Exposing: The Fallacies in the Wire-Tap Drive, See Page Two

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That Fake Pre-Bermuda Tussle With McCarthy

The immediate precipitant of the Dulles statement against "McCarthyism" was Canadian resentment over the Jenner committee in the Gouzenko affair, which has upset negotiations for joint defense facilities with Canada. The tip-off was the passage in which Dulles said "we gain security because of an early warning system which permits of interception and civil defense. But this requires facilities in the friendly countries which are nearer the Soviet Union. Without that such industrial centers as Detroit, Cleveland, Chicago and Milwaukee would be 'sitting ducks' for atomic bombs." It is the Canadian border to which he referred.

Gouzenko Wants to Get Into the Act

Gouzenko's name and whereabouts are no secret in Canada and any newspaperman who wants to interview him can do so—for a fee. Gouzenko feels cheated. Whitaker Chambers, Louis Budenz and Elizabeth Bentley cleaned up on their revelations while Gouzenko has had to be satisfied with a small annuity conferred upon him by a Canadian business man. Gouzenko may yet yield to temptation and cross the border. Book, magazine and movie rights dangle before him.

Ike Will Not Fight McCarthy

McCarthy would like a battle with Ike, but Ike will not fight McCarthy. The President's endorsement of the Dulles statement at the White House press conference last week was cautious, discreet and limited. It was intended to appease the restive British and French at Bermuda. British business men smart under McCarthy's reference to their trade with China. No such spotlight is thrown on West German and Japanese trade with the Communist mainland, and the U. S. itself directly and through Japanese intermediaries has been increasing its trade with China. American cars are conspicuous in Peking.

A Crisis in Western Relations

The British and French attitude toward negotiation with the Russians is diverging sharply from that of the State Department. M. Laniel's difficulties over German rearmament in any form reached their climax before the latest Soviet move was heard of. The British are insisting on a meeting with the Russians while the mood in Bonn is described as "pessimism verging on despair . . . as a result of the combined impact of the Soviet note and the French debate" (*Sunday Times*, London, November 29). Dulles and Adenauer see eye to eye —their objective is to stave off negotiations until the U. S. has financed German rearmament, and then to "push" eastward at the risk of war.

Dulles is still "liberationist" and Eisenhower, a weak and uncertain cipher in the equation of American government, now seems to agree with him. At press conference last week the President said "a breath of freedom" must mean giving the satellite countries the right to determine their own form of government. This and his remark shutting the door even on negotiating about recognition of China shows that the American government is still dead set against a conference with Moscow, and will seek some formula at Bermuda with which to block talks or ensure their failure.

Eisenhower's Strategy

Abroad is to continue the Truman-Acheson policy of "containment" plus, holding the French back from a settlement in Indo-China, restraining the British in their relations with China and leaving Korea as an insoluble sore. At home his Administration will pursue the policy of trying to cut the ground out from under McCarthy by outdoing him in the loyalty purge and in sensations like Brownell's smear of Harry White.

McCarthy and Dulles Both Pro-German

Despite Eisenhower's personal predilections, which count for very little, this is a pro-German orientated Administration. McCarthy, the defender of the Malmedy slayers, will ride herd on the Administration to force it into anti-British and anti-French positions. Dulles has been pro-German at least since the early '30's and despite his "rebuke" of McCarthy has pursued a policy of imposing American will on the Atlantic powers for the benefit of Germany and Japan. The way he rammed the Japanese peace treaty down the throats of London and Paris was an example. In a speech earlier this year Dulles said the U. S. need not take a "popularity poll" before deciding what course to pursue in foreign policy.

Rhee May Upset the Applecart Again

In this situation, Rhee may upset the applecart again. It was the Korean war which enabled Acheson unilaterally to launch Germany on the path of rearmament. A renewal of the Korean war would again "solve" the German problem. The American military in Korea are pro-war and many of the American military in Washington are resentful of the truce and the curb put on them by Eisenhower's big business advisers. Rhee is being encouraged to start the war up again. The logic of the situation indicates that now as in June, 1950, he can force the Administration to support him once the fighting resumes. The Rhee-Chiang visit is a danger signal which should not be ignored.

Fallacies of the Drive for Wiretap Legislation

It Won't Catch Spies, But It Will Police Thoughts

The Federal Communications Act of 1934 makes wire-tapping a crime. In 1937 the Supreme Court (Nardone v. U.S., 302 U.S. 379) rejected the Justice Department's contention that this did not apply to Federal agents. Ever since the Department has been (1) violating the law and (2) trying to get legislation which will authorize the FBI to tap wires. Attorney General Herbert Brownell, Jr., failed to get such legislation last spring. He is using the White affair as a springboard for another attempt.

