

Probers Suggest Nixon Response

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The two senior members of the Senate select Watergate committee suggested yesterday that President Nixon should give testimony concerning his version of the Watergate affair.

Although no clear mention was made about asking Mr. Nixon to appear in person, the White House issued a prompt statement rejecting the possibility that he would testify either voluntarily or under subpoena to answer charges made against him by former White House counsel John W. Dean III.

The question of a response by the President to Dean's testimony was first raised yesterday by committee chairman Sam J. Ervin Jr. (D-N.C.), who somewhat rhetorically asked Dean, "Is there any way whatsoever to test the credibility of anybody when the credibility has to be judged merely upon the basis of a written statement?" Dean agreed there was no way.

Asked by a reporter after the morning session if he was suggesting that Mr. Nixon testify before the committee, Ervin replied with a smile, "I'm not suggesting anything. You can draw any deduction you want from my questions." During the afternoon session, the con-

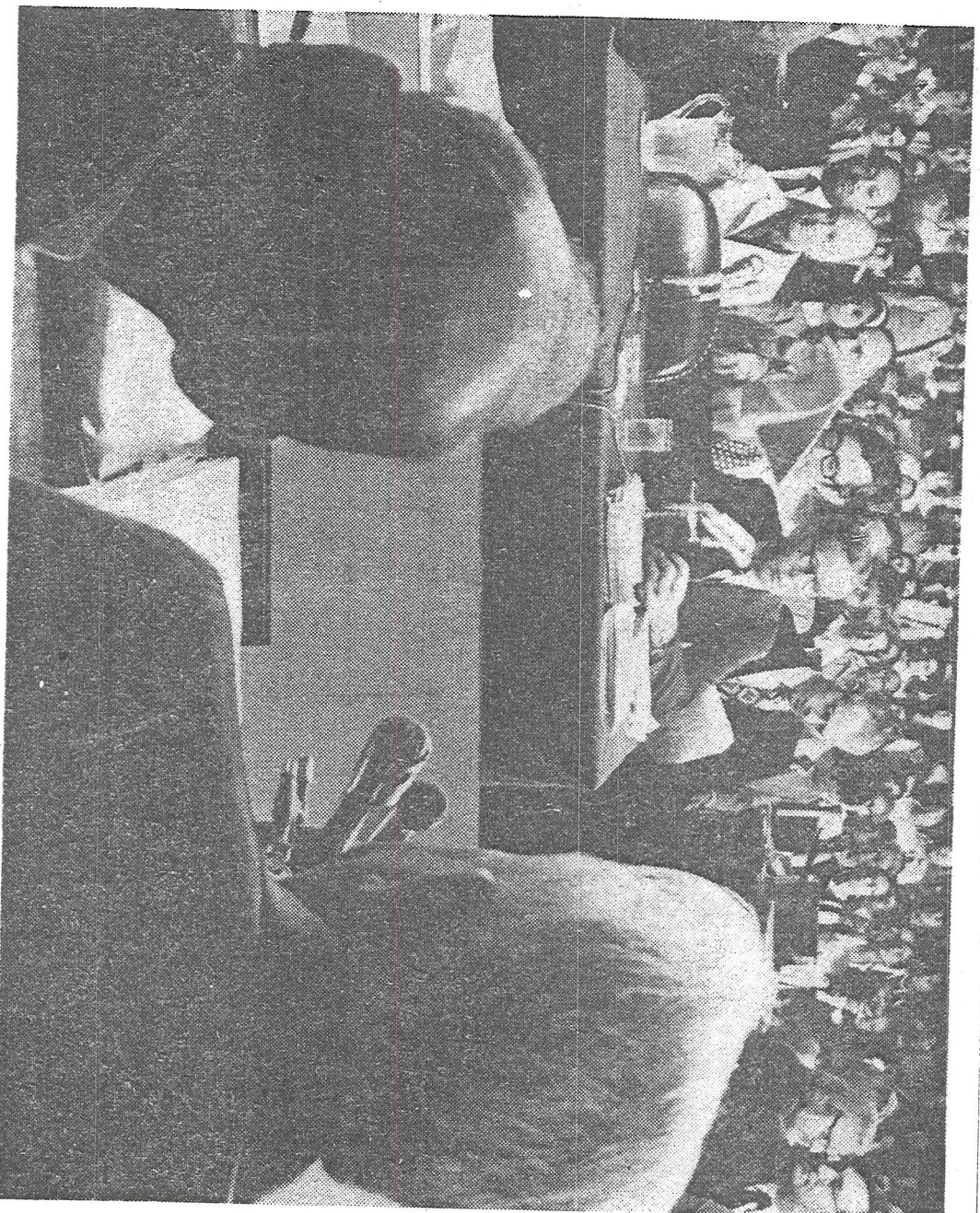
mittee's vice chairman, Sen. Howard H. Baker Jr. (R-Tenn.), commented about a crucial meeting Dean said he had with Mr. Nixon on Sept. 15, 1972. "I'm not prepared to say at this point how we may be able to gain access to the President's knowledge of that meeting," Baker said.

