

Bulletin

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CONTENTS

Twin Freedoms of a Democracy	1
More Wheat for China	3
Canada Joins World Conservationists	3
Stratford National Theatre to Tour	3
Fisheries Scientist Honored by U.S.	4
What Price Housework?	4
Aid Funds to India	4
Gift to King of Denmark	5
Cape Breton Honors Early Settlers	5
Canada-U.S. Parks Staff	6

TWIN FREEDOMS OF A DEMOCRACY

Speaking to the Canadian Bar Association in Ottawa last month on the subject of wiretapping and whether or not this and the use of similar electronic techniques should be made a criminal offence, the Minister of Justice, Mr. John N. Turner, said that his Department and the Standing Committee in the House of Commons had been studying the whole question with a view to introducing legislation on some of its aspects during the next session of Parliament. "The right to privacy and the right to know," he declared, "are twin freedoms under a democratic order."

Excerpts from the Minister's address follow:

...A remote-controlled amplifier and microphone no larger than the head of a pin can capture a conversation and transmit it by wire for 25 miles; a parabolic microphone without wires or radio transmitter can catch the conversation of people in a boat in mid-lake and record it on shore; the switching of a single wire can convert any telephone in Canada into a live microphone conducting sound, even when the telephone is in its cradle; cameras the size of a cigarette can photograph a room two blocks away by moonlight; infra-red light techniques permit a room to be watched and photographed from an adjoining room through apparently opaque walls, while wall microphones, of course, can hear and record anything said in such a room; radio pills substituted for the subject's aspirins and lodged in his stomach can transform him into a living electronic beacon; the investigator's dream — making his subject a walking transmitter and enabling the investigator to hear everything the subject says to anybody else, or even what he mutters to himself — can be realized by the wiring of a person's clothing. There are transmitters so small that they can be

mounted as a tooth in a dental bridge.

The corollary to all this, as revealed in testimony before the House of Commons Committee on Justice and Legal Affairs, is that our telephone can be tapped, our office bugged, our files photographed, our physical movements monitored, our communications recorded — all this without our knowing anything about it or having any right of recourse or any protection in law. The Orwellian society of 1984 may be here already. The open society has become the bugged society. The struggle for freedom is being mortgaged to the parabolic microphone. The zones of solitude are being occupied. There are no more sanctuaries. The erosion of privacy is the beginning of the end of freedom.

RIGHT TO PRIVACY

How can we overestimate how important it is to be left alone? Privacy is paramount. Without it a man's friendships become suspect, his trust wanting, his love tainted, his self-respect gone. Imagine a life full of days of being observed by invisible, anonymous eyes, or being listened to by invisible ears. Think of going through life continually looking over our shoulder to try to spot that invisible shadow. The human being in us would suffocate. We would have no real freedom to build a community, to practise our religion or adhere to a political party....

In a democratic society, sanctity of communication is essential if its citizens are to have freedom of thought and action. Creativity depends on privacy.

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.

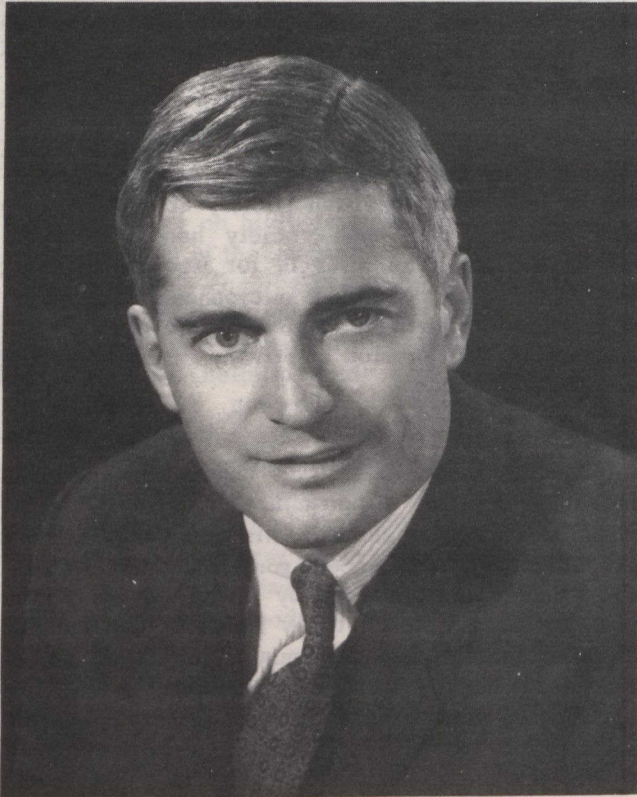
The Department of Justice and the Standing Committee in the House of Commons have been exploring the whole question of the right to privacy with a view to introducing legislation on some aspects of this question during the next session of Parliament.

