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Government Lawbreaking

"Within the Federal Government," Attorney General Katzenbach testified the other day before a Senate Judiciary Subcommittee, "wiretapping is strictly regulated. The FBI uses wiretaps only for intelligence purposes in national security matters, and then only with the express approval of the Attorney General." By any standard, this must be reckoned a remarkable statement coming from the highest legal and law enforcement authority in the Nation.

With all due respect, we submit that the Attorney General (and a succession of Attorneys General before him) has misconstrued the law. As he told the Subcommittee, he construes it "as not prohibiting wiretapping as such, but as prohibiting the interception and disclosure or use for personal benefit of the information so obtained." But he has left out of account a very important phrase of the act which we set forth here in italics: "No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or *for the benefit of another not entitled thereto . . .*"

When this Act of Congress came before the Supreme Court for construction, the Court said: "The plain words of Sec. 605 forbid anyone, unless authorized by the sender, to intercept a telephone message, and direct in equally clear language that '*no person*' shall divulge or publish the message or its substance to '*any person*.'" Here the italics were supplied by the Court. There is nothing, absolutely nothing, in the language of the Act authorizing an exception "for intelligence purposes in national security matters." And there is not a word authorizing the Attorney General to approve such an exception.

At the very least, in our view, the plain words of the Act make it a crime for an FBI agent, or anybody else who taps a telephone, to communicate the substance of what he hears to any other person, even to Mr. Katzenbach or to Mr. J. Edgar Hoover, or to make any use of the information for intelligence purposes or any other purposes. And with the fullest acknowledgment of Mr. Katzenbach's good intentions, we think he has no more right or authority to approve such a crime by one of his subordinates than he has to approve a search

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without a warrant or the imprisonment of a citizen without a trial, even if these forms of lawbreaking should be thought to serve the national security.

Like Attorneys General before him, Mr. Katzenbach seeks to justify his approval of FBI wiretapping by asserting that the President has approved this approval. But nothing is clearer about the American political system than that the President has no power whatever to authorize the violation of an Act of Congress.

Mr. Katzenbach thinks of the wiretapping bill he has endorsed as a "compromise" because it would outlaw private wiretapping while permitting it on a wide scale by government officials. If such a compromise is impossible of legislative achievement, he told the Subcommittee, "then I would urge that Section 605 be amended to prohibit *all* wiretapping, except that authorized by the President for national security purposes." The first part of what he recommends can be easily achieved by having the Justice Department obey and enforce the law as it now stands. The second part would be to invite a limitless invasion of the privacy which is an essential part of the American heritage.