Dean's testimony, Baker said, would be tested against that of former White House chief of staff H. R. (Bob) Haldeman, who was present at the Sept. 15 meeting and is scheduled to testify next month. "And," Baker added, "hopefully (by) statements from the President—in whatever manner can be arranged."

Deputy White House press secretary Gerald L. Warren said in San Clemente yesterday that it would be "constitutionally inappropriate" for Mr. Nixon to respond to a committee subpoena, and that he would not testify voluntarily. "We have said before the President will not testify before the Ervin committee," Warren said.

Yesterday's session also was highlighted by emotional expositions by Ervin, on threats to civil liberties, and Sen. Lowell P. Weicker (R-Conn.), who characterized the activities testified to by Dean and other witnesses so far as falling into three cate-

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By James K. W. Atherton—The Washington Post
John Dean (center) is framed by heads of Sam Dash, chief committee counsel, and Sen. Ervin, chairman.

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gories: the illegal, the unconstitutional and the "gross."

In a rising voice, Weicker drew applause as he said: "Republicans do not cover up; Republicans do not go ahead and threaten; Republicans do not go ahead and commit illegal acts; and God knows Republicans don't view their fellow Americans as enemies to be harassed but rather, I can assure you that this Republican, and those that I serve with, look upon every American as human beings to be loved and won."

Ervin's examination of Dean yesterday amounted to a series of leading questions by the committee chairman apparently intended to demonstrate Ervin's belief, that Mr. Nixon and his administration have acted unconstitutionally while seeking to stifle the constitutional right of citizens to dissent from the policies of the government.

Ervin referred Dean to a copy of a document, prepared in the White House by presidential staff assistant Tom Charles Huston, discussing a 1970 intelligence plan that authorized using surreptitious entry, electronic surveillance, use of military undercover agents and mail coverage to gather information on "individuals and groups in the United States who pose a major threat to the internal security."

Ervin noted that Huston stated in the document that use of surreptitious entry as a technique, although recommended and subsequently approved by Mr. Nixon, "is clearly illegal. It is also highly risky and could result in great embarrassment if exposed. However, it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion."

Mr. Nixon said last May 22 that the plan was approved on July 23, 1970 and that his approval was rescinded five days later at the insistence of FBI Director J. Edgar Hoover.

"I will ask you as a lawyer," Ervin said to Dean, "if you do not think that surreptitious entry or burglary and the electronic surveillance and penetration constituted a violation of the Fourth Amendment?"

"Yes, sir, I do," Dean replied.

Ervin: The Fourth Amendment provides that "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. And no warrant shall issue other than upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the personal things to be seized."

Hasn't it always been a violation of the Fourth Amendment under the decisions of the court to resort to burglary for the purpose of getting information?"

Dean: Yes, sir, it has been.

Ervin: And hasn't the Supreme Court recently held by unanimous opinion that the use of electronic surveillance and penetration to obtain information concerning persons allegedly guilty of subversive—of domestic subversion activities—is also a violation of the Fourth Amendment?"

Dean: That is correct, Mr. Chairman.

Ervin then asked Dean to read aloud a July, 1970, White House memorandum from former Presidential Assistant H. R. (Bob) Halde-man telling Huston that "the recommendations you have proposed as a result of the review have been approved by the President . . . He would prefer that the thing simply be put into motion on the basis of this approval . . ."

