The trouble with Watergate— civil liberties and the scandal

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aclu NEWS

In terms of civil liberties, the Watergate scandal presents a whole range of complex problems, confirms a long series of events which have threatened personal freedoms in this nation, and at the same time, has created an atmosphere in which the American people's acquiescence to past actions of this Administration has been severely shaken.

Many of the activities that have come to light as a result of the Watergate trials, investigations and publicity were recognized and protested by the ACLU long ago. The ACLU was criticized for trying to "tie the hands" of law enforcement agencies in their quest for "law and order". It should now be clear that when constitutional limitations on government officials are lifted, a clear hazard is that the law enforcers will become law breakers.

Government secrecy has also been attacked by ACLU but in many instances, little general concern or public outcry was forthcoming when government spokesmen told the press and people that they must not know what their government is doing but that they should believe what they are told. It is now also clear that too much secrecy and too little public scrutiny has lead to tragic disregard for the fundamentals of democracy. In that the American people are finally seeing the problems they have ignored, Watergate may serve a purpose.

Nevertheless, this is no occasion to lean back and say "I told you so" for civil libertarians. The same prosecutions and publicity that have done so much to vindicate the value of democratic principles have also raised new civil liberties problems.

Last week, National ACLU issued a 26-page position paper which outlined many of the questions raised by Watergate: the "due process" problems of the hearings and investigations; the Constitutional interpretations involved in the whole affair; and, the revelations of previously unknown illegal acts by the government.

'McCARTHYISM' CHARGED

One of the earliest concerns expressed to the ACLU was that the press was guilty of engaging in "McCarthyism" in its reporting on Watergate. The National ACLU statement points out that there is a fundamental difference between "McCarthyism" and press coverage of Watergate. In the first instance, a government official, relying on the power and influence of his position, was making charges against individuals for politically unpopular beliefs and associations. In the Watergate affair, however, the press has charged government officials with corruption. It has been admitted already that serious crimes have in fact been committed. No one is being criticized for political association. The charges and speculation being circulated today emerge from the efforts of the press to investigate criminal activity in the government.

THE DUTY OF THE PRESS

ACLU has always considered the rights of the press and individuals to criticize government officials to be the necessary method which a democratic society uses to assure that its officials remain accountable to the people. The right of open criticism of public officials was given special status when the U.S. Supreme Court held in *New York Times v. Sullivan* that "debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Therefore, it is not only permissible that the press discuss Watergate but it is practically a constitutional duty since only the press is actually able to scrutinize our national officials effectively.

A further point that must be kept in mind is that the press holds an important Constitutional role in the impeachment process. It is a political reality that Congress cannot embark on impeachment proceeding until a great deal is known of the facts in any particular case. The press must come up with the facts and serve as an expression of public opinion to guide Congress if and when it considers the largely political act of initiating impeachment proceedings.

Continued on page 2

Continued from page 1

EXECUTIVE PRIVILEGE

Relations and balances between Congress and the Executive Branch have also raised substantial Constitutional issues with civil liberties implications. President Nixon has claimed that some of the Watergate events were justitified by considerations of "national security" or that Congress may not have access to certain persons and documents in order to uphold the "separation of powers." For both of these reasons, the President has at times invoked "executive privilege" for his staff and papers.

Though the definition and rationale for the use of executive privilege has been changed and redefined several times in the past few months, the basic question is whether or not a President may withhold information from the press, public, Congress, grand juries or prosecutors.

National ACLU's statement denies that "national security" considerations are valid justification for illegal surveillance of lawful political activity, and the withholding of "sensitive" information from the public. The ACLU believes "security cannot be sought by methods which destroy the basic freedoms we seek to protect." The two major elements of Watergate, political surveillance and a mania for secrecy, represent threats to our national security, not protections. ACLU argues that "the only information the government may withhold is: (a) tactical military operations; (b) blueprints or designs for advanced military equipment; or (c) secret codes," because citizens do not need this type of information to engage in public policy decisions.

