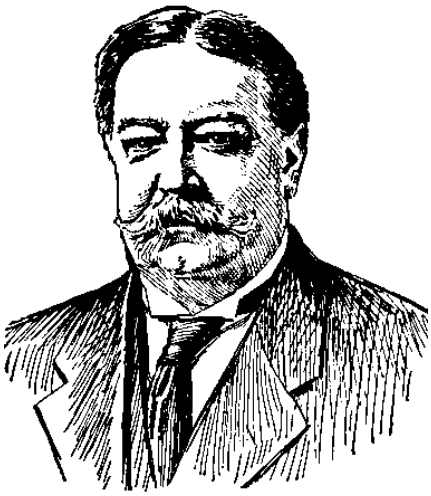
WASHINGTON

In light of the turmoil over Bush wire tapping,
this is an eye opener to get us started.

O L M S T E A D v. U N I T E D S T A T E S

SUPREME COURT OF THE UNITED STATES
277 U.S. 438
June 4, 1928
[6—3]

OPINION: Chief Justice TAFT…Whether the use of evidence of **private telephone conversations** between the defendants and others, intercepted by means **of wire tapping,** amounted to a violation of the Fourth and Fifth Amendments. The petitioners were convicted... of a **conspiracy** to violate the National Prohibition Act by unlawfully possessing, transporting and importing **intoxicating liquors** and maintaining nuisances, and by selling intoxicating liquors...



William Howard Taft

First, a President, then, a Chief Justice

[The conspiracy]…involved the employment of not less than 50 persons, of two sea-going vessels for the transportation of liquor to British Columbia, of smaller vessels for coastwise transportation to the state of Washington, the purchase and use of a branch beyond the suburban limits of Seattle, with a large underground cache for storage and a number of smaller caches in that city, the maintenance of a central office manned with operators, and the employment of

executives, salesmen, deliverymen, dispatchers, scouts, bookkeepers, collectors, and an attorney. In a bad month sales amounted to $176,000; the aggregate for a year must have exceeded $2,000,000.

Olmstead was the leading conspirator and the general manager of the business…Of the several offices in Seattle, the chief one was in a large office building. In this there were three telephones on three different lines. There were telephones in an office of the manager in his own home, at the homes of his associates, and at other places in the city. Communication was had frequently with Vancouver, British Columbia. Times were fixed for the deliveries of the 'stuff to places along Puget Sound near Seattle, and from there the liquor was removed and deposited in the caches already referred to. One of the chief men was always on duty at the main office to receive orders by the telephones and to direct their filling by a corps of men stationed in another room-the 'bull pen.' The call numbers of the telephones were given to those known to be likely customers…

The information which led to the discovery of the conspiracy and its nature and extent was largely obtained by intercepting messages on the telephones of the conspirators by four federal prohibition officers. **Small wires were inserted along the ordinary telephone wires from the residences of four of the petitioners and those leading from the chief office. The insertions were made <u>without trespass</u> upon any property of the defendants. They were made in the basement of the large office building. The taps from house lines were made in the streets near the houses.**

…Conversations of the conspirators…revealed the large business transactions…[and] disclosed the conspiracy charged in the indictment. Many of the intercepted conversations were…with members of the Seattle police, the messages to them which secured the release of arrested members of the conspiracy, and also direct promises to officers of payments as soon as opportunity offered.

The Fourth Amendment provides:

> 'The right of the people to be secure in their **<u>persons, houses, papers, and effects</u>**, against **<u>unreasonable searches and seizures</u>**, shall not be violated, and **<u>no warrants</u>** shall issue, but upon **<u>probable cause</u>**, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

And the Fifth:

> 'No person…shall be compelled in any criminal case to be a witness against himself.'

It will be helpful to consider the chief cases in this court which bear upon the construction of these amendments.

The next three-plus pages is a fairly tough read. Hang in there --- it is much, much better after that.

Boyd v. United States (1886) was an information filed by the District Attorney in the federal court in a cause of seizure and forfeiture against 35 cases of plate glass, which charged that the owner and importer, with intent to defraud the revenue, made an entry of the imported merchandise by means of a fraudulent or false invoice. It became important to show the quantity and value of glass contained in 29 cases previously imported. The fifth section of the Act of June 22, 1874 provided that, in cases not criminal under the revenue laws, the United States attorney, whenever he thought an invoice, belonging to the defendant, would tend to prove any allegation made by the United States, might by a written motion, describing the invoice and setting forth the allegation which he expected to prove, secure a notice from the court to the defendant to produce the invoice, and, if the defendant refused to produce it, the allegations stated in the motion should be taken as confessed, but if produced the United States attorney should be permitted, under the direction of the court, to make an examination of the invoice, and might offer the same in evidence. This act had succeeded the act of 1867 which provided in such cases the District Judge, on affidavit of any person interested, might issue a warrant to the Marshall to enter the premises where the invoice was and take possession of it and hold it subject to the order of the judge. This had been preceded by the act of 1863 of a similar tenor, except that it directed the warrant to the collector instead of the Marshal. The United States attorney followed the act of 1874 and compelled the production of the invoice.

The court held the act of 1874 repugnant to the Fourth and Fifth Amendments. As to the Fourth Amendment, Justice Bradley said:

> …It is contended that, whatever might have been alleged against the constitutionality of the acts of 1863 and 1867, that of 1874, under which the order in the present case was made, is free from constitutional objection, because it does not authorize the search and seizure of books and papers, but only requires the defendant or claimant to produce them. That is so; but it declares that if he does not produce them, the allegations which it is affirmed they will prove shall be taken as confessed. This is tantamount to compelling their production; for the prosecuting attorney will always be sure to state the evidence expected to be derived from them as strongly as the case will admit of. It is true that certain aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching amongst his papers, are wanting, and to this extent the proceeding under the act of 1874 is a mitigation of that which was authorized by the former acts; but **it accomplishes the substantial object of those acts in forcing from a party evidence against himself. It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property, is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be; because it is a material ingredient, and effects the sole object and purpose of search and seizure.'**

Concurring, Mr. Justice Miller and Chief Justice Waite said that they did not think the machinery

used to get this evidence amounted to a search and seizure, but they agreed that the Fifth Amendment had been violated.

The statute provided an official demand for the production of a paper or document by the defendant, for official search and use as evidence on penalty that by refusal he should be conclusively held to admit the incriminating character of the document as charged. It was certainly no straining of the language to construe the search and seizure under the Fourth Amendment to include such official procedure.

…[In] *Weeks v. United States* (1914), a conviction [was obtained] for using the mails to transmit coupons or tickets in a lottery enterprise. The defendant was **arrested** by a police officer **without a warrant.** After his arrest, other police officers and the United States Marshal went to his house, got the key from a neighbor, entered the defendant's room, and searched it, and took possession of various papers and articles. **Neither the Marshal nor the police officers had a search warrant.** The defendant filed a petition in court asking the return of all his property. The court ordered the return of everything not pertinent to the charge, but denied return of relevant evidence. After the jury was sworn, the defendant again made objection, and on introduction of the papers contended that the search without warrant was a violation of the Fourth and Fifth Amendments, and they were therefore inadmissible. This court held that such taking of papers by an official of the United States, acting under color of his office, was in violation of the constitutional rights of the defendant, and upon making seasonable application he was entitled to have them restored, and that by permitting their use upon the trial the trial court erred.

The opinion cited with approval language of Mr. Justice Field in *Ex parte Jackson,* saying that the Fourth Amendment as a principle of protection was applicable to sealed letters and packages in the mail, and that, consistently with it, such matter could only be opened and examined upon warrants issued on oath or affirmation particularly describing the thing to be seized.

In *Silverthorne Lumber Co. v. United States* (1920), the defendants were arrested at their homes and detained in custody. While so detained, representatives of the government without authority went to the office of their company and seized all the books, papers, and documents found there. An application for return of the things was opposed by the district attorney, who produced a subpoena for certain documents relating to the charge in the indictment then on file. The court said:

> 'Thus the case is not that of knowledge acquired through the wrongful act of a stranger, but it must be assumed that the government planned or at all events ratified the whole performance.'

And it held that the illegal character of the original seizure characterized the entire proceeding and under the *Weeks* Case the seized papers must be restored.

In *Amos v. United States* (1921), the defendant was convicted of concealing whisky on which the tax had not been paid. At the trial he presented a petition asking that private property seized in a search of his house and store 'within his **curtilage**' without warrant should be returned. This was denied. A woman, who claimed to be his wife, was told by the revenue officers that they had

come to search the premises for violation of the revenue law. She opened the door; they entered and found whisky. Further searches in the house disclosed more. It was held that this action constituted a violation of the Fourth Amendment, and that the denial of the motion to restore the whisky and to exclude the testimony was error.

Curtilage = courtyard.
No Extra Charge!!
/s/ *ℰℒℒ*

In *Gouled v. United States* (1921), the facts were these: Gouled and two others were charged with conspiracy to defraud the United States…Gouled was suspected of the crime. A private in the United States Army, pretending to make a friendly call on him, gained admission to his office, and in his absence, without warrant of any character, seized and carried away several documents. One of these, belonging to Gouled, was delivered to the United States attorney and by him introduced in evidence. When produced it was a surprise to the defendant. He had had no opportunity to make a previous motion to secure a return of it…Admission of the paper was considered a violation of the Fourth Amendment.

Agnello v. United States (1925) held that the Fourth and Fifth Amendments were violated by admission in evidence of contraband narcotics found in defendant's house, several blocks distant from the place of arrest, after his arrest and seized there without a warrant. Under such circumstances the seizure could not be justified as incidental to the arrest.

There is no room in the present case for applying the Fifth Amendment, unless the Fourth Amendment was first violated. **There was no evidence of compulsion to induce the defendants to talk over their many telephones**. They were continually and voluntarily transacting business without knowledge of the interception. Our consideration must be confined to the Fourth Amendment.

The striking outcome of the *Weeks* Case and those which followed it was the sweeping declaration that the Fourth Amendment, although not referring to or limiting the use of evidence in court, really forbade its introduction, if obtained by government officers through a violation of the amendment. **Theretofore many had supposed that under the ordinary common-law rules, if the tendered evidence was pertinent, the method of obtaining it was unimportant. This was held by the Supreme Judicial Court of Massachusetts in *Commonwealth v. Dana.* There it was ruled that the only remedy open to a defendant whose rights under a state constitutional equivalent of the Fourth Amendment had been invaded was by suit and judgment for damages…**But in the *Weeks* Case, and those which followed, this court decided with great emphasis and established as the law for the federal courts that the protection of the Fourth Amendment would be much impaired, unless it was held that not only was the official violator of the rights under the amendment subject to action at the suit of the injured defendant, but also that the evidence thereby obtained could not be received.

The well-known historical purpose of the Fourth Amendment..., directed against general warrants and writs of assistance, was to prevent the use of governmental force to search a man's

house, his person, his papers, and his effects, and to prevent their seizure against his will. This phase of the misuse of governmental power of compulsion is the emphasis of the opinion of the court in the *Boyd Case*. This appears, too, in…*Weeks,*…*Silverthorne* and *Amos.*

[In] *Gouled v. United States...*[t]here was actual entrance into the private quarters of defendant and the taking away of something tangible. **Here we have testimony only of voluntary conversations secretly overheard.**

The amendment itself shows that the search is to be of material things-the person, the house, his papers, or his effects. The description of the warrant necessary to make the proceeding lawful is that it must specify the place to be searched and the person or things to be seized...

The Fourth Amendment may have proper application to a sealed letter in the mail, because of the constitutional provision for the Post office Department and the relations between the government and those who pay to secure protection of their sealed letters…It is plainly within the words of the amendment to say that the unlawful rifling by a government agent of a sealed letter is a search and seizure of the sender's papers or effects. The letter is a paper, an effect, and in the custody of a government that forbids carriage, except under its protection.

The United States takes no such care of telegraph or telephone messages as of mailed sealed letters. The amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants...

The language of the amendment cannot be extended and expanded to include telephone wires, reaching to the whole world from the defendant's house or office. The intervening wires are not part of his house or office, any more than are the highways along which they are stretched...

Justice Bradley, in the *Boyd* Case, and Justice Clarke, in the *Gouled* Case, said that the Fifth Amendment and the Fourth Amendment were to be liberally construed to effect the purpose of the framers of the Constitution in the interest of liberty. But that cannot justify enlargement of the language employed beyond the possible practical meaning of houses, persons, papers, and effects, or so to apply the words "search and seizure" as to forbid **hearing** or **sight**.

Hester v. United States held that the testimony of two officers of the law who trespassed on the defendant's land, concealed themselves 100 yards away from his house, and saw him come out and hand a bottle of whisky to another, was not inadmissible. **While there was a trespass, there was no search of person, house, papers, or effects.**

Congress may, of course, protect the secrecy of telephone messages by making them, when intercepted, inadmissible in evidence in federal criminal trials, **by direct legislation**, and **thus depart from the common law of evidence**. But the courts may not adopt such a policy by attributing an enlarged and unusual meaning to the Fourth Amendment. The reasonable view is that one who installs in his house a telephone instrument with connecting wires intends to project

his voice to those quite outside, and that the wires beyond his house, and messages while passing over them, are not within the protection of the Fourth Amendment. Here those who intercepted the projected voices were not in the house of either party to the conversation.

Neither the cases we have cited nor any of the many federal decisions brought to our attention hold the Fourth Amendment to have been violated as against a defendant, unless there has been an official search and seizure of his **person** or such a seizure of his **papers** or his **tangible material effects** or an actual physical invasion of his **house** 'or **curtilage'** for the purpose of making a seizure.

We think, therefore, that the wire tapping here disclosed did not amount to a search or seizure within the meaning of the Fourth Amendment…

[Some believe] that evidence obtained through intercepting of telephone messages by government agents was inadmissible because the mode of obtaining it was **unethical** and a **misdemeanor** under the law of Washington…**The common-law rule is that the admissibility of evidence is not affected by the illegality of the means by which it was obtained...**

The *Weeks Case* announced an exception to the common law rule by excluding all evidence in the procuring of which government officials took part by methods forbidden by the Fourth and Fifth Amendments. Many state courts do not follow the *Weeks Case*. But those who do treat it as an exception to the general common-law rule and required by constitutional limitations. The common-law rule must apply in the case at bar.

Nor can we, without the sanction of congressional enactment, subscribe to the suggestion that the courts have a discretion to exclude evidence, the admission of which is not unconstitutional, because unethically secured. This would be at variance with the common-law doctrine generally supported by authority. There is no case that sustains, nor any recognized textbook that gives color to such a view. Our general experience shows that much evidence has always been receivable, although not obtained by conformity to the highest ethics. The history of criminal trials shows numerous cases of prosecutions of oathbound conspiracies for murder, robbery, and other crimes, where officers of the law have **disguised** themselves and **joined the organizations**, taken the **oaths**, and given themselves every appearance of active members engaged in the promotion of crime for the purpose of securing evidence. Evidence secured by such means has always been received.

Somehow, I don't put undercover investigation of hardcore crime into the unethical category - certainly not the same brand of ethical violation as intentionally breaking the law.

A standard which would forbid the reception of evidence, if obtained by other than nice ethical conduct by government officials, would make society suffer and give criminals greater immunity than has been known heretofore. In the absence of controlling legislation by Congress, those who realize the difficulties in bringing offenders to justice may well deem it wise that the exclusion of evidence should be confined to cases where rights under the Constitution would be violated by admitting it.

The statute of Washington, adopted in 1909, provides that:

> 'Every person…who shall intercept, read or in any manner interrupt or delay the sending of a message over any telegraph or telephone line…shall be guilty of a misdemeanor.'