Ervin: Now, that letter can only be construed as a statement on the part of Mr. H. R. Halde-man to Mr. Tom Charles Huston, the aide in charge of domestic intelligence, to the effect that the President of the United States had approved his recommendations about removing the limitations on . . . electronic surveillance and penetration, surreptitious entry or burglary, the use of mail coverage, and of sources of information on the campuses and the military undercover agents for the purposes of gathering information upon the objectives of that.

Dean: That is correct, Mr. Chairman.

Ervin asked Dean if he was ever informed that President Nixon had indeed later rescinded his approval of this plan. Dean said he never was so informed, even though he took over some of Huston's responsibilities as liaison with the federal intelligence community after

Huston left the White House.

Ervin later asked Dean if it was true that in 1970 and 1971 "there was a great complement of fear" in the White House. Dean replied that there was "great concern about demonstrators" but not physical fear.

Ervin: Well there are two kinds of fear. There is physical fear and intellectual fear prevalent at that time among some people in the committee (to Re-elect the President) and some people in the White House about Americans who undertook to exercise their First Amendment right to petition for redress of grievances?"

Dean: I think that is correct when you put it in the political context.

Ervin: Well, all of this was it not?"

Dean: Yes, it was.

Ervin: Now, was not there a feeling there among some White House officials such as Mr. (Charles W.) Colson, and perhaps among some in the Committee to Re-elect the President, that every person who was not backing their efforts to re-elect the President or who dissented from the programs of the President was an enemy?"

Dean: I think that many people who were most vocal audience in their dissent were considered opponents or enemies, yes.

Ervin then singled out, from a list of White House "enemies" that Dean gave the committee Wednesday, the name of Samuel M. Lambert, identified as the president of the National Education Association. Ervin, reading from the list, gave this description of Lambert: "Has taken us on vis-a-vis federal aid to parochial schools, a '72 issue."

Ervin: Didn't those in the White House interested in President Nixon's re-election and the Re-election Committee classify among their enemies people who dissented from President Nixon's programs?"

Dean: As I say, those who were able to command audience were singled out.

Ervin: Here is a man listed among the opponents or the enemies whose only offense is that he believed in the First Amendment and shared Thomas Jefferson's conviction as expressed in the Virginia Statute for Religious Freedom that to compel a man to make contributions of money for the dissemination of religious opinions he disbelieves is sinful and tyrannical. Isn't that true?"

Dean: I cannot disagree with the chairman at all.

Ervin also noted that those "who were concerned about these so-called enemies, that the processes of the Internal Revenue Service should be perverted and prostituted in order to harass people who were enemies as viewed by the White House and the Committee to Re-elect the President."

Finally, Ervin said, he had just "one other matter" to take up. "Article Two of the Constitution says, in defining the power of the President, Section 3 of Article Two, 'He—'—that is the President—' shall take care that the laws be faithfully executed.'"

"Do you know anything that the President did or said at any time between June 17 and the present moment to perform his duty to see that the laws are faithfully executed in respect to what is called the Watergate affair?"

"Mr. Chairman," Dean replied, "I have given the facts as I know them and I don't—I would rather be excused from drawing my own conclusion on that at this point in time."

"Now there has been," Ervin said in his windup, "you

have been asked several questions about the credibility—about your credibility. I will ask you as a lawyer if the experience of the English-speaking race, both in its legislative bodies and in its courts, has not demonstrated that the only reliable way in which the credibility of a witness can be tested is for that witness to be interrogated upon oath and have his credibility determined not only by what he says but by his conduct and demeanor while he is saying it and also by whether his testimony is corroborated or not corroborated by other witnesses?"

"That is correct," Dean replied.

Baker, in an interview with CBS-TV during a break, said, "Sen. Ervin did a fantastic job of stringing together contentions of presidential malfeasance."

Throughout the day, Dean was not pressed by questions as he had been Wednesday during more than three hours of cross-examination by Sen. Edward J. Gurney (R-Fla.) Dean appeared relaxed, cool and self-confident, occasionally

sharing a laugh with a committee member.

Baker's questioning of Dean, which is to continue today, was aimed at "structuring" Dean's accusations against the President into three categories: direct evidence, circumstantial evidence and hearsay.

Dean again went through a detailed description of his meeting Sept. 15, 1972, at which Dean said he first concluded that Mr. Nixon was aware of the cover-up. Baker concluded that Dean's testimony on the meeting was circumstantial rather than "hard."

