NYTimes OCT 16 1973

A Tendency To Ignore the Law

By Tom Wicker

IN THE NATION

One of the few Nixon Administration officials unstained by the Watergate and related scandals recalled recently that he had frequently noticed and feared a tendency in the Haldeman-Ehrlichman White House toward ignoring or breaking the law. He cited the following episode, which happened well before the June, 1971, break-in at the Democratic National Committee.

Congress had passed legislation which the official was required to administer; but one provision of it he regarded as totally unenforceable. Conferring with John Ehrlichman, then the head of the Domestic Council, the official advised one of two courses: either an immediate request to Congress for needed changes, or an effort to enforce the provision for a year, after which the evidence of its unworkability could be placed before Congress.

Instead of accepting either recommendation, Mr. Ehrlichman coolly ordered the official simply to ignore the provision.

"But we can't do that," the official protested. "Congress passed it. It's the law."

"Do you mean to tell me," Mr. Ehrlichman then demanded, "that if Congress does something that's not in the public interest the President doesn't have the power to set it aside?"

The official argued in vain that the President could veto an act but not ignore the law—that the legislative branch had the constitutional power and duty to legislate. He argued in vain because he was up against the mentality that produced the Watergate offenses—the notion that the Presidency is above the law, the Constitution, the courts, Congress, the people, that in the cloak of national security or public interest, the elected mortal in the White House can become more than that, and can authorize anything from a burglary to the secret bombing of another country.

The Second Circuit Court of Appeals has just dismissed that contention, in the matter of Mr. Nixon's tapes; but even as it did so another story popped up to suggest how strongly it influenced the first Nixon Administration. Not just one, as had been thought, but two National Security Council members were wiretapped *after* they had left their N.S.C. positions and joined the Presidential campaign staff of Senator Muskie.

It was already known that this had been the case with Morton Halperin; now Government sources have disclosed that it was equally true in the case of Anthony Lake, who became chairman of Mr. Muskie's Committee on the Military Budget. Both men were originally tapped without court orders under the President's presumed but not certain authority to order wiretaps to protect national security. Even if it is argued that Mr. Halperin and Mr. Lake could be properly tapped even after they left the Government, since presumably they retained security information in their heads, authorization for the taps was supposed to be specifically renewed by the Attorney General's signature every ninety days. Yet, one tap remained on Mr. Halperin for 21 months and the other on Mr. Lake for nine months without authorization for renewal in either case.

These taps, extending electronic eavesdropping directly into the political organization of a major opponent, were of the most dubious propriety and were, in the first instance, of uncertain legality; that is true also of the unexplained wiretaps on John Sears and James W. McLane, two White House officials with absolutely no national security functions or access to national security information. But set propriety aside and concede the original legality of these taps; those on Mr. Halperin and Mr. Lake became clearly illegal without the required renewals. They furnish one more of all too many instances in which the Nixon-Haldeman-Ehrlichman White House did what it pleased and what served its interest despite what the Second Circuit called "the law's commands."

Unfortunately, this kind of misuse of power and official lawbreaking is difficult to explain; it is apparently not of much interest to a public that tends to concede to the President all sorts of powers not to be found in the Constitution; and it is frustrating to a Congress that has neither stomach for, nor efficient means of grappling with the President on constitutional grounds—much less in the press and on television. So the perversion of the Presidency under Mr. Nixon may well go legally unpunished, shameful though that may be.

On the other hand, evidence is mounting that Government expenditures at San Clemente, Mr. Nixon's extraordinary financing of that private property, his tax returns, and cash gifts from such interested parties as Howard Hughes—any or all of these murky matters—may not stand investigation. That, after all, is the way the downfall of Spiro Agnew came about—when Government evidence showed him to be what U.S. Attorney James R. Thompson of Chicago, a member of the prosecuting team, called "a simple crook."

That was something the public could understand and react against, and a matter with which Congress could have dealt if Mr. Agnew had not himself copped a plea and resigned to stay out of prison. Being on the make for dictatorial power is much more threatening than being on the take for money, but the latter is probably a more certain route to impeachment for a President or anyone else.