

President, Ervin to Meet on Privilege

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Washington Post Staff Writers

President Nixon will meet with Watergate Committee Chairman Sam J. Ervin Jr. in an effort to avoid a confrontational confrontation over the President's refusal to release documents to the committee.

In announcing the meeting yesterday, deputy White House press secretary Gerald L. Warren said it will be private and that a date will be set later.

Warren said the meeting will cover procedural matters between the White House and the committee, but he added that "there will be no change" in Mr. Nixon's refusal to testify or permit the Senate investigators to have access to the presidential papers dealing with the Watergate scandal. He described the meeting as "a matter of courtesy."

The Senate select committee met twice yesterday in secret session to discuss the

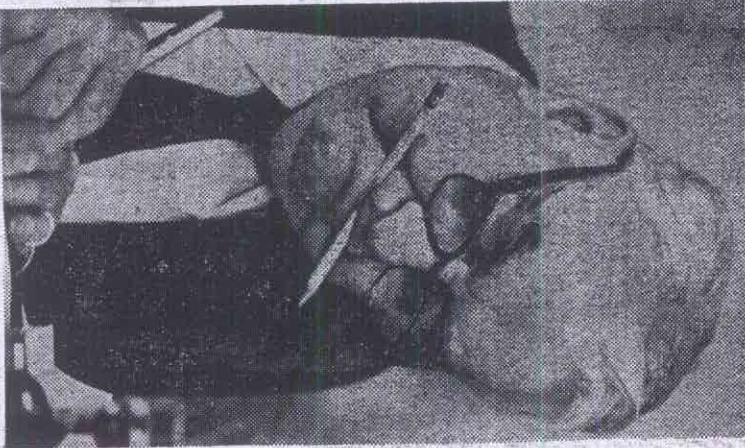
pending crisis over the documents. Significantly, it did not pass a resolution to subpoena the documents. Such a subpoena, if rejected by the President, would have precipitated a titanic Supreme Court battle.

Instead, at its first meeting, held before former Attorney General John N. Mitchell began his third day of testimony, the committee approved by a letter from Ervin to Mr. Nixon and a note saying Senator Ervin would telephone the President at noon. Both messages were hand-delivered by messenger in a sealed envelope marked "For the President's eyes only."

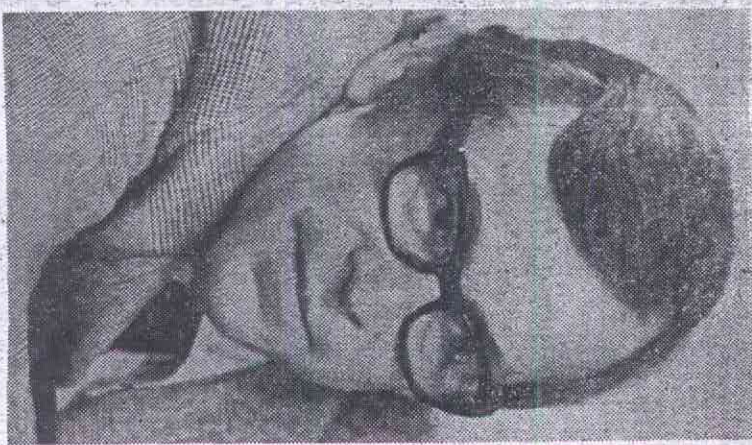
The letter stated that the President's and the committee's positions "present the

See PAPERS, A14, Col. 4

Cor promises to look into White House manufacturing in a Civil Aeronautics Board nomination. A16.



SAM J. ERVIN JR.
... signing letter to President



HOWARD H. BAKER
... "It may take years."

PAPERS, From A1

very grave possibility of a fundamental constitutional confrontation between the Congress and the presidency. We wish to avoid that, if possible.

"Consequently," the letter continued, "we request an opportunity for representatives of this committee and its staff to meet with you and your staff to try to find ways to avoid such a confrontation."

At noon the President and the North Carolina Senator talked for 17 minutes and agreed to meet alone. The committee's second secret meeting followed that conversation.

Afterward, Ervin said he would not bring up the question of the President's testifying himself.

While most of the members of Ervin's committee have indicated no desire to subpoena the President, some of them have said they wish he would appear voluntarily. And they have requested all documents related to presidential aides and the 1972 campaign, a request that Mr. Nixon refused in a letter last Saturday to Ervin.

The constitutional crisis escalated Wednesday when Warren announced that White House lawyers had decided May 23 that former presidential aides involved in the Watergate investigation could "peruse" their old documents but could not take notes on them or copy them in any way.

Yesterday, after learning that Mr. Nixon had agreed to meet with Ervin, the committee passed a resolution saying it "is of the unanimous opinion" that it "is entitled to have access to every document in the possession of the White House or any department or agency of the executive branch ... which is relevant" to the committee's investigation.

While neither side appeared to be giving ground on the document issue, the committee also said in its resolution that it "is anxious to avoid any confrontation with the White House" and for that reason had authorized Ervin to meet with the President "to ascertain whether there is any reason-

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United States Senate

SELECT COMMITTEE ON
PRESIDENTIAL CAMPAIGN ACTIVITIES
(PURSUANT TO S. RES. 11, 93D CONGRESS)
WASHINGTON, D. C. 20510

July 12, 1973

The President
The White House
Washington, D. C.

Dear Mr. President:

I acknowledge receipt of your letter of July 6, addressed to me with a copy to Senator Baker.

The Committee feels that your position as stated in the letter, measured against the Committee's responsibility to ascertain the facts related to the matters set out in Senate Resolution 60, present the very grave possibility of a fundamental constitutional confrontation between the Congress and the Presidency. We wish to avoid that, if possible. Consequently, we request an opportunity for representatives of this Committee and its staff to meet with you and your staff to try to find ways to avoid such a confrontation.

We stand ready to discuss the matter with you at your convenience. We would point out that the hearings are on-going and that time is of the essence. We trust that this may be done very promptly.

Very truly yours,

Sam J. Ervin, Jr.
Chairman

Senator Ervin's letter to the President, hand-carried to the White House.

able possibility of working out any reconciliation."

Another indication of possible compromise came from an administration source, who pointedly noted a section in the President's July 6 letter that said:

"The White House will continue to cooperate fully with the committee in furnishing information relevant to its investigation except in those instances where I determine that meeting the committee's demands would violate my constitutional responsibility to defend the office of the presidency against encroachment by other branches."

Although the Senate committee has asked that all White House documents relevant to Watergate be turned over, the committee

and staff over the last couple of days have attempted to define more narrowly what it believes the committee is entitled to see.

A memorandum prepared by staff lawyers, for example, has suggested that the White House could excise portions of documents that did not relate to Watergate.

Among the papers the committee specifically wants to see are daily news summaries prepared for the President which reportedly contain notations Mr. Nixon wrote to aides; notes purportedly taken by former White House chief of staff H. R. Haldeman during alleged discussions of Watergate with Dean; and briefing papers from the files of Haldeman, Dean, and Mr. Nixon's former domestic adviser, John D. Ehrlichman.

It was also reported that Archibald Cox, special Watergate prosecutor, has been discussing the documents issue with the White House in order to avoid a similar confrontation. But it is known that the White House has not been supplying everything that Cox' office has requested.

Sen. Howard H. Baker (R-Tenn.), committee vice chairman, said voluntary cooperation "would be the best thing at this point. It takes time to litigate. It may take years."

Baker noted that Mr. Nixon had reversed himself May 22 on his earlier claim of executive privilege for present and former White House aides and also waived the attorney-client privilege in connection with the testi-

mony of his former counsel, John W. Dean III.

Another committee member, Sen. Lowell P. Weicker (R-Conn.), said he hopes the Nixon-Ervin meeting produces a voluntary agreement to produce the documents. "But if it doesn't," he said, "the committee is still going to be able to do its job investigating the matter with or without the President."

The history of executive privilege is complex. Harvard law Professor Raoul Berger has contended that the President's right to withhold information from Congress or the courts does not exist. Other authorities, however, have insisted that it does.

Mr. Nixon in his July 6 letter noted that in 1953 former President Harry S. Truman declined a subpoena to testify before a House committee "on the ground that the separation of powers forbade his appearance. This position was not challenged by the Congress," Mr. Nixon said.

The Truman letter, written to the House Un-American Activities Committee nearly a year after he left office, said he assumed the committee wanted to examine him about matters that occurred during his tenure.

In declining, Mr. Truman named Presidents Washington, Jefferson, Monroe, Jackson, Tyler, Polk, Fillmore, Buchanan, Lincoln, Grant, Hayes, Cleveland, Theodore Roosevelt, Coolidge, Hoover and Franklin D. Roosevelt as having also refused congressional sub-

poenas "or demands for information of various kinds."

On the other hand, George Washington in 1792 did provide papers to a House select committee looking into the defeat of Gen. Anthony St. Clair in a battle with American Indians. Four years later the President

refused a demand by the House for correspondence and other papers sent to John Jay about a treaty with England. But Washington said he acted only because the papers were not pertinent to the inquiry.

In 1807 Chief Justice John Marshall, presiding over the treason trial of Aaron Burr, issued an order for President Thomas Jefferson to produce documents involving Burr. Jefferson contended that some of the papers might contain state secrets, but he did not claim immunity and produced a letter that the court wanted.

The present-day emphasis on executive privilege stems from the 1950, when the late Sen. Joseph McCarthy (R-Wis.) was holding free-swinging probes of the executive branch. The privilege was often invoked in those days.

A series of memos written in 1957 and 1958 by then Deputy Attorney General William P. Rogers provided a widely quoted rationale for the privilege.

This week the Ervin committee staff released its own memo on the issue of applying the privilege to documents in White House custody.

It acknowledged that scholars disagree over the legal basis for the privilege, but insisted that the doctrine does not apply to the papers because executive privilege may not be used to conceal information relating to a crime.

Further, it argued, since Mr. Nixon opened the door to testimonial evidence on the part of his aides and former aides, he has waived the privilege in regard to documentary evidence.