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

MORE WHEAT FOR CHINA

The Canadian Wheat Board announced on September 25 the sale of 2.2 million long tons, five per cent more or less, of wheat to the People's Republic of China. This is the equivalent of a maximum of 86.2 million bushels.

The greater part of this consignment, some 84 million bushels, will be shipped from Pacific ports; the balance will go from ports on the St. Lawrence River and the Atlantic coast. Delivery begins this month and will be spread over a period of 12 months.

Grades to be delivered are mainly 4 Northern and No. 5 Wheat, but there is a provision in the contract for delivery of a minimum quantity of 3 Northern and some Garnets and Alberta Red Winters.

As in the previous contract with the People's Republic of China, the terms of payment of this contract are 25 per cent cash when each vessel is loaded, and a balance of 75 per cent in 18 months with interest. The deferred-payment provision is made possible by a guarantee to the Canadian Wheat Board by the Government of Canada.

In commenting on the transaction, Industry, Trade and Commerce Minister Jean-Luc Pepin congratulated the Canadian Wheat Board for making such a sale to "one of our most important customers". The amount of money involved in the sale, he said, was about \$135 million.

Mr. Pepin stated that the Canadian Wheat Board was also negotiating with the Polish Grain Agency, Rolimpex, and he expected negotiations to resume, during autumn, with the Soviet Union regarding the 135 million bushels still to be purchased under the Agreement of 1966.

Mr. Pepin also stated that "exceptionally large sales" of seed barley had been made recently to markets in Asia and Eastern European countries. As a result, barley exports will be very much higher this year than they were last year, when Canada sold some 21 million bushels of all grades.

CANADA JOINS WORLD CONSERVATIONISTS

Canada has joined the International Union for Conservation of Nature and Natural Resources.

The IUCN, which has its headquarters in Switzerland, was set up in 1948 to promote the preservation and economical use of the world's resources. As an international, non-political body, it has the support of such agencies as the United Nations Food and Agriculture Organization, the United Nations Educational, Scientific and Cultural Organization, the Economic and Social Council of the United Nations, and the Council of Europe.

In making the announcement recently, Indian Affairs and Northern Development Minister Jean Chrétien said that as one of some 30 state members, Canada would have two votes at IUCN general assemblies, would be able to draw on the scientific, legal, and administrative experience of conservation

experts associated with IUCN and would receive all its publications.

Annual dues of \$3,000 have been paid by Mr. Chrétien's Department, which manages a large conservation and scientific research program through its Canadian Wildlife Service and National and Historic Parks Branch.

Canadian membership will be ratified at the tenth general assembly to be held with the eleventh Technical Meeting in New Delhi, India, from November 24 to December 1. Dr. John S. Tener, Director of the Canadian Wildlife Service, and Mr. John I. Nicol, Director of the National and Historic Parks Branch, will represent Canada at the assembly.

Dr. W.E. Stevens, Western Regional Director of the Canadian Wildlife Service, will be an observer and, as a member of the Rhinoceros Committee of the IUCN's Survival Service Commission, will also take part in the technical sessions.

At the meeting in New Delhi the IUCN will consider holding its 1972 meeting in Banff, Alberta.

STRATFORD NATIONAL THEATRE TO TOUR

Jean Gascon, executive artistic director of the Stratford National Theatre of Canada, announced recently that the Stratford Company would undertake its third annual tour this winter and next spring, with productions of Shakespeare's *The Merchant of Venice* and Sheridan's *School for Scandal*.

The former will be directed by Mr. Gascon and designed by Desmond Heeley. During the 1969 Stratford Festival, Mr. Gascon directed the highly-rated production of Jonson's *The Alchemist* (scheduled to play the National Arts Centre in Ottawa in October and November) and a revival of his 1968 *tour de force*, Moliere's *Tartuffe*. Mr. Heeley is at present working on designs for the Metropolitan Opera Company's forthcoming productions as the 1957 *Hamlet*, *The Tempest*, *Richard III*, *Così fan tutte* and, last season, *The Three Musketeers*.

