Electronic Surveillance, the Mafia and Individual Freedom

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ELECTRONIC SURVEILLANCE, THE MAFIA, AND INDIVIDUAL FREEDOM*

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I. INTRODUCTION

The United States Constitution affects the ability of federal, state and local governments to combat criminal activity. Since the relevant constitutional provisions are in the form of broadly stated legal commands,1 the constitutionality of specific law enforcement practices can only be determined when the courts, ultimately the Supreme Court of the United States, interpret these commands in cases in which they are challenged.

As has long been recognized, the judicial role in the interpretation process is a creative one, for when conflicting policies compete for acceptance, a court's interpretation will further one policy at the expense of another.2 The court's policy preference can only be rational and responsible when it is based on "considerations of what is expedient for the community concerned."3 This requires the court to know the community, determine how implementation of each competing policy would affect it, and choose the policy of greatest utility for that community.4

Cases involving electronic surveillance5 by law enforcement agen-

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1. E.g., U.S. Const. amend. IV.
3. O. Holmes, supra note 2, at 32.
5. This article adopts the definition of electronic surveillance used by the National Wiretap Commission. The term generally includes *wiretapping* and *bugging*. *Wiretapping* generally refers to the interception (and recording) of a communication transmitted over a wire from a telephone, *without* the consent of any of the participants. *Bugging* generally refers to the interpretation (and recording) of a communication transmitted orally, *without* the consent of any of the participants. The term *consensual surveillance* refers to the overhearing, and usually the recording, of a wire or oral communication *with* the consent of one of the parties to the conversation.

cies involve two competing policies. They are the societal interests in (1) protecting individual freedom from governmental intrusions on privacy by means of electronic surveillance, and (2) protecting individual freedom from private, criminal invasions of privacy. Statements identifying the conflicting interests as "individual privacy" and "law enforcement" are misleading because they imply that law enforcement is an end in itself and that it necessarily limits individual freedom. Both of these implications are invalid.

Law enforcement is not an end in itself. It is only a means to the end of protecting individual freedom from private, criminal invasions. And, rather than limiting individual freedom, law enforcement is indispensable to it by protecting individuals from criminal acts by private persons. Thus, it is erroneous to believe that individual freedom is enhanced whenever law enforcement powers are limited.

There is, in particular, no warrant for assuming that eliminating governmental electronic surveillance will expand individual freedom. On the contrary, its elimination may contract individual freedom by subjecting people to the power of authoritarian criminal regimes that are not subject to any political controls.

Unfortunately, such regimes exist in the United States. The most powerful one is sometimes called "Organized Crime," sometimes the "Mafia," sometimes "La Cosa Nostra." Innumerable killings, beatings and coerced silences testify that the private nature of this regime does not prevent it from interfering with the individual freedom of persons in the United States.


8. See text following note 46 through text accompanying note 56, infra. In 1980, the Chairman of the Pennsylvania Crime Commission reported, "Daily, Pennsylvanians are damaged or destroyed financially, brutalized, maimed, burned or murdered with such frequency that in some communities these terrors are considered an acceptable way of life." Pennsylvania Crime Commission, A Decade of Organized Crime—1980 Report vi (1980).
In order to determine whether governmental electronic surveillance increases or lessens individual freedom, it is not enough to examine the extent to which it invades privacy. One must also examine existing and potential invasions of individual freedom by organized crime, and how useful electronic surveillance is in combatting organized crime. One will then be equipped to decide whether or not governmental electronic surveillance is necessary to enable law enforcement to combat more effectively organized crime's invasions of individual freedom. This article examines these factors and concludes that judicially supervised law enforcement electronic surveillance expands individual freedom and is constitutional.

II. STRUCTURE AND OPERATIONS OF ORGANIZED CRIME

Organized crime is composed of twenty-five gangs with bases of operation in many states, including, New York, New Jersey, Illinois, Florida, Louisiana, Nevada, Michigan and Rhode Island. These gangs

9. The flaw in some articles on the constitutionality of various law enforcement techniques is that they limit themselves to examining only this question. See, e.g., Comment, Telescopic Surveillance as a Violation of the Fourth Amendment, 63 Iowa L. Rev. 708 (1978). They give little or no consideration to how much a particular law enforcement technique contributes to effective law enforcement and thereby to the protection of individual freedom from criminal invasions. E.g., McNulty, Dalia v. United States: The Validity of Covert Entry, 65 Iowa L. Rev. 931, 958-62 (1980); Comment, Tracking Katz: Beepers, Privacy and the Fourth Amendment, 86 Yale L.J. 1461 (1977). By omitting or slighting consideration of the extent to which a law enforcement technique contributes to protecting individual freedom for criminal invasions, the authors' conclusions reflect only their personal preferences on how much is too much invasion of personal privacy, rather than a meaningful accommodation of the needs of members of our society for both privacy from governmental intrusions and security from private criminal invasions.

consist of about 2,000 full members, all of whom are of Italian descent. Twenty thousand associates,\(^6\) who are of varied ethnic backgrounds, are employed by or otherwise affiliated with these gangs.\(^7\)

The operations of the gangs are coordinated by a central administrative body, called the "Commission," whose members are the leaders of several of the most powerful gangs.\(^8\) This commission has nationwide authority and acts to prevent or resolve disputes between different gangs and sometimes, \(e.g.,\) when the leadership of a gang is in dispute, within a gang.\(^9\)

The gangs engage in illegal activities to make money and to avoid detection, conviction and punishment of gang members and associates. The most lucrative activities are those which provide illegal materials and services to willing customers. Thus, organized crime gangs gross billions of dollars annually from gambling operations. The Justice Department estimated that the 1973 annual gross volume of illegal gambling was $29 to $39 billion with more than 40 percent under Mafia control.\(^10\)

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6. Earlier in 1980, a New Jersey jury convicted four men of conspiracy to participate in a "secret nationwide criminal organization", La Cosa Nostra or Mafia. Seventy-nine criminal acts were allegedly engaged in by the conspirators. See N.Y. Times, June 21, 1980, at 25, col. 5.

11. See testimony of F.B.I. agent James W. Nelson, 1980 Senate Hearings, supra note 10, at 90-91. Earlier it was believed that La Cosa Nostra had about 5,000 members. See 1967 TASK FORCE REPORT, supra note 10, at 6-7; N. GAGE, THE MAFIA IS NOT AN EQUAL OPPORTUNITY EMPLOYER 36 (1971). Nelson testified, "Without a doubt, in our estimation, the group known as La Cosa Nostra is the most powerful organized crime group in this country. It is first in an organized criminal ranking, that has no second or third. No one else is close." Nelson, 1980 Senate Hearings, supra note 10, at 87.


15. REPORT OF THE NATIONAL COMMISSION FOR THE REVIEW OF FEDERAL AND STATE LAWS RELATING TO WIRETAPPING AND ELECTRONIC SURVEILLANCE 143 & note (1978) [hereinafter cited as NWC REPORT]. The estimated degree of Mafia control varied. It was: Northeast, 53.2 percent; Midwest 47.4 percent; Southeast, 35.7 percent; Far West 29.2 percent; and
The validity of these multi-billion dollar revenue estimates is evidenced by information about the income of gambling operations whose operators are apprehended. One Mafia numbers game in New Jersey run by five persons from a private dwelling in 1969 was reported to have had a daily income of $50,000. Authorities believe that 1980 organized crime controlled gambling in Connecticut is an $800 million a year operation. In 1975, one report estimated that the largest numbers game in New York City had an annual income of hundreds of millions of dollars. Loan sharking is the second largest source of revenue for Mafia gangs. Probably, annual income from this activity is also in the multibillion dollar range. Other revenue producing illegal activities reported include narcotics, fixing sports events, pornography, securities thefts, hijacking, cigarette bootlegging, extortion, labor racketeering, and arson.


22. See N.Y. Times, April 21, 1972, at 20, col. 6; id., March 5, 1978, at 33, col. 1.
Organized crime gangsters also derive revenue from legal activities in a wide range of businesses. In 1951, the Kefauver Committee reported that organized criminals were active particularly in the "sale and distribution of liquor, real estate operations, night clubs, hotels, automobile agencies, restaurants, taverns, cigarette vending companies, juke box concerns, laundries, the manufacture of clothing, and the transmission of racing and sports news. . . ." The legal business activities of many of the gangsters who met at Appalachiin, New York, in 1957 were believed to be in these areas. In addition, organized crime figures were reported to have substantial interests in the private trash disposal business.

Gang members often use legal activities as a springboard for illegal revenue producing activities. For example, control of a legitimate business has been used to sell fraudulent stock, to commit arson for insurance, to defraud suppliers and milk assets before placing an enterprise in bankruptcy, and to sell contaminated meat to customers.

Revenue producing activities of this magnitude require substantial administrative support. Besides the normal administrative activities that any large enterprise would engage in, the gangs rely on illegal methods. The principal illegal administrative activities in support of both the illegal and legal revenue producing activities are murder and intimidation of actual and potential witnesses, corruption of law enforcement and other public officials, and murder and intimidation of competitors, suppliers and customers.

Murder and intimidation of witnesses and potential witnesses against organized crime figures is a frequent occurrence. Gang members and other criminals suspected of providing information to law enforcement officials have been killed, some while under police protection. Many

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33. 1967 TASK FORCE REPORT, supra note 10 at 4; N. GAGE, supra note 11, at 175-76; J. KWIITNY, supra note 13, at 14-5, 32-33, 103-22; Houston Post, June 6, 1975, § A, at 17, col. 1. Resort hotels associated with organized crime sometimes serve as a base for illegal gambling, prostitution, and other criminal activities. See N.Y. Times, April 17, 1978, § A, at 1, col. 1.
35. See D. FRASCA, KING OF CRIME 126-27 (1959); 1963 Narcotics Hearings, supra note
law abiding witnesses have also been murdered or intimidated.\textsuperscript{36}

Corruption of law enforcement and other government officials is also a long standing organized crime procedure.\textsuperscript{37} Corruption benefits organized crime by securing lax law enforcement by the corrupted public officials and information on the activities of uncorrupted law enforcement personnel.\textsuperscript{38} "In different places at different times, organized crime has corrupted police officials, prosecutors, legislators, judges, regulatory agency officials, mayors, councilmen, and other public officials \ldots,\) concluded the 1967 Task Force Report on Organized Crime.\textsuperscript{39} The Task Force reported that some local governments were dominated by organized crime, and that in many large cities "there [was] a considerable degree of corruption."\textsuperscript{40} The available evidence shows that organized crime continues to use the technique of corruption on the local, state, and national levels.\textsuperscript{41}

In 1963 one observer wrote, "When organized crime embarks on a venture in legitimate business it ordinarily brings to that venture all the techniques of violence and intimidation which are employed in its illegal enterprises."\textsuperscript{42} This, too, has not changed. According to one report, in one city a waste product was sold by every seller to a business controlled by organized crime, even though the buyer paid only one-third of the price that other buyers were willing to pay.\textsuperscript{43} Another report indicates that when, in 1965, a national supermarket chain refused to buy a detergent sold by a company in which the then acting boss of one gang had an interest, some of its stores were dynamited, two of its employees

\textsuperscript{34} at pt. 1, at 118, 378-80; J. STARR, supra note 34, at 185-86 & note; N.Y. Times, July 19, 1977, at 14, col. 6.


\textsuperscript{37} 1967 \textit{TASK FORCE REPORT}, supra note 10, at 93.

\textsuperscript{38} \textit{See} N.Y. Times, July 4, 1980, \textsection A, at 9, col. 1; Baton Rouge Morning Advocate, Nov. 24, 1978, \textsection C, at 9, col. 1; Baton Rouge Morning Advocate, Nov. 25, 1978, \textsection B, at 11, col. 1.

\textsuperscript{39} \textit{See} J. GARDINER, \textit{WINCANTON: THE POLITICS OF CORRUPTION}, 1967 \textit{TASK FORCE REPORT}, supra note 10, at app. B.

\textsuperscript{40} 1967 \textit{TASK FORCE REPORT}, supra note 10, at 6.


\textsuperscript{42} Johnson, supra note 36, at 402-04.

were murdered and others were beaten. Organized crime also uses corruption in its legitimate business ventures. Thus, meat companies controlled by organized crime personnel were reported to have sold diseased meat, unfit for human consumption, to the public with the connivance of corrupted federal inspectors. Murder, corruption, and intimidation provide a substantial advantage over business competitors; and organized crime uses them to secure that advantage.

