

Government and Liberty

By TOM WICKER

WASHINGTON, May 3—It was good, but not good enough, for President Nixon to assure us from San Clemente that "this isn't a police state and it isn't going to become one." It was good, but not good enough, for him to declare that his Administration "is against any kind of repression, any kind of action that infringes on the right of privacy."

It was good to be reassured that these are Mr. Nixon's beliefs, but it is not good enough that he asserts them without doing anything to stop those actions of the Nixon Administration that called them into question. What does it mean, for instance, that the President said that "as far as the subpoenaing of notes are concerned, a reporter's, as far as bringing any pressure on the networks as the Government is concerned, I do not support that"?

It does not seem to mean anything, because it was, after all, Mr. Nixon's Administration that sought to subpoena the notes of reporters for The New York Times and the news magazines; it has been Vice President Agnew who has maintained the steadiest critical pressure against the networks; it was a Nixon appointee, F.C.C. Chairman Burch, who interested himself conspicuously in network analysis of Presidential speeches; and one reason for the House Commerce Committee's sweeping subpoena of unused C.B.S. film, tape, transcripts and the like—in the case of the excellent documentary, "The Selling of the Pentagon"—appears to have been Administration pressure on the ranking Republican committee members.

If Mr. Nixon really believed that the confidential notes of reporters ought not to be subpoenaed by the Government, he could have told his Department of Justice not to do it; and most of the other items in the bill of particulars above could at least have been influenced by the President. Without the groundwork laid by Mr. Agnew, for example, the House committee might well not have acted as—unfortunately—it did. Now the committee is out on a limb from which there will be no easy climb down.

In defending Attorney General Mitchell's claim to an unlimited right to tap the telephones of people he suspects are subversives, Mr. Nixon missed the point entirely. It may well be true, as he claimed, that there are only half as many telephone taps today "as there were in 1961, '62 and '63," although this is an assertion by the F.B.I. that both Mr. Nixon and the public must take—if at all—on faith, not on evidence. And it is certainly true that some of the vocal

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Democratic critics of today were not heard from "in 1968 when there was Army surveillance of the Democratic National Convention"—Mr. Nixon's words—or earlier.

Nevertheless, it is the Nixon Administration—unlike any before it—that has claimed the unchecked right to tap the phones of persons it suspects as subversives, without any form of court authority and with no necessity ever to admit, or to inform its target of the eavesdropping, even if a trial should result. Mr. Nixon said such taps were "always approved by the Attorney General"—but the Attorney General does not have the power to grant a search warrant without court permission, nor to suspend other constitutional guarantees on his own motion. A wiretap is a particularly sweeping form of search; why should the Attorney General in a certain category of cases that he alone defines, be able to set aside Fourth Amendment guarantees against unwarranted searches, and the clear intent of Congress, expressed in the Omnibus Crime Act of 1968, to authorize wiretapping only by court order?

Mr. Nixon said he would "always be for that kind of action that is necessary to protect this country from those who would imperil the peace that all the people are entitled to enjoy." So are we all, but that is not the point; the point is that if Mr. Mitchell has sufficient reason to consider, say, Rennie Davis or the Black Panthers a threat to the Government, he would have sufficient evidence to get a wiretap order from a court; if he does not have sufficient reason—only his own suspicions—he has and should have no right to act on his own, without accountability to anyone.

It is just such unchecked power that can lead to a "police state." The mere threat of it is a form of repression and a certain infringement on the right of privacy. To say these things is not to suggest that Mr. Nixon and Mr. Mitchell intend to abuse their power; undoubtedly, they believe their use of it will be only for the most necessary and supportable purposes, as Mr. Nixon avowed at San Clemente.

But how do they know who will come after them to use the precedents and procedures they establish? How do they know who will some day walk through the doors they open and seize the powers they leave behind? And by what right do they assume that their own judgments, however well-intended, are immune to those human fallibilities against which constitutional rights are the most important protection?