64] Nardone v. United States, 308 U.S. 338 (1939).

[65] *Supra* n. 24; and see Pugach v. Dollinger, 365 U.S. 458 (1961).

[66] 47 U.S.C.A. § 501.

[67] Hubin v. Maryland, 180 Md. 279, 23 A.2d 706 (1942); Harlem Check Cashing Corp. v. Bell, 296 N.Y. 15, 68 N.E.2d 854 (1946).

[68] People v. Channell, 107 Cal.App.2d 192, 236 P.2d 654 (1951).

[69] 31 Fed. Reg. 3400 (1966).

[70] *Ibid.*

Statutes Authorizing Eavesdropping and Wire-Tapping

Some states have enacted statutes which regulate eavesdropping and wire-tapping[71] and authorize the eavesdropping trespass into constitutionally protected areas under situations not dissimilar to those giving rise to search warrants. In Illinois, the legislature recently defeated a bill that would have permitted court ordered wire-tapping by law enforcement officials,[72] and in a recent case[73] Pennsylvania construed its statute to prohibit all wire-tapping, even by law enforcement officers.

The best known state statute regulating eavesdropping and wire-tapping is that of New York.[74] This statute derives its authority from a provision in the New York Constitution[75] which expressly authorizes wire-tapping by law enforcement officers acting pursuant to a valid court order. The Supreme Court of the United States in the case of *Berger v. New York*[76] has declared the New York statute unconstitutional. Applying the standards of previous Fourth Amendment decisions, the Court held the statute was defective because (1) it did not require belief that a particular offense had been or was being committed, and it did not "particularly [describe] the place to be searched, and the persons or things to be seized."[77] The Court said,

> New York's statute lacks this particularization. It merely says that a warrant may issue on reasonable ground to believe the evidence of crime may be obtained by the eavesdrop. It lays down no requirement for particularity in the warrant as to what specific crime has been or is being committed nor "the place to be searched," or "the persons or things to be seized" as specifically required by the Fourth Amendment.[78]

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[71] Twenty-six states have passed statutes prohibiting wire-tapping; see Swire, *op. cit. supra* n. 3. Seven states have passed statutes limiting electronic eavesdropping in whole or in part; see Sullivan, *op. cit. supra* n. 7.

[72] Aspen, *op. cit. supra* n. 7.

[73] Commonwealth v. Murray, 423 Pa. 37, 223 A.2d 102 (1966).

[74] N.Y. Code of Crim. Proc. § 813-a (1958): "An ex parte order for eavesdropping . . . may be issued . . . upon oath or affirmation . . . that there is reasonable ground to believe that evidence of crime may be thus obtained, and particularly describing the person or persons whose communications, conversations or discussions are to be overheard or recorded and the purpose thereof. . . . In connection with the issuance of such an order the justice or judge may examine on oath the applicant and any other witness he may produce and shall satisfy himself of the existence of reasonable grounds for the granting of such application. Any such order shall be effective for the time specified therein but not for a period of more than two months unless extended or renewed by the justice or judge who signed and issued the original order upon satisfying himself that such extension or renewal is in the public interest. . . ."

[75] N.Y. Const., Art. I, Sec. 12.

[76] 35 U.S.L.W. 4649 (June 12, 1967).

[77] Constitution of the United States, Amendment 4.

[78] Berger v. United States, *supra* n. 76 at 4653; see also People v. Grossman, 45 Misc.2d 557, 257 N.Y.S.2d 266 (Sup. Ct. 1965) rev'd on other grounds 27 A.D. 572, 276 N.Y.S.2d 168 (1966) where the court said that any eavesdrop order by a court would be unconstitutional on its face because the evidence searched for must be particularly described.

The statute was held unconstitutional because (2) it authorized eavesdropping for two months. This amounted to a series of intrusions with only one showing of reasonable grounds. Probable cause should be shown for each eavesdrop. The statute was held unconstitutional also because (3) there was no provision for termination of the eavesdrop order once the evidence sought was obtained, and (4) there was no procedure for giving notice to the one being eavesdropped, nor was there a provision for special facts to overcome this notice.

In short, the court held that the statute is "broadside authorization" permitting "general searches by electronic devices" [79] and that the statute's "blanket grant of permission to eavesdrop is without adequate judicial supervision or protective procedures." [80]

The decision in *Berger v. New York*[81] does not overrule any of the case law of eavesdropping. *Olmstead v. United States*[82] still stands.[83] Eavesdropping still is permitted where there is no trespass into a constitutionally protected area. The *Berger* decision merely declares the New York statute unconstitutional because it is too broad and does not provide adequate safeguards. It recognizes that the guarantees of the Fourth Amendment are not absolute.

> The Fourth Amendment does not make the "precincts of the home or office . . . sanctuaries where the law can never reach . . .," but it does prescribe a constitutional standard that must be met before official invasion is permissible.[84]

The decision states that some of the elements favoring constitutionality would be (1) "that a neutral and detached authority be interposed between the police and the public," (2) that the affidavit allege a specific criminal offense, (3) that the search be for a limited purpose, (4) that the order describe with particularity the type of conversation sought, (5) that once the property is obtained, the officer can't search further, (6) that the "order authorize one limited intrusion rather than a series or a continuous surveillance," (7) that new orders based on probable cause be issued for succeeding eavesdrops, (8) that the order is executed with dispatch and not over a prolonged or extended period, and (9) that the "officer was required to and did make a return on the order showing how it was executed and what was seized."

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[79] Berger v. United States, *supra* n. 76 at 4653.

[80] *Ibid.*

[81] *Supra* n. 76.

[82] *Supra* n. 23.

[83] But see concurring opinion of Mr. Justice Douglas, Berger v. United States, *supra* n. 76 at 4655.

[84] Berger v. United States, *supra* n. 76 at 4655.

Thus, it seems from the decision in the *Berger* case that court ordered eavesdropping and wire-tapping will be allowed if it conforms to the strict requirements governing search warrants.

Eavesdropping: Problem and Solution

The nature of the eavesdropping problem is that there are two opposing interests, both extremely important to the welfare of the people of the United States. On the one hand is the need for hard-hitting and efficient law enforcement to stem the rising crime rate and to protect the safety of the individual. On the other hand is the need to protect the integrity and dignity of the individual from excesses and abuses that occasionally accompany unrestricted investigation. Unbridled eavesdropping would bring with it some of these excesses. Complete restriction of eavesdropping certainly would limit the effectiveness of law enforcement. The chief result would be the failure to convict persons who otherwise would have been convicted.[85]

> Organized crime which uses all the modern techniques of electronics and communications can no longer be combated with horse and buggy methods.[86]

The trend of recent decisions is proceeding toward a balancing of one interest with the other. Eavesdropping where there is no trespass into a constitutionally protected area should be liberally permitted in the interest of law enforcement. Where one retreats to a constitutionally protected area, his right of privacy should be jealously guarded, and his privacy should be invaded only upon compliance with the standards prescribed by the Fourth Amendment. However, when one does retreat to a constitutionally protected area, he should be cognizant of its boundaries, and when communications intended to be solely within the confines of the protected area penetrate into unprotected areas, he should not be heard to cry that those communications are protected by the right of privacy.

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[85] Sullivan, *op. cit. supra* n. 7.

[86] Aspen, *op. cit. supra* n. 7.