The impression has been created that if wire-tapping were legal, convictions might have been obtained against those named by Elizabeth Bentley. Thus the New Republic (November 30) says, "The Grand Jury heard the evidence for eighteen months, and decided that no case had been presented against any member of the group that called for court action. Its conclusion was based largely on the inadmissible nature of evidence gained by wire-tapping."

If Elizabeth Bentley told the grand jury what she told the Court under cross-examination in the Remington case (see last week's *Eye-Opener*), there could hardly be an indictment returned against most of the people she named. For she testified that except for the Silvermasters and Ullman, none of the persons from whom she claims to have collected information were told that she was a spy working for the Russians.

The persons named could not be indicted for espionage if according to Miss Bentley herself they did not know that they were helping a spy. It is hard to see what could have been added by wire-tapping. If Miss Bentley herself did not tell these people what she was really doing, they would hardly be discussing it among themselves over the telephone. Wire-taps could show *association*. But the fact that these people associated with each other would not prove espionage.

The Attorney General's summary of the evidence obtained by FBI surveillance shows that only association was uncovered. Though evidence obtained by wire-tapping is inadmissible in a court of law, there was nothing to stop the Attorney General from using facts obtained by wire-tapping in his summary. It would have been the strongest possible argument for the legislation Brownell and Hover want, if they had said, "We heard two officials planning to obtain a secret document but we could not use this information before the grand jury because it had been obtained by wire-tapping."

Documents cannot be passed by telephone. There must be physical contact. This can be observed. Documents must be filched and photographed. This can also be observed. The strangest thing in this whole story is that though the Silvermasters and Ullman were involved in loyalty proceedings in 1942, three years before Miss Bentley told her story, and were supposed to be using basement photographic equipment for improper purposes, surveillance neither before nor after the Bentley story turned up any evidence. The only fair inference under the circumstances is that there was none to turn up.

The Coplon case is supposed to show the need for permitting wire-taps. It is said that in this case a spy went free because wire-tap evidence was not admissible. But this does not happen to be true. Miss Coplon was tried in Washington and in New York. The conviction in Washington was reversed not because the government had used wire-tapping to investigate espionage but because the FBI had listened in on conversations between Miss Coplon and her lawyer. The Circuit Court of Appeals in the District of Columbia said this was an invasion of her constitutional rights under the Fifth and Sixth amendments "which unqualifiedly guard the right to assistance of counsel" (191 F. 2d 749). Even if wire-tapping were made legal, it would still be illegal to listen in on a lawyer and client preparing for trial.

As for the New York case, the finding of the trial judge, Sylvester Ryan, throws considerable light on wire-tapping in espionage cases. "Careful study of the information obtained on all these interceptions," Judge Ryan ruled, "reveals that at no time was a conversation between Coplon and Gubitchev intercepted; that at no time was either defendant heard mention the name of the other; that the existence of the alleged conspiracy was never discussed in the slightest manner."

The New York conviction was reversed because no warrant had been obtained for the arrest of Miss Coplon and the seizure of the confidential material found in her purse. The conviction was also reversed because the Circuit Court felt that Miss Coplon and her counsel had a right to examine the wire-tap records for themselves extensively enough to determine whether the original tip or later evidence had been obtained by wire-tapping. Only Judge Ryan had seen this evidence (185 F. 2d 629).

According to Judge Ryan's findings, an examination of the records would show that wire-tapping had disclosed only two matters, one irrelevant, the other unnecessary. The irrelevant was "information on her contacts and relationships to one H.S., a male acquaintance" (88 F. Supp. 926). This had no bearing on the charge of espionage. The other information was that she was going to New York on three specific dates, "but this information," as the Circuit Court pointed out in Washingon, "was also given to Foley [Miss Coplon's superior in the Justice Department] by the appellant herself."

In the Coplon case, wire-tapping was unnecessary. Coplon and Gubitchev did not communicate by telephone. The reasoning of the two Circuit Courts would have called for reversal even if wire-tapping were legal. The Department of Justice and the FBI were the victims of their own unfair and clumsy tactics.

The existence of legislation permitting wire-taps in such cases would have made a difference in other respects, however. If wire-tapping were legal, Miss Coplon's lawyer would never have been able to learn that the FBI had been listening in on his telephone talks with his client in preparation for trial.