III. RESTRICTIONS ON INDIVIDUAL FREEDOM BY ORGANIZED CRIME

Organized crime deprives many persons within the United States of their rights to life, liberty and property. It does this by means of murder, extortion, intimidation, and corruption.

Extortion involves violence or threats of violence to a person or those he cares about unless he gives a gang member some economic benefit. A person who is required to pay a share of his earnings to a gang member is deprived of both property and liberty to engage in his chosen occupation for his own benefit. Similarly, a person is deprived of property and liberty when he is forced by violence, or threats of violence or labor troubles, to purchase an unwanted product or service. Organized crime gangs have used murder and intimidation to deprive union members of freedom to choose their union officers and citizens of freedom to choose their public officials.

Murder and intimidation also have been used to silence actual and potential witnesses against organized crime figures. These crimes deprive persons of their lives as well as their freedom to cooperate with governmental agencies. Examples of such incidents are numerous. In

47. See C. Mollenhoff, supra note 13, at 47, 134; S. Penn, Muscling In, reprinted in N. Gage, MAFIA, USA, 336-37 (1972); A. Seedman & P. Hellman, CHIEF 412-16, 182-85 (1975); A. Tully, Treasury Agent (1958), reprinted in G. Tyler, ORGANIZED CRIME IN AMERICA 207 (1962).
48. See United States v. Compagna, 146 F.2d 524 (2d Cir. 1944); M. Johnson, CRIME ON THE LABOR FRONT (1950), reprinted in G. Tyler, supra note 47, at 201, which discusses extortion from motion picture exhibitors and producers. See also J. Demma & T. Renner, THE MAFIA IN THE SUPERMARKET, reprinted in N. Gage, MAFIA, USA 329-30, 334 (1972).
49. See M. Johnson, supra note 48, reprinted in G. Tyler, supra note 47, at 201; A. Tully, supra note 47, reprinted in G. Tyler, supra note 47, at 207; C. Mollenhoff, supra note 13, at 90-91; V. Peterson, THE BARBARIANS IN OUR MIDST (1952), reprinted in G. Tyler, supra note 47, at 156-57; F. Pasley, supra note 26, at 176 (on Cicero election); KANSAS CITY GRAND JURY REPORT (1961), reprinted in G. Tyler, supra note 47, at 297.
1926, two key witnesses against members and associates of the Al Capone gang were killed. In 1930, a witness to the murder of a federal prohibition agent was murdered. In 1967, a twenty year old who testified about the theft of $370,862 in securities by organized crime figures was found dead from numerous stab wounds. During a 1972 New York investigation of organized crime, a key witness was called out of his restaurant and shot to death. There are many such incidents.

Corruption of public officials potentially deprives persons of all freedoms since these officials will not protect citizens against gang-sanctioned criminal activity and will use public agencies to further gang policies. The problem is a present one. Many local, state and federal officials have been corrupted by organized crime. In some communities the extent of corruption is total, in others it is extensive.

This corruption is one reason that citizens are unwilling to report organized crime activities to the public. As the Task Force on Organized Crime said:

Anyone reporting corrupt activities may merely be telling his story to the corrupted; in a recent "investigation" of widespread corruption, the prosecutor announced that any citizen coming forward with evidence of payments to public officials to secure government action would be prosecuted for participation in such unlawful conduct.

The problem is serious enough to have resulted in a Task Force recommendation that reports on organized crime conditions "should be

50. F. Pasley, supra note 26, at 176.
51. F. Tannenbaum, supra note 94, at 105-08 (1938) (quoting N.Y. Times, Nov. 8, 1932, at 44).
52. N.Y. Times, April 6, 1967, at 25, col. 3; A. Seedman & P. Hellman, supra note 47, at 342-43.
53. N.Y. Times, March 31, 1972, at 1, col. 5.
56. See 1967 Task Force Report, supra note 10, at 6; C. Mollenhoff, supra note 13, at chs. 5, 9 & 12; M. Dorman, supra note 19, at 7-71; N.Y. Times, Nov. 6, 1966, at 25, col. 5. One writer estimated that preventive corruption of police officers in 1970 cost the Cosa Nostra gang in a city of 230,000 a monthly four figure payment, and that additional payments were made to judicial officers. See A. Anderson, The Business of Organized Crime 57-58 (1979).
withheld from jurisdictions where corruption is apparent and knowledge by a corrupt official of the information in the report could compromise enforcement efforts."

The limitations on individual freedom which now result from organized crime's corruption of public officials are great. Corruption enables organized crime to enlist governmental power more effectively to limit persons' freedom to engage in economic activities for their own benefit and to cooperate with law enforcement. But the potential limitations on individual liberty from a gangster-governmental partnership are even greater. They are not limited to those that further the economic interests of organized crime. Freedom of speech and of the press may be limited in the interest of one or another partner. In February, 1946, longshoremen of the union headed by Anthony Anastasia barred reporters from the pier from which Charles (Lucky) Luciano was being deported to Italy. Other reported instances include the blinding of investigative reporter Victor Riesel in 1956, and the murder of anti-fascist editor Carlo Tresca in 1943.

Organized crime has demonstrated its willingness, for a price, to serve governmental officials by improving the wartime efficiency of the New York docks, and by assisting in plots to murder Fidel Castro in Cuba on behalf of the C.I.A. Clearly, organized crime poses a subst-

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58. Id. In 1978, the F.B.I. charged that some law enforcement agencies disclosed information from a nationwide computer file on organized crime to organized crime gangs. N.Y. Times, Nov. 26, 1978, at 65, col. 1.

59. C. Mollenhoff, supra note 13, at 15-16, 135-45, 179.


65. Alleged Assassination Plots Involving Foreign Leaders, S. Rep. No. 94-465, 94th Cong., 1st Sess. 74-85 (1975). On July 19, 1975, several days before he was scheduled to testify before the Senate Select Committee on Intelligence Activities on the alleged
tial actual and potential threat to the individual liberties of persons in our society.

IV. SAFEGUARDS PROTECTING INDIVIDUAL FREEDOM AGAINST INVASION BY ORGANIZED CRIME

Internal and external safeguards protect individual freedom from more extensive invasion by organized crime. One internal safeguard is that organized crime's resources are not sufficient for it to exercise control over wider areas of American society. Even organized crime's 2,000 members, 20,000 associates and 50 billion dollar gross revenue are inadequate to the task of exercising greater control over a population of more than 200 million persons, many of whom are imbued with the spirit of individual freedom and are willing to cooperate with law enforcement. Another less important internal safeguard is the Mafia's desire to avoid unfavorable publicity. Criminal activity that is likely to outrage public opinion to the point of resulting in a crackdown on gang revenue producing activities is usually avoided. But the fact that public interest is soon diverted and public outrage short lived makes this a very weak safeguard against organized crime activities.

The external safeguards on invasions of individual freedom by organized crime gangs are more effective since they are independent of organized crime's resources or desire for avoidance of bad publicity. The only significant external safeguard is the possibility of apprehension and punishment by governmental authorities. The penalties for murder, assault, and extortion are severe, ranging up to life imprisonment and the death penalty. The possibility that these penalties will be imposed has increased in recent years. High ranking gang leaders, including national commission members, have been sentenced to long prison terms.

C.I.A. plot to kill Castro, Sam Giancana, former head of the Chicago gang, was murdered. In July, 1976, John Roselli, one of Giancana's lieutenants who testified before the Senate Committee in 1975, was also murdered. See N.Y. Times, Aug. 9, 1976, 16, col. 4. See also G. BLAKEY & R. BILLINGS, supra note 12, at 385-91.


67. See M. DORMAN, supra note 19, at 94-95.

68. The possibility of self-help by a victim is too remote to be a significant safeguard. But see N.Y Times, Jan. 18, 1980, § B, at 2, col. 5.


70. E.g., Vito Genovese, discussed in Hearings Before the Senate Permanent Subcomm. on Investigations, 88th Cong., 1st Sess. pt. 1, at 250 (1964). Raymond Patriarca, discussed
These facts protect individual liberty from invasion by organized crime gangs in two ways. First, the removal of gang members from society limits their ability and their associates' ability to commit crimes. Second, the threat of punishment deters gang members and associates from engaging in some criminal activities in which they might otherwise engage. Clearly the possibility of apprehension and punishment for criminal activity is an important safeguard protecting individual freedom from more invasion by organized crime gangs.

V. WHAT ORGANIZED CRIME DOES TO OVERCOME LAW ENFORCEMENT LIMITATIONS ON ITS ACTIVITIES

As stated above, the possibility of apprehension and punishment is a significant external safeguard against organized crime's invasions of individual freedom. Effective law enforcement—the ability of law enforcement agencies to detect criminal activity, apprehend its perpetrators, and secure sufficient evidence to convict them—is required for the possibility of punishment to exist. Of course, effective law enforcement does not guarantee that a convicted criminal will actually be subject to meaningful penalties. Judges may impose lenient or no penalties; politicians may parole and pardon even after meaningful penalties have been imposed. But since there can be no significant penalty without effec-
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Effective law enforcement is itself dependent on one essential—information about the criminal activities of organized crime. Without such information law enforcement agencies often cannot know even that a crime was committed much less who the perpetrators were. Nor can they apprehend the criminals or produce evidence to prove their guilt. Thus, without information about the criminal activities of organized crime effective law enforcement to combat it is impossible.

Because organized crime recognizes the importance of denying information about its criminal activities to law enforcement agencies, its structure and many of its operating procedures are designed for this purpose. Information about criminal activity must come from participants, victims, witnesses, or real evidence. Organized crime uses measures to deny law enforcement agencies information from each of these sources. It limits information from participants principally by insulation of gang leaders, discipline of gang members, and careful personnel selection practices.

Insulation is accomplished by use of an established chain of command in the gang and by the employment of a "buffer" for gang leaders. The chain of command is boss, under boss, lieutenants, and soldiers. Since it is usually the "soldiers" or persons who are not gang members who perform the criminal acts, and since they receive their orders through the chain of command, the boss and other gang leaders are insulated from responsibility for the crimes.

In addition to the chain of command, Mafia bosses also use a "buffer" to help them avoid personal contact with members of the gang while administering its criminal activities. John J. Shanley, of the New York Police Department testified that "[leaders of the syndicate] deal through a buffer, a member. . . . The buffer's main duty is to stay between the boss and trouble. . . . In these families [gangs], all important matters go through channels. At the last stage, it comes to one man—the buffer—and he takes it to the overlord. . . ."

One of Valachi's murders illustrates how insulation works to deny law enforcement agencies information about the involvement of gang

75. See 1968 Narcotics Hearings, supra note 34, at pt. 1, at 80-82, 87, and chart of Vito Genovese gang facing 248; V. TERESA, supra note 14, at 87.
76. See 1963 Narcotics Hearings, supra note 34, at pt. 1, at 66-68. Apparently, some gangs do not use insulation. According to one source, in the Rochester, New York, gang, consisting of about forty-five persons, the boss and under-boss personally ordered the murder of an unsatisfactory member. See the testimony of Angelo Monachino, one of the murderers, in Arson-For-Hire, Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 95th Cong., 2d Sess. 51-52 (1978).
leaders in criminal activities. Valachi himself testified that in 1952, Charles (Lucky) Luciano, who was in Italy, ordered the murder of Eugene Gianini, a New York gang member who had become an informer. Valachi volunteered for the job. Valachi's boss, Anthony (Tony Bender) Strollo, told Valachi that he, Strollo, would have to secure approval from the gang boss, Vito Genovese, and later told Valachi that Genovese approved. Valachi assigned the task of killing Gianini to three aspirants for La Cosa Nostra membership, Pat Pagano, Joe Pagano, and Fiore Siano. According to Valachi, these three killed Gianini.

Thus, in order to hold Genovese legally responsible for the murder a highly improbable chain of informers would have to exist: one of the three killers on Valachi, Valachi on Strollo, and Strollo on Genovese. It did not exist. None of the participants was ever arrested for the murder.*

Discipline of members is another technique used by organized crime to limit information to law enforcement agencies. This discipline is achieved by means of penalties for divulging information and rewards for loyal service. Its effectiveness is enhanced because of the common ethnic and, in many cases, family relationship of gang members.

