

How Much Security Is Enough?

By Tom Wicker

WASHINGTON, June 4—A crucial question that sooner or later must be raised in the Watergate matter is to what extent a President may commit criminal acts in order to protect what he believes to be the "national security."

In his May 22 statement, Mr. Nixon said that he had set up, in 1971, the White House "plumbers" unit to try to stop what he thought were leaks of sensitive information. But after the Watergate break-in, in 1972, he said he ordered the ubiquitous Messrs. Ehrlichman and Haldeman "to insure" that the plumbers' activities would not be uncovered by the Watergate investigation.

Mr. Nixon denied that he then knew the plumbers were responsible for any illegal activities, although it is now on the record that they conducted the break-in at the office of Daniel Ellsberg's psychiatrist in 1971, and although the name of one of the leading plumbers, E. Howard Hunt, was publicly connected with the Watergate break-in only a day or two after it occurred, and was given by the police to the White House almost immediately.

If it should be established that Mr. Nixon *did* know of the Ellsberg break-in, the presumption would be overwhelming that his order to limit the Watergate investigation was not given for security reasons but to cover up, and thus to obstruct justice.

But suppose Mr. Nixon, as he insists, knew nothing of the 1971 break-in. Suppose against all probability that Hunt's involvement at the Watergate and his role among the plumbers suggested nothing to Mr. Nixon. The question still has to be asked: Did he have a right to order a lawful police agency — the F.B.I. — to limit its investigation of a crime — the Watergate break-in — merely in order to protect a covert White House "security" operation that had no real legal sanction and was not a part of the formal "security" apparatus? Is that not in itself an "obstruction of justice" in that it prevented full and fair investigation of criminal activity?

In the same May 22 statement, Mr. Nixon also expressed his fear that the C.I.A. might in some way have been involved in the Watergate break-in, and that a full investigation of that incident might endanger C.I.A. activities abroad. Memorandums from C.I.A. files, concerning conversations between C.I.A. and White House officials just after the Watergate break-in, now raise the question whether Mr. Nixon had not been sufficiently assured by the C.I.A. that it was not involved in, and could not be damaged by an investigation of, the Watergate break-in.

But whether or not Mr. Nixon knew or believed at the time that C.I.A. operations could not be endangered,

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the question again has to be asked — did he have the right to obstruct justice, by ordering the F.B.I. to limit its investigation solely to protect a real or imagined covert security operation by the C.I.A.?

The same question is pertinent as to the 1970 "internal security" plan worked up in the White House but never officially put into execution. Mr. Nixon conceded on May 22 that it would have authorized illegal acts, such as breaking and entering, in the protection of what its authors thought was the national interest. Is a President entitled to order such a program for such a reason? Is he later entitled to order a criminal investigation of another matter to be so limited as to avoid disclosure of a "security" plan that he says never went into effect?

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A flat "yes" to such questions clearly would open the way to virtually unlimited Presidential power to set aside the law wherever he could claim the remotest connection to national security—and "the remotest connection" seems to be about what Mr. Nixon is claiming in these cases. In the Watergate matter, moreover, it means that the F.B.I. became less an impartial investigative body than an instrument of Presidential policy.

A flat "no" on the other hand suggests that there never could be a time when the head of Government could take extraordinary action for genuine national security purposes. It might be rash to take such an absolutist position, tempting as it is; the President's duty to uphold the laws might at some point have to be balanced against his duty to preserve the nation.

The real problem may be that a President has too much latitude to make such decisions for himself, too many untouchable aides around him who can act in his name, and too many instruments by which self-serving political action can be taken in the name of national security. The power and secrecy of the national security apparatus, with the President at its apex, is what must in some way be limited and restrained—without diminution of the President's ability to take strong emergency action when it can be clearly justified.

One good suggestion already has been made by Whitney North Seymour, the recently resigned United States Attorney in New York. He said the F.B.I. should be an independent criminal investigating agency, deprived of the direct and secret link to the White House now provided by its responsibility for internal security activities. If that had been the case last year, the Watergate cover-up probably would not have been possible.