

Nixon Tells Senate He Will Not Testify

Ervin Hits President's Decision

By Edward Walsh
Washington Post Staff Writer

7/8/73

Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate select committee investigating the Watergate case, yesterday criticized President Nixon's refusal to appear before the committee, saying the President will have to "take the consequences" of his decision "to withhold information from the committee and the American people."

Citing legal precedents stretching back to an opinion of Chief Justice John Marshall in an 1807 case involving President Thomas Jefferson, Ervin said he believes the Senate committee has authority to subpoena the President to appear before it and to produce presidential papers. He said, however, he would oppose the committee taking such a course.

"If a President wants to withhold information from the committee and the American people, I would just let him take the consequences of that," Ervin said.

Ervin also cited what he called "a rule of law" that an "unfavorable inference" can be drawn against anyone who fails to produce evidence he has to an investigative body.

"I think that rule applies in this case and all others,"



By Joe Helberger—The Washington Post

John N. Mitchell: He shuns talk of Watergate.

he said.

The North Carolina Democrat spoke in a telephone interview from his home in Morganton, N.C., shortly after the Western White House in San Clemente, Calif., released the text of a letter from the President to Ervin setting out Mr. Nixon's position on suggestions that he testify before the committee.

In the letter, the President said he would not appear before the committee personally "under any circumstances" and would not allow the committee to see any of his presidential papers.

Mr. Nixon—citing his own precedent of President Harry S. Truman's refusal to appear before a House committee in 1953 after he had left the presidency—said he took his position because of his "constitutional obligation to preserve intact the powers and prerogatives of the presidency."

The President's letter was no great surprise, having been preceded by several recent White House statements taking the same position. Nonetheless, the forceful language of the letter pitted the President directly against Ervin, the chairman of the committee, and Sen. Howard H. Baker Jr. (R-Tenn.), the committee vice chairman, both of whom have suggested they would like to

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Separation Of Powers Is Cited

By Carroll Kilpatrick
Washington Post Staff Writer

SAN CLEMENTE, Calif., July 7—President Nixon told the Senate Watergate investigating committee today that under no circumstances would he testify before it or open presidential papers for committee inspection.

To do otherwise, he said in a letter to Chairman Sam J. Ervin Jr. (D-N.C.), would violate his constitutional duty to the independence of the presidency and to the principle of separation of powers.

In the letter, made public here and delivered to the committee in Washington, the President promised to "cooperate fully" in furnishing information to the committee.

"At an appropriate time during your hearings, I intend to address publicly the subjects you are considering," he said.

The letter clearly ruled out the possibility that former counsel John W. Dean III might copy official papers of his which are in the White House and turn them over to the committee.

However, the President said nothing to change the earlier promise that Dean and other former assistants may inspect their papers under supervision and make notes from them.

Dean complained in testifying to the committee that he was not provided a desk and was not allowed to use a copying machine in the basement room of the Executive Office Building where his papers are held under guard.

[In a telephone interview with The Washington Post, Ervin said that the President "will have to take the consequences" of his decision to "withhold informa-

tion from the committee and the American people." He said he believes the committee has authority to subpoena the President, but that he would oppose such a course.

[Ervin also cited what he called "a rule of law" that an "unfavorable inference" can be drawn against any-

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Texts of Nixon and Truman letters on Page A12.

PRESIDENT, From A1

one who fails to produce evidence he has to an investigative body. "I think that rule applies in this case and all others," Ervin said.]

The President's action in effect locks up any documents not already outside the White House files which would either prove or disprove the President's position on Watergate.

While the investigating committee has never requested the President to testify, committee members have raised the question publicly and have suggested there might be some way the President could answer questions without going to a televised session to testify.

Mr. Nixon cited a letter from former President Truman to the old House Committee on Un-American Activities declining to respond to a subpoena to testify before it after he left office. "It is difficult to improve upon President Truman's discussion of this matter," Mr. Nixon said, and he enclosed the full text of the letter from the former Democratic President.

Mr. Truman said that he felt "constrained by my duty to the people of the United States to decline to comply with the subpoena. In doing so, I am carrying out the provisions of the Constitution, and I am following a long line of precedents, commencing with George Washington himself in 1796."

Mr. Truman then listed 15 other Presidents who "have declined to respond to subpoenas or demands for information of various kinds from Congress."

Mr. Nixon told Ervin that

he wanted to state the reason why "I shall not testify before the committee or permit access to presidential papers."