As we have seen, membership is limited to persons of Italian descent. The bond of common ethnic background is further strengthened by family relationships among gang members. Fathers and sons, brothers, uncles and nephews, and in-laws are often members of the same gang. An additional bond is sometimes provided by a ritual ceremony of induction in which blood is drawn to symbolize "a blood relationship" between the members and oaths are taken not to expose the organization. When he joins, the initiate is told what he already knows—that

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78. See 1963 Narcotic Hearings, supra note 34, at pt. 1, at chart of Vito Genovese gang facing 248, also at 156, 158, 238; V. TERESA, supra note 14, at 86-87; testimony of Angelo Monachino, Arson-For-Hire, Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 95th Cong., 2d Sess. 55, 59-60 (1978); testimony of Gary Bowdach, in Organized Criminal Activities, Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 95th Cong., 2d Sess. 15-16 (1978).


80. See 1963 Narcotics Hearings, supra note 34, at pt. 1, at 181-85 for Valachi's account of his induction and E. REID, MAFIA 157-58 (rev. ed. 1964) for Tony Notaro's account of his 1918 initiation into the Comorra, a criminal organization that preceded in Mafia. Jimmy Fratiano, a member, describes his own initiation ceremony and that of another; and in a wire-tapped conversation three members discuss when they and Jerry Catena,
death is the penalty for informing. 81

There are many instances of imposition of this penalty. Eugene Gianini was killed for being an informer. 82 Ernest (The Hawk) Rupolo, who had supplied information to police about Vito Genovese’s participation in a 1934 murder was killed in 1964. 83 From 1975 to 1977, several members and associates of the Outfit, Chicago’s organized crime gang, were killed because it was thought that they had or might become informers. 84 During this period, twenty-three F.B.I. informants and witnesses about organized crime activities were murdered, some while in federal prisons. 85 Valachi’s fear that he would be killed for informing, led him to murder a fellow inmate. 86

To the stick of murder, organized crime joins the carrot of wealth for disciplined service. Organized crime’s $50 billion dollar annual gross revenue means that rewards for members are very substantial. 87 The gang also rewards loyalty by providing legal services and support for a member’s family if he is imprisoned. 88 Organized crime also uses its influence with some public officials to secure a light sentence, or a parole or pardon for gang members and associates. 89

Careful personnel selection also reduces the possibility that gang members will give law enforcement agencies information. Aspirants for

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82 See 1963 Narcotics Hearings, supra note 34, at pt. 1, at 185; R. Martin, Revolt in the Mafia 66 (Popular Library ed. 1964); P. Maas, supra note 66, at 96; A. Seedman & P. Hellman, supra note 47, at 407; V. Teresa, supra note 14, at 244.
83 See text accompanying note 81, supra.
86 See P. Maas, supra note 66, at 26-31; P. Maas, supra note 66, at 161.
87 See 1963 Narcotics Hearings, supra note 34, at pt. 1, 301. For insights into the lifestyle of Lucky Luciano, Frank Costello, and other less notorious gang leaders, see G. Wolfe & J. Dimona, Frank Costello: Prime Minister of the Underworld 60, 91, 95, 100, 131 (Bantam ed. 1975); N.Y. Times, Nov. 3, 1977, at 40, col. 3; N.Y. Times, Dec. 15, 1977, § B at 21, col. 2.
88 See 1963 Narcotics Hearings, supra note 34, at pt. 1, at 239-40; V. Teresa, supra note 14, at 295-97. Failure of some gang leaders to provide this help has resulted in some associates becoming informers. See V. Teresa, supra note 14, at 7-12.
gang memberships must prove themselves through participation in gang controlled serious crimes. The three aspirants for gang memberships whom Valachi recruited for the actual task of killing Eugene Gianini did not expect or receive money. Valachi testified that participation in murder was required for admission to the Vito Genovese gang, and that is what the killers wanted and received.

The importance that organized crime ascribes to careful personnel selection is evidenced by the report that one purpose of the 1957 Appalachin La Cosa Nostra meeting was to expel "some couple of hundred of new members . . . that never done anything," and the report that Vito Genovese justified his murder of Albert Anastasia, another gang leader, by charging that Anastasia had been selling memberships.

These are the means used by organized crime to insure that gang members and associates will not provide information to law enforcement agencies. It uses additional techniques to suppress information from victims of and witnesses to its activities. The principal techniques are murder and intimidation. Others are professionalism, use of legitimate businesses as covers, and national and international operations.

Conrad Greaves, a black man, worked his way from bartender to owner of a lucrative night club in Queens, New York. His warmth and personality were key factors in his success. An organized crime gang tried to extort a share of the club's income from Greaves. Greaves resisted until his maitre'd and some of his customers were beaten up. Then he began to pay $400 a week out of his $20,000 gross receipts. After six months, Greaves went to the authorities and testified before a grand jury. His testimony resulted in the indictment of six persons for extortion and felonious assault. He was "an indispensable witness," according to an assistant district attorney. On March 31, 1972, Greaves was shot to death in the street near his night club by three to five men "who calmly stood in the street firing at him as he tried to run for his life." After his death, the extortion charges were dropped.

90. See R. Martin, supra note 81, at 56-57; J. Stark, supra note 34, at 19-22.
93. See 1963 Narcotics Hearings, supra note 34, at pt. 1, at 348; P. Maas, supra note 66, at 246.
94. The extortion technique consisted of one man posing as a "peacemaker" after thugs beat up employees and customers. If the paid services of the "peacemaker" were rejected, the beatings would continue. N.Y. Times, March 31, 1972, at 1, col. 5. Teresa describes the same racket being used in Massachusetts in the early 1960's and states that it yielded $1,000 per month from twenty night clubs. V. Teresa, supra note 14, at 116-17.
95. N.Y. Times, March 31, 1972, at 1, col. 5.
96. Id., Nov. 22, 1972, at 75, col. 4.
Conrad Greaves was one murdered witness in a line that includes August Gobel, the boiler attendant, who witnessed the murder of a prohibition agent in 1920, and, before he could testify, was killed while at work under police guard. Another witness who suffered the same fate was Patricia Parks, a model who was stabbed to death. The cases of murder of victims and witnesses are too numerous to list in an article.

Intimidation is an even more frequently used technique. The 1976 Report of the Task Force on Organized Crime of the National Advisory Committee on Criminal Justice Standards and Goals, reports that in a major northeast city “almost every witness connected with an organized crime prosecution in that city is subject to intimidation.”

As early as 1932, the United States Attorney in Chicago, George E. Q. Johnson, informed the Senate that, in organized crime cases, witnesses called before the grand jury preferred imprisonment to the certainty of vengeance which would result if they gave testimony.

That intimidation is effective is evident not only from the above cited statements of law enforcement officers but also from numerous incidents in which witnesses have refused to testify or recanted prior testimony because of fear of physical violence to themselves or loved ones. For example, in 1975 a university professor recanted his original grand jury testimony that was instrumental in indicting Alphonse Indelicato, a member of the Joseph G. Colombo, Sr., gang, for perjury. According to an assistant district attorney, the professor was terrified to appear in court. The best evidence of the effectiveness of intimidation is the fact

97. F. Tannenbaum, supra note 34, at 105-08; N.Y. Times, Nov. 8, 1932, at 44, col. 2. See also a column by Jack Anderson entitled Mob, Crooks and Medicaid, Chicago Style for an account of the murder of a witness against Irwin Weiner, a reputed associate of Chicago organized crime figures, in Baton Rouge Morning Advocate, April 8, 1978, § A, at 18, col. 2.


99. Johnson, supra note 36, at 399, 408 nn. 55 & 56, 409 n. 57. cites many incidents. See also N.Y. Times, April 27, 1967, at 32, col. 8; id., April 6, 1967, at 25, col. 3; id., April 7, 1972, at 21, col. 2. A passerby who happened to witness a gangland murder in October, 1979 and testified against the killers was found shot to death in Brooklyn in his car in May, 1980. See N.Y. Times, May 14, 1980, § B, at 3, col. 5.


101. F. Tannenbaum, supra note 34, at 110-15. See also the testimony of William J. Duffy, Director of Intelligence, Chicago Police Department, in 1963 Narcotics Hearings, supra note 34, at pt. 2, at 512-13; testimony of Walter E. Stone, Superintendent, Rhode Island State Police, id. at pt. 2, at 552-53; testimony of Clarence M. Kelly, FBI Director, 1 NWC HEARINGS, supra note 15, at 96.

102. See N.Y. Times, Oct. 11, 1975, at 43, col. 3. See also, id., June 3, 1977, at 1, col. 4; id., Nov. 11, 1976, at 29, col. 1; id., Jan. 12, 1968, at 47, col. 7; R. Martin, supra note 81, at 31, 37-39, 61. In order to get witnesses to testify about a neighborhood killing, a New York detective had to convince them that the slaying was not connected with organized crime. N.Y. Times, Oct. 27, 1977, § A, at 1, col. 6. Witnesses' refusal to testify in criminal cases because of fear of reprisal is a growing problem nationally. See id., Nov. 14, 1977, at 29, col. 3.
that in many organized crime cases the United States can only secure witnesses' testimony by providing them with new identities and new lives.\textsuperscript{103}

The professionalism with which organized crime gangs operate also serves to deny information to law enforcement agencies. Thus, cars used in crimes are registered under fictitious names and addresses.\textsuperscript{104} Such cars are safer than stolen cars because in addition to the owner being untraceable, the car user need not be concerned about being stopped by the police for driving a stolen car.

The professionalism with which gangland murders are performed was testified to by Valachi.\textsuperscript{105} Raymond V. Martin, a former New York police officer, described the professional techniques for committing murder with a gun in writing about the murder of Frank Abbatemarco, which he investigated.

This was a professional job. Professional gunmen wear gloves. They have a routine, too. They shoot for the head and the neck so that if a victim lingers on, he will not be able to talk. The body is always filled with bullets; there is certainty in numbers.\textsuperscript{106}

That this professionalism denies law enforcement agencies vital information is evident from the fact that only a miniscule number of organized crime murders are solved. No one was ever convicted for any of the numerous murders that Valachi testified about.\textsuperscript{107} Between 1923 and 1929, not a single conviction followed the 257 reported organized crime killings in the United States and 90 percent of the murders were unsolved.\textsuperscript{108} The figures for organized crime murders committed since then are not much better.\textsuperscript{109}


\textsuperscript{104} See 1963 Narcotics Hearings, supra note 34, at pt. 2, at 513-14; N.Y. Times, April 1, 1972, at 27, col. 5.


\textsuperscript{106} R. MARTIN, supra note 81, at 11. See also V. TERA, supra note 14, at 81-82.

\textsuperscript{107} ORGANIZED CRIME AND ILLICIT TRAFFIC IN NARCOTICS, S. REPORT No. 72, 89th Cong., 1st Sess. 14-16 (1965).

\textsuperscript{108} F. TANNENBAUM, supra note 34, at 115-16.

\textsuperscript{109} Of 976 organized crime murders in Chicago from 1919 to 1963, only two were cleared by the arrest and conviction of the killers. See 1963 Narcotics Hearings, supra note 34, at pt. 2, at 487-88; 1976 TASK FORCE REPORT, supra note 10, at 10, giving law enforcement officials' estimate that the odds against solving an underworld homicide in the Northeast "are about 600 to 1."
Further barriers to public awareness of organized crime activities result from members' involvement in legitimate business operations. The Kefauver Committee in its 1951 Third Interim Report found that organized crime members were active in the "sale and distribution of liquor, real-estate operations, night clubs, hotels, automobile agencies, restaurants, taverns, cigarette-vending companies, juke-box concerns, laundries, the manufacture of clothing, and the transmission of racing and sport news...." Other businesses that have been infiltrated by organized crime include trash collection and air freight. In addition to producing revenue, the legitimate business may serve to assist in and as a cover for illegal activities. In the 1930's, bakeries and laundries served as cover for the operation of illegal stills. Trucking operations at waterfronts and the import-export business are used in the smuggling of narcotics. Acetic anhydride used in the treatment of rayon can be procured from organized crime garment manufacturing plants and put to another use, the conversion of raw opium to a morphine base for heroin manufacture. The ownership of garbage disposal facilities enables gang members to dispose of evidence of criminal activities. In short, legitimate businesses provide a protective chain of supply, production, and distribution for many organized crime enterprises. The public and law enforcement agencies often see only legitimate business activities which raise no suspicions.

The national and international scope of organized crime's activities also contributes to its ability to deny information to law enforcement agencies. One example of organized crime's national scope is found in two reported cases: *La Rocca v. United States*, 337 F.2d 39 (8th Cir. 1964) and *Ferina v. United States*, 302 F.2d 95 (8th Cir. 1962). These cases involve illegal 1957 purchases of revolvers in Colorado, burglary of an Iowa drug wholesaler, purchase of the stolen drugs in Nebraska, and the 1960 Kansas City, Missouri, attempted murder of a witness against Anthony

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Biase, the alleged drug seller, using one of the guns illegally purchased in Colorado in 1957.116

Each of the related incidents took place in a different state. Together, they are but one example of the interstate scope of the operations of organized crime.

