WXPost JUL 22 1974

Impeachment and the President's Wiretaps

IN RECENT DAYS we have stated the view here that the President's obstruction of the impeachment proceedings, his creation and operations of the "plumbers" unit, and his misuse of the Internal Revenue Service are among those acts constituting abuses of presidential power of such magnitude as to be impeachable offenses. Today we consider yet another clearly identifiable example of an abuse of power which has been persuasively documented by the House Judiciary Committee. This is the use of warrantless wiretapping by Mr. Nixon and his aides in the name of national security. As a matter of procedure, the wiretap issue probably should be considered together with the "plumbers" activities as kindred cases involving either presidential complicity in illegal acts or gross presidential negligence in failing to superintend the actions of subordinates. Taking the matter on its merits, however, wiretapping is also such a uniquely sensitive instrument of law enforcement that Mr. Nixon's demonstrable misuse of it could stand by itself, in our view, as grounds for charging him with a failure to uphold his constitutional obligation to "take care that the laws be faithfully executed."

Between May 1969 and June 1972, Mr. Nixon and his aides conducted a number of warrantless wiretapping operations which they considered so sensitive as to require keeping them outside even the normal FBI channels and procedures for national security taps. It is easy to decide what to make of these episodes if one believes that the President has no power to engage in warrantless electronic surveillance at all. If one adopts that view, then by authorizing many of these taps and failing to prevent others, Mr. Nixon has offended the Constitution and broken the law.

Mr. Nixon argues, of course, that the chief executive does enjoy sweeping inherent powers, and that warrantless wiretapping for the protection of national security was unquestionably legal before the Supreme Court ruled in June 1972 that wiretaps in domestic security cases, without warrants, are impermissible. But even that generous—and in our view excessive—conception of presidential power is not exculpatory where the particular wiretaps in question are concerned.

Consider the wiretaps on 13 government officials and four newsmen which the FBI conducted at various times between May 1969 and February 1971. The issue of Dr. Henry Kissinger's precise role can be set aside; Mr. Nixon has said, "I authorized this entire program." What he authorized, and should be held accountable for, was a surveillance effort which went far beyond the original purpose of combatting leaks of highly classifed information.

The timing and targets of some of these taps, such as those on White House staff aides with very little access to classified materials, support Judiciary Committee counsel John Doar's argument that some of the tapping never had any legitimate national security justification and was therefore illegal from the start. Documents published by the committee also show the illicit White House use of political gossip gleaned from the taps. One such tidbit, relayed to Mr. Nixon personally by FBI Director J. Edgar Hoover, prompted John Ehrlichman to tell H. R. Haldeman, "This is the kind of early warning we need more of." There is further evidence that the object of these taps was nothing other than digging up dirt to use against Vietnam war critics and other "enemies."

In short, when the blanket of national security is pulled aside, what appears is a program of warrantless surveillance which served not the purpose of protecting state secrets but rather the more amorphous and plainly improper aim of keeping track of those perceived as political enemies and threats. Given the evident presidential blessing on such illegal efforts, it is hardly surprising that Mr. Nixon's loyal aide, Mr. Ehrlichman, did not hesitate to take the next logical step and engage special operatives for surveillance projects too dubious or too dangerous to be entrusted to the FBI. Thus John Caulfield was dispatched to wiretap the home of columnist Joseph Kraft in June 1969. And thus, two years later, wiretapping of unknown purposes and proportions appears on the list of activities undertaken by G. Gordon Liddy in the heyday of the "plumbers."

Here, as with the rest of the "plumbers'" operations, there is no favorable light in which Mr. Nixon's role can be seen. If he did not know what Messrs. Ehrlichman, Caulfield and Liddy were doing, he has demonstrated gross negligence in failing to supervise the actions of his aides and protect citizens against the violation of their rights. If he did know about and approve these irregular taps, that would show complicity in surveillance which is illegal under any responsible reading of the law—political surveillance which can be legitimized only under the doctrine that a President can use any means he likes for his personal political ends.

The offensiveness of such operations is underscored and compounded by the lengths to which Mr. Nixon and his aides have been willing to go to cover them up. Messrs. Ehrlichman and Liddy still have not divulged any details of the wiretapping forays of the "plumbers." The records on the 17 earlier taps were carefully kept separate from other FBI wiretap files—and this coverup had particular consequences, for it caused government attorneys to lie to the Supreme Court and a federal district court by denying that any conversations involving Daniel Ellsberg had been intercepted by the government. It was the May 1973 discovery that Mr. Ellsberg had indeed been overheard on one of those 17 taps which was the final blow causing the dismissal of the Ellsberg case. And so the coverup of one supposed national security effort wound up torpedoing a prosecution which the administration was pursuing in the name of national security. This is more than an irony; it is a trifling with the administration of justice which hardly squares with any reasonable definition of "taking care" to execute the laws.

As with the "plumbers" and the Huston plan, one looks in vain for any indication of serious presidential concern about the boundaries of law and constitutionality at the time when those boundaries were being so thoroughly overstepped. No such concern emerges from the private White House memos and transcripts. What does emerge is Mr. Nixon's particular fascination with electronic surveillance as a political tool—a fascination which led directly to unjustifiable uses of electronic surveillance in a manner and on a scale which, by itself, would constitute an impeachable offense.