Forbidden by Presidents

Wiretaps Prejudice Prosecution Chances

Last in a Series

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Washington Post Staff Writer

So far as the American public has been aware, wiretapping and eavesdropping — except in rare cases involving national security — have been contrary to the policies of the United States government for years.

President John Kennedy, according to his appointments secretary, Kenneth P. O'Donnell, "despised that kind of thing and never authorized it."

President Lyndon Johnson "shortly after taking office"—either in late 1963 or early 1964—forbade wiretapping by any Federal official or employee except in national security cases, according to his press secretary, Bill D. Moyers.

Every Attorney General from the Eisenhower Administration to the present has assured Congress that wiretapping is prohibited in non-security cases.

Despite these clear expressions of national policy, there is a growing body of evidence that the FBI under J. Edgar Hoover has for years been eavesdropping on American citizens in cases not even remotely connected with "national security."

Wiretaps and "bugs" were installed by the FBI in the homes and offices of various Las Vegas gamblers in 1962 and 1963. At least nine wiretaps or eavesdropping devices were arranged by the FBI in Kansas City between 1961 and 1965. A "listening device" was installed by the FBI in 1963 in the Washington hotel suite of Fred B. Black Jr.

From the day it began the FBI's eavesdropping has been

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a risky business. It is a Federal crime to intercept without permission of the sender "any communication and divulge or publish the existence, contents substance, purport, effect, or meaning of such intercepted communication to any person . . ."

Eavesdropping with devices unconnected to a telephone is likewise illegal if any form of trespass is involved, even such a trivial trespass as inserting a "bug" in a wall to "the depth of a thumbtack shaft."

Self-Defeating Technique

Furthermore, as Attorney General Nicholas deB. Katzenbach informed the Senate last year, eavesdropping and wiretapping are self-defeating techniques.

"Once you put a wiretap on or use an illegal device of any kind," said Katzenbach, "the possibilities of prosecution are gone. It is just like a grant of immunity."

This is true whether or not the "national security" is involved. Thus, a suspected spy cannot be prosecuted if his telephone is tapped.

Nevertheless, Katzenbach and his predecessors have authorized wiretapping in such cases—50 to 100 a year—on the assumption that the information gained is more important than a conviction.

They have not been prosecuted for their apparent violation of Federal law because they have interpreted the law to mean that so long as information from wiretaps is not disclosed outside the Department no crime has been committed.

FBI Director Hoover is thoroughly familiar with the wiretapping and eavesdropping laws. "He would never engage in any of that without authority from the Attorney General," one of his former superiors has said.

Another Justice Department figure, knowledgable in these affairs, has said much the same thing: "Anyone who claims that Hoover had no authority for what he did (in Las Vegas and in the "bugging of Black's suite) is just not telling the truth. And anyone who says Bill Rogers, Bobby Kennedy and Nick Katzenbach didn't know what he was doing, doesn't know the facts. 'Whizzer' White (Associate Supreme Court Justice Byron White) knew a lot about this himself when he was working for Bobby (as a Deputy Attorney General)."

Raps Marshall

One government official in a position of responsibility has gone further. "It seems pretty clear to me," he said, "that the (Bobby) Baker case, the Black case, and the cases in Las Vegas are going to be lost because of (Solicitor General) Thurgood Marshall's memorandum to the Supreme Court (admitting that Black's hotel suite had been 'bugged').

"Some of these cases will never came to trial. Deals will be made if they haven't already been made and Hoover is being set up to take the blame. This whole affair is not being handled like a law suit. It's being handled politically."

How much—if anything—the Justice Department knew about the FBI's eavesdropping and wiretapping activities is a closely held secret that will be aired, ultimately, before the Supreme Court.

For the moment, however, Hoover has turned down requests for an interview and has ordered his aides not to discuss the matter. Katzenbach takes the same position and has ordered his subordinates not to talk. They will not even reveal what, if any, regulations now are in effect governing wiretapping and eavesdropping by Government agencies.