"I want to strongly emphasize that my decision, in both cases, is based on my constitutional obligation to preserve intact the powers and prerogatives of the presidency and not upon any desire to withhold information relevant to your inquiry," the President wrote.

Regarding the question of his own testimony, Mr. Nixon said: "I have concluded that if I were to testify before the committee irreparable damage would be done to the constitutional principle of separation of powers . . .

"The constitutional doctrine of separation of powers is fundamental to our structure of government. In my view, as in the view of previous Presidents, its preservation is vital. In this respect, the duty of every President to protect and defend the constitutional rights and powers of his office is an obligation that runs directly to the people of this country.

"The White House staff 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 . . .

"I consider it my constitutional responsibility to decline to appear personally under any circumstance before your committee or to grant access to presidential files."

Earlier this week, White House press secretary Ronald L. Ziegler said that Mr. Nixon would not testify before the committee. The President's letter, furthermore, made it clear in the phrase "under any circumstances," that he would not now consider inviting the committee to the White House for an informal meeting.

Ziegler also said the President intended to address the subjects raised in the committee when the first phase of the hearings are concluded, possibly in early August, and the President affirmed his intention to lay's letter.

Recalling earlier state-

ments, Mr. Nixon said his staff is under instructions to "cooperate fully" in furnishing pertinent information to the inquiry. On May 22, he said, he directed that the right of executive privilege not be invoked "as to any testimony concerning possible criminal conduct." And "I waived in addition the attorney-client privilege" in the case of his former counsel, John W. Dean III, he said.

"These acts of cooperation with the committee have been genuine, extensive and,

in the history of such matters, extraordinary," Mr. Nixon said in his letter to Ervin.

Requests for inspection of presidential papers or for the President to testify, however, he said, "would move us from proper presidential cooperation with a Senate committee to jeopardizing the fundamental constitutional role of the presidency.

"This I must and shall resist."

Declaring that no President could operate without

the freedom to communicate with his staff in complete candor and to explore alternative lines of policy in a confidential manner, the President said he had nonetheless agreed to permit "the unrestricted testimony of present and former White House staff members before your committee."

However, to open his papers "would inevitably result in the attrition, and the eventual destruction, of the indispensable principle of confidentiality of presidential papers," Mr. Nixon said.

Nixon's Letter: 'I Shall

SAN CLEMENTE, Calif., July 7 (UPI)—Text of a letter from President Nixon to Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate Select Committee on Presidential Activities.

Dear Mr. Chairman:

I am advised that members of the Senate Select Committee have raised the desirability of my testifying before the committee. I am further advised that the committee has requested access to presidential papers prepared or received by former members of my staff.

In this letter I shall state the reasons why I shall not testify before the committee or permit access to presidential papers.

I want to strongly emphasize that my decision, in both cases, is based on my constitutional obligation to preserve intact the powers and prerogatives of the presidency and not upon any desire to withhold information relevant to your inquiry.

My staff is under instructions to cooperate fully with yours in furnishing information pertinent to your inquiry. On 22 May 1973, I directed that the right of executive privilege, "as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation," no longer be invoked for present or former members of the White House staff. In the case of my former counsel, I waived, in addition, the attorney-client privilege.

These acts of cooperation with the committee have been genuine, extensive and, in the history of such matters, extraordinary.

The pending requests, however, would move us from proper presidential cooperation with a Senate committee to jeopardizing the fundamental constitutional role of the presidency.

This I must and shall resist.

No President could func-

tion if the private papers of his office, prepared by his personal staff, were open to public scrutiny. Formulation of sound public policy requires that the President and his personal staff be able to communicate among themselves in complete candor, and that their tentative judgments, their exploration of alternatives, and their frank comments on issues and personalities at home and abroad remain confidential.

I recognize that in your investigation, as in others of previous years, arguments can be and have been made for the identification and perusal by the President or his counsel of selected documents for possible release to the committees or their staffs.

But such a course, I have concluded, would inevitably result in the attrition, and the eventual destruction, of the indispensable principle of confidentiality of presidential papers.

The question of testimony by members of the White House staff presents a difficult but different problem. While notes and papers often involve a wide-ranging variety and intermingling of confidential matters, testimony can, at least, be limited to matters within the scope of the investigation. For this reason, and because of the special nature of this particular investigation, I have agreed to permit the unrestricted testimony of present and former White House staff members before your committee.

The question of my own testimony, however, is another matter.

