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of the funds available are reserved for the elderly (see discussion above). Of the amounts that are set aside under this provision, not less than five percent must be available for use only with respect to "integrated projects." The bill defines integrated as "any project in which not less than ten per centum nor more than 50 per centum of the dwelling units are planned for occupancy by elderly or handicapped families.

CONTROL OF GOVERNMENT SNOOPING

Mr. MONDALE. Mr. President, last Wednesday the distinguished Senator from Wisconsin (Mr. NELSON) gave the opening testimony before a House Judiciary subcommittee which is considering legislation to control Government snooping.

The Senator from Wisconsin has been concerned with this issue long before Watergate became a household word, and has been a leader in the Senate in helping to secure protection for American citizens from the unwarranted interference of Government surveillance. In his testimony, Senator NELSON explained the source of his deepseated concern and the measures which Congress should enact to meet the problems of Government spying.

One measure discussed in detail is S. 2820, a bill introduced by Senator NELSON to prohibit the use of warrantless wiretaps in national security cases. I am proud to be a cosponsor of this legislation, and share my colleague's hope that Congress will consider it carefully.

Mr. President, I ask unanimous consent that the Senator's testimony before the House Judiciary subcommittee be printed in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

STATEMENT BY U.S. SENATOR GAYLORD NELSON

The time is long past due for Congressional action to check the dangerous abuses of government wiretapping and other surveillance activities. Indeed, continued inaction by Congress in this area would be inexcusable.

The need for action, and therefore the importance of this subcommittee's inquiry, are clear. Uncontrolled government wiretaps and other surveillance activities constitute an intolerable threat to fundamental constitutional rights and liberties. Individual freedom—the cornerstone of our democratic system—is but an illusion in a society where the government can invade an individual's privacy at will.

Until recently, most of the public did not appreciate the inherent dangers of government snooping. Now the public understands that government snooping poses a real threat to everyone, regardless of his or her station in life. Now 77% of the public favors legislation to curb the abuses of government wiretapping and spying.

The explanation for this shift in public opinion is easy to understand. The Watergate scandals and other events have underscored the dangers of government snooping in a dramatic fashion.

Hearings by the Senate Watergate Committee and other Congressional bodies, as well as reports by various periodicals, exposed in sordid detail how the government could and did invade the privacy of law-abiding individuals. Reference to just a few recent examples is sufficient to illustrate the magnitude of dangers of government snooping:

On April 14, 1971, it was revealed that the FBI had conducted general surveillance on those who participated in Earth Day celebrations in 1970. These activities involved tens of thousands of citizens, state governors, representatives of the Nixon administration, and members of Congress. As the one who planned that first Earth Day, I cannot imagine any valid reason for spying on individuals exercising their constitutional rights of speech and assembly in a peaceable manner. There is still no satisfactory explanation of the surveillance. Nor is there any guarantee it could not be repeated in the future.

A 1973 Senate subcommittee report detailed the extensive spying secretly conducted by 1500 agents of the U.S. Army on more than 100,000 civilians in the late 1960's. This surveillance was directed principally at those suspected of engaging in political dissent. No one in the Congress knew about this spying. No one in the executive branch would accept responsibility for it. Again, there is no guarantee that this sorry episode could not be repeated. In fact, a Senate committee learned recently that in the last three years—after the administration assured the public that the military would no longer spy on civilians—the U.S. Army has maintained numerous surveillance operations on civilians in the United States. And an article in *The New Republic* magazine of March 30, 1974 detailed the U.S. Army's use of wiretaps, infiltrators, and other surveillance techniques to spy on American citizens living abroad who supported the presidential candidacy of George McGovern. The Army's spying was reportedly so extensive that it even intercepted a letter from a college librarian in South Carolina who requested information about a German publication;

On December 5, 1973, Retired Rear Admiral Eugene LaRoque revealed the existence of a secret unit in the Pentagon which engages in the same kind of activities conducted by the White House "plumbers";

Testimony before the Senate Watergate Committee and the Senate Judiciary Committee documented White House efforts to use confidential tax returns of thousands of individuals to spy on and harass its "enemies."

For many years Constitutional authorities and other citizens have repeatedly expressed alarm over the rapidly expanding practice of governmental invasions of privacy by wiretapping, data collection, and other forms of surveillance. In 1967 I made a lengthy speech on the floor of the Senate on this issue and in 1971 introduced legislation to establish a joint congressional committee to control government snooping. In this session of Congress I have introduced three separate bills designed to remedy the abuses of government spying. One of these measures—a bill to prohibit the use of wiretaps without approval of a judicial warrant in so-called "national security" cases—has been introduced in the House by the Chairman of this subcommittee.

Because this last bill, entitled the "Surveillance Practices and Procedures Act of 1973," is presently before the subcommittee, the remainder of this testimony will be devoted to a discussion of it.