The School for Scandal marks the return of Stratford's former artistic director, Michael Langham, who will be guest director of the production. Mr. Langham, artistic director at Stratford from 1955 to 1957, recently directed William Congreve's *Way of the World* for Britain's National Theatre. Among his memorable Stratford productions are *Hamlet*, *Henry V*, *King Lear* and *The Government Inspector*.

The Stratford National Theatre tour presently includes two weeks in Montreal's Théâtre Maisonneuve from March 17 to 28, sponsored by Sam Gesser Productions, and a month at the National Arts Centre in Ottawa from March 30 to April 25. *The Merchant of Venice* and *The School for Scandal* are the fifth and sixth productions in the Stratford subscription series at the Arts Centre.

Both productions will then return to Stratford, where they will be restaged for presentation in the Festival Theatre during the 1970 Festival season.

FISHERIES SCIENTIST HONORED BY U.S.

The first Award of Excellence of the American Fisheries Society has been presented to Dr. W.E. Ricker, Chief Scientist of the Fisheries Research Board of Canada. Dr. Ricker is a resident of Nanaimo, British Columbia, and works at the Board's biological station there. He is at present on a six-month teaching and research assignment in Moscow.

Elwood A. Seaman of Virginia, president of the AFS, presented the medal and \$1,000 in prize money at the Society's ninety-ninth annual meeting held in New Orleans. He paid the award winner the following tribute:

"Dr. Ricker has been called the foremost scientist in Canada by his Canadian peers, and in the United States is recognized for his superb and original contribution to the theory of lake circulation; to the methodology of statistically sound sampling in fishing waters; to measuring and interpreting the vital statistics of fish population; for new concepts about growth and mortality and about predator influences on salmon survival and relations between parent fish stocks and numbers of surviving progeny."

Dr. Ricker was also cited for his scientific and technical versatility. He was a professor at the University of Indiana for 11 years and editor of the *Journal of the Fisheries Research Board of Canada* for 12 years. He has had almost 150 scientific papers published.

The new award is not just for recent scientific accomplishment but for recognition of excellence of lasting contributions to fisheries and aquatic science.

WHAT PRICE HOUSEWORK?

Although men have found a way to overcome the obstacles facing them when they tried to walk on the moon, they have failed to overcome the difficulties of measuring the value of the services provided in their homes — services, that is, such as domestic activities which, if paid for, would be calculated as a national economic product.

Last month, in an address entitled "Housework Services — The Orphan in Economic Reckoning" to the Engineers' Wives Association at the National Arts Centre, Miss Sylva Gelber, Women's Bureau director, Canada Labor Department, said that it could be done.

Miss Gelber outlined efforts by economists for half a century to devise some formula for measuring the monetary value of the unpaid domestic services provided by members of a family. She quoted illogical situations that can, and do, arise because services provided for payment are dropped from the national product when they are provided without payment. Much of her speech was based on views put forward over the years by outstanding economists, many of whom agreed that the confused state of affairs resulting from present practices needed rectifying.

Miss Gelber contended that, although there were difficulties in measuring unpaid household services, the availability of statistical tools in this age of technology should facilitate the removal of such obstacles.

"Perhaps the time has come," she said, "when those who provide the services should bring pressure to bear on the social scientists, to ensure that the *bona fide* services, unpaid though they be, should no longer be set aside as valueless in dollar terms."

Miss Gelber suggested that housewives should insist on a value being placed at least on the unpaid domestic services they provide. "In so doing, they will acquire from society a new attitude towards their services and, at the same time, make meaningful the measure of all services reflected in the national accounting," she declared.

AID FUNDS TO INDIA

At the request of the Government of India, Canada has agreed to release \$174.5 million in counterpart funds for the financing of 14 development projects in the Asian subcontinent. These funds derive from past gifts of wheat and commodities to India.

The proposed projects are related to Canada's current contribution to the Indian economy, particularly in agriculture and transportation and the Canadian-financed multi-million dollar Idikki power project.

The counterpart fund, a long-established feature of Canada's international assistance program, is designed to ensure that each aid dollar is put to the maximum use for development. When foodstuffs or commodities are supplied on a grant basis, the recipient country sets up an account in its own currency equivalent to the dollar value of the Canadian shipment. These funds are then spent on economic development projects that have been agreed on by both countries. Title to counterpart funds rests with the recipient, and investment priorities are established basically on its initiative.