At that meeting, Dean has testified, the President congratulated him for his efforts in handling the Watergate case over the summer.

Dean said that he made it clear to Mr. Nixon that the case had been "contained" with the indictment that day of the seven Watergate conspirators, none of whom worked at the White House, but, Dean said, he told Mr. Nixon "I don't think it can be contained indefinitely."

Yesterday's hearing began with a recital by Sen. Daniel Inouye (D-Hawaii) of 35 questions submitted to the committee by the White House, where they were prepared by the office of special counsel J. Fred Buzhardt.

On Wednesday, Inouye read—and Dean responded to—a 12-page memorandum that accompanied the questions. The memorandum was essentially a commentary (based on sworn testimony in the Watergate hearings and other forums) placing the blame for the Watergate affair heavily on Dean and his "patron" former Attorney General John N. Mitchell.

Buzhardt issued a statement yesterday saying that the memorandum was merely a "hypothesis prepared as a basis for cross-examination" of Dean. The document, the statement said, "does not represent a White House position."

The accompanying White House questions read yesterday morning by Inouye were complete down to such personalizing touches as "Mr. Dean, one point of distinction you drew in your testimony puzzles me" and ranged over much of Dean's testimony in the past three days but elicited little new information.

Much of the questioning was devoted to the manner in which Dean prepared his exhaustive 245-page statement on the events preceding and following the Watergate break-in, particularly his recall of meetings with Mr. Nixon at which Dean alleges that the cover-up was discussed.

Dean said that in preparing that statement he had been denied access to his files at the White House but "I had kept a newspaper clipping file from roughly June 17 up until about the time when these hearings started . . . it was by going through every single newspaper article outlining what had happened and then placing myself in what I had done in a given sequence of time, I was aware of all the principal activities I had been involved in, the dealings I had with others in relationship to these activities.

"I think I have a good memory," Dean said. "I think anyone who recalls my student years knew that I was very fast at recalling information, retaining information. I was the type of student who didn't have to work very hard in school because I do have a memory that I think is good."

In addition, Dean said, he was able to remember his meetings with the President because, "when you meet with the President of the United States, it is a very momentous occasion, and you tend to remember what the President of the United States says when you have a conversation with him."

As an example of his recall, cited a point in one of the meetings at which Mr. Nixon cited a statement made by then acting FBI Director L. Patrick Gray that he had "jolly well proceeded with the investigation at the White House despite the fact that Mr. Dean had been sitting in on the investigations."

Dean said he could remember "vividly when the President mimicked Mr. Gray in saying this and saying it was absurd. That sort of thing is very easy to remember and it sticks very clearly in one's mind."

In response to a question about the number of private meetings Dean had with the President in 1973, Dean

added a new story to those he has already told about Mr. Nixon's concern over demonstrators.

He said that at some stage of the inaugural procession last January "there was a demonstrator who ran

through police lines and towards the President's car. That night the head of the Secret Service detail protecting the President called me and told me the President was quite angry and anxious to something about this man charging at the President's car."

The next Sunday morning, at a church service, Dean went on, the President pulled him aside and said "I want something done about that man, that fellow that charged the car." Dean said he had concluded after checking with police authorities that nothing was worth doing. Meanwhile, he said, Haldeman kept sending him reports asking about the man's status, but the matter has dropped.

After the White House questions were completed, Inouye read another commentary sent to him by Buzhardt.

"Does this represent the White House view of Mr. Buzhardt's view?" Dean asked. It came with a cover letter signed by Buzhardt, Inouye replied.

The commentary said in part:

"A central credibility question is: What prompted Dean's tactics in March and April, 1973—the desire to have the truth told or the effort to achieve immunity from prosecution."

After a brief recap of Dean's account of his activities during that time period, the commentary concludes: "Time had run out; the cover-up had come apart; Dean was centrally involved . . ."

Later, Sen. Lowell Weicker (R-Conn.) criticized the White House for issuing statements that assumed the guilt of Dean and, to a lesser extent, John Mitchell before either man has been charged with a crime.

In midafternoon, while other members of the committee were off voting on the Senate floor, Sen. Herman Talmadge had a brief exchange with Dean on how the White House operated and how staff personnel communicated with Mr. Nixon.

Dean has testified that everything he did went through Haldeman and E. L. Richