Taps Deemed Vital to Crime

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A sharply divided National Wiretapping Commission concluded yesterday that court-ordered wiretapping, as opposed to unsupervised illegal snooping, has proved "indispensable" in the fight against crime.

The commission, winding up a two-year $1 million study, split 11 to 4 in finding that the system of judicial warrants for wiretaps created by Congress in 1968 has been effective in catching criminals while preserving individual privacy.
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Dissenters argued that after seven years of authorized wiretapping, very few major criminals had been caught, "illegal gambling continues to flourish in every major city" and many Americans still do not feel secure from government and private surveillance.

If the 1968 law were repealed or modified, "no substantial impediments would be placed in the way of effective law enforcement,' said Sen. James Abourezk (D—S.D.), Rep. Robert W. Kastenmeier (D-Wis.), Rep. John F. Seiberling (D-Ohio) and Prof. Alan F. Westin of Columbia University.

Their views were rejected by the majority of the commission headed by Justice William H. Erickson of the Colorado Supreme Court and including supporters of the 1968 law and out of Congress.

The law outlawed private eavesdropping and required federal agents, through the Justice Department, to obtain warrants similar to search warrants from federal judges before installing wiretaps or listening devices. It authorized states to establish similar systems, and half the states have done so.

Summarizing reports from federal and state courts and prosecutors, the commission said 4,334 court-approved wiretaps and bugs were installed between 1968 and 1974, of which 957 involved

WILLIAM H. ERICKSON
... commission chief

federal agents. Of the 3,377 eavesdroppings authorized by state courts, New York had 1,760, New Jersey had 952 and Maryland had 147.

The commission, which held 17 days of hearings in Washington and heard 100 witnesses praise and criticize the workings of the law, was unanimous in concluding that "too many electronic surveillance gambling investigations have been devoted to apprehending relatively low level gamblers."

But the majority said that several investigative agencies "have now determined to be more selective" in deciding where to eavesdrop and added, "It would be simplistic to reject altogether the propriety of the use of this tool in the gambling area."

The dissenters said gambling and several other crimes, should be dropped from the law's list of offenses for which agents can tap telephones. The majority said that the list should be lengthened to include such offenses as firearms violations, and that more authority to seek wiretap warrants should be delegated to prosecutors across the country rather than centralized in Washington.

The majority refused to study a question left open by the wiretap law — whether warrants are required for wiretaps in foreign intelligence cases. Most of the members said Congress, which has probed the issue in connection with the Senate Intelligence Committee hearings, had not asked for the commission's advice on the subject.

Another split occurred over whether Congress and state legislatures should explicity approve "surreptitious entry" to plant listening devices when courts have approved them. The majority said police and federal agents were confused and should have clarification of their break-in authority. The minority argued that "bugs are so intrusive on personal privacy that they should be prohibited" except possibly in national security cases.

The dissenters disputed a finding that federal agents were taking effective action to minimize the overhearing of innocent talk on wiretapped lines. They cited a staff finding that FBI and drug enforcement agents had used two recording devices — one to record all conversations and the other to submit to a court with innocent conversations carefully deleted.

In a separate dissent, Westin protested the commission's refusal to conduct a proposed $15,00 survey of popular anxiety overprivacy.

All the dissenters said the commission's conclusion about the 1968 law was "more a statement of predisposition than of hard evidence educed from the record."

That prompted a retort from G. Robert Blakey, a law professor at Cornell University and a principal draftsman of the law. "It is an ugly two-edged sword that the minority raises," said Balkey.

Other commission members were Richard R. Andersen, chief of police in Omaha; Samuel R. Pierce Jr., former general counsel of the Treasury Department; Frank J. Remington, University of Wiconsin law professor; Florence P. Shientag, a New York attorney; Sens. John L. McClellan (D-Ark.), Roman L. Hruska (R-Neb.) and Robert Taft Jr. (R.-Ohio), and Reps. Thomas F. Railsback (R-Ill.) and M. Caldwell Butler (R Va.).

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