I have concluded that if I were to testify before the committee irreparable damage would be done to the constitutional principle of separation of powers. My position in this regard is supported by ample precedents with which you are familiar and which need not be recited here. It is appropriate, however, to refer to

one particular occasion on which this issue was raised.

In 1953 a committee of the House of Representatives sought to subpoena former President Truman to inquire about matters of which he had personal knowledge while he had served as President. As you may recall, President Truman declined to comply with the subpoena on the ground that the separation of powers forbade his appearance. This position was not challenged by the Congress.

It is difficult to improve upon President Truman's discussion of this matter. Therefore, I request that his letter, which is enclosed for the committee's convenience, be made part of the committee's record.

Not Testify...'

The constitutional doctrine of separation of powers is fundamental to our structure of government. In my view, as in the view of previous Presidents, its preservation is vital. In this respect, the duty of every President to protect and defend the constitutional rights and powers of his office is an obligation that runs directly to the people of this country.

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 pres-

idency against encroachment by other branches.

At an appropriate time during your hearings, I intend to address publicly the subjects you are considering. In the meantime, in the context of Senate Resolution 60, I consider it my constitutional responsibility to decline to appear personally under any circumstances before your committee or to grant access to presidential files.

I respect the responsibilities placed upon you and your colleagues by Senate Resolution 60. I believe you and your committee colleagues equally respect the responsibility placed upon me to protect the rights and powers of the presidency under the Constitution.

Truman Rejection

The text of former President Truman's letter of Nov. 12, 1953, to Chairman Harold H. Velde of the House Committee on Un-American Activities, cited by President Nixon as precedent for refusing to testify before the Senate Watergate Committee:

I have your subpoena dated November 9, 1953, directing my appearance before your committee on Friday, November 13, in Washington. The subpoena does not state the matters upon which you seek my testimony, but I assume from the press stories that you seek to examine me with respect to matters which occurred during my tenure of the Presidency of the United States.

In spite of my personal willingness to cooperate with your committee, I feel constrained by my duty to the people of the United States to decline to comply with the subpoena.

In doing so, I am carrying out the provisions of the Constitution of the United States; and am following a long line of precedents, commencing with George Washington himself in 1796. Since his day, Presidents Jefferson, Monroe, Jackson, Tyler, Polk, Fillmore, Buchanan, Lincoln, Grant, Hayes, Cleveland, Theodore Roosevelt, Coolidge, Hoover and Franklin D. Roosevelt have declined to respond to subpoenas or demands for information of various kinds by Congress.

The underlying reason for this clearly established and universally recognized constitutional doctrine has been succinctly set forth by Charles Warren, one of our leading constitutional authorities, as follows:

"In this long series of contests by the executive to maintain his constitutional integrity, one sees a legiti-

mate conclusion from our theory of government:

"Under our constitution, each branch of the government is designed to be a coordinate representative of the will of the people.

"Defense by the executive of his constitutional powers becomes in very truth, therefore, defense of popular rights — defense of power which the people granted to him.

"It was in that sense that President Cleveland spoke of his duty to the people not to relinquish any of the powers of his great office. It was in that sense that President Buchanan stated the people have rights and prerogatives in the execution of his office by the President which every President is under a duty to see 'shall never be violated in his person' but 'passed to his successors unimpaired by the adoption of a dangerous precedent.' In maintaining his rights against a trespassing Congress, the President defends not himself, but popular government; he represents not himself but the people."

President Jackson repelled an attempt by the Congress to break down the separation of powers in these words:

"For myself I shall repel all such attempts as an invasion of the principles of justice as well as of the Constitution, and I shall esteem it my sacred duty to the people of the United States to resist them as I would the establishment of a Spanish inquisition."

I might commend to your reading the opinion of one of the committees of the House of Representatives in 1879, House Report 141, March 3, 1879, Forty-fifth Congress, third session, in which the House Judiciary Committee said the following:



HARRY TRUMAN
... declined subpoena

"The executive is as independent of either house of Congress as either house Congress is independent of him, and they cannot call for the records of his actions, or the action of his officers against his consent, any more than he can call for any of the journals or records of the House or Senate."

It must be obvious to you that if the doctrine of separation of powers and the independence of the presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President.

The doctrine would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the legislative branch of the government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes.

If your intention, however, is to inquire into any acts as a private individual either before or after my Presidency and unrelated to any acts as President, I shall be happy to appear."