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Mr. Nixon's Plausible Fallacies

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IN THE NATION

Some words have the sound of logic without the ring of truth. To one who was far from the August action but who had plenty of time to contemplate events, that seems to be the case with some of President Nixon's most important defensive positions. They just don't stand too much looking into.

In the matter of the White House-ordered burglary of the office of Daniel Ellsberg's psychiatrist, for example, Mr. Nixon and his associates have insisted that, however ill-advised this might now appear, it resulted at the time from justifiable concern over the serious breach of security for which the White House considered Dr. Ellsberg responsible. The authority to order such a break-in, it is contended, was believed inherent in Mr. Nixon's sworn duty to protect the national security.

Well, all right. Only for the purpose of argument, let us concede both points. All the Watergate disclosures have shown the Nixon White House to have been so paranoid on national security matters that it is believable enough that release of the Pentagon papers might have seemed to such panicky and suspicious men a doomsday matter that required them to go to any lengths to counter it (although it has never been clear what the "plumbers" hoped to find in Dr. Ellsberg's psychiatric records).

Since other "national interest" burglaries apparently had been perpetrated in some earlier Administrations—with what, if any, high-level consent is not clear—the Nixon men also could have believed that the burglary of a psychiatrist's office was within the President's power to order, or to have ordered by his designated aides.

Even conceding all that, the argument does not finally exonerate its makers, for the reason that, the burglars having found nothing in the psychiatric records, the Nixon Administration then pushed the trial of Dr. Ellsberg as if nothing had happened. In fact, as the President, John Ehrlichman, John Dean and Egil Krogh—lawyers all—must have known, they had grievously violated Dr. Ellsberg's constitutional rights for no discernible security gains, were concealing the violation from him and from the court (probably even from the prosecution), and were proceeding to try him as if the violation had not occurred.

The White House might have believed in good faith, that is to say, that it could violate Dr. Ellsberg's ordinary constitutional rights as a desperation security measure; but when the burglary failed to produce the expected results that would have justified at least this view of the situation, the White House could not have believed in good faith—only self-servingly—that no violations had occurred. The case should then have been dropped, but it was not; Dr. Ellsberg was brought to trial in ignorance and thus in clear violation of another sworn duty of the President—to uphold the law.

In the matter of the tapes of Presidential conversations, Mr. Nixon and his lawyers have insisted rather plausibly that they are standing on the principle of a President's right to confidentiality; that once that principle is violated even in such limited fashion as by a Federal judge in his chambers, no one can ever again have faith in the confidentiality of a conversation with the President.

Aside from constitutional arguments about the separation of powers and executive privilege, there is less to this contention than meets the eye. No experienced person could ever expect more than a reasonable degree of confidentiality for a conversation with the President or any other high officials; records are made, memos are written, aides briefed, actions approved and taken, all of which put absolute confidentiality in hazard.

Mr. Nixon himself, in fact, greatly increased the hazard by taping these conversations and thus producing a verbatim record; no matter what he intended to do with the tapes, that record provided one more possibility of leakage.

Besides, do Presidents really have some absolute "right of confidentiality" which at all costs has to be preserved? It is hard to see how; if, for example, Mr. Nixon conferred alone with Prime Minister Heath or Chairman Brezhnev, he might request confidentiality, the other party might agree upon confidentiality, but the President would have no power to enforce it on his visitor, nor the visitor on him. Even one of Mr. Nixon's hired hands, if sworn to silence, might be discharged but could not be prosecuted for breaching a President's confidence.

The truth is that every President's "confidentiality" has been repeatedly violated, usually without dire results. When President Johnson told me and other reporters in 1964 the details of his search for a Vice-Presidential candidate, we were sworn to secrecy; but when he settled on Hubert Humphrey, all those "secret" details were published by all who knew them. So far as is known, no politician or dignitary became afraid to speak frankly to Mr. Johnson after that occasion, or to any other President after similar breaches that could be detailed—many of them by Presidents themselves.

If a Presidential right of confidentiality exists, therefore, it is a sieve already and the mere fact of Judge Sirica listening to a few of Mr. Nixon's tapes will not shake the Republic—although what is on the tapes might.