Other indications of the interstate scope of organized crime activities are the control of Nevada and Puerto Rico gambling operations by New York and Chicago gang members,117 the national disposition of hijacked and other stolen goods,118 the national production and marketing of illicit alcohol,119 and the national distribution of bootleg cigarettes.120

The national scope of La Cosa Nostra operations is also exemplified by the fact that murderers may be imported from other states in order to enforce La Cosa Nostra rules or to further its revenue producing activities. In 1963, Chicago Superintendent of Police O. W. Wilson testified that the 976 gangland-type slayings in the Chicago area since 1919 "were usually committed by hired killers often imported from other cities for this specific purpose, as in the case of the Kilpatrick slaying."1121 The Kilpatrick murder was committed in Chicago, Illinois, by two Detroit based killers in 1961. John H. Kilpatrick was a union officer who had incurred the enmity of a Chicago labor racketeer. Detroit Police Commissioner George C. Edwards, after stating the facts with respect to this interstate murder, said:

The reason that I point this out, Senator, is because frequently we believe the major criminal activities of this variety are carried on across State lines. The difficulty of the Chicago police in finding the actual perpetrators of this crime has been almost absolute, just as perhaps our difficulties in finding the perpetrators of some of our own crimes, if they have been imported from across State lines or across international boundaries, are also almost absolute.122

119. J. STARR, supra note 34, at 23, 156.
122. 1965 Narcotics Hearings, supra note 34, at pt. 2, at 480. See also J. STARR, supra note 34, at 42.
Finally, the meetings of organized crime gang leaders from widely separated parts of the United States provides additional proof of the national scope of organized crime's activities. Such meetings are known to date back to the Prohibition Era. Thus, in 1928, the police raided a meeting in Cleveland, Ohio, at which the following persons were present: Joseph Profaci and Vincent Mangano of Brooklyn, New York, Ignazio (Red) Italiano of Tampa, Florida, one person accused of murder in New Jersey and twenty other men.  

Teresa writes about regular meetings of organized crime bosses from all over the United States during the second World War at the racing stables owned by Joseph Lombardo, the New England gang chief, in Framingham, Massachusetts. In 1957, the notorious Appalachin, New York, meeting was attended by at least 58 persons: 33 from New York, 8 from New Jersey, 6 from Pennsylvania, 2 from California, 2 from Ohio, and 1 each from Colorado, Florida, Illinois, Massachusetts, Texas, and Cuba. Joseph Profaci, Vito Genovese, Anthony Maggadino, Mike Miranda, John Scalish, Joe Magliocco, Santos Trafficante, and other gang leaders attended. Other meetings of gang leaders from all over the United States appear to have occurred in Queens, New York, on September 22, 1966 and somewhere in the New York City area in 1976.  

The significance of the interstate and international scope of La Cosa Nostra operations on the ability of law enforcement agencies to secure information about criminal activities is great. When a murder is committed by out of state killers who enter the state only to commit the murder and leave, the difficulty of apprehending the murderer is "almost absolute." They are unknown to the local police, residents of the community, and even to the victim. The "almost absolute" immunity enjoyed by interstate murderers is indicated by the fact that of 976 organized crime murders in the Chicago area from 1919 to October, 1963, "usually committed by hired killers often imported from other cities for this specific purpose...", only two have been solved by the arrest and conviction of the killers.  

123. E. Reid, supra note 26, at 32-33. For a detailed account of meetings in 1929 in Atlantic City, New Jersey, and in 1946 in Havana, Cuba, see M. Gosch & R. Hammer, supra note 60, at 103-07, 311-19.  
124. V. Teresa, supra note 14, at 24-25.  
When plans are made in one state for criminal activities in other states or even in different jurisdictions of the same state, when organized crime bosses live in communities other than those in which the criminal operations that they administer are carried out, interest in and opportunities for police surveillance of La Cosa Nostra leaders' activities are greatly reduced.

Clearly then, the interstate and international scope of organized crime activities curtails the amount of information about these activities that is available to law enforcement agencies.

VI. THE ESSENTIALITY OF LAW ENFORCEMENT ELECTRONIC SURVEILLANCE

Without the ability to use electronic surveillance, law enforcement agencies would be virtually powerless to protect individual freedom against invasions by organized crime. As has been shown, murder and intimidation effectively limit the availability of information from gang members and associates, customers, victims and witnesses. Consequently, law enforcement agencies must rely on their own personnel for information and evidence about organized crime's activities.

Of the methods available to law enforcement personnel for securing information, only electronic surveillance is effective against higher echelon organized crime leaders. Infiltration and physical surveillance do not work: infiltration, because organized crime's methods for recruitment and screening of members and insulation of leaders make it almost impossible for a law enforcement agent to penetrate its upper levels. Ralph Salerno, an expert on organized crime, said that "any allusion to, or illusion of, the penetration of organized crime constitutes an exercise in semantics." While an agent may succeed in becoming a hanger-on or minor worker in organized crime activities, the recruitment and screening of members, including the requirement that a potential member commit murder for the gang, makes it virtually impossible to place an undercover agent inside a gang. As an outsider, the agent

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129. See 1968 Narcotics Hearings, supra note 34, at pt. 1, at 251, 254. For a list of about 100 reputed La Cosa Nostra members from various regions in the United States and their connections with South Florida, see Organized Criminal Activities, Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 95th Cong., 2d Sess. 764, 765 (1978).
130. See text at notes 81-103, supra.
132. See text at note 90, supra.
133. See E. Godfrey, Jr. & D. Harris, Basic Elements of Intelligence 21 (Law Enforcement Assistance Administration, Department of Justice, 1971). A recent federal indictment of two reputed gang members refers to infiltration of the gang by two undercover F.B.I. agents. N.Y. Times, March 30, 1982, at 18 col. 1 (National Ed.).
would not be permitted any contact with higher level bosses.\textsuperscript{184}

Physical surveillance is inadequate because it does not disclose the purpose of meetings or the substance of conversations at meetings or by telephone. If there is no informant, only electronic surveillance can provide this essential information to law enforcement agencies.\textsuperscript{185} And, even if an informant will provide information, usually he will not testify.\textsuperscript{186}

Electronic surveillance does not suffer from these deficiencies. By using the technique of “working up the ladder” (i.e., successive wiretaps of higher echelon criminals with each wiretap based on probable cause secured from wiretaps on lower echelon criminals) information about the criminal involvement of gang leaders can be secured. Traditional investigative work, including the use of informers, provides the indispensable basis for the initial wiretaps on the gang members or associates.\textsuperscript{187}

The resulting court authorized electronic surveillance yields not only information, but also indisputable, and almost always undisputed, evidence of guilt.\textsuperscript{188} Electronic surveillance contributed to the elimination of a major gambling organization which had been corrupting law enforcement officers in Massachusetts for many years. It produced evidence of gambling, extortion, narcotics, customs, and stolen securities violations in New York; and it produced evidence of narcotics violations in Washington, D.C. by two gang leaders who had successfully resisted many previous efforts to prove their guilt by the use of other methods.\textsuperscript{189}

In a few cases, bugs provided evidence when wiretaps would have been ineffectual.\textsuperscript{190} The bugs can be installed at the headquarters of an organized crime leader and can furnish information about planned gang operations which may not be available by wiretapping.\textsuperscript{191}

\textsuperscript{184} NATIONAL WIRETAP COMMISSION LAW ENFORCEMENT EFFECTIVENESS CONFERENCE 17 (1976) [hereinafter cited as NWC EFFECTIVENESS CONF.]

\textsuperscript{185} See E. GODFREY, JR. & D. HARRIS, supra note 133, at 19. See also United States v. Giordano, 416 U.S. 505, 531 (1974) (in which the affidavit supporting an application for a wiretap stated “conventional surveillance would be completely ineffective except as an adjunct to electronic interception”).

\textsuperscript{186} See NWC REPORT, supra note 15, at 49-51.

\textsuperscript{187} See id. at 132-33.

\textsuperscript{188} See id. at 4-5, 49-51. See also N.Y. Times, Feb. 24, 1980, at 1, col. 3; id., Nov. 20, 1979, § A, at 1, col. 1.

\textsuperscript{189} Of 1,220 federal electronic surveillance orders from 1968 to 1973, only 26 provided solely for bugging. NWC REPORT, supra note 15, at 43. An additional 38 allowed both bugging and wiretapping to be used. From 1974 to 1979, 152 federal intercepts allowed bugging alone or in combination with wiretapping. See ADMINISTRATIVE OFFICE OF THE U.S. COURTS, REPORTS ON APPLICATIONS FOR ORDERS AUTHORIZING OR APPROVING THE INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS for the years 1969 to 1979.

\textsuperscript{190} See NWC REPORT, supra note 15, at 15. Between 1961 and 1965, the headquarters of Samuel Rizzo De Cavalcante and Angelo (Gyp) De Carlo were bugged. See N.Y. Times.
Consistently and almost unanimously law enforcement personnel have testified that electronic surveillance is indispensable to the effort to repress organized crime. From 1900 to 1950, law enforcement records and statements indicate that wiretapping "produced remarkable results in the prevention of crime and the apprehending of major criminals...."

In 1962, New York County District Attorney Frank S. Hogan testified that electronic surveillance is the single most valuable weapon in law enforcement's fight against organized crime. It has permitted us to undertake major investigations of organized crime. Without it, and I confine myself to top figures in the underworld, my own office could not have convicted Charles "Lucky" Luciano, Jimmy Hines, Louis "Lepke" Buchalter, Jacob "Gurrah" Shapiro, Joseph "Socks" Lanza, George Scalise, Frank Erickson, John "Dio" Dioguardi, and Frank Carbo.

In 1967, President Johnson's Commission on Law Enforcement and Administration of Justice reported that

the great majority of law enforcement officials believe that the evidence necessary to bring criminal sanctions to bear consistently on the higher echelons of organized crime will not be obtained without the aid of electronic surveillance techniques. They maintain these techniques are indispensable to develop adequate strategic intelligence concerning organized crime, to set up specific investigations, to develop witnesses, to corroborate their testimony, and to serve as substitutes for them—each a necessary step in the evidence-gathering process in organized crime investigations and prosecutions.

In 1976, the National Wiretap Commission reported the conviction of most law enforcement officers that electronic surveillance is "abso-
lutely essential to thorough and effective law enforcement," because without the power to conduct electronic surveillance

[in addition to making cases only against street-level operations, law enforcement would know less generally about organized crime. Fewer lower-echelon personnel would be induced to "turn," that is, to become witnesses or informants for the government . . . [and] [m]ost importantly . . . convictions against the highest-ranking members of tightly organized criminal conspiracies would not be possible.145

The views of law enforcement officers were expressed to the National Wiretap Commission by the New Jersey Attorney General's office. It informed that Commission that it had been more successful in combating organized crime since it had obtained authority to use wiretaps and stated that "there can be no meaningful organized crime investigations without wiretapping . . . " It stated that

wiretapping has allowed the development of cases which were not possible before wiretapping was authorized. This is most important in gambling cases where prior to 1969 it was almost impossible to arrest anybody beyond the first level in a bookmaking or lottery operation. Wiretapping has also been effective in narcotics investigations. Before wiretapping they might have seized the narcotics, but seldom could they arrest more than a carrier. Now they can get to the higher ups.