The bill is a direct response to wiretap abuses in so-called "national security" cases. Last May it was revealed that in 1969 the White House by-passed established procedures and authorized wiretaps on the telephones of seventeen government officials and newspapermen. The purported basis of these "taps" was a concern that sensitive information was being leaked to reporters by government officials. The government, however, did not obtain a judicial warrant before installing the taps. The government alone decided whom it would tap and for how long.

Subsequent investigation showed that some of the government officials tapped did not have access to sensitive information. It was also learned that two of the taps were maintained after the individuals involved had left government service and joined the presidential campaign staff of Senator Muskie. In none of the cases was the individual suspected of having violated the law.

These were not isolated incidents. Warrantless taps based on so-called "national security" reasons were placed on the telephones of newspaper columnist Joseph Kraft in 1969 and in 1971 on friends of a Navy yeoman suspected of passing sensitive information to the Joint Chiefs of Staff. Again, none of these individuals were even suspected of having violated the law.

The use of so-called "national security" taps, however, has not been confined to the present administration. Democratic and Republican administrations since the 1930's have used such taps to spy on law-abiding individuals. Various government reports indicate that since that time thousands of individuals have had their telephone conversations intercepted for so-called "national security" reasons.

From the very beginning, those sensitive to civil liberties recognized the dangers of warrantless wiretaps. Such taps enable the government to exercise unchecked and unreviewed power over the individual. There is no opportunity for a court, the Congress, or the public to demonstrate that the taps are unreasonable. For this reason, Supreme Court Justice Oliver Wendell Holmes called them "dirty business." In my view, such taps are also unconstitutional.

To understand the basis of this opinion it is necessary to examine the language and judicial interpretation of the Fourth Amendment. That amendment states quite simply that

"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 persons or things to be seized."

One need not be an historian or a lawyer to understand the essential purpose of this amendment. It is intended to protect the individual's privacy from unreasonable invasions by the government. To afford this protection, the amendment contemplates that a neutral court—not the government—will determine whether any search and seizure planned by the government is reasonable. Otherwise the government would be both advocate and judge of its own case.

The Fourth Amendment thus limits the power of the government. Like the other amendments in the Bill of Rights, it reflects the Framers' intention that individual liberty, rather than unrestrained governmental power, be the hallmark of our political system. In his dissent in the 1928 Olmstead case Supreme Court Justice Louis Brandeis articulated the importance of the Fourth Amendment in our scheme of government:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, *whatever the means employed,* must be deemed a violation of the Fourth Amendment." (Emphasis added).

The Fourth Amendment's protections apply to all government searches and seizures. No exception is made for national security cases or any other kind of circumstance. The absence of any expressed exceptions, moreover, cannot be interpreted as an oversight or a failure of the Founding Fathers to appreciate future developments in which world affairs would be overshadowed by the nuclear sword of Damocles.

When the Constitution was drafted in 1787, our country was only 11 years old. The new American citizens had recently concluded a long war with England to preserve their country's independence. That independence was not entirely secure. That threat of foreign attack and subversion remained ever present. Despite the existence of this threat, the Founding Fathers adopted the Fourth Amendment and made no exception to its application.

In the 1967 *Berger* and *Katz* cases, the Supreme Court held that the Fourth Amendment applies to wiretapping for criminal purposes. In effect, these decisions required the government to obtain an approving judicial warrant before it could install a wiretap in a criminal investigation.

In the 1972 *Keith* case the Court, by an 8-0 vote, decided further that the government could not wiretap individuals without a judicial warrant even when the individual's activities threatened the nation's "domestic security." Again, the Court made clear that wiretaps must adhere to the safeguards delineated by the Fourth Amendment:

"Though physical entry of the home is the chief evil against which the wording of broader spirit now shields private speech from unreasonable surveillance."

The Supreme Court has not yet decided whether the Fourth Amendment's protections apply to cases involving the intelligence activities of foreign powers and their agents. In the *Keith* case, the Court stated explicitly that it did not consider those situations where American citizens have a "significant connection" with foreign powers and their agents.

Because the Court has not ruled on these "national security" taps, the present administration maintains that it may install warrantless wiretaps in certain situations. In a September 1973 letter to Senator William Fulbright, Chairman of the Senate Foreign Relations Committee, then Attorney General Elliot Richardson stated that the administration would continue to install warrantless wiretaps against American citizens and domestic organizations if the administration believes their activities affect "national security" matters.

Mr. Richardson's comments apparently still reflect administration policy. Last January the Justice Department reported that it had authorized three warrantless wiretaps for national security reasons—an average week's quota according to the department. The department did not explain to any neutral party the justification for the taps or identify the subjects of the taps.

The continued use of warrantless wiretaps for so-called "national security" reasons underscores the need for Congressional action. People in our country should not be afraid to speak to one another on the telephone, never knowing whether the government is listening or how the government might use any information obtained. Every citizen should be assured that the privacy of his or her telephone conversations will not be invaded unless a neutral court first determines that the invasion is justified.

