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Is It Safe to Talk on the Telephone?

The court release, and the subsequent publication, of FBI-recorded transcripts of "Mafia" telephone conversations in New Jersey raises some fascinating questions. The lawyers and judges will be arguing for a long time as to whether the recording of these conversations of itself violated an act of Congress and as to whether Federal District Judge Robert Shaw's release of the transcripts was legitimate. Let us confine ourselves here, however, to considering the social consequences of such governmental action and its implications for civil liberty.

There are some real benefits to be derived from the publication of this material. The transcripts show in a dramatic and impressive fashion how the tentacles of that underground, octopus-like organization called the Mafia have extended into municipal and county governments—how "protection" and corruption of public officials operated to fleece the public of uncountable millions of dollars each year. The ruthlessness, the callous cruelty, the contempt for human life of the Mafia bosses are revealed by this record as they could hardly have been by any other means. And perhaps this revelation was necessary to waken the public.

But there is another side to the revelation. Governor Richard J. Hughes of New Jersey has denounced it as endangering American concepts of individual freedom. It indiscriminately victimized innocent persons, he said, without putting "a single hood in jail." It may be that the governor is quite right in characterizing the record as consisting largely of "gossip and character assassination by braggarts and name droppers." One consequence of the revelation may be that the alleged Mafia leaders currently on trial on charges of extortion and conspiracy will get off scot free because of invasion of their rights as defendants.

It must be, and surely should be, disquieting to those who care about civil liberty to learn that the New Jersey transcripts were obtained through electronic eavesdropping by the FBI over a four-year period. According to the FBI, these transcripts did not come from wiretaps but, rather, from "micro-phone surveillance." The distinction is somewhat technical. A "micro-phone surveillance," it can be contended, is an ingenious way of overhearing and recording a telephone conversation without literally "intercepting" it, a practice expressly forbidden by federal law at the time this eavesdropping was done.

The FBI eavesdropping not only skirted the law—to put the best possible construction upon it; it also skirted repeated declarations by the Director of the FBI that his agency never, never, never tapped telephones, except in situations involving internal security—a term generally thought to mean espionage or sabotage by agents of a foreign government. Mr. Hoover said in 1963, for example—at a time when the New Jersey eavesdropping was going forward—that "we have throughout the country at the present time less than 100 telephone taps. As a matter of fact the actual number today is 95. All are in security cases. In accordance with the policy of many years standing telephone taps are utilized only in cases where the internal security of the country is involved, or where kidnaping and extortion may bring about the jeopardy of a human life."

This assertion was repeated in nearly identical terms year after year. And in April of 1969, Mr. Hoover testified before the House Appropriations Committee: "We make use of a total of 49 telephone taps and 5 micro-phone installations in Bureau cases in the security field. All were approved in advance and in writing by the Attorney General." This appears to be the first public assertion of a distinction between taps and micro-phone installations, which raises the question of whether his earlier public reports on "wire-taps" were a complete accounting of all the FBI's electronic eavesdropping at the time.

The racketeering activity of the Mafia is undoubtedly dangerous but it does not fall within what is commonly understood by the term "internal security." The New Jersey transcripts suggest that the FBI engaged in a widespread network of electronic surveillance in excess of the restraints repeatedly avowed by its director. Whether this eavesdropping was legal or illegal, constitutional or unconstitutional, it puts a very heavy damper on social intercourse by telephone.

The telephone is today so common and necessary a means of social and business communication that it would entail a very heavy hardship to know that it could not safely be used for confidential conversations. It is exceedingly disturbing to think that any phone conversation may be recorded by governmental authorities. Americans are not used to living under such surveillance. The practice may help to catch criminals. But it also goes a long way toward clamping up the law-abiding.