Tom Braden

The President and Privacy

President Nixon said the other day that "personal privacy is a cardinal principle of American liberty" and that "electronic snoopers have left Americans deeply concerned about the privacy they cherish. The time has come," he added, "for a major initiative."

Coming from a man whose administration has been notable for wiretapping, mail covering, breaking and entering and spying, it was, at first blush, a surprising statement.

"No law requires an attorney general to say what he means by national security'."

But only at first blush. The text reveals that the President wasn't talking about any of these blatant invasions of privacy. He was talking about the accumulation of electronic data on consumers by credit card companies, banks, department stores and other businesses. Without taking anything away from Mr. Nixon's laudable desire to regulate in this area, it still seems necessary to put the question, "What about the Fourth Amendment?"

Just last week, Atty. Gen. William Saxbe said he had initiated three new national security wiretaps. Naturally, Saxbe didn't say who was being wiretapped, whether the taps were being placed upon Americans or foreigners. We may never know. No law requires Saxbe or any subsequent attorney general to tell us. No law requires an attorney general to say what he means by "national security."

Sometimes we are told the numbers. In 1972, testimony before the Senate revealed that 97 "national security" wiretaps were in operation during the year 1970. Since then, we have been given good reason to suspect that a lot of these taps were not placed for the national security but in order to spy on White House enemies. The Watergate investigations have determined that 17 newspapermen and government officials were wiretapped during 1969, and many of the taps were not removed until much later.

Just last week it was revealed that four more wiretaps were conducted by the White House plumbers during 1971 against friends of a White House official.

All of this is in direct contradiction to the Fourth Amendment which declares it "the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure." The Supreme Court has ruled that wiretapping is a "physical entry into a house."

The Founding Fathers never envisioned that a physical entry into a house could be made without a warrant issued upon probable cause and "particularly describing the place to be searched." But not one of these "national security" wiretaps has been authorized by a warrant. Recent attorneys general and Presidents have tapped whomever they wanted to tap. Whether the tap was in the interests of national security or in the interests of politics or in their personal interests has been left to their own consciences.

Thus, Robert Kennedy tapped Martin Luther King—apparently at the insistence of J. Edgar Hoover. Lyndon Johnson is alleged to have tapped members of his Cabinet, and Richard Nixon has widened the "physical entries" to include the press. Under Mr. Nixon, the practice seems to have been so widespread that the President and his attorney general delegated their authorities. H. R. (Bob) Haldeman, John Ehrlichman and even Henry Kissinger were permitted to make nominations for wiretapping targets, and Mr. Nixon may not have seen the final list of those to be spied upon.

So the President is right when he talks about invasions of privacy as a growing danger, and Sen. Gaylord Nelson (D-Wis.) has introduced a bill which may fix his mind upon the aspect of privacy which he ignored.

Nelson's bill would require the government to seek a warrant before a "national security" wiretap could be authorized or installed. Thus, an independent third party would be able to check upon the power which successive Presidents and attorneys general have used with such frequency.

"The Supreme Court has a rule that wiretapping is a 'physical entry into a house'."

If the President is really concerned about privacy, he will endorse Nelson's bill.