This statute does not declare that evidence obtained by such interception shall be inadmissible, and by the common law,…it would not be. Whether the state of Washington may prosecute and punish federal officers violating this law, and those whose messages were intercepted may sue them civilly, is not before us. But clearly a statute, passed 20 years after the admission of the state into the Union, cannot affect the rules of evidence applicable in courts of the United States…The judgments of the Circuit Court of Appeals are affirmed...

DISSENT: Justice BRANDEIS…[A] lineman of long experience in wire tapping was employed on behalf of the government and at its expense. He tapped eight telephones, some in the homes of the persons charged, some in their offices. Acting on behalf of the government and in their official capacity, at least six other prohibition agents listened over the tapped wires and reported the messages taken. Their operations extended over a period of nearly five months. The typewritten record of the notes of conversations overheard occupies 775 typewritten pages…The defendants objected to the admission of the evidence obtained by wire tapping on the ground that the government's wire tapping constituted an **unreasonable search and seizure**, in violation of the Fourth Amendment, and that the use as evidence of the conversations overheard **compelled the defendants to be witnesses against themselves**, in violation of the Fifth Amendment.

The government makes no attempt to defend the methods employed by its officers. Indeed, it concedes that, if wire tapping can be deemed a search and seizure within the Fourth Amendment, such wire tapping as was practiced in the case at bar was an unreasonable search and seizure, and that the evidence thus obtained was inadmissible. But it relies on the language of the amendment, and it claims that the protection given thereby cannot properly be held to include a telephone conversation.

'We must never forget,' said Mr. Chief Justice Marshall in *McCulloch v. Maryland*[1], 'that it is a Constitution we are expounding.' Since then this court has repeatedly sustained the exercise of power by Congress, under various clauses of that instrument, over objects of which the fathers could not have dreamed. We have likewise held that general limitations on the powers of government, like those embodied in the due process clauses of the Fifth and Fourteenth Amendments, do not forbid the United States or the states from meeting modern conditions by regulations which 'a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.' Clauses guaranteeing to the individual protection against specific abuses of power, must have a similar capacity of adaptation to a changing world. It was with reference to such a clause that this court said in *Weems v. United States:*

> "...Time works changes, brings into existence new conditions and purposes. Therefore a principal to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of Constitutions. They are not

[1] Case 1-7 on this website.

> ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, 'designed to approach immortality as nearly as human institutions can approach it.' The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a Constitution, therefore, our contemplation cannot be only of what has been but of what may be. Under any other rule a Constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality."

When the Fourth and Fifth Amendments were adopted, 'the form that evil had theretofore taken' had been necessarily simple. Force and violence were then the only means known to man by which a government could directly effect self-incrimination. It could compel the individual to testify-a compulsion effected, if need be, by torture. It could secure possession of his papers and other articles incident to his private life-a seizure effected, if need be, by breaking and entry. Protection against such invasion of 'the sanctities of a man's home and the privacies of life' was provided in the Fourth and Fifth Amendments by specific language. But 'time works changes, brings into existence new conditions and purposes.' Subtler and more far-reaching means of invading privacy have become available to the government. Discovery and invention have made it possible for the government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.

Moreover, 'in the application of a Constitution, our contemplation cannot be only of what has been, but of what may be.' The progress of science in furnishing the government with means of espionage is not likely to stop with wire tapping. Ways may some day be developed by which the govermnent, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. Advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts and emotions. 'That places the liberty of every man in the hands of every petty officer' was said by James Otis of much lesser intrusions than these. To Lord Camden a far slighter intrusion seemed 'subversive of all the comforts of society.' Can it be that the Constitution affords no protection against such invasions of individual security?...

In *Ex parte Jackson* it was held that a sealed letter entrusted to the mail is protected by the amendments. The mail is a public service furnished by the government. The telephone is a public service furnished by its authority. **There is, in essence, no difference between the sealed letter and the private telephone message**. As Judge Rudkin said below:

> 'True, the one is visible, the other invisible; the one is tangible, the other intangible; the one is sealed, and the other unsealed; but these are distinctions without a difference."

