

## Controlling Wiretaps

Watergate demonstrated that unfettered executive discretion can lead to serious abuse of the constitutionally dubious practice of installing "national security" wiretaps without authorization from the courts.

As we have previously noted, legislative limits need to be set on such authority. However, the legislation now taking shape in the Senate calls for caution lest it give sanction to the perpetuation of abusive practices. As presently formulated, the bill would permit issuance of a warrant to tap or to bug without any requirement that there be evidence of criminal activity. Depending on the spirit in which the authority might be used, many civically active and committed citizens might once again become victims of electronic surveillance.

In order to obtain a warrant, the Government, under the present proposal, would merely be required to show evidence that the target of surveillance has a connection with a person who may be an agent engaged in clandestine intelligence activities. If that formula sounds familiar, it ought to. The same rationale was used to justify the taps and the bugs involved in the F.B.I.'s effort to destroy Dr. Martin Luther King Jr.

Proponents of the bill as now written offer the dubious assurance that improper use of the authority will be inhibited because high officials would be required to sign requests for wiretaps. Unfortunately, there is evidence which suggests that at least one President and two Attorneys General as well as the F.B.I. director were involved in the King taps and that a President, a National Security Adviser, an Attorney General as well as the F.B.I. director were involved in the infamous White House "national security" taps of 1969 and 1970.

Furthermore, judges tend to be excessively compliant in granting wiretap requests. Records of the Administrative Office of the United States Courts show that over a six-year period, judges turned down only 13 of 4,863 taps sought for criminal investigations under the Omnibus Crime Control Act of 1968.

Whether intended or not, the proposal now before the Judiciary Committee seems to legalize more electronic surveillance than it inhibits. In contrast, the Senate Intelligence Committee concluded accurately that a citizen should not be subjected to wiretapping except when it can be demonstrated to a court that there is good reason to believe that the information sought relates to criminal activity.

Though such a formulation might require careful re-drafting of some criminal statutes, it would provide a clear notion of what Congress intended to prohibit and what it intended to permit. The revelations of the last four years and the intensive conceptual effort of the Senate Intelligence Committee should suffice to convince the Judiciary Committee of the need to impose clear limits on any governmental actions which can so readily be turned into a threat to the personal privacy that is a fundamental right in a free society.