And the New Jersey Attorney General's office concluded that no investigation methods were effective as substitutes for electronic surveillance.146

After careful studies, Congress and several independent bodies agreed with the law enforcement position that electronic surveillance is an indispensable weapon against organized crime. When it enacted Title III, Congress found:

Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent

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146. See National Wiretap Commission Staff Studies and Surveys 117 (1976) [hereinafter cited as Staff Studies and Surveys]. Accord, the statement of New York Detective Robert Nicholson, who was active in several important investigations of organized crime activities, in J. Kwitny, supra note 13, at 403; Clarence M. Kelley, Director, F.B.I., Baton Rouge Morning Advocate, Aug. 19, 1975, § A, at 14, col. 2; E. Godfrey, Jr. & D. Harris, supra note 133, at 19-20; NWC Effectiveness Conf., supra note 134, at 10, 11, 20.
their commission is an indispensable aid to law enforcement and the administration of justice.\footnote{147}{Pub. L. No. 90-351, § 801(c), historical note following 18 U.S.C.A. § 2510 (1976).}

This Congressional finding is in accord with the previously stated conclusions of several independent study groups. In 1967, after reviewing the organization and operations of organized crime, President Johnson's Commission concluded that "[f]rom a legal standpoint, organized crime continues to grow because of defects in the evidence-gathering process."\footnote{148}{See 1967 Task Force Report, \textit{supra} note 10, at 200.} Consequently, a Commission majority, over the opposition of then Attorney General Ramsey Clark, recommended that Congress enact legislation "granting carefully circumscribed authority for electronic surveillance to law enforcement officers to the extent it may be consistent with the decision of the Supreme Court in \textit{People v. Berger}...\text{...}"\footnote{149}{See 1967 Task Force Report, \textit{supra} note 10, at 203; \textit{N.Y. Times}, Nov. 23, 1966, at 1, col. 7.}

In 1968, the American Bar Association Advisory Committee on the Police Function found "that the use of electronic surveillance is necessary in the administration of justice in the area of organized crime." It concluded that there existed "the most compelling showing of need" justifying an exception to the principle "that all private and public use of electronic surveillance techniques to overhear private communications be prohibited."\footnote{150}{ABA Project on Minimum Standards Relating to Electronics Surveillance 96 (1968 tentative draft) (approved 1971).}

Finally, in 1976, after an exhaustive, Congressionally mandated study of the first six years of operation of Title III of the Omnibus Crime Control and Safe Streets Act (18 U.S.C. §§ 2510-2520), a majority of the fifteen member National Wiretap Commission "vigorously reaffirmed the finding of Congress in 1968 when it enacted Title III, that electronic surveillance is an indispensable aid to law enforcement in obtaining evidence of crimes committed by organized criminals...\text{...}"\footnote{151}{See NWC Report, \textit{supra} note 15, at xiii. Accord, 1976 Task Force Report, \textit{supra} note 10, at 148-49; Gambling in America, Final Report of the Commission on the Review of the National Policy Toward Gambling 52 (1976).} While bugging is engaged in rarely by law enforcement agencies, the majority of the Commission also believed that bugs "are indispensable to law enforcement in certain situations" and recommended that court orders authorizing bugging include express authorization to enter upon premises, if necessary to install the bugs.\footnote{152}{NWC Report, \textit{supra} note 15, at xvii-xviii. In \textit{Dalia v. United States}, 441 U.S. 238 (1979), the Supreme Court held that a court order authorizing bugging impliedly authorized covert entries to install and service the device.}
Experience with the electronic surveillance provisions enacted by Congress in 1968 has vindicated its proponents' views. Its general effectiveness is shown by the number of arrests and convictions resulting from court authorized electronic surveillance orders. The 6,996 electronic intercepts authorized and installed from 1969 to 1979 resulted in a total of 30,216 arrests and 14,765 convictions, as follows: 153

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<tr>
<td>1975</td>
<td>2,234</td>
<td>336</td>
<td></td>
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<tr>
<td>1976</td>
<td>2,189</td>
<td>358</td>
<td></td>
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<tr>
<td>1977</td>
<td>2,191</td>
<td>372</td>
<td></td>
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<td>1978</td>
<td>1,825</td>
<td>337</td>
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<tr>
<td>1979</td>
<td>1,717</td>
<td>368</td>
<td></td>
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<tr>
<td>1980</td>
<td>1,871</td>
<td>259</td>
<td></td>
<td></td>
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<td></td>
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</table>

*Includes arrests and convictions which occurred prior to the year in which they were reported.*
In the survey by the National Wiretap Commission, 98 percent (535/537) of all federal wiretaps in gambling cases resulted in an arrest and 97 percent (117/121) of all wiretaps in narcotics cases resulted in arrest. And although electronic surveillance is not as effective against crimes such as loan sharking, extortion, hijacking and fencing, which do not involve as extensive a use of the telephone as do gambling and narcotics, it has been used successfully in a number of cases involving these crimes.

Nor is the effective use of electronic surveillance limited to federal law enforcement agencies. In New Jersey, the state attorney general used 318 wiretaps from 1969 to December 1973, 73 percent in gambling cases, 12 percent in narcotics cases, and 9 percent in cases involving robbery, larceny, or stolen property. During that period the office secured a total of 320 indictments against 841 defendants.

Although the statistics do not reveal how many of the convictions resulting from the use of electronic surveillance were in organized crime cases, "only a very small percentage of them . . . [were] not related to organized crime." Federal authorities use Title III "chiefly in connection with organized crime investigations . . .", and the New Jersey Attorney General follows the same policy.

Further evidencing its effectiveness is the fact that the convictions which electronic surveillance was instrumental in securing reach all levels of the gangs rather than only the lower echelons who physically commit the criminal acts. Convicted higher echelon gang leaders in the New York City area include Nicholas Forlano (gambling), Anniello Dellacroce (tax), Nicholas Ratenni (gambling), Vincent Rizzo (counterfeit, narcotics, extortion), Carmine Tramunti (narcotics, perjury), James V. Napoli, Sr. (gambling), Arthur Tortorello (fraud, sale of unregistered securities), Enrico Tantillo (narcotics), Carmine Paladin (narcotics), Robert Santorelli (narcotics), Michael Clemente and Tino Fiumara (labor racketeering).

154. NWC REPORT, supra note 15, at 256.
155. Id. at 148-50. Bugging is effective in such cases. For example, in Dalia evidence obtained by bugging supported the "unmistakable inference . . . that he was an active participant in the scheme to steal the truckload of fabric." Dalia v. United States, 441 U.S. at 245.
156. See STAFF STUDIES AND SURVEYS, supra note 146, at 109.
158. Testimony of United States Assistant Attorney General Henry E. Peterson, id. at 7, 41.
159. See STAFF STUDIES AND SURVEYS, supra note 146, at 109.
Higher echelon gang leaders convicted in New Jersey include Samuel De Cavalcante (gambling), and Joseph Zicarelli (bribery). And in other localities: Joseph Nicholas Civella (Kansas City, Mo., gambling); Dominic Brucclieri, Peter Milano and Samuel O. Sciortino (Los Angeles, Calif., extortion); and Carlos Marcello (New Orleans, La., conspiracy). In addition, Joseph Colombo, leader of one of the New York gangs was indicted on gambling, loan sharking and other charges.

These statistics and the identity of the convicted gang leaders show that law enforcement electronic surveillance has had a significant impact on organized crime. Indictments and convictions of organized crime members and associates based on evidence derived from Title III surveillance have eliminated large scale gambling and narcotics operations and resulted in the removal of corrupt officials from public office. In Washington, D.C., for example, use of a Title III wiretap in the Lawrence Jackson case disclosed the extensive nature of his operations and the identity of his suppliers, Genovese gang members Carmine Palodino, Enrico Tantillo and Robert Santorelli. Fifty-five persons were indicted as a result of the investigation, and Jackson, Palodino, Tantillo, Santorelli, and Carl Brooks, a Washington, D.C. police narcotics squad officer, were among those convicted. The Title III intercept helped shut down one of Washington's largest narcotics operations.

In New Jersey, a Title III bug placed in the office of Joseph Zicarelli, a New Jersey gang leader, resulted in breaking organized crime's control of a large county. The bug resulted in Zicarelli's indictment for conspiracy to murder. This indictment induced one of Zicarelli's confederates, Peter Policastro, to become an active informer. Policastro, following Zicarelli's orders while Zicarelli was imprisoned, delivered protection payments to various public officials while wearing a concealed recording device. The information gathered resulted in the indictment of Zicarelli, his chief lieutenant, other gang members, and several prominent Hudson County, New Jersey, political figures and police officials. Zicarelli was convicted and sentenced to a long prison term. His organization, which was involved in gambling, narcotics, loan sharking, and other illegal enterprises under the protection of corrupt public officials, was effectively destroyed.

When criminal enterprises have not been eliminated, electronic surveillance has severely disrupted organized crime activities. Because
of the need to take precautions against electronic surveillance, gambling activities have been made more expensive. Some organized crime associates involved in gambling have decided to drop out because the income no longer justified the risk. Communication among gang members and associates has been made more difficult. As a result the efficiency of gang operations and the income derived therefrom have suffered. In some places, persons have been unwilling to accept leadership positions in organized crime gangs because of their higher exposure to law enforcement action.\footnote{See NWC Hearings, supra note 15, at 140-41.}

Clearly, these results refute the assertion by some critics that Title III has been ineffective against organized crime.\footnote{See the testimony of Ramsey Clark, 2 NWC Hearings, supra note 15, at 1025-26; testimony of Herman Schwartz, id., at 1088-89.} But a more sophisticated criticism of Title III is based on the fact that it is used mainly in gambling cases and is therefore of trivial significance.\footnote{See the testimony of Herman Schwartz, NWC Hearings at 1088-89. Compare the prediction that it was “unlikely” that even “a few more criminals may be convicted in other cities” than New York. Schwartz, The Legitimation of Electronic Eavesdropping: The Politics of Law and Order, 67 Mich. L. Rev. 455, 505 (1969).}

This criticism is also invalid. First, although it is true that Title III is used most often in gambling cases, it is also used in narcotics, racketeering, homicide, kidnapping and extortion cases. The figures for 1978 are: 42 percent (241) gambling, 34 percent (195) narcotics, 4 percent (25) homicide and assault, 8 percent (45) racketeering, and 2 percent (14) loan sharking and extortion, 3 percent (15) bribery, 2 percent (13) stolen property crimes, and 1 percent (5) kidnapping.\footnote{See V. Teresa, supra note 14, at 180-84.} Even if all gambling intercepts are discounted, saving even one life and preventing the addiction of several thousand persons justify the availability of law enforcement use of Title III intercepts.

But the gambling intercepts should not be discounted. They are a vital element in the fight against organized crime. First, they help to reduce the enormous income that organized crime gangs receive from gambling. This income finances other criminal operations, and pays administrative expenses for corruption of public officials, payment of a regular salary to murder specialists,\footnote{See Administrative Office of the U.S. Courts, supra note 153, reports for Jan. 1, to Dec. 31, 1978, at 8.} and support of jailed members' families. Second, gambling investigations sometimes provide leads to other criminal activities by gang members. Thus Operation Fraulein, which began as a gambling investigation, led to loan sharking, narcotics, counterfeiting and stolen securities investigations that resulted in the
conviction of 27 defendants, including 15 organized crime figures. Third, gambling investigations provide information about the membership, structure, and activities of organized crime gangs, which enables traditional investigative methods to be used against otherwise unknown gang members and activities. Fourth, gambling and gambling related convictions remove organized crime gang members from the community and thereby reduce their and their associates' ability to engage in other crimes.

Thus, the effectiveness of Title III in gambling cases is further evidence of its overall utility in the fight against organized crime gangs.

VII. OBJECTIONS TO LAW ENFORCEMENT USE OF ELECTRONIC SURVEILLANCE

Critics of the law enforcement use of electronic surveillance base their criticism on two fundamental grounds. First, they question the value of electronic surveillance as a law enforcement technique in the fight against organized crime. Second, they condemn electronic surveillance for its interference with individual privacy. The four dissenters from the National Wiretap Commission Report expressed this criticism when, in advocating repeal of Title III, they said: "In our view, no substantial impediments would be placed in the way of effective law enforcement, and privacy concerns would be greatly strengthened, by the repeal of Title III . . ."171

The criticism that electronic surveillance is not an effective technique against organized crime was stated most broadly by former Attorney General Ramsey Clark. Mr. Clark implied that electronic surveillance was unnecessary because "[p]olice know where numbers are sold, they know who's running the dice game, they know the prostitutes and bookies—they do not need a bug to tell them. They know the big shots, too. Most have criminal records. Their activities are knowable and known without wiretapping."172

Even if we accept Mr. Clark's views that the street activities of organized crime and many of its leaders are known to the police, that does not eliminate the need for electronic surveillance. Many organized crime activities are not as public as gambling and prostitution. Extortion, hijacking, securities fraud, and corruption of political and law enforcement figures, for example, cannot be discovered by observing street

171. Id. at 180. The four dissenters from the report of the fifteen member commission were Senator James Abourezk, Congressmen Robert W. Kastenmeier and John F. Seibertling, and Professor Alan F. Westin. Their minority report appears at pages 177-182 of the National Wiretap Commission Report.
activities of organized crime personnel. Moreover, even when criminal
activities are ascertainable through police observation of street activities,
that knowledge cannot be translated into evidence against the organ-
ized crime leaders who employ the bookies, narcotics dealers, porno-
graphers and prostitutes. As one law enforcement person working in
a jurisdiction which did not provide for electronic surveillance stated,
"When the federal people get a bookmaking wiretap going they get a
whole organization because of their knowledge obtained over the phones.
They attack an organization. When we attack a bookmaker we attack
an individual." 113 Thus, more than knowledge of criminal activity is re-
quired for effective action against organized crime. Evidence and leads
to evidence that can be used to secure convictions of gang leaders and
members is also needed. Electronic surveillance provides the evidence
and leads.

