

Subpoena Of Nixon Ruled Out

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By Peter A. Jay

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Senate Democratic leaders indicated yesterday there will be no effort to force President Nixon to testify on the Watergate affair and said it was possible but unlikely that a subpoena would be issued for White House documents.

"I doubt the committee can subpoena a President of the United States," said Sen. Herman E. Talmadge (D-Ga.), a member of the Senate select committee investigating the Watergate scandal. But if the White House withholds documents sought by the committee, he said, "we might get to" the point of issuing a subpoena.

Sen. Robert C. Byrd (D-W.Va.), the majority whip, said he thought the Senate would follow the recommendations of Watergate committee chairman Sen. Sam J. Ervin Jr. (D-N.C.) on the matter. Ervin yesterday reiterated his opposition to his committee's issuance of a subpoena, though he has said he believes it would be constitutional.

Talmadge and Sen. Edward J. Gurney (R-Fla.), also a Watergate committee member, appeared on the ABC television program "Issues and Answers" (WMAL). Byrd was interviewed on "Face the Nation" (CBS, WTOP).

Byrd said he felt the Senate would "probably support" Ervin if he sought to compel the White House to produce documents sought by the committee, but added that he personally hopes no such confrontation between the legislative and executive branches of government occurs.

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Ervin, interviewed by telephone at his home in Morganton, N.C., said there are two specific White House documents he has requested, and has received no response other than the President's declaration on Saturday that he will neither testify nor open Presidential papers to the committee.

The documents, already

published verbatim in The New York Times and The Washington Post, are memorandums from former White House aide Tom Charles Huston and concern plans for potentially illegal domestic security operations.

One, dated July 15, 1970, indicates that Mr. Nixon approved Huston's intelligence proposals. (The President has said subsequently that his approval was withdrawn after

five days because of opposition from former FBI director J. Edgar Hoover.)

The other memorandum says that Huston is to be "the representative of the President" on a special intelligence committee called the Interagency Group on Domestic Intelligence and Internal Security.

Ervin noted that the committee has copies of the documents, but would like to have the originals. "If they won't give us those," he said, "we may just send them copies and ask them to certify them."

As far as other documents are concerned, particularly material still in the White House from the files of former presidential counsel John W. Dean III, Ervin said he didn't see "much point in fussing with those" to the extent of seeking to subpoena them.

The White House has said Dean may make notes from his files but may not remove documents or make photocopies of them.

In their television appearance, both Gurney and Talmadge agreed that the White House should turn over all Watergate-related material re Watergate-related material re "Public records belong to the American public," Talmadge said.

They disagreed, however, on the question of a Presidential appearance. Talmadge said he thought it "might be best" if Mr. Nixon volunteered to testify, but Gurney said he thought that would be "most inappropriate" — at least until other witnesses have been heard.

Talmadge, Gurney and Byrd all agreed that Mr. Nixon should make some sort of pub-

lic appearance, probably at a news conference, to discuss the Watergate situation — though Gurney said he should wait for "an appropriate time" to do so.

Talmadge said the President must take some action to dispel "this cloud that hangs over the White House . . . if he has nothing to hide, why does he refuse to appear?"

The two Watergate committee members did not discuss the possible impeachment of the President. But both Byrd and House Speaker Carl Albert (D-Okla.) made it clear they do not consider such a thing likely.

"I don't think there is hard evidence to support impeachment," Byrd said. "Public opinion really has to support such a move, and I don't think that public opinion has crystallized," Albert, at a news con-

ference in St. Louis, said he thought impeachment sentiment was diminishing.

Talmadge, discussing Dean's week of testimony before the Ervin committee, said that the former counsel had been convincing in his discussion of the Watergate affair if only because there has been "no serious contradiction of any word of his testimony" from the White House.

He did not mention a report written by Dean and in the possession of the committee that gives a somewhat different account of the Watergate situation than that given as formal testimony. The report was prepared by Dean for his superiors about a month before he was fired by the President, April 30 and left the White House.

The committee staff is ex-

amining the report, and if significant discrepancies are found with his testimony, Dean may be asked to return to the witness stand.

In other Watergate developments, Time magazine reported in its editions this week that former Attorney General John N. Mitchell will say in his testimony before the Ervin committee that Mr. Nixon was innocent of wrongdoing both before and after the June 17, 1972, break-in at the Watergate offices of the Democratic National Committee.

Mitchell, whom some White House officials have recently sought to single out—along with Dean—as chiefly responsible for Watergate, is due to appear before the committee on Tuesday at 10 a.m.