

Fear or suspicion of surveillance, even imagined, kills dissent. And when dissent dies, democracy withers. Intellectual controversy is choked. New ideas are stunted. The common weal withers....

I start from the proposition that the right to privacy is the most complete of human freedoms and that any encroachment on that right should be allowed only if society has proven that encroachment is necessary.

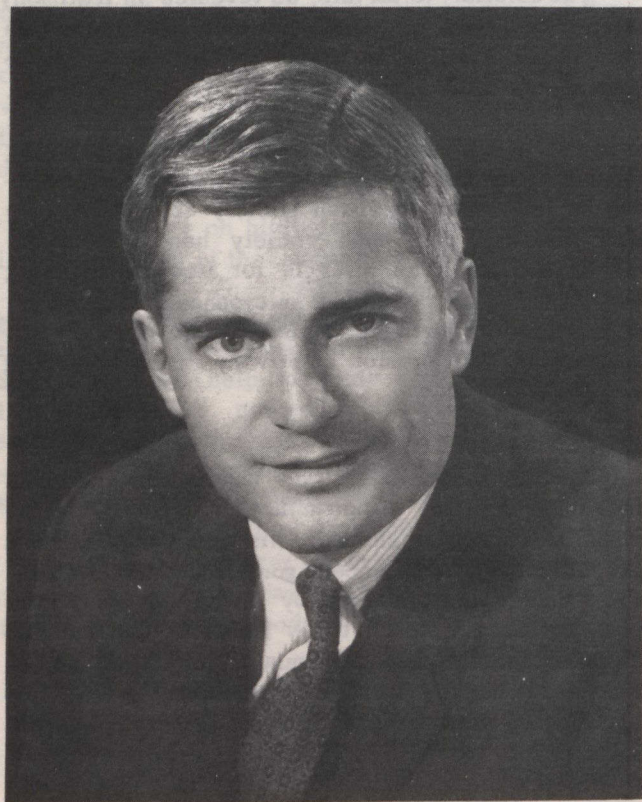
The Department of Justice and the Standing Committee in the House of Commons have been exploring the whole question of the right to privacy with a view to introducing legislation on some aspects of this question during the next session of Parliament.

This Association wrestled with the problem for several years. Last year the first debate I attended at the convention in Vancouver was about wiretapping. I must confess to you that I still have difficulty in reconciling some of the provisions of the resolution which finally passed, but the importance given to the subject by the deliberations of the Canadian Bar contributed to a growing public awareness, adding thrust to what we are now trying to do.

#### CHOICE OF POLICY

I should like to address myself to some of the questions we shall have to answer in choosing the various policy options:

(1) Should it be a criminal offence to invade privacy by electronic surveillance techniques?



The Honorable John N. Turner,  
Minister of Justice and Attorney General of Canada

If there is to be a legal right to privacy and if privacy is to mean anything at all, it must be protected; and if that protection itself is to be meaningful, then all forms of the use of wiretapping or electronic surveillance techniques for the overhearing or recording of private communications must be expressly prohibited and made the subject of a criminal offence.

Moreover, an attempt must also be made to strike at objectionable equipment; if privacy is to be sufficiently protected, then the prohibition must be directed not only against objectionable conduct, but also against objectionable devices. Accordingly, this would prohibit the intentional possession, sale distribution or manufacture of a device, the design of which makes it primarily useful for the surreptitious overhearing or recording of such communications.

(2) If all forms of wiretapping and electronic surveillance are to be made illegal, should there be any exceptions authorizing the use of surveillance devices in specifically limited instances?

Certainly the law must be reasonable and you need only think of the following items to see the need for some exceptions: hearing aids for the deaf; citizen band radio communications; protection of property by use of closed-circuit TV; necessary servicing of communications systems in order to maintain quality of service.

These are some obvious examples. Others will come to mind and there must be sufficient flexibility in the statute to allow for changing circumstances.

A second class of exceptions, more difficult to determine in policy terms, comprises certain classes of suspected offences for which electronic surveillance might be authorized. Here, as elsewhere in the criminal law, the problem is one of balancing conflicting interests - those of the citizen as an individual and those of society generally. A right to privacy, however fundamental, is not, as I have suggested, absolute. In the words of the report of the Privy Councillors into Wiretapping in Britain: "Every society must have the power to protect itself from wrong-doers...if these powers are *properly and wisely exercised* it may be thought that they are in themselves aids to the maintenance of the true freedom of the individual."

Two alternative, but not necessarily mutually exclusive, tests might be employed in selecting the offences. The first is that the offences be serious in themselves; the second is that the offences ought to be characteristic of organized criminal activity. With this in mind, then, a carefully circumscribed use of electronic eavesdropping for purposes of national security, attacking syndicated organized crime, and combating specifically designated criminal offences intrinsically serious and primarily involving in themselves the use of communications *might* be authorized.

(3) If certain exceptional use of electronic surveillance is to be authorized, who, then, should