JUDGE SIRICA'S SENTENCING

Watergate demonstrates a desperate need for Congressional and public scrutiny of the executive branch, and especially of such secret agencies as the F.B.I. and the C.I.A. These agencies are powerful, policy making organizations and little is known of what they do, how much money they spend or who really controls them. The "national security" argument cannot justify that. ACLU concludes that the "national security lesson to be learned from Watergate is that our security is endangered by 'patriots' from within who would subvert us by destroying the basic elements of our freedom in the guise of protecting us."

Just as this administration has relied on "national security" to suppress information that should be public, it has greatly expanded the definition of "executive privilege" to withhold information from Congress. Back in April, Attorney General Kleindienst claimed broad and absolute executive privilege not only for the President, but also every employee and document in the executive branch. A more modest position was later issued by White House Counsel Leonard Garment which claimed that conversations with and documents prepared for the President are privileged.

These claims of privilege, however, are made in the absence, according to ACLU's statement, "of any statute or language in the Constitution or decision of the Supreme Court recognizing such an executive privilege." The ACLU believes that any and all activities of individuals acting in an official capacity as a representative of the government must be disclosed.

Despite the overwhelming importance of getting the truth out and securing the public's right to know, considerations for the rights and liberties of the accused and subpoenaed must also be safeguarded. The ACLU is concerned that the criminal process provides all defendants their "due process" rights and this certainly pertains to Watergate defendants.

Last month, National ACLU filed a motion before Federal Judge John Sirica asking that he set aside the convictions of the seven defendants who have already been tried on the grounds that they did not receive a fair trial due to the admitted perjury by Assistant Campaign Director Jeb Magruder who testified for the prosecution. Judge Sirica has not yet ruled on that motion for re-trial.

The ACLU is also protesting the sentencing procedures followed by Judge Sirica in the trial of the seven original defendants. He sentenced G. Gordon Liddy to a long term of imprisonment and a stiff fine but he gave the other six maximum sentences and fines — 40 years and $50,000 — on a provisional basis. The clear implication was that the other six might get lenient sentences if they cooperated with the Grand Jury and the Senate Select Committee.

While Judge Sirica's attempt to obtain the full story is laudable, the ACLU believes that the provisional maximum sentences constitute a "device for coercing incriminating testimony from the defendants in violation of their Fifth Amendment right to remain silent." The entire criminal sentencing process is notoriously arbitrary and there are few procedures to prevent a judge from basing a sentence on improper factors. Nevertheless, Judge Sirica's conditioning the severity of the sentences of the other six Watergate defendants on their cooperation with the grand jury or the Ervin Committee clearly violates the principles of due process of law.

DUE PROCESS AND THE FIFTH

In recent years, ACLU has charged that fundamental rights are routinely ignored in grand jury proceedings and the same is true for the Watergate grand jury. The jury, and the Ervin Committee for that matter, has been compelling testimony from witnesses by confering limited "use" immunity. This means that a witness's own testimony may not be used against him but he may still be prosecuted for the crimes he discusses if the government produces independent evidence of guilt. If a witness who has been offered such immunity still refuses to testify, he can be found in contempt and sentenced. It is the ACLU's position that "the Fifth Amendment means what it says and no person should be compelled by any device or means to bear witness against himself." Obviously, if a witness tells a prosecutor about a crime he committed the prosecutor knows just what

to look for in his investigation. The ACLU opposes such dilution of the Fifth Amendment's privilege against self-incrimination.

Due process rights also suffer in the grand jury and Senate Committee proceedings. The right to counsel is severely weakened if a witness's counsel cannot cross-examine witnesses or confront accusers. In the grand jury, a witness's attorney may not even come into the jury room while before the Senate Committee, the attorney is present but his ability to submit questions or ask that witnesses be called is dependent on whether a majority of the Senators agree. Such arbitrariness does not safeguard basic rights.