Nontheless, certain information has become available. It has been obvious for several years to some attorneys in the Department, one official said, that detailed reports from the FBI on various conversations could only have come as a result of wiretapping or eavesdropping. It is not clear whether these reports came to the personal attention of the Attorney General or his deputies.

Bugging Discussed

It has been ascertained that FBI officials met with Justice

Department lawyers last year and discussed at length the use of "bugging" equipment in the Black case.

Solicitor General Marshall in his memorandum to the Supreme Court referred to a meeting last fall at which "attorneys in the Criminal Division of the Department of Justice learned that a listening device had been installed in (Black's) suite. They then reviewed materials derived from that installation for the purpose of determining whether information obtained therefrom would prejudice a pending criminal investigation unrelated to (Black)."

There have been strong suggestions—but no official confirmation—that the "pending criminal investigation" Marshall referred to involved Bobby Baker and that the Justice Department was aware before Baker was indicted in January of this year that wiretapping was involved in his case.

This virtually has been admitted by William G. Hundley, the Justice Department's chief racketeering prosecutor, in a brief filed with the Federal District Court here earlier this month.

Identical 'Bugs'

He said in his brief that wiretapping and eavesdropping issues raised in connection with the Baker indictment were identical to issues that had been raised long ago in Las Vegas in connection with the wiretapping of gambler Edward Levinson and others. The two cases, said Hundley, involved the same "bugs," the same wiretaps, the same offices and the same bedrooms.

In that context, it was logical to assume that the Department had known for some time before the indictment that the wiretapping issue would be raised in the Baker case, for it had been aware of the Las Vegas incidents at least since 1964.

In the light of Katzenbach's statement that wiretapping is "just like a grant of immunity" the question has been raised within the Administration as to whether the Baker indictment was a meaningful step toward prosecution or a meaningless legal gesture.

"Once you admit wiretapping," one official has said, "it becomes almost impossible to prove that any other evidence you have is not tainted."

These are, of course, speculations that the courts will decide. They also may resolve the question of whether Hoover exceeded his authority.

Led to Bitter Dispute

It is known that Marshall's memorandum to the Supreme Court infuriated Hoover and provoked a bitter dispute with Attorney General Katzenbach, who is said to have ended one discussion with the curt announcement:

"That's the way it's going to be."

On June 13, the Supreme Court entered this area of dispute with an order to the Attorney General to give a complete accounting of the Black "bugging" incident, along with the names of those responsible and the legal authority on which they relied.

"Hoover," it has been reported, "will not wash this dirty linen in public. He's too loyal for that."

But it may be washed in public both here and in Las Vegas, where Hoover's agents are the target of a $1 million law suit by Edward Levinson and the Fremont Hotel.

Whatever the outcome of these and related cases, they have raised profound issues involving the operation of the FBI, and the rights of citizens in a free society.

Wide Range

The FBI's recent investigations have included such areas as these:

- A national magazine discovered in 1964 that the FBI had compiled — for unexplained reasons—a dossier on the ex-wife of one of its writers. The material in the file was cited by Hoover's associates in refusing to allow the writer to sit in on an interview with the FBI director.
- The managing editor of a prominent newspaper in the Midwest was advised by a U.S. District Attorney in 1965 that a reporter for the paper had become persona non grata at the Federal building because of "derogatory information" circulated by the FBI.
- University professors and Americans in other walks of life have become aware within the past year that they have been under surveillance both here and in their foreign travels at the instigation of the FBI.
- The authors of books critical of the Federal establishment are the subject of dossiers in the FBI files.

The investigations that have produced these materials are based on almost unlimited authority to probe into the lives of suspected criminals, "security risks" and "subversive." The Attorney General, the Justice Department says, provides only "general" supervision over these activities.

The grant of investigative authority to the director of the FBI is, in other words, extremely broad, and the Justice Department now finds itself in the position of trying to define the limits in terms of eavesdropping and wiretaps.

The irony is that it has taken the Federal drive against "organized crime" and the Bobby Baker case to bring the issue to a head.