HOW SYSTEM WORKS

Under this system, the recipient country receives essential supplies that it lacks the foreign exchange to purchase. At the same time, it is able to underwrite development programs by investing the local currency funds "generated" by the grant of food or, occasionally, other commodity assistance from a donor.

The \$174.5-million counterpart expenditure agreed on by Canada and India includes minor irrigation projects and other agricultural schemes such as education, research, staff training and improvement of grain-storage methods. A soil-conservation program involving over two million acres is planned and will be supported by counterpart funds.

GIFT TO KING OF DENMARK

The latest present to King Frederick IX of Denmark is a piece of rock from the northernmost point of land in the world, picked up by one of Canada's leading Arctic scientists.

The gift, a piece of orange-white quartzite from Kaffeklubben ("Coffee Club") Island, off the northern tip of Greenland, was found last April by Dr. E.F. Roots, co-ordinator of the polar continental shelf project of the Department of Energy, Mines and Resources.



On behalf of the Department, it was presented on October 8 in Copenhagen to the Danish minister for Greenland by Dr. J.M. Harrison, EMR's assistant deputy minister for mines and geosciences. The presentation was followed by a dinner given by the Danish minister.

Dr. Harrison stopped off in Copenhagen before returning home from a meeting of the International Council of Scientific Unions in the U.S.S.R.

Until a polar expedition led by Dr. Roots last spring, the northernmost piece of land was thought to be Greenland's Cape Morris Jesup, some 400 miles from the pole. But Dr. Roots found nearby Kaffeklubben Island to be about a mile farther north.

He picked up the piece of quartzite at the water's edge at the north tip of the island.

The accompanying inscription, on the wooden base on which the rock is mounted, describes the gift as a token of the "friendship and collaboration" between Canada and Denmark.

CAPE BRETON HONORS EARLY SETTLERS

A federal monument commemorating the Sieurs de la Boularderie, Louis-Simon and his son Antoine, was unveiled on September 20 at Alder Point, a Cape Breton community 22 miles northwest of Sydney, Nova Scotia. Located on the shore of Little Bras d'Or, which connects Bras d'Or Lake with the sea, Alder Point is the site where the elder Sieur de la Boular-

derie, an officer of the French navy, established a commercial settlement in 1720 to supply the fortress of Louisbourg with timber, coal, wheat and fish.

Dr. Peter Waite, Nova Scotia representative on the Historic Sites and Monuments Board of Canada, chaired the ceremony. The monument was unveiled by Dr. C. Bruce Ferguson, Nova Scotia provincial archivist and former chairman of the Historic Sites Monuments Board of Canada.

Addresses were given by Allan J. MacEachen, federal Minister of Manpower and Immigration, representing the Minister of Indian Affairs and Northern Development; Thomas J. McKeough, provincial Minister of Labor and of Trade and Industry representing the Premier of Nova Scotia; and Mrs. J.S. Munro, President, Cape Breton Historical Society. A prayer of dedication was offered by Rev. J.B. Kyte.

The monument, a pebble-faced concrete panel six feet high and eight feet long at the base, bears bronze plaques inscribed in French and English.

The Little Bras d'Or settlement is believed to have been the earliest and largest commercial settlement on Cape Breton Island to achieve some degree of success. The development of Cape Breton Island as a defence shield for the St. Lawrence River route to French colonial Quebec led to attempts to establish agricultural settlements to make the Island self-sustaining.

In 1720 Boularderie obtained monopoly of fishing operations at Niganiche, now Ingonish, a protected cod-drying station he hoped would provide return cargoes for ships bringing supplies to the area. He succeeded in interesting companies of French merchants in leasing property and development rights from him in the Ingonish and Little Bras d'Or areas.

But the venture made scant progress and showed little financial return, leaving Boularderie heavily in debt. At the time of his death in 1738, a small commercial settlement engaged in fishing, farming, lumbering and coal mining had been established at Little Bras d'Or.

In 1744 France declared war on England, and the ensuing hostilities saw the destruction of both the Little Bras d'Or settlement and the private Boularderie farm. In 1745, New England militiamen, who viewed the war as an opportunity to wipe out French trading and fishing competition, invaded Louisbourg, and the farm was burned. The entire Little Bras d'Or settlement was put to the torch in 1747 by the French because it was believed settlers there were selling coal to the British garrison occupying Louisbourg.