THE 1970 INTELLIGENCE PLAN

A final consideration involving the rights of present and future Watergate defendants is the problem of whether they can get fair trails or has prejudical publicity precluded that possibility. The ACLU believes that it is entirely possible that some defendants may not be able to get fair trials and will urge that prosecutions be dropped or convictions reversed if they have been tainted by publicity. ACLU favors both proper political accountability through exposure and the efforts to ascertain criminal liability but recognizes that in some cases these may be inconsistent. "The government may have to make a choice between them, but the choice itself does not offend civil liberties."

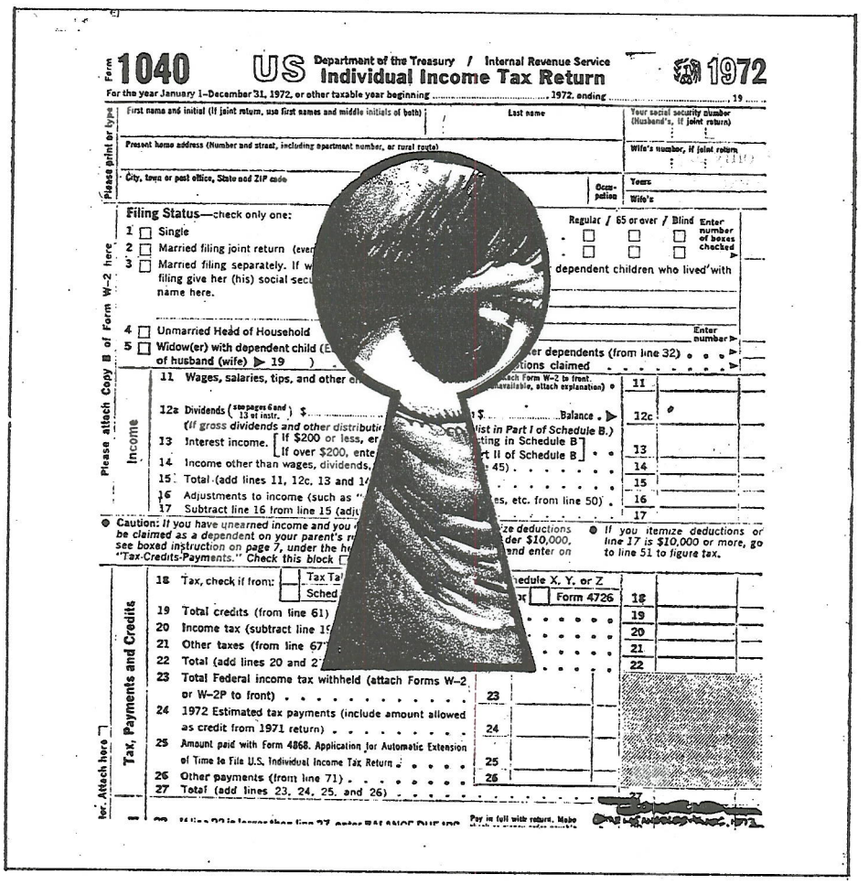
One further matter is of great concern to the ACLU. President Nixon has said he first approved and then rescinded his approval of the 1970 plan to conduct electronic surveillance, burglaries, mail covers, the use of military undercover agents and infiltration of college campus groups, all for the purposes of political surveillance. It is now known that all of the methods contemplated in the 1970 plan (except perhaps mail covers) were employed by the Federal government in the past few years. The ACLU considers "the President's admission that he gave even temporary approval to these activities — and more permanent approval to wiretapping of news reporters and employees of the National Security Council—indicative of a contemptuous disregard for constitutional freedoms."

On May 22, the president said that the wiretaps, which were installed without court order, were "legal at the time."

In June 1972, the Supreme Court unanimously ruled (Mr. Justice Rehnquist not participating) that such wiretaps were illegal. They were clearly illegal all along. ACLU believes that the President's declaration is tantamount to saying that nothing he does is illegal until it has been held illegal by the Supreme Court. The wiretaps described by President Nixon are so obviously without lawful authority that it is frivolous for anyone to say he believed them to be legal. (National ACLU has filed suit on behalf of Dr. Morton Halperin, a former aide to Henry Kissinger and the subject of one of these wiretaps.)

