

Nixon Says He Had Right To Order Illegal Actions

Tonight's TV Show

Washington

Richard M. Nixon declared, in an interview to be broadcast tonight, that he had inherent power to order burglaries, eavesdropping or other illegal conduct against American dissidents when he was in the White House.

"When the President does it, that means that it is not illegal," Nixon told David Frost in the third installment of their videotaped conversations.

The statement, contained in the transcript of the interview made available to the New York Times by Frost's production company, crystalized an attitude that the House Judiciary Committee ruled was an abuse of power in the impeachment proceedings that led to Nixon's resignation in 1974.

Discussing the domestic turmoil produced by the Vietnam war, the former president rationalized that the so-called Huston plan to spy on dissidents, the creation of the White House "plumbers" unit and the White House-sanctioned burglary of the offices of Daniel Ellsberg's psychiatrist had been logical extensions of presidential authority to maintain internal order.

"In retrospect," an apparently incredulous Frost asked, "wouldn't it have been better" to have sought legislative remedies rather than "adding another crime to the list" of charges that drove Nixon from office?

"The proposition you've just stated in theory is perfect," Nixon replied. "In practice, it just won't work."

He said it "would not only have raised an outcry" if he had asked Congress for approval of wiretaps without court warrants or burglaries as devices to deal with dissidents but would also have thwarted such covert operations by alerting "potential targets" that the government meant to spy on its citizens.

"An action's either going to be covert or not," Nixon said.

Coincidentally, the telecast of Nixon's views takes place a day after President Carter asked Congress to enact legislation specifically prohibiting government use of wiretaps without prior court order. Carter said the measure could eliminate "some of the distrust and dissension" bred by disclosures of

past eavesdropping.

Nixon denied having known in advance that E. Howard Hunt Jr. and G. Gordon Liddy, the principal operatives of the "plumbers" unit, planned to break into the Los Angeles office of Dr. Lewis Fielding

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on Sept. 3, 1971. The unit was seeking the psychiatrist's files on Ellsberg, who had assumed responsibility for making public the secret Pentagon Papers three months earlier.

But Nixon conceded that John D. Ehrlichman, then the White House aide who supervised the "plumbers," might have warned him that Hunt and Liddy intended to go "operational" to get files that the psychiatrist had refused to turn over the FBI.

Although the former president said he could not recall any conversation in which Ehrlichman had alerted him, Nixon added: "He may have. And if he had I would have said, 'Go right ahead.'"

His unabashed approval of the burglary, after the fact, was in accord with Nixon's theory that he was entitled to use extralegal means to deal with the anti-war movement, which he considered a threat to secret diplomacy to end

American involvement in the Vietnam war.

On July 23, 1970, Nixon ordered the implementation of a plan drafted by Tom Charles Huston, then a deputy White House counsel, to use electronic eavesdropping, opening of mail and other surveillance methods against domestic dissidents.

The Huston plan, as it became known, specifically noted that techniques such as "surreptitious entry" — or burglary — were "clearly illegal." Nixon rescinded his approval five days later because of objections by FBI director J. Edgar Hoover.

Asked by Frost if the Huston plan and other White House ventures amounted to a presidential fiat to commit illegal acts, Nixon readily agreed.

"Well, when the President does it," he said, "that means that it is not illegal."

"By definition," Frost interjected.

"Exactly. Exactly," Nixon said.

"If the President, if . . . if, for example, the President approves something, approves an action because of the national security, or, in this case, because of a threat to internal peace and order of, of significant magnitude, then the President's decision in that instance is one that enables those who carry it out to carry it out without violating a law. Otherwise they're in an impossible position."

But the former President recoiled, stammering and objecting, from Frost's question of whether such reasoning would also permit a President to order murder.

"There are degrees, there are nuances which are difficult to explain," Nixon said eventually.

"The dividing line is the President's judgment?" Frost prompted. Nixon agreed.

He also said: "just so that one does not get the impression that a President can run amok in this country and get away with it," that there are built-in political and legislative restraints.

A President "has to come up before the electorate," he said, and has to make limited disclosures of covert activities to "trusted members of Congress" in pursuit of appropriations.

The exchange about presidential powers ended with Frost saying he did not believe it was intended that the Huston plan should ever be disclosed to the electorate or to Congress.

"That's correct, that's correct," Nixon said.

Nixon's theme closely paralleled one that was rejected by members of the Senate Watergate committee when Ehrlichman first advanced it on July 25, 1973. Ehrlichman told the committee that Nixon had inherent authority to authorize the Fielding burglary, even if he had not specifically done so.

Under such a thesis a President might approve murder or a bank

robbery to obtain secret documents, Senator Herman E. Talmadge (Dem-Ga.) said at the time. He called it a violation of the English common law notion that a king may not enter the most humble subject's home without permission.

"I am afraid," Ehrlichman said, "that has been considerably eroded over the years, has it not?" But Talmadge shot back, "Down in my country we still think it is a pretty legitimate principle of law."