The Surveillance Practices and Procedures Act is designed to provide that assurance. The bill includes three principal provisions.

First, before it could wiretap American citizens for national security reasons, the government would have to obtain a judicial warrant based on probable cause that a specific crime has been or is about to be committed. This provision would thus protect an individual's privacy against unjustified national security wiretaps.

Second, before the government could wiretap a foreign power or its agents, it would have to obtain a judicial warrant based on the belief that the tap is necessary to protect national security interests. The warrant standards for foreign powers and their agents would thus be less rigorous than those required for American citizens. This warrant requirement will in no way undermine the government's ability to protect against foreign attack or subversion; the government will be able to wiretap foreign powers and their agents any time there is a need for such surveillance.

The justification for this second warrant procedure is plain. The government's desire to wiretap should be reviewed by a court. There should be no exceptions. Otherwise the exceptions may be stretched to sanction an unreasonable invasion of an individual's privacy—a situation which would violate the rights and liberties guaranteed under our Constitution.

Third, every American citizen wiretapped would be informed of the surveillance within 30 days after the last authorized interception. This provision would assure every wiretapped American citizen the opportunity to protect against violation of his or her constitutional rights. The disclosure of the wiretap could be postponed however, if the government satisfies the court that the person wiretapped is engaged in a continuing criminal enterprise or that disclosure would endanger national security interests.

The need for legislation such as this should be beyond dispute. Warrantless wiretaps—whether for "national security" reasons or other purpose—pose a grave danger to individual rights of speech and privacy. Such taps invest the government with an absolute power over the individual. They enable the government to pry into an individual's private affairs without justification. They foster the reality of an Orwellian state in which the government becomes a monster to be feared rather than a servant to be trusted.

That is not the kind of government envisioned by our Founding Fathers. The underlying and fundamental premise of our Constitution is that all government power is limited by checks and balances. This is no less true of the government's power to protect "national security." That power is not so absolute that it can excuse infringements of the right to privacy and other constitutional liberties. It would indeed be ironic if the government could invoke "national security" to violate those individual freedoms which the government is obligated to defend.

The public apparently agrees that invocation of "national security" cannot excuse violations of constitutional rights and liberties. A recent Harris opinion poll found that 75% of the public believes that "wiretapping and spying under the excuse of national security is a serious threat to people's privacy."

More than 20 years ago, Justice Felix Frankfurter voted with a majority of the Supreme Court to condemn as unconstitutional President Truman's seizure of the steel mills, an action which that President also tried to justify in terms of "national security." In explaining his vote, Justice Frankfurter observed that

"The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."

The observation is equally true of warrantless wiretaps in so-called "national security" cases. Over the past few decades, the use of these taps has generated an unchecked power in the executive branch. The danger has now been exposed. In wiretapping, as in other matters, unchecked power can be and often is exercised in an arbitrary and abusive fashion.

It is not a question of good faith. Even the best of intentions can lead individuals—and their government—astray. If Congress wants to insure respect for constitutional limitations and constitutional liberties, it should not rely on the good will of government officials; it should enact legislation which defines clearly the government's obligations and the individual's rights. This is at least one lesson of Watergate. Time will tell how well Congress has learned the lesson.

THE THREAT OF NUCLEAR THEFT AND SABOTAGE

Mr. RIBICOFF. Mr. President, over the weekend I released a report prepared for the Atomic Energy Commission which finds that the AEC's present system of safeguarding explosive uranium and plutonium in the nuclear power industry is "entirely inadequate" to meet the threat of theft by terrorist groups and the subsequent manufacture of nuclear bombs.

This internal report, prepared by a team of four outside consultants and one AEC official, stresses that even the new safeguards regulations implemented by the AEC last month are inadequate and must be strengthened immediately. The study group makes several recommendations including the establishment of a Federal Nuclear Protection and Transportation Service to provide an immediate Federal presence wherever the use of force may be needed to protect these incredibly dangerous materials from falling into the hands of would-be saboteurs and blackmailers.

The report also declares that "acquisition of special nuclear material remains the only substantial problem facing groups which desire to have such weapons." It further states that "the potential harm to the public from the explosion of an illicitly made nuclear weapon is greater than that from any plausible powerplant accident," including a meltdown of the core and a breach of the containment vessel of a nuclear plant.

As serious as the safeguards problem is today, the report makes clear that it will magnify manyfold unless we come to grips with it now. It takes only 20 pounds of plutonium to make a crude bomb. The AEC estimates that by 1980, there will be more plutonium in the commercial sector than the Government sector, including the Government weapons program. The present generation of light-water nuclear reactors will produce 60,000 pounds of plutonium a year by 1980. The next generation of reactors—the so-called fast breeder, which produces more plutonium than it consumes—will generate 600,000 pounds of plutonium annually by the year 2000. The basic message of the report is that