The FBI would also be saved the embarrassment of subpoenas which reveal how extensively it has been tapping wires and what trivial, scandalous and personal material it gathers. The FBI reports seized in Miss Coplon's possession were published at the time and they showed widespread wire-tapping as a means of political surveillance often unconnected with any allegations of crime or threat to internal security.

The reports which came to light in the Coplon case showed that the FBI's criteria of "loyalty" are (as the National Lawyers Guild declared in a conmprehensive analysis of the documents at the time) "subjective and reactionary." Affiliation with the Progressive Party, "writing a master's thesis on the New Deal in New Zealand," "opposing the House Committee on Un-American Activities," "making a strong progressive speech which attacked an anti-Semitic teacher," "taking courses under Veblen" and even having Kravchenko's anti-Soviet "I Chose Freedom" in one's library were enough to qualify one for inclusion in an FBI dossier.

Public and private wire-tapping is now so extensive in this country that everyone assumes that it is no longer safe to discuss private affairs of any kind on the telephone. Wire-tapping will catch no spies. But to take off all inhibitions and make wire-tapping by the FBI legal would be to encourage the G-men to expand their work as a political thought police.

(Note: A succeeding issue will provide a study of the wiretap legislation now before Congress.)

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They Keep Re-Heating The Cold War

The Eisenhower Administration is serving warmed over spy at home and warmed over atrocity at the UN. The latest on atrocities (UN Document A/2563) is referred to as a "report" but consists of a "compilation of typical documents" which turns out to be a hodge-podge of affidavits, stapled together in no particular order. The pages are not numbered and the material is not analyzed. There is nothing in it particularly new (See the *Weekly*, No. 40, Special Issue: A Report on An Atrocity Report) but what there is makes one wish a legal commission had been set up to examine the witnesses and documents for itself, instead of depending on these ex parte statements. A few samples will allow the reader to get the flavor for himself.

Some of the incidents hardly seem atrocities but the sort of things which happen in the heat and panic of war. Thus no less than six affidavits are provided on Case No. 639 in which 3 British and 5 Belgian soldiers were killed. These were prisoners captured on the Imjin April 23, 1951. "They were given some food and had not been mistreated at all," one of the documents says, "until a flight of American fighter planes began dropping napalm bombs. The Chinese became frightened and one or more of them started firing at the British and Belgian soldiers."

Page 8 of Part III is the affidavit of a returned American POW who tells how three captured soldiers went looking for food. They were discovered by a Chinese soldier, killed him and started burying his body. Three other Chinese soldiers came upon them. Two of the POW's made a get-away but the third was captured, court martialed and shot.

Case No. 16 makes one wonder just what methods were used to obtain confessions in our own POW camps. This is the affidavit of a North Korean POW on Koje Island, dated August 17, 1951. It says "Prior to my making this statement I have been interrogated by different persons on several different occasions at Waegwan, at Taegu, at Pusan and also here on Koje island. I was also given a lie detector test sometime in October 1950 at Pusan. To my knowledge I have never written or signed any statement. On all of these occasions when I was interrogated I did not exactly lie, however, I also did not relate the complete true facts of the details which occurred in the vicinity of Waegwan between 15 and 17 August 1950. I will now of my own free will, write the true facts." This is followed by an affidavit by a South Korean War Crimes investigator saying, "no force, threats or promises" were made to extort the confession.

Tricky Tactics

The 2-to-1 decision by the Circuit Court of Appeals in the Remington case serves as a reminder of just how low the government stooped to obtain its one and only conviction growing out of Elizabeth Bentley's spy ring story (see the *Eye-Opener* in last week's issue).

When the Circuit Court two years ago reversed Remington's conviction for perjury in denying to a grand jury that he had ever been a Communist, it did not dismiss the indictment but recommended a new trial. It also gave the defense limited access to the grand jury minutes so that on a new trial the defense could fully explore evidence that the indictment had been unfairly obtained because (1) the foreman of the grand jury was Miss Bentley's literary and financial collaborator and (2) the U.S. Attorney (Irving Saypol), after consulting then Attorney General McGrath, had withheld this information from the defense.

The government, to avoid full exploration of these charges, applied to the Supreme Court for permission to have the indictment dismissed. When this was denied, the government nonetheless shelved the old indictment and went to trial on a second indictment hastily obtained from a new grand jury. The new indictment was based on his testimony in the trial. This novel procedure raised the question of whether the government might, by a succession of indictments for perjury, keep trying a man until it got a conviction which would stick. The Circuit Court has now upheld this conviction, but this time with a dissent by Judge Learned Hand that may help Remington to get a hearing in the Supreme Court.