Another issue that has severe civil liberties implications surfaced recently in the Senate Watergate hearings when former Presidential Counsel John Dean III testified that the "enemies list" was kept to arrange Internal Revenue Service audits of Administration foes. If such audits were actually authorized, they represent ominous abuse of power and invasion of privacy. The government has access to almost any individual's financial records as it is and that fact presents enough dangers but to have that information used by the government for political purposes smacks of totalitarianism. (ACLU-NC Legal Director Charles Marson has learned, in the course of preparing his case against the Bank Secrecy Act for the Supreme Court, that Gordon Liddy and Howard Hunt discovered who Daniel Ellsberg's psychiatrist was by going through copies of his cancelled checks which they acquired through provisions of the Act.)

Under the twin guises of "law and order" and "national security," this Administration has shown unrestrained willingness to trample individual freedoms. Secrecy, surveillance, press censorship, political repression and all of the activities associated with Watergate have presented the American people with the spector of being governed without Constitutional protections. It can only be hoped that the lesson has been learned and that civil liberties will be strengthened.



Form **1040** **US** Department of the Treasury / Internal Revenue Service
Individual Income Tax Return **1972**

For the year January 1–December 31, 1972, or other taxable year beginning ..... , 1972, ending ..... , 19 .....

Please print or type

First name and initial (If joint return, use first names and middle initials of both) | Last name | Your social security number (Husband's, if joint return)

Present home address (Number and street, including apartment number, or rural route) | Wife's number, if joint return

City, town or post office, State and ZIP code | Occupation | Yours | Wife's

Filing Status—check only one:

1 ☐ Single

2 ☐ Married filing joint return (ever

3 ☐ Married filing separately. If w
filing give her (his) social secu
name here.

4 ☐ Unmarried Head of Household

5 ☐ Widow(er) with dependent child (E
of husband (wife) ▶ 19)

Regular / 65 or over / Blind — Enter number of boxes checked ▶

dependent children who lived with

Enter number ▶

er dependents (from line 32) ▶

tions claimed ▶

Please attach Copy B of Form W-2 here

Income

11	Wages, salaries, tips, and other ei		11
12a	Dividends (see pages 6 and 13 of instr.) $ ... (If gross dividends and other distributi	Balance ▶	12c 0
13	Interest income. [If $200 or less, er / If over $200, ente	ting in Schedule B / t II of Schedule B	13
14	Income other than wages, dividends,	45)	14
15	Total (add lines 11, 12c, 13 and 1		15
16	Adjustments to income (such as "	es, etc. from line 50)	16
17	Subtract line 16 from line 15 (adj		17

● **Caution:** *If you have unearned income and you* ... *be claimed as a dependent on your parent's r* ... *see boxed instruction on page 7, under the h* ... *"Tax Credits-Payments." Check this block* ☐

ist in Part I of Schedule B.)

ze deductions der $10,000, nd enter on

● *If you itemize deductions or line 17 is $10,000 or more, go to line 51 to figure tax.*

Tax, Payments and Credits

18	Tax, check if from: ☐ Tax Ta ☐ Sched	edule X, Y, or Z / ☐ Form 4726	18
19	Total credits (from line 61)		19
20	Income tax (subtract line 1		20
21	Other taxes (from line 67		21
22	Total (add lines 20 and 2		22
23	Total Federal income tax withheld (attach Forms W-2 or W-2P to front)	23	
24	1972 Estimated tax payments (include amount allowed as credit from 1971 return)	24	
25	Amount paid with Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return	25	
26	Other payments (from line 71)	26	
27	Total (add lines 23, 24, 25, and 26)		

Pay in full with return. Make ... LOS ANGELES, CALIF., ... 1972

Ver. Attach here