

Preventive government mark of Nixon Administration

WASHINGTON — Back in the Fifties, Mort Sahl used to recite what was then considered a bitter portrayal of the Nixon family at home. Mrs. Nixon, as the story went, was sitting on one side of the fireplace, knitting an American flag. Mr. Nixon was sitting on the other side of the fireplace, reading the Constitution — in search of loopholes.

But it is not established to what extent the decision of the Nixon Administration to try to prevent publication of the Pentagon papers was a product of the President's personal impulse. Whether it was or not, that decision is one more in a chain of approaches which has given this administration the appearance of searching for loopholes in the Constitution.

Here in the District of Columbia, for the first time in American history, it has imposed a system of preventive detention of persons who may commit crimes at some time in the future. And although the courts have not as yet upheld this presumptive breach of the Bill of Rights, Atty. Gen. Mitchell is recommending preventive detention as a part of nationwide crime legislation.

Mitchell also is advocating — and presumably conducting — a system for preventive eavesdropping, through his contention that the Executive Branch has the inherent right to bug, or wiretap, without any form of court authority or disclosure, those persons it considers threats or potential threats to national security. On its face, this appears to

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violate the Fourth Amendment's prohibition of unreasonable searches and seizures; and it is plainly aimed at the preventive smothering of what most Americans historically have assumed to be their constitutional right to engage in dissident political activity.

Last spring, so successfully that Mitchell has urged it as a national model, the administration also permitted and apparently encouraged the Washington police to engage in preventive dragnetting against the Mayday demonstrators. While sweeping the streets on the first morning of the action might have been justified, there could have been only one reason for holding thousands of the demonstrators for 48 hours or more without charges, and when there was no possibility of filing any charges, orderly arrest procedures having been suspended. That one reason was to prevent further demonstrations, although there is no authority in the Constitution for that kind of prevention.

Many broadcasters, glancing nervously at licenses that must someday be renewed, believe this administration also has engaged in a systematic campaign of preventive inhibition of aggressive radio and television journalism. If so, it has to be added in fairness that the Democratic Congress is now being asked by a House Commerce subcommittee — controlled by Democrats — to join in

harassing the Columbia Broadcasting System with a contempt citation.

For the last two weeks, this administration also has sought by every means within its power to impose preventive suppression of the news on the American press, and thus on the American people. For the first time in American history, a prior restraint was imposed by federal court orders against a newspaper trying to publish what it considered information; and although the Supreme Court has now declared that the government made no case that could sustain such a prior restraint, it must never be forgotten that for two long weeks the presses were in fact stopped by court order, on government application.

In most cases, two weeks' prevention of publication would amply serve whatever purpose the government had in mind in seeking prior restraint; so might two days. In The New York Times case, the material in question was largely historical; so it may be argued that no great harm was done. But it remains to be seen what ultimate damage has been done to the First Amendment — whether, for instance, temporary restraining orders will now be more readily sought by the government, with the effect of temporarily stopping publication no matter what the final decision of the courts might be.

Preventive detention, preventive eavesdropping, preventive dragnetting, preventive inhibition and preventive suppression of the news — what will they seek to prevent next, and by what dubious or extra-constitutional means? It is a sad question, made unavoidable by this ominous and continuing search for loopholes in the Bill of Rights, on the part of a government solemnly sworn to uphold it.

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