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Brother, Can You Spare a Dime?

By Art Buchwald

The startling revelation last week that President Nixon had tapped the telephone of his own brother, F. Donald Nixon, has caused great concern among civil libertarians. If a President can tap his own brother without a court order, their thinking goes, no one in this country is safe.

But there is a school of legal opinion that maintains the Fourth Amendment guarantees of right of privacy and of protection against search and seizure do not cover blood relatives of high government officials.

The leader of this school is the great constitutional lawyer, Prof. Sam Clemente, who wrote the definitive book on President Millard Fillmore's wiretapping activities, titled "He Ain't Heavy, He's My Brother."

Prof. Clemente told me, "The Supreme Court has ruled on many occasions that it is perfectly legal for a President to tap his brother's telephone in the interests of national security. In the case of President Fillmore, the President suspected his brother Dillard was getting kickbacks from slaves who were working on government projects in the South. Fillmore ordered the Secret Service to tap his brother's lines. When The Washington Post broke the story, Fillmore's press secretary announced the tap had been placed on Dillard because of threats on his life. Most of the threats were made by President Fillmore himself. But when questioned about this the press secretary refused to comment.

"Fillmore's brother sued the President for invasion

of privacy but the Supreme Court, in a 5-to-4 decision, ruled in the President's favor. The majority opinion said, 'It is obvious that writers of the Constitution did not have relatives in mind when they wrote the Fourth Amendment. It is impossible for a President of the United States to carry on his executive duties without knowing what his brother is up to.

"'Nobody can do more damage to a President than his brother and since most brothers tend to take advantage of the President's high office, it is essential that the President of the United States be given free rein to tap his kinfolk.'"

Clemente continued, "But the court ruled that the President could not tap in-laws. 'We realize,' the ruling said, 'that in many cases a brother-in-law could give a President even more trouble than a brother. But if we opened the privilege to brothers-in-law, there would be no end to wiretapping in this country.'

"Although President Fillmore won the suit, he agreed not to tap Dillard's phone anymore. But he refused to turn over the tapes on the grounds that if he did he would be setting a precedent for future Presidents who would have to turn over *their* tapes to *their* brothers."

I asked Prof. Clemente, "Do you think President Nixon was relying on the President Fillmore-Dillard decision when he authorized the tapping of his brother's phone?"

"Either that or the Ulysses S. Grant case.

"If you recall, President Grant was worried about his brother's drinking problems and ordered a tap on his phone. As soon as he got enough evidence on him, Grant ordered his brother arrested for drunkenness. But the case was thrown out when it was revealed that Grant had members of the White House staff break into his brother's doctor's office to steal his brother's files."

Prof. Clemente did not think the American public would be alarmed over the news that President Nixon had tapped his brother's phone. "Anyone who has a brother would like to do the same thing."