

In the Name of Security

By Anthony Lewis

BOSTON, June 10—To prevent a crippling strike during the Korean War, President Truman seized the country's steel mills. There was no law authorizing the seizure. But when the steel companies sued to get their plants back, Government lawyers said the President had inherent power under the Constitution to prevent such a national "catastrophe."

Then the trial judge, David A. Pine, put a question to the Government counsel, Holmes Baldrige: "If the President directs [someone] to take you into custody, right now, and have you executed in the morning, you say there is no power by which the court may intervene?"

Mr. Baldrige had some difficulty with that question, and the judge gave him overnight to think it over. The next day Judge Pine changed to what he termed an earlier question: If the President ordered Mr. Baldrige's home seized, would the courts be powerless because the President had "declared an emergency"?

"I do not believe any President would exercise such unusual power," Mr. Baldrige said, "unless in his opinion there was a grave and extreme national emergency existing."

"Is that your conception of our Government?" Judge Pine asked . . . "is it not your conception that it is a Government whose powers are derived solely from the Constitution?"

The question drove Mr. Baldrige to say that the Constitution gave only limited, specified powers to Congress and the courts—but gave the President "all of the executive power." Judge Pine observed dryly, "I see." Soon thereafter he rejected that claim of unrestricted executive power and ordered the steel mills returned to their owners.

The danger that Judge Pine so shrewdly exposed by his questions—the danger of a President governing by decree in the name of national security—is with us now in much more alarming form. President Truman's seizure order was a public act, subject to political debate and judicial testing. President Nixon used his vision of national security to cover secret orders that have been brought to light only by lucky accident.

On July 15, 1970, the White House prepared a Top Secret memorandum of decisions on the new program of "domestic intelligence." The New York Times published the memorandum last week. It will go down as one of the most chilling documents in American history.

Mr. Nixon directed intelligence op-

ABROAD AT HOME

eratives to intensify wiretapping and bugging of Americans deemed threats to "the internal security," to open their mail, to break into their homes. He authorized security men to listen in to all overseas telephone calls and ordered the C.I.A. to increase its "coverage" of Americans traveling or living abroad.

The President did all that despite direct advice that some of the steps he ordered were illegal. Quite apart from what the present inquiries may show about his involvement in the Watergate crimes, those directives should disqualify him from office.

But the point of the 1970 memorandum is broader than Richard Nixon. It shows how vulnerable we are to the doctrine that those in power may violate the law in the name of what they consider "national security." Even a man then so highly regarded as Richard Helms of the C.I.A. apparently supported the 1970 program. Only J. Edgar Hoover's dogged opposition forced Mr. Nixon to drop it.

One of the curious things about the United States is that, again and again, we ask our judges to tell us the obvious—to tell us, for example, that the Constitution does not give Presidents power without limit. But then, as a great judge said, we need education in the obvious.

To restore in this country the sense of legitimacy that has been so shattered by Watergate we may once more need to have our judges speak some lasting American truths. When they do, they will find powerful support in the Supreme Court opinions affirming Judge Pine in the steel seizure case and rejecting the idea that a President may act as he wishes to meet what he defines as an emergency.

"Not so long ago," Justice Frankfurter wrote, "it was fashionable to find our system of checks and balances . . . outmoded—too easy. The experience through which the world has passed in our own day has made vivid the realization that the framers of our Constitution were not inexperienced doctrinaires.

"These long-headed statesmen had no illusion that our people enjoyed biological or psychological or sociological immunities from the hazards of concentrated power . . . the accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."