More frequently, critics of electronic surveillance do not argue that
it is unnecessary. They merely question its effectiveness. Professor Her-
man Schwartz stated in 1974: "The picture is thus quite clear: wiretap-
ing is of no significant value in crime detection or crime preven-
tion ..." 114 And the National Wiretap Commission dissenters stated,
"Overall, however, we would say that the actual impact of court-ordered
electronic surveillance on Organized Crime in this country has been
minimal." 115

This writer has shown that these statements are invalid, and that
electronic surveillance is indeed effective against organized crime. 116 But
it will be instructive to examine the basis on which these critics claim
that electronic surveillance has been ineffective. Such an examination
will show that the claim of ineffectiveness is supported by flimsy and
unconvincing evidence. In his testimony in June, 1975, Professor
Schwartz repeated a charge made in his 1974 report. He said,

It may also be worth noting that the large majority of installations—
many of which are quite costly—have apparently produced nothing.
The federal figures for 1971 and 1972, for example, where we have
relatively complete figures, show that almost two-thirds of the in-
stallations produce nothing:

174. See Schwartz, Reflections on Six Years of Legitimated Electronic Surveillance, in
Privacy in a Free Society, Annual Chief Justice Earl Warren Conference 52, (spon-
Hearings, supra note 15, at 1146. Compare Professor Schwartz's testimony on June 11, 1975,
stating that his position was "essentially not that wiretapping is ineffective.... Indeed,
I don't really know." See 2 NWC Hearings, supra note 15, at 1088.
175. See NWC Report, supra note 15, at 179. See also R. Clark, supra note 172, at 288.
176. See text at notes 139-166, supra.
Table 9  

INSTALLATIONS ASSOCIATED WITH FEDERAL CONVICTIONS  

<table>
<thead>
<tr>
<th>Year</th>
<th>Gambling</th>
<th>Drugs</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>86/248</td>
<td>6/21</td>
<td>8/12</td>
<td>100/281</td>
</tr>
<tr>
<td>1972</td>
<td>51/147</td>
<td>15/35</td>
<td>5/23</td>
<td>71/205</td>
</tr>
<tr>
<td>Total</td>
<td>137/395</td>
<td>21/56</td>
<td>13/35</td>
<td>171/486</td>
</tr>
</tbody>
</table>

Professor Schwartz's statement is incorrect. First, his Table 9 shows only that up to the time he testified "almost two-thirds" of the installations produced no convictions. But some of these installations produced arrests which required probable cause and which were followed by convictions. Thus, it is inaccurate to say that "almost two-thirds ... produce nothing."

Even more significant is the fact that when the results for the calendar years through 1979 are taken into account the 1971 and 1972 installations are shown to have been quite productive. The following table shows the results of the intercepts installed by federal authorities in 1971 and 1972:

<table>
<thead>
<tr>
<th>Federal Wiretap Installations</th>
</tr>
</thead>
<tbody>
<tr>
<td>in 1971 and 1972 Resulting in</td>
</tr>
<tr>
<td>Convictions and Arrests</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Installations</th>
<th>Number of Installations that resulted in convictions</th>
<th>Number of Installations that resulted in arrests but no convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>281</td>
<td>126</td>
<td>49</td>
</tr>
<tr>
<td>1972</td>
<td>205</td>
<td>95</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td>486</td>
<td>221</td>
<td>72</td>
</tr>
</tbody>
</table>

Thus, rather than two-thirds producing nothing, as of the end of 1979, 45.4 percent of the 1971 and 1972 federal installations resulted in convictions, and an additional 14.8 percent resulted in arrests but no convictions.\(^{177}\) The results for 1971 and 1972 are not isolated. Fifty-one

\(^{177}\) NWC REPORT, supra note 15, at 1130. See also Schwartz, supra note 174, at 48.  
\(^{178}\) See Administrative Office of the U.S. Courts, supra note 153, for the calendar years 1971 to 1979 (for Supplementary Reports for the years 1972 and 1973, see Table C in each report. For Supplementary Reports for the years 1974 to 1979, see Table A-2 in each report).
percent of the 1973 federal installations resulted in convictions and an additional 19 percent in arrests but no convictions as of the end of 1979.\textsuperscript{179}

The National Wiretap Commission dissenters offered different evidence for their conclusion that electronic surveillance is ineffective against organized crime. Based on information on federal indictments and convictions of “leading” organized crime figures from 1968 to 1974 supplied to Commissioner Blakey by the Department of Justice, they concluded that “in seven years, Title III has been responsible, directly or indirectly for only nine federal convictions and three pending indictments against leading Organized Crime figures. The actual impact of these cases on an organization with over 5,000 known members nationwide must be regarded as minimal at best.”\textsuperscript{180}

The dissenters’ conclusion was erroneous because it relied on too small a base when it looked only to convictions and indictments of “leading Organized Crime figures.” The word “leading” is ambiguous and resulted in understating the impact of Title III installations on organized crime. Apparently, in its reply, the Department of Justice gave a narrow interpretation to “leading” and omitted action against high level organized crime figures because it did not consider them “leading.” For example, the convictions of Arthur Tortorello, a member of the Gambino gang, and of Joseph E. Cafero and Dominick Vinciguerra, associates of the Bruno gang, are not listed in the “leading” figures list, even though their criminal activities were substantial and Title III intercepts were instrumental in their convictions.\textsuperscript{181}

Title III’s effectiveness against organized crime is more accurately shown by the overall impact of law enforcement action, including electronic surveillance, on organized crime, the total number of convictions resulting from Title III intercepts, and the number of convictions per intercept. In a 1979 report, Assistant Attorney General Philip B. Heyman stated

That as a result of initiatives taken within the last two years, we have begun to make a substantial impact on certain of organized crime’s most insidious activities . . . . In the prosecutions discussed below, 134 persons were convicted of serious offenses . . . . The success of these investigations resulted in large part from imaginative (and often potentially dangerous) undercover operations; lawful, carefully controlled electronic surveillance; deep informant penetra-

\textsuperscript{179} Id.  
\textsuperscript{180} NWC REPORT, supra note 15, at 179. The dissenting Commissioners erred in referring to “seven years,” since the information supplied covered only six years. There were no Title III federal intercepts in 1968. And the names cited by John C. Kenney in his June 5, 1975 reply to Commissioner Blakey cover 1974 actions only. Hence, only six years were covered in the reply, 1969-1974. See id. at 46-74.  
\textsuperscript{181} See NWC HEARINGS, supra note 16, at 51-53.
And a 1977 report stated the Department of Justice's belief that quantitative statistics indicate that extensive accomplishments have been made in the Government's continuing campaign against the hoodlum element. Among these statistics are the FBI's accomplishments of . . . over 6,000 organized crime convictions during the past five years, including top La Cosa Nostra functionaries in New York City, New England, New Jersey, Philadelphia, Buffalo, Cleveland, Detroit, Chicago, St. Louis, Kansas City, Denver, and Los Angeles . . .

That much of the effectiveness of the efforts against organized crime is due to Title III intercepts is shown by the number of convictions resulting from such intercepts. The total number of convictions is relevant because almost all federal Title III intercepts are related to organized crime. Thus, as the following table shows, through December 31, 1980, 608 productive Federal intercepts constituting 42 percent of all installed, resulted in a total of 4,781 convictions of persons, almost all of whom were associated with organized crime.

Productive Federal Title III Intercepts and Number of Convictions Resulting Therefrom

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of intercepts installed</th>
<th>Number resulting in convictions</th>
<th>Total number of convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>30</td>
<td>16</td>
<td>173</td>
</tr>
<tr>
<td>1970</td>
<td>180</td>
<td>79</td>
<td>525</td>
</tr>
<tr>
<td>1971</td>
<td>281</td>
<td>126</td>
<td>1,060</td>
</tr>
<tr>
<td>1972</td>
<td>205</td>
<td>95</td>
<td>881</td>
</tr>
<tr>
<td>1973</td>
<td>130</td>
<td>68</td>
<td>494</td>
</tr>
<tr>
<td>1974</td>
<td>120</td>
<td>64</td>
<td>574</td>
</tr>
<tr>
<td>1975</td>
<td>106</td>
<td>42</td>
<td>395</td>
</tr>
<tr>
<td>1976</td>
<td>136</td>
<td>55</td>
<td>339</td>
</tr>
<tr>
<td>1977</td>
<td>77</td>
<td>24</td>
<td>132</td>
</tr>
<tr>
<td>1978</td>
<td>81</td>
<td>16</td>
<td>72</td>
</tr>
<tr>
<td>1979</td>
<td>87</td>
<td>23</td>
<td>136</td>
</tr>
<tr>
<td>Totals</td>
<td>1,433</td>
<td>608</td>
<td>4,781</td>
</tr>
</tbody>
</table>

184. See the testimony of U.S Assistant Attorney General Henry E. Petersen, 1 NWC REPORT, supra note 15, at 41.
This is a far cry from the “only nine federal convictions and three pending indictments” mentioned by the National Wiretap Commission dissenters and is of an order of magnitude that has an impact on organized crime. Moreover, these figures refer only to federal action against organized crime figures. Title III also empowers the states to engage in electronic surveillance and some states, notably New Jersey, have used this authority effectively against organized crime members and associates.\textsuperscript{186}

Another basis for criticism of electronic surveillance is that it is too expensive.\textsuperscript{187} Professor Schwartz cumulated the annual cost for electronic surveillance from 1968 to 1974 showing a total of $9,585,264 in federal costs and $12,873,394 in state costs. However, he did not compare the cost of electronic surveillance with the cost of any other law enforcement technique, nor did he indicate what proportion of the total cost of law enforcement is represented by electronic surveillance.\textsuperscript{188}

Professor Schwartz states that some “interceptions are very expensive,” apparently referring to installations whose costs exceeded $15,000. Again, he does not compare the costs of other law enforcement techniques. And, he estimates the cost per federal conviction involving electronic surveillance at $3,688.\textsuperscript{189}

Evaluating the performance and cost effectiveness of different law enforcement techniques poses great difficulties.\textsuperscript{190} It may well be that electronic surveillance is the law enforcement technique whose cost effectiveness is most subject to measurement because Title III mandates that the costs and results of all intercepts be reported.\textsuperscript{191} In the absence of similar data on the cost of and results derived from other law enforcement techniques, for example, searches and physical surveillance, it is impossible to compare their cost effectiveness with that of electronic surveillance.\textsuperscript{192} But when the costs of electronic surveillance are compared

\textsuperscript{186} See \textit{Staff Studies and Survey}, supra note 146, at 108-15, 170-72.

\textsuperscript{187} This criticism is inconsistent with condemnation of Title III electronic surveillance as a lazy man’s law enforcement technique that may become habitual and inhibit “the development of methods of investigation that are effective and efficient. . . .” \textsc{R. Clark}, supra note 172, at 294. There is no indication that electronic surveillance is replacing other techniques of investigation. In fact, the use of electronic surveillance by both federal and state authorities since 1972 has diminished.

\textsuperscript{188} See 2 \textit{NWC Hearings}, supra note 15, at 1129.

\textsuperscript{189} See id. at 1129-30.

\textsuperscript{190} See \textit{National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice} (1976), \textit{Performance Measurement and the Criminal Justice System: Four Conceptual Approaches}.


\textsuperscript{192} Studies of the effectiveness of helicopter patrols to reduce residential burglary point out that “no apprehensions were made . . . .” Kirschner, \textit{The Applicability of a Helicopter Patrol Procedure to Diverse Areas: A Cost-Benefit Evaluation}, 13 \textit{J. Applied Behavioral Analysis} 143, 146 (1980).
with total cost for police protection it does not appear that electronic surveillance is an unduly expensive law enforcement technique. For example, the total cost of federal intercepts installed in 1974 was $1,281,126. This represents less than two-tenths of one percent (0.0019) of the $677,000,000 federal outlay for enforcement of federal criminal law in fiscal 1974. Furthermore, Professor Schwartz’s figure of $3,668 per conviction compares favorably with a cost of $18,686 per conviction which is secured by dividing the $677,000,000 1974 federal outlay by 36,230, the number of persons convicted of federal crimes in fiscal 1974.