The majority (Augustus Hand and Swan) declared that even if the first indictment had been illegally procured that would "not permit the defendant to commit a new and independent crime." Learned Hand felt that testimony given by Remington in the trial of the tainted indictment hardly constituted a "new" and "independent" crime. He also objected that improper pressure had been brought to bear by the first grand jury on Remington's former wife Ann, to get her to change her testimony and give evidence against Remington.

Learned Hand's dissent says that after prolonged questioning by the first grand jury, Ann Remington protested that she was getting "fuzzy" from fatigue and hunger. She was refused permission to see her lawyer. The questioning continued and the witness finally broke down, giving the testimony the grand jury wanted, though this consisted largely of communications privileged as between man and wife.

Judge Hand said that Brunini, the foreman of the grand jury, Bentley's collaborator, advised Ann Remington falsely when he told her during this prolonged examination that she had no privilege to refuse to answer the question put to her. Judge Hand thought this ground enough for quashing the first indictment. "It seems to me," he said, "that the case at bar is within the implied ambit of the doctrine of 'entrapment' as well as it is within that of the doctrine against using evidence unlawfully obtained."

Jennings Perry: Daring Dulles Peeps in from the Outside

I am so pleased that we did not have to go to war with Canada over Igor Gouzenko that I could pass napkins at a cocktail for John Foster Dulles. This would give me a chance to ask him whether his remarkable Answer to Jenner was a quippish thought, happily tailored for the moment only, or a new doctrine intended to guide our external relations henceforth.

If the latter, we all could indulge in fresh hope for the eventual triumph of sanity.

For what Mr. Dulles has done here is that amiable but for some reason most difficult thing to do—put himself in the place of the other party to a dispute. Instead of cracking down on our Canadian friends for refusing to deliver their ex-spy unconditionally into the hands of the headline-happy Indiana senator, he told the senator he would have taken the same position on behalf of the United States.

You have to admise a stand of that sort on the part of a fellow countryman placed to speak for the nation. It is a stand of understanding, of principle, related to the great philosophy of live and let live, to the Golden Rule itself. And you have to imagine what the effect would be upon the whole community of humanity, on the temper of the times, if more of the same fellow feeling were allowed to enter our bearing toward all other peoples.

Canada is of course on our side, our uranium mine, as it were, and important for bases all along the rim of the arctic. We owe those people some special consideration. But others who also are our friends and valuable to us certainly deserve equal treatment with the "most favored" under the new policy; and still others, at present outside this description, have a right to expect that even they will be touched agreeably by sympathetic orientation of the American point of view.

Great meetings appear to be coming up—at Bermuda, perhaps at Berlin and in the Far East. These will be the conference tables we look to as places for "making our principles prevail." Here the new Dulles Doctrine must be tested.

Britain will press for high level talks with Russia and defend the expansion of her trade with Red China: France will try to explain her fear of German rearmament and her need to close out the dreary war in Indo-China. Will we have the candor to reply, "Yes, in your place we would feel the same way?"

At the Berlin conference of foreign ministers the Russians also will protest German rearmament and undoubtedly will complain of encirclement by the military forces of "capitalist imperialism." Mr. Dulles will be there: can we depend on him to brush off these representations with the usual comment about "the same old line?"

Or will the other Dulles, the let-principles-prevail Dulles, the Dulles of the Answer to Jenner respond:

"I know exactly how you feel. The Germans have marched on your land, wrecked your cities, slaughtered your people; your nervousness is entirely natural. If *you* had air bases on our borders from the Pole to the tropics and back to the Pole again, if *you* were subsidizing *our* close neighbors, if your great publications constantly were pointing out the vulnerability of our atomic plants and hailing the establishment in our back yard of some new field providing 'a point of return for strategic bombers striking across the Polar zone'—under similar circumstances I would be stating exactly the concern you state on behalf of the United States."

What are the chances that our spokesman will so respond? For the question is not exclusively whether our principles will prevail among others, the benighted: they must also be honored at home—and their enunciation in Mr. Dulles' Answer to Jenner leaves plenty of room for their exercise in other directions.

Our forbearance with Canada is indeed exemplary, and most gratifying if we have set an example for ourselves. Other nations also have their reasons for pride and dignity and for fears for their security. If we recognize and respect them as Mr. Dulles has done in the instance in question, as we recognize and respect our own, the conference tables hereafter will be more profitable for all concerned. It just could be as one result that, understanding others, we should find ourselves better understood.

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