The evil incident to invasion of the privacy of the telephone is far greater than that involved in tampering with the mails. Whenever a telephone line is tapped, the privacy of the persons at both ends of the line is invaded, and all conversations between them upon any subject, and although proper, confidential, and privileged, may be overheard. Moreover,

the tapping of one man's telephone line involves the tapping of the telephone of every other person whom he may call, or who may call him. As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wire tapping.

Time and again this court, in giving effect to the principle underlying the Fourth Amendment, has refused to place an unduly literal construction upon it. This was notably illustrated in the *Boyd Case* itself. Taking language in its ordinary meaning, there is no 'search' or 'seizure' when a defendant is required to produce a document in the orderly process of a court's procedure. 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures' would not be violated, under any ordinary construction of language, by compelling obedience to a subpoena. But this court holds the evidence inadmissible simply because the information leading to the issue of the subpoena has been unlawfully secured. *Silverthorne.* Literally, there is no 'search' or 'seizure' when a friendly visitor abstracts papers from an office; yet we held in *Gouled* that evidence so obtained could not be used. No court which looked at the words of the amendment rather than at its underlying purpose would hold, as this court did in *Ex parte Jackson,* that its protection extended to letters in the mails. The provision against self-incrimination in the Fifth Amendment has been given an equally broad construction. The language is: 'No person…shall be compelled in any criminal case to be a witness against himself.'

…The narrow language of the Amendment has been consistently construed in the light of its object, to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime...

Decisions of this court applying the principle of the *Boyd Case* have settled these things. Unjustified search and seizure violates the Fourth Amendment, whatever the character of the paper; whether the paper when taken by the federal officers was in the **home**, in an **office**, or **elsewhere**; whether the taking was effected by force, by fraud, or in the orderly process of a court's procedure. From these decisions, it follows necessarily that the amendment is violated by the officer's reading the paper without a physical seizure, without his even touching it, and that use, in any criminal proceeding, of the contents of the paper so examined - as where they are testified to by a federal officer who thus saw the document or where, through knowledge so obtained, a copy has been procured elsewhere - any such use constitutes a violation of the Fifth Amendment...

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, <u>every unjustifiable intrusion by the government upon the privacy of the individual</u>, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by**

such intrusion must be deemed a violation of the Fifth.

Applying to the Fourth and Fifth Amendments the established rule of construction, the defendants' objections to the evidence obtained by wire tapping must, in my opinion, be sustained. It is, of course, immaterial where the physical connection with the telephone wires leading into the defendants premises was made. And it is also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent...

Independently of the constitutional question, I am of opinion that the judgment should be reversed. By the laws of Washington, wire tapping is a crime. To prove its case, the government was obliged to lay bare the crimes committed by its officers on its behalf. A federal court should not permit such a prosecution to continue...

When these unlawful acts were committed they were crimes only of the officers individually. The government was innocent, in legal contemplation; for no federal official is authorized to commit a crime on its behalf. When the government, having full knowledge, sought, through the Department of Justice, to avail itself of the fruits of these acts in order to accomplish its own ends, it assumed moral responsibility for the officers' crimes…[A]nd if this court should permit the government, by means of its officers' crimes, to effect its purpose of punishing the defendants, there would seem to be present all the elements of a ratification. If so, the government itself would become a lawbreaker.

Will this court, by sustaining the judgment below, sanction such conduct on the part of the executive?...Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. **Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example**. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

DISSENT: Justice BUTLER…The single question for consideration is this: May the government…have its officers whenever they see fit, tap wires, listen to, take down, and report the private messages and conversations transmitted by telephones?...Telephones are used generally for transmission of messages concerning official, social, business and personal affairs including communications that are private and privileged - those between physician and patient, lawyer and client, parent and child, husband and wife. The contracts between telephone companies and users contemplate the private use of the facilities employed in the service. The communications belong to the parties between whom they pass. During their transmission the exclusive use of the wire belongs to the persons served by it. Wire tapping involves interference with the wire while being used…[and] literally constitute[s] a search for evidence…This court has always construed the Constitution in the light of the principles upon which it was

founded…With great deference, I think they should be given a new trial.

DISSENT: Justice STONE...[It is worth repeating:] 'Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all other rights would lose half their value.'...