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Hangover From Watergate

By Tom Wicker

After President Ford abandoned his opposition to a special prosecutor to investigate wrongdoing within the Government, the Senate included such an office in its Watergate reform bill. But Mr. Ford isn't showing much interest in acting on his own to curb executive excesses or clean up past offenses.

He recently ordered the Justice Department, for example, to go into court for a restraining order against a House subcommittee's attempt to obtain Federal wiretap records from American Telephone and Telegraph Company. Mr. Ford contended that it would be an "unacceptable risk" to the national security to let the subcommittee have the records it had subpoenaed from A.T.&T.

It may be true that the House in the past has not been sufficiently scrupulous in maintaining the security of sensitive documents, and the Administration's concern may therefore be reasonable. Yet, how is Congress to operate as a real check on the Executive if the President can nullify a Congressional subpoena with a claim of national security.

Judge Oliver Gasch, who issued the temporary order, has the matter under advisement and may yet rule in favor of the subcommittee. But with the echoes of Watergate scarcely faded from the Washington air, Mr. Ford would have acted more reassuringly if he had sought some security arrangement with the subcommittee chairman, Representative Moss of California, rather than going into court to protect executive branch secrets.

By doing so, as subcommittee lawyers pointed out, he ranked duly elected members of Congress as less trustworthy than Justice Department officials, Federal Bureau of Investigation agents and the large number of A.T.&T. employees who have seen the secret documents. He also raised the question whether there may not be more to hide than "national security" information in the wiretap records.

Nor is this the only instance in which an executive branch "cover-up" might at least be suspected. A Justice

IN THE NATION

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Department official recently told The New York Times that the department's lawyers had recommended against the prosecution of Central Intelligence Agency officials involved in the illegal opening of mail between the United States and Communist countries.

Opening mail, by the C.I.A. or anyone else, was clearly against the law throughout the 20-year period when the agency engaged in the practice. Yet, the Justice official explained, the department's lawyers had concluded that during all that time there had been "a continuum of Presidential authority" that had made the C.I.A. mail openings legal after all.

But since when have Presidents been able to make legal what the law says is illegal, by a continuum or any other kind of authority? And even if there were some such power inherent in the office, what about the report of the Senate Select Committee on Intelligence that it had found no documentary evidence that any President had "authorized" the mail openings?

Aside from these questions, however, why should the Justice Department take it upon itself to decide such matters? There is ample evidence that the mail openings took place, against the statutory law. That seems reason enough to prosecute those responsible, and if the defendants wanted to claim a "continuum of Presidential authority" as a defense, the courts could decide the validity of such a claim.

Justice Department lawyers already have recommended to Attorney General Levi that no indictments be sought as a result of C.I.A. assassination plots against Fidel Castro of Cuba and the late Patrice Lumumba of, then, the Congo. Nor does it appear that perjury action will be taken against the former C.I.A. director, Richard Helm, for his questionable statements to Congress on the agency's involvements in Chile.

If no evidence of legal offenses in these cases exists, of course there should be no prosecutions. But it is hard to see how that could be so, at least in the mail-opening matter. And if such evidence does exist—no matter what exculpatory theories the defendants might offer in court—no special prosecutor ought to be needed to order indictments.

Mr. Ford's sudden switch to support of a special prosecutor may have represented a sincere change of heart. But it may also have reflected the Democrats' recent show of interest in Watergate as an issue against him. In either case, action by Mr. Ford's own Administration would speak louder