But the principal basis for criticism of law enforcement electronic surveillance is not lack of effectiveness or cost, but that it invades individual privacy. One critic referred to Title III electronic surveillance as a “massive attack on individual privacy...” and the four National Wiretap Commission dissenters stated that “electronic surveillance casts a wide net” and that it “has a substantial and adverse impact on individual privacy within our society.”

The critics believe that under Title III too many telephones are tapped, and too many innocent persons and innocent conversations are overheard. Thus, former Attorney General Ramsey Clark charged that electronic surveillance is indiscriminate and unfocused.

No technique of law enforcement casts a wider net than electronic surveillance. Blind, it catches everything in the sea of sound but cannot discriminate between fish and fowl. It is ineffective and inefficient because this world is too big to detect crime by gathering all the noise and silence of whole areas to sift for evidence.

The National Wiretap Commission dissenters imply the same criticism when they measure Title III electronic surveillance against the impossible ideal “that only the criminal conversations sought would be intercepted,” and state that “as a practical matter, however, it does not work that way...” It does not work that way because it cannot work that way. The impossibility of the ideal is clear from the fact that no law enforcement technique attains or can even hope to attain it. Innocent persons are arrested, searches fail to produce evidence, and innocent persons are even convicted.

In any event, the criticism of Title III electronic surveillance as an

193. See Administrative Office of the U.S. Courts, supra note 153, report for 1974, Table 5, at XII.
195. See id. Table No. 298 at 179, and Table No. 309 at 185.
197. R. Clark, supra note 172, at 290.
199. See generally J. Frank & B. Frank, Not Guilty (Garden City, N.Y. 1957); E. Borchard, Convicting the Innocent (New Haven, Conn. 1932).
indiscriminate "big ear" is far off the mark. Title III contains safeguards that were designed to assure that "the order will link up specific person, specific offense, and specific place . . . . [The provisions of Title III] are intended to meet the test of the Constitution that electronic surveillance techniques be used only under the most precise and discriminate circumstances, which fully comply with the requirement of particularity."

Title III establishes the following safeguards against indiscriminate use of electronic surveillance. It requires:

- a showing of probable cause that a crime has been, is being, or is about to be committed;
- a description of the locations where the communication is to be intercepted;
- that the type of communication to be intercepted be particularly described;
- that the identity, if known, of the persons whose communications are to be intercepted be disclosed;
- that it be shown that alternative investigative procedures have been tried and failed or that they "reasonably appear to be unlikely to succeed if tried or would be too dangerous";
- that the period of time for which the interception is required to be maintained, which in no event may be longer than thirty (30) days without extensions, be stated;
- and that facts about any previous applications for orders to engage in electronic surveillance of the same persons, facilities, or places be disclosed.

Moreover, under 18 U.S.C. § 2516, electronic surveillance may only be used against persons engaged in serious crimes or persons engaged in crimes in which there is a high degree of organized crime involvement. These safeguards are enforced by a statutory rule excluding any evidence obtained in violation of the provisions of Title III, as well as by criminal and civil penalties.

The effectiveness of these safeguards is evidenced by the National Wiretap Commission's conclusion "that the procedural requirements of Title III have effectively minimized the invasion of individual privacy in electronic surveillance investigations by the law enforcement officers. When properly implemented, Title III procedures have served to pro-

tect the privacy not only of innocent individuals but also of the persons who are the subject of the investigation.\textsuperscript{203}

The statutory safeguards against indiscriminate use of electronic surveillance are supplemented by institutional ones. In the federal system, an elaborate internal review procedure must be successfully completed before an application for a Title III order may be submitted to a court. All federal applications go through two separate multistage review proceedings. One is in the FBI or other agency involved in the investigation. The other is in the Department of Justice and consists of six stages, beginning with the United States Attorney or Federal Strike Force handling the investigation and ending in the Attorney General's office.\textsuperscript{204}

Another institutional safeguard against the indiscriminate use of electronic surveillance is the care with which many judges review applications for intercept authorizations.\textsuperscript{205} The National Wiretap Commission concluded that generally federal judges carefully review applications for authorizations to engage in electronic surveillance and that state judges differ in the degree of care with which they review such applications.\textsuperscript{206} When the courts found that the procedural requirements of Title III were not complied with, they did not hesitate to suppress any evidence obtained as a result of the electronic surveillance. In 1974, for example, evidence obtained in 60 cases involving 626 defendants was suppressed because the applications for the orders were authorized by the Attorney General's Executive Assistant rather than the Attorney General or a specifically designated Assistant Attorney General.\textsuperscript{207}

Finally, the ultimate safeguard against abuse of electronic surveillance is the fact that the public officials who use this law enforcement technique are responsible to the people. Congress intentionally centralized in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will avoid the possibility that divergent practices might develop. Should abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guaranteeing that no abuses will happen.\textsuperscript{208}

\textsuperscript{203} See NWC Report, supra note 15, at xvi.
\textsuperscript{204} See id. at 55-56. In fiscal 1979, the United States Department of Justice internal review process was "considerably streamlined," but it remains in effect. See 1979 Annual Report of the Attorney General 57.
\textsuperscript{205} See NWC Report, supra note 15, at 74-76.
\textsuperscript{206} Id.
Despite these safeguards, critics contend that electronic surveillance under Title III is a "massive attack on individual privacy . . . ." To prove this, Professor Schwartz, sets out to show "how much . . . electronic surveillance costs us in . . . a loss of privacy," by cumulating the number of installations for the years 1968 to 1974, the number of people overheard, and the number of conversations intercepted. He concludes that from 1968 to 1974 there were a total of 4,184 installations; 200,143 people were overheard; and 2,721,337 conversations were intercepted. 

The technique of cumulating the figures for several years results in a misleading indicator of the extent of the invasion of privacy due to electronic surveillance. Obviously, if the cumulation is continued for enough years, it could show that a substantial proportion of the adult population was overheard and that every conversation made in the United States during a particular time was overheard. This is misleading because only a miniscule proportion of the population, and an even smaller proportion of the telephones in use and telephone conversations made each year, are overheard as a result of Title III surveillance.

Requisite to accurate depiction of the extent of invasion of privacy due to law enforcement electronic surveillance is the proportion of installations, persons overheard and conversations intercepted in any given year to the relevant total figures for that year. When that is done, the figures show that the invasion of privacy resulting from Title III intercepts is insignificant.

Professor Schwartz's table shows that 1972 was the year with the largest number of installations, persons overheard, and conversations intercepted. In that year there were 839 installations, 42,182 persons were overheard, and 517,205 conversations were intercepted. Since there were 132,000,000 phones in use in the United States in 1972, about six phones out of every million (0.0000063) were subject to a Title III intercept for an average period of 18.5 days during the year. And the 42,182 persons overheard in some conversations in 1972 represent about 3 out of every 10,000 persons (0.000228) in the then total noninstitutional population 16 years and over numbering 145,800,000. As for the 517,205 conversations intercepted in 1972, they are but an infinitesimal portion of the more than 199 billion telephone calls made in that year. Only 2.5 conversations out of every million made in 1972 (0.0000025) were the subject of a Title III intercept.

Since the number of installations, persons

210.  See 2 NWC Hearings, supra note 15, Table 1, at 1128.
211.  See 1975 Statistical Abstract of the United States Table No. 851, at 515; Administrative Office of the U.S. Courts, supra note 153, Table No. 7. The latter table gives the total number of days that 841 installed intercepts were in operation in 1972 as 15,561, resulting in an average length of 18.5 days.
212.  See 1977 Statistical Abstract of the United States Table No. 625, at 387.
213.  The 1975 Statistical Abstract of the United States Table No. 851, at 515, in-
overheard, and conversations intercepted pursuant to Title III were lower in 1978 and 1979 than they were in 1972, at the same time that the United States population, number of telephones installed, and average number of telephone calls made each day increased, the ratio of Title III installations to telephone in use, and the ratio of persons overheard and conversations intercepted under Title III to persons using the phones and total number of telephone conversations has become even smaller.214

Thus the figures evidence not "a massive attack on individual privacy" but rather an economical use of Title III as a law enforcement technique. That the few targets of Title III intercepts can be carefully chosen to discriminate between intercepts that serve legitimate law enforcement purposes from those that needlessly invade individual privacy is shown by the number of productive federal intercepts and their results.

### Arrests and Convictions Resulting from Federal Intercepts from 1969 to 1979215

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Intercepts Installed</th>
<th>Number Resulting in Arrests</th>
<th>Number Arrested</th>
<th>Convictions</th>
<th>Arreasts per Installation</th>
<th>Convictions per Installation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>30</td>
<td>19</td>
<td>300</td>
<td>173</td>
<td>10</td>
<td>5.8</td>
</tr>
<tr>
<td>1970</td>
<td>180</td>
<td>114</td>
<td>1,081</td>
<td>525</td>
<td>6</td>
<td>2.9</td>
</tr>
<tr>
<td>1971</td>
<td>281</td>
<td>175</td>
<td>2,172</td>
<td>1,060</td>
<td>7.7</td>
<td>3.8</td>
</tr>
<tr>
<td>1972</td>
<td>205</td>
<td>118</td>
<td>1,261</td>
<td>881</td>
<td>6.2</td>
<td>4.3</td>
</tr>
<tr>
<td>1973</td>
<td>130</td>
<td>90</td>
<td>877</td>
<td>494</td>
<td>6.7</td>
<td>3.8</td>
</tr>
<tr>
<td>1974</td>
<td>120</td>
<td>85</td>
<td>705</td>
<td>574</td>
<td>5.9</td>
<td>4.8</td>
</tr>
<tr>
<td>1975</td>
<td>106</td>
<td>53</td>
<td>523</td>
<td>395</td>
<td>4.9</td>
<td>3.7</td>
</tr>
<tr>
<td>1976</td>
<td>136</td>
<td>65</td>
<td>508</td>
<td>339</td>
<td>3.7</td>
<td>2.5</td>
</tr>
<tr>
<td>1977</td>
<td>77</td>
<td>38</td>
<td>369</td>
<td>132</td>
<td>4.8</td>
<td>1.7</td>
</tr>
<tr>
<td>1978</td>
<td>81</td>
<td>26</td>
<td>117</td>
<td>72</td>
<td>1.4</td>
<td>0.9</td>
</tr>
<tr>
<td>1979</td>
<td>87</td>
<td>28</td>
<td>194</td>
<td>136</td>
<td>2.2</td>
<td>1.6</td>
</tr>
</tbody>
</table>

forms that in 1972 the number of average daily conversations in the United States was 546,000,000. Multiplying by 365 yields a total of 199,290,000,000 conversations in 1972. The NWC REPORT understates the lack of justification for "[t]he average citizen's fears that he might be the victim of electronic surveillance" when it says that "over two billion telephone calls were placed in the United States in 1974 ...." See NWC REPORT, supra note 15, at xviii. The correct figure is more than 223 billion calls. See 1975 STATISTICAL ABSTRACT OF THE UNITED STATES Table No. 851, at 515, which indicates that the average number of calls made each day in the United States during 1974 was 613 million.

214. See Administrative Office of the U.S. Courts, supra note 153, reports for 1978 and 1979, Table Nos. 9 and 4; 1979 STATISTICAL ABSTRACT OF THE UNITED STATES Table No. 644, at 392, Table No. 973, at 582.

These statistics show that Title III intercepts can be and are targeted on criminal activities and not on personal matters. They prove that the statutory and institutional safeguards have been effective in focusing the use of Title III intercepts on securing evidence of criminal conduct. More than half of Title III intercepts installed by federal authorities produced sufficient grounds for at least an arrest. As the table after footnote 185 shows, 41 percent produced sufficient grounds for conviction. And those that result in arrests and convictions lead to the apprehension of participants in conspiratorial type crimes, characteristic of organized crime, as evidenced by the number of arrests and convictions per installation.

Further evidence that law enforcement officials are careful to focus Title III intercepts on criminal activity is the small number of such intercepts that are suppressed. For example, in 1979, only one motion to suppress a 1979 federal intercept was granted while 27 were denied and three were pending. And of 281 motions made in 1979 to suppress prior year intercepts, 212 were denied, 61 were pending, and only 8, all involving state intercepts, were granted.