The young Boularderie, a captain in the French army, came to Cape Breton with a retinue of Norman peasants and artisans upon the death of his father, but was forced to return to France after the fall of Louisbourg to the English in 1758. The same year the Little Bras d'Or settlement was again ravaged and most of the Cape Breton settlers fled. The coal mines were shut down and settlement was discouraged until the coming of the Loyalists in 1784.

CANADA-U.S. PARKS STAFF

For the second year, the United States and Canadian national parks are exchanging staff. Roy Addie, of the National Parks Branch, Department of Indian Affairs and Northern Development, Ottawa, was chosen to serve as Assistant Superintendent of Rocky Mountain National Park, Estes, Colorado, for two-and-a-half months, beginning September 5.

An officer from the National Parks Service, U.S. Department of the Interior, will later be chosen to serve in a similar position in a Canadian national park for about the same period.

The exchange program was established last year (see *Canadian Weekly Bulletin*, Vol. 23, No. 12, dated March 20, 1968, P. 4), to enable staff in various aspects of national and historic park administration to gain a knowledge of the other country's procedures and policies and, where feasible, to apply that knowledge to their own park system.

Although the national parks systems of the two countries differ, and have developed independently of each other, both the U.S. and Canada are world leaders in the application of the theory that suitable and sufficient historic sites and wilderness areas should be preserved.

Canada's national and historic parks system now consists of some 29,400 square miles and is made up of 19 national parks and 626 historic sites, of which 44 are major historic parks and sites.

The U.S. National Parks Service includes 168 historic sites, 71 natural areas, and 36 recreational sites, comprising some 43,000 square miles in all.

TWIN FREEDOMS OF A DEMOCRACY

(Continued from P. 2)

authorize these exceptions?

Applications for authorization to conduct electronic surveillance should be made only by the chief of a designated law enforcement authority or his appointed deputy. There is some difference of opinion here as to whether the application should be made to the attorney general or to the chief judge of a trial division. As I have stated on other occasions, my personal inclination is that someone who is politically accountable to the people — rather than a judge — should assume the responsibility for that authorization. The very nature of the proceeding is *ex parte*, (a notice is not given to the other party). Accordingly, a judge would be required to issue a one-sided order without a real hearing in which all parties could make their representations. Rather than put a judge in that position, I would prefer having the judiciary examine the evidentiary and adversary aspects of invasions of privacy and place the responsibility for its authorization on those responsible to Parliament or a legislature and, through that

popular forum, to the people.

(4) If there are authorized exceptions, what terms or conditions should be attached to these exceptions for purposes of supervision and control?

POSSIBLE LIMITING CONDITIONS

Some of those limiting conditions *might* include the following:

- (a) The grant of any power ought to be "the least possible power adequate to the need proposed". Accordingly, the application for an order should be particular as to the facts and circumstances relied upon by the applicant, the nature of the offence sought to be investigated, the place of interception, the type of communication to be intercepted, the identity of the persons whose communications are to be intercepted, perhaps a statement as to whether other investigative techniques have been tried and failed, and the time for which the interception is to be maintained.
- (b) No order should authorize the overhearing or recording of communications for a period of time beyond that which is necessary to achieve the order's objective. There must be a proportionate relation between the duration of the surveillance and the need for such surveillance. A surveillance warrant should not open the door to indiscriminate "fishing expeditions".
- (c) Any exceptionally authorized use of electronic surveillance must protect the integrity of privileged communications, unless an additional special need is demonstrated. This would have to be a question of fact to be determined in each particular case.
- (d) All recordings would have to be made in such a way that their authenticity could not be suspect.
- (e) Every subject of electronic surveillance must be permitted to have his day in court. The fear of possible unknown surveillance must be lessened. Provision might be made for a civil cause of action whereby an individual would be able to take whatever action might be available to him to recover, where appropriate, civil damages. The knowledge that the subject might ultimately have an opportunity to seek redress should have a deterrent effect on abuse of the technique of electronic surveillance.
- (f) Any administration of criminal justice authorizing even the exceptional use of electronic surveillance techniques must contain some provision for a public accounting. Indeed, public support for the exercising of even this limited surveillance can only be obtained where the public can be responsibly informed of the extent and character of its use. This accounting would provide, as well, an empirical base by which may be measured the need and extent of success of electronic surveillance as a law enforcement technique....