pected spies. You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens.

(S) F. D. R.

OFFICE OF THE ATTORNEY GENERAL,
*Washington, D.C., July 17, 1946.**

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: Under date of May 21, 1940, President Franklin D. Roosevelt, in a memorandum addressed to Attorney General Jackson, stated:

"You are therefore authorized and directed in such cases as you may approve, after investigation of the need in each case, to authorize the necessary investigating agents that they are at liberty to secure information by listening devices directed to the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies."

This directive was followed by Attorneys General Jackson and Biddle, and is being followed currently in this Department. I consider it appropriate, however, to bring the subject to your attention at this time.

It seems to me that in the present troubled period in international affairs, accompanied as it is by an increase in subversive activity here at home, it is as necessary as it was in 1940 to take the investigative measures referred to in President Roosevelt's memorandum. At the same time, the country is threatened by a very substantial increase in crime. While I am reluctant to suggest any use whatever of these special investigative measures in domestic cases, it seems to me imperative to use them in cases vitally affecting the domestic security, or where human life is in jeopardy.

As so modified, I believe the outstanding directive should be continued in force. If you concur in this policy, I should appreciate it if you would so indicate at the foot of this letter.

In my opinion, the measures proposed are within the authority of law, and I have in the files of the Department materials indicating to me that my two most recent predecessors as Attorney Genreal would concur in this view.

Respectfully yours,

(S) TOM C. CLARK,
Attorney General.

July 17, 1947*
I concur.

(S) HARRY S. TRUMAN.

THE WHITE HOUSE,
Washington, D.C., June 30, 1965.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

I am strongly opposed to the interception of telephone conversations as a general investigative technique. I recognize that mechanical and electronic devices may sometimes be essential in protecting our national security. Nevertheless, it is clear that indiscriminate use of these investigative devices to overhear telephone conversations, without the knowledge or consent of any of the persons involved, could result in serious abuses and invasions of privacy. In my view, the invasion of privacy of communications is a highly offensive practice which should be engaged in only where the national security is at stake. To avoid any misunderstanding on this subject in the Federal Government, I am establishing the following basic guidelines to be followed by all government agencies:

(1) No federal personnel is to intercept telephone conversations within the United States by any mechanical or electronic device, without the consent of one of the parties involved. (except in connection with investigations related to the national security).

(2) No interception shall be undertaken or continued without first obtaining the approval of the Attorney General.

(3) All federal agencies shall immediately conform their practices and procedures to the provisions of this order.

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*The possibly conflicting dates are quoted as set forth in the original document.

Utilization of mechanical or electronic devices to overhear non-telephone conversations is an even more difficult problem. which raises substantial and unresolved questions of Constitutional interpretation. I desire that each agency conducting such investigations consult with the Attorney General to ascertain whether the agency's practices are fully in accord with the law and with a decent regard for the rights of others.

Every agency head shall submit to the Attorney General within 30 days a complete inventory of all mechanical and electronic equipment and devices used for or capable of intercepting telephone conversations. In addition, such reports shall contain a list of any interceptions currently authorized and the reasons for them.

(S) LYNDON B. JOHNSON.

Senator ERVIN. I would just like to make some observations, since some of the questions have been asked.

I think the Supreme Court in the *Escobido* case only held that the confession there was inadmissible as an involuntary confession. When I worked in this field, they said if a confession was induced by hope or extorted by fear, it was involuntary. The law enforcement officer in the *Escobido* case had the man in custody; he wanted to see his lawyer, and they said, in effect, "We won't let you see your lawyer unless you confess." We won't let you see your lawyer unless you confess—it was both a promise and a threat, and I don't believe the majority ought to sail out on an unknown sea and make some new law there because it was so unnecessary.

Now, with reference to *Miranda*, Dr. Oliver Wendell Holmes said, "Life and language are alike sacred. Homicide and verbicide—that is, violent treatment of a word with fatal results to its legitimate meaning—are alike forbidden." I think in the *Miranda* case, the Supreme Court majority committed verbicide in the self-incrimination clause. The self-incrimination clause says no person shall be compelled in any criminal case to be a witness against himself. There is nothing compelled about a voluntary confession. The man is not even a witness there. So they committed verbicide on the plain words of the Constitution, with fatal consequence by 60 percent of the majority of the Court.

Just one other observation: I say I agree with Senator Fong, if the self-incrimination clause does not prohibit comments by a prosecutor on the failure of the accused to testify, we might as well do away with the presumption of innocence. The prosecution has to prove beyond a reasonable doubt. We might as well repeal the self-incrimination clause because its purpose would be destroyed. I just don't think that the Constitution can possibly permit a prosecutor to make a comment on the failure of a man to go up and incriminate himself.

Senator MCCLELLAN. Senator Hart?

Senator HART. I take it, Mr. Chairman, that we are coming back?

Senator MCCLELLAN. Yes, sir; the Chair intended to recess until 2:30.

Senator HART. Perhaps just to help the record, Mr. Powell, it was my understanding that when you discussed the *Escobido* case, you indicated an appreciation of the reasoning of the majority, but your conclusion was that you were rather more persuaded by the minority. Is that correct?

Mr. POWELL. I think I said or I intended to say——

Senator HART. Let me explain why I ask. Subsequently a direct question was asked, and you responded that the majority opinion seemed more persuasive, and I am just trying to get the record straight.