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Foreword

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FOREWORD

THE controversy over wiretapping has developed two opposing schools of thought.

One is comprised of those who believe that law enforcement agencies should be permitted, with court approval, to use the wire tap for crime detection. They are vigorous in their assertion that without the benefit of this medium the enforcement agencies would be handicapped severely in their efforts to stamp out organized crime, including narcotics traffic and various forms of racketeering.

The second school charges that there have been abuses in the authorized use of telephonic interception, and, re-affirming that wiretapping is a "dirty business" and its products "the fruit of the poisonous tree," argue for a total ban against eavesdropping in every form.

The public, torn between the desire for protection against lawlessness and the determination to preserve the privacy of communication between individuals, is generally uninformed as to the underlying details of the arguments offered in support of these two positions.

The bar is confused by the legalistic dilemma resulting from the uncertain effect of more recent decisions in the federal and state courts.

The decision of the United States Supreme Court in the *Benanti* case is susceptible of the interpretation that Section 605 of the Federal Communications Act forbids the legal issuance of a state court order permitting law enforcement agencies to wiretap. It can be contended with equal validity that decisions of the New York State Court of Appeals, upholding our State laws which authorize such court action, are based upon sound thinking and accurate legal reasoning.

Legislation is needed to clarify the subject. Section 605 should either be amended to provide for excepting from its provisions wiretap evidence obtained through a validly issued state court order, or there should be an unequivocal amendment or decision stating that

under no circumstances may evidence obtained by wiretapping be admitted in any court. The Congress has been considering such legislation for a number of years but has taken no definitive action. The decisions of the courts have not adequately clarified the area of the admissibility of evidence obtained through wiretapping.

With a view to projecting into focus some of the more cogent reasoning that is being applied to this subject, the New York Law Forum presents the articles that follow. They have been prepared by two of the leading proponents of the respective schools of thought to which reference has been made. The authors write with conviction and with informed understanding. It is hoped that this presentation will induce a greater interest in this serious and important question.

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