One basis for the contention that electronic surveillance unduly invades individual privacy are figures that show that “many innocent, non-criminal conversations are intercepted on every wiretap . . .” The National Wiretap Commission dissenters stated,

The extent to which this occurs differs with the type of crime being investigated. The Commission examined 1,309 gambling wiretaps and found 107 in which not a single incriminating conversation was intercepted. On the average, all gambling wiretaps yielded about 63 percent incriminating and 37 percent nonincriminating conversations. For narcotics offenses, where criminal conversations are fewer and farther between, only 25 percent of the monitored interceptions were deemed incriminating; 75 percent were innocent in nature. For theft-related crimes, that figure rises to 84 percent, meaning that only 16 percent of intercepted conversations were related to any sort of criminality.

These figures are disturbing in that they suggest that even under a court-ordered system, electronic surveillance has a substantial and adverse impact on individual privacy within our society. Wholly innocent persons are overheard and great numbers of nonincriminating conversations are monitored by government agents.

216. See id., report for 1979, Table No. A-1.
217. See id. Table No. 8.
218. See NWC REPORT, supra note 15, at 179.
219. Id. at 180.
This criticism is invalid because the percentage of incriminating conversations is not significant in determining the value of law enforcement electronic surveillance to the protection of persons from criminal conduct. All law enforcement techniques involve police exposure to innocent as well as incriminating materials. For example, when a search warrant is executed, officers see a lot of innocent material that is not covered by the warrant while searching for the material specified in the warrant. The fact that they do does not make search warrants an undue interference with privacy. Similarly, the fact that in an electronic intercept involving murder or kidnapping, only one of the conversations was incriminating does not make the reasonable overhearing of other conversations an undue interference with individual privacy. The intercepts were all necessary in order to intercept the one dealing with the murder or kidnapping.\textsuperscript{220}

As the Supreme Court pointed out in \textit{Scott v. United States}, even though “the percentage of nonpertinent calls is relatively high” their interception may still be reasonable.\textsuperscript{221} The nonpertinent calls may have been intercepted in an early stage of the surveillance, before it was clear that they were in a non-pertinent category. They may have been short conversations whose relevance to the investigation could not be determined before the conversation ended. They may have been unique or ambiguous. Moreover, the type of criminal conduct being investigated may require listening in on many calls which later prove to be innocent. “For example, when the investigation is focusing on what is thought to be a widespread conspiracy more extensive surveillance may be justified in an attempt to determine the precise scope of the enterprise.”\textsuperscript{222} The applicability of this last factor to organized crime wiretaps is obvious.

If electronic surveillance were used without securing any incriminating conversations that fact would evidence undue interference with privacy, because it would show that intercepts were being used without any valid law enforcement reason. But, as we have seen, that is not the case. Forty-one percent of all federal intercepts in the 1969 to 1979 period resulted in convictions. In fact, in 1969, 1973 and 1974 more than 50 percent of the federal intercepts resulted in convictions, and it is too early to predict what the final results of the 1977 to 1979 intercepts will be.\textsuperscript{223} It is therefore clear that Title III surveillance is being used for law enforcement purposes, and that the number of innocent conversations overheard are unavoidable side effects to the achievement of valid law enforcement objectives.

\textsuperscript{221} See 436 U.S. at 140.
\textsuperscript{222} Id. at 140.
\textsuperscript{223} See text at notes 178 and 179, \textit{supra}. 
Electronic surveillance is also criticized because it may be misused by law enforcement officials. Ramsey Clark indicated that the police may use electronic surveillance for corrupt purposes, for example, to determine how much of a payoff should be made to them, or for personal reasons because they dislike someone's political or social beliefs. Of course, these abuses, though unlikely because of the safeguards surrounding issuance of Title III orders, are possible. However, as of 1976, the National Wiretap Commission was able to report "[w]e know of no instance, furthermore, in which a judicial electronic surveillance authorization was obtained in bad faith."  

There has been some illegal police wiretapping without court orders in New York, Texas, and Pennsylvania. The Commission found illegal wiretapping in those states, and stated that such illegal police actions "are not to be condoned. Unauthorized wiretapping is a plain violation of the criminal provisions of Title III, and should be dealt with accordingly ...." In at least one such case, in Houston, Texas, six police officers were convicted for illegal interceptions of communications in 1976. That law enforcement authorities are careful about avoiding misuse of electronic surveillance is indicated by the fact that five F.B.I. agents were placed on administrative leave pending the outcome of a federal grand jury investigation into alleged improper conduct on their part. The alleged improper conduct was that the agents returned an illegal bugging device to the Richmond police, one of whose members had placed an illegal wiretap, instead of confiscating it for the Department of Justice in accordance with regulations. 

The ultimate criticism of electronic surveillance is that, even under court order, it has a chilling effect on free speech. Ramsey Clark states this criticism in terms of the need to maintain a free society:

Pervasive surveillance of the individual, his every word and deed, is possible through the wonders science will bestow on us in the next few years. The wonders are adequate now to create widespread belief among many people that their phones are tapped, or their rooms bugged. This hardly has a stabilizing influence on society. It does not create confidence in government or the purposes of our laws.

The evidence proves that these alarms are baseless. The extent of electronic surveillance in American society under Title III is insignifi-

224. See R. Clark, supra note 172, at 292-93.
226. Id. at 20.
229. See the testimony of H. Schwartz, in 2 NWC Hearings, supra note 15, at 1096-98.
230. R. Clark, supra note 172, at 297.
ELECTRONIC SURVEILLANCE

In terms of number of telephones tapped, persons overheard, or conversations overheard. When it occurs, it is justified by valid law enforcement needs as shown by the high percentage of federal intercepts that result in either conviction or arrest.

Nor is there any evidence of a chilling effect on free speech. That the public does not fear any such effect is indicated by its support for court ordered electronic surveillance. Furthermore, the widespread and vocal opposition to the Viet Nam War and to the abuses of presidential power revealed by the Watergate investigations occurred while Title III was in effect, proving that Title III did not limit Americans' exercise of the right of free speech.

VIII. CONCLUSION

In Katz v. United States, the Supreme Court held that governmental electronic surveillance of a telephone conversation by a non-participant is a "search and seizure" subject to the fourth amendment. In its opinion, the Court implicitly outlined the requirements for a constitutional statute providing for court ordered electronic surveillance. Congress tried to observe these requirements when it enacted Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Thus, Senator McClellan, its chief sponsor, stated during the debate on Title III, Let us be candid about this. If there are any flaws in this proposal, we want to find them. We do not want anything unconstitutional. We tried to pattern this legislation after what the Supreme Court said in the Berger and Katz decisions. I think we have, but if in any particular we have not, we want to find it as much as anybody else.

It appears that Congress was successful. The Courts of Appeal have upheld Title III's constitutionality, and the Supreme Court has implicitly approved Title III's constitutionality in several decisions interpreting its provisions. However, no constitutional issue is finally resolved, until

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231. See 1976 SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, Table 2.49, at 324 and Table 2.50.
232. 389 U.S. 347, 353 (1967). The Court has held that electronic surveillance by a participant to a conversation and the discovery of telephone numbers called by means of a pen register, are not "searches" because callers "can claim no legitimate expectation of privacy" in information voluntarily conveyed. Smith v. Maryland, 442 U.S. 735, 743-44 (1979).
233. See 389 U.S. at 354-56.
it is correctly resolved. Moreover, even if it is constitutional, the advisability of Title III must still be determined.

The evidence is overwhelming that there exists in this country a criminal organization of national scope. This organized crime group was and is capable of depriving people of their rights to life, liberty, and property by its criminal acts. It has used and continues to use its power for that purpose.

The methods that organized crime uses to increase its members' and associates' income and to frustrate their apprehension and punishment are murder, assault, extortion, intimidation, and corruption of law enforcement and other government officials. These methods have enabled a similar, probably allied, criminal organization to secure a dominant role in Sicilian economic and political life, resulting in terrorization of the populace by and subservience of the governmental system to the criminals. In the United States these methods have enabled La Cosa Nostra to secure a dominant position in some sectors of American economic and political life—control of some powerful labor unions, control of significant economic activities, and corruption of law enforcement and other governmental officials. While organized crime does not dominate American society, its impact is evident not only in the communities, unions, and enterprises that it controls, but also throughout the community in geographic areas where it is active. Thus, the right to engage in some businesses in the New York City area depends on permission

(objectively reasonable interception of all telephone calls in executing a Title III wiretap satisfied both constitutional and statutory minimization requirements). See also United States v. Donovan, 429 U.S. 413, 426-27, 429 n.19, 437 n.25 (1977) (unintentional failure to identify known persons in a Title III application whose conversations the applicant believes will relate to criminal activity does not require suppression of evidence against them secured by means of the electronic surveillance); Bynum v. United States, 423 U.S. 952, 952-53 (1975) (Brennan, J., dissenting from denial of certiorari). A view expressed soon after the adoption of Title III that it was of "dubious constitutionality" has thus proven to be incorrect. See Schwartz, The Legitimation of Electronic Eavesdropping: The Politics of Law and Order, 67 MICH. L. REV. 455, 456 (1969).


238. The Supreme Court recognized the "pervasiveness of the problem" created by the existence and activities of organized crime, in its decision holding the RICO (Racketeer Influenced Corrupt Organizations) provisions, 18 U.S.C. sections 1961 to 1968, applicable to illegitimate as well as legitimate enterprise. See United States v. Turkette, 101 S. Ct. 2524 (1981).

from an organized crime gang. In some areas, citizens are afraid to testify or even provide information about criminal acts which they witnessed. In view of its past effectiveness, one cannot dismiss the possibility that organized crime may gain a dominant role in American life similar to that of the Mafia in Sicily.

The gravity of organized crime’s threat to individual freedom and a democratic society in which government is responsible to the people rather than the gang boss, requires the use of effective law enforcement tools that are consistent with the Constitution. The evidence is overwhelming that court ordered electronic surveillance is one such highly effective law enforcement tool. Its constitutionality is determined by accommodating the basic values of protecting individuals and United States society from the threat posed by criminal conduct, and “the potential danger posed by unreasonable surveillance to individual privacy and free expression . . . .”

The threat of organized crime to individual freedom and American society has been shown. Neither the Constitution nor wise policy require that court ordered electronic surveillance, an effective instrument against organized crime, be discarded on the basis of unfounded charges of undue governmental invasion of individual privacy and potential

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242. In 1980, the Chairman of the Pennsylvania Crime Commission labeled organized crime “the most insidious and all-pervasive evil in our free society” and described it as “a cruel and seditious force which seeks to subvert and nullify our social, economic and political institutions.” PENNSYLVANIA CRIME COMMISSION, A DECADE OF ORGANIZED CRIME—1980 REPORT at vi (1980). In 1969, a respected observer, Donald R. Cressey, advocated “a little cold-blooded appeasement . . . .” as “especially valuable when ‘our side’ is losing, as it is losing to Cosa Nostra . . . .” D. CRESSY, THEFT OF THE NATION—THE STRUCTURE AND OPERATIONS OF ORGANIZED CRIME IN AMERICA 323 (New York, 1969).


244. 407 U.S. at 314-15. In United States v. Kahn, 415 U.S. 143, 151 (1974), the Court said, “To be sure, Congress was concerned with protecting individual privacy when it enacted this statute. But it is also clear that Congress intended to authorize electronic surveillance as a weapon against the operations of organized crime. There is, of course, some tension between these two stated congressional objectives . . . .” The objectives of the Canadian legislation on electronic surveillance, which is substantially modeled after Title III, are similar: “to enhance the protection of privacy in Canada” and “to invest law enforcement personnel with the sophisticated investigative aid provided by electronic surveillance in order to ensure the adequate protection of the citizenry whose privacy was so zealously guarded. . . . .” D. WATT, LAW OF ELECTRONIC SURVEILLANCE IN CANADA 2 (Toronto, 1979).
danger to free expression. As has been shown, the extent of government- 
tal interference with individual privacy resulting from Title III electronic 
surveillance is negligible. 245

The threat posed by La Cosa Nostra to personal freedom and a 
democratic society is real, present and grave. The risks involved in court 
ordered law enforcement electronic surveillance are negligible. Given 
these circumstances, we would be foolish to “expose our property and 
our liberty to the mercy [of ruthless criminals] and invite them by our 
weakness to seize the naked and defenceless prey, because we are afraid 
that rulers, created by our choice, dependent on our will, might endanger 
that liberty, by an abuse of the means necessary to its preservation.” 246 
Accomodating the competing policies leads to the conclusion that judicial-
ly supervised electronic surveillance is both constitutional and advisable.

245. See text at notes 211-215, supra.
246. The Federalist No. 25 (A. Hamilton).