

FOR RELEASE
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DEPARTMENT OF JUSTICE

March 15, 1940

Upon the recommendation of Director J. Edgar Hoover of the Federal Bureau of Investigation, Attorney General Robert H. Jackson today issued the following order:

"As of this date the provision of the manual governing the operations of the Federal Bureau of Investigation, which was adopted in 1931 on order of the Attorney General, and which reads as follows, is superseded."

WIRE TAPPING: Telephone or telegraph wires shall not be tapped unless prior authorization of the Director of the Bureau has been secured.

In its place and stead there is hereby reinstated the provision of the manual which prevailed until 1931:

UNETHICAL TACTICS: Wire tapping, entrapment, or the use of any other improper, illegal, or unethical tactics in procuring information in connection with investigative activity will not be tolerated by the Bureau.

There will further issue to all United States Attorneys and attorneys of the Department of Justice orders directing that no case originating in or investigated by any other department of the government be presented to a grand jury or otherwise prosecuted in which

it appears that the case has been developed in whole or in part as the result of wire tapping after April 1, 1940. Any case so developed shall be called to the attention of the Assistant Attorney General in charge of the Division and shall not be presented except upon special direction of the Attorney General.

This action is required in order that the rules governing the Federal Bureau of Investigation shall conform to the decisions of the Supreme Court in recent cases, which have held interception and divulgence of any wire communication to be forbidden by the terms of the Communications Act of 1934. These decisions have in effect overruled the contentions of the Department that it might use wire tapping in its crime suppression efforts.

Charges of violation of several federal laws such as the income tax laws, narcotic law, mail fraud statute and alcohol tax law are not investigated by the Federal Bureau of Investigation but by other departments of the government. These agencies are not bound by this rule of the Attorney General. But all their cases are presented to grand juries and courts by Department of Justice attorneys. Cases, wherever originating, must, under this rule, be free of illegality on the part of the government if they are to be presented to courts under the sponsorship of the Department of Justice. From the time of its reorganization under Attorney General Stone until 1931 the practice of wire tapping was not authorized in the Bureau of Investigation. In 1931 the Department of Justice had two investigative forces, the Federal Bureau of Investigation, in which wire tapping was prohibited,

and the Prohibition Enforcement Bureau in which wire tapping was resorted to. In 1931 Attorney General Mitchell was confronted with the inconsistency of the two practices and stated to a House Appropriations Committee as follows:

"* * * The present condition in the Department cannot continue. We cannot have one Bureau in which wire tapping is allowed and another in which it is prohibited. The same regulations must apply to all. * * * I think I should give a direction applicable to all Bureaus and Divisions in the Department that no tapping of wires should be permitted to any Agent of the Department without the personal direction of the Chief of the Bureau involved, after consultation with the Assistant Attorney General in charge of the case. Something, of course, can be said in favor of permitting the tapping of wires when efforts are being made to detect the perpetrators of heinous offenses or to apprehend and bring to punishment desperate gangs of criminals. In such cases the criminals are usually equipped with all modern scientific inventions such as the radio, the telephone and the automobile, and the Government is at a considerable disadvantage in any event in dealing with them."

Thereafter the rules were amended to permit wire tapping by the Federal Bureau of Investigation in the discretion of the Director.

I am informed by the Director that this authority has been very little used and only in cases of extreme importance; that without the use of wire tapping several kidnaping cases would not have been solved; and that wire tapping has never been used in minor cases, nor on Members of Congress or officials or any citizen except where charge of a grave crime had been lodged against him.

In view of the widespread charges of indiscriminate wire tapping, it is only fair to Mr. Hoover to state that the records of this Department show that on two occasions he has advised strongly against extension of wire tapping. In March 1939 he advised this Department to oppose a bill pending in Congress to legalize wire tapping, and stated his view as follows:

"While I concede that the telephone tap is from time to time of limited value in the criminal investigative field, I frankly and sincerely believe that if a statute of this kind were enacted the abuses arising therefrom would far outweigh the value which might accrue to law enforcement as a whole."

Upon another occasion he advised this Department against trying to sustain in the Supreme Court the practice of wire tapping.

Notwithstanding it will handicap the Federal Bureau of Investigation in solving some extremely serious cases, it is believed by the Attorney General and the Director of the Bureau that the discredit and suspicion of the law enforcing branch which arises from the occasional use of wire tapping more than offsets the good which is likely to come to it. We have, therefore, completely abandoned the practice as to the Department of Justice.

In a limited class of cases, such as kidnaping, extortion and racketeering, where the telephone is the usual means of conveying threats and information, it is the opinion of the present Attorney General as it was of Attorney General Mitchell that wire tapping should be authorized under some appropriate safeguard. Under the existing state of the law and decisions, this cannot be done unless Congress sees fit to modify the existing statutes.