

James Reston

Now Is the Time to Stop The Wiretaps

Washington

THE SENATE FOREIGN Relations Committee seemed determined to find out Henry Kissinger's role in wiretapping his own officials and newspaper reporters a few years ago, but less determined to get at the main thing, which is to get hold of this wiretapping mania in the future.

Everybody from Kissinger and Attorney General Richardson to President Nixon has said noble things about the right of privacy and some nasty things about the dangers of tapping people's phones, but these philosophical generalities are not quite good enough.

What we need now is a clear and explicit statement of policy by the Administration that it will henceforth not subject its own citizens to unreasonable searches and seizures or tap their telephones without prior judicial approval.

Undoubtedly, cases will arise in the future that would justify the Executive in seeking a court order to tap private telephones in the interests of national security, but such an order would be easily available in genuine national security cases. What is pernicious in the present situation is the Administration's assertion of its right to wiretap without a court order on its own judgment that national security questions may be involved.

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THE ADMINISTRATION continues to defend this authority both in its public statements and in various court suits. Contrary to the implications of some of the Administration's statements, the Supreme Court has not held that warrantless wiretaps initiated for



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foreign policy reasons are legal. It has clearly stated that warrantless wiretaps for domestic security reasons are unconstitutional, but it left the constitutionality of warrantless wiretaps for foreign policy reasons open for later resolution.

In his context, and given the uncertain situation, the Foreign Relations Committee was undoubtedly justified in trying to get assurances from Kissinger that he didn't intend to go around tapping his associates or bugging the National Press Club, but even as Secretary of State, Kissinger cannot guarantee the privacy of other people's phones. Other agencies of the government from the FBI and the Secret Service to the Army Signal Corps can do the job; in fact, Kissinger has not even been sure of the security of his own private telephone calls.

Attorney General Richardson, however, could improve the present situation by issuing new regulations or guidelines putting limitations on the Executive's use of the wiretap power, particularly the need for a prior court order when U.S. citizens are involved. Better still, the President could add this to the shopping list of legislation he wants from the Congress by the end of November, preferably on Thanksgiving Day.

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IN HIS SPEECH to the American Bar Association last month, Richardson made some reassuring remarks:

"It is imperative — not only morally requisite but practically requisite — that our democratic rhetorical commitment to fairness-across-the-board be matched by consistent performance . . .

"We cannot allow ourselves to foster or to preserve practices which undermine respect for the capacity of the system to treat people — as the people — fairly under law . . .

"Reporters have a primary responsibility to the public, just as we (in law) do. This responsibility can lead them into controversial situations. But the prosecutorial power of the department should never be used — not even by indirection or innuendo—in a way that could weaken the exercise of the First Amendment rights . . ."

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THESE SENTIMENTS by the new attorney general have already produced a new spirit and atmosphere at the Justice Department, but as long as other men in the Executive branch speak in a different spirit and argue for a continuation of their right to wiretap on their own suspicion or excuse of national security matters, without prior approval of the court, more specific regulations or laws are essential.

The Administration's excuse for tapping was that it wanted to "stop the leaks," and nobody can blame officials for trying to secure official lines of communication, but it is not only information but freedom that has been leaking around here, and if Richardson means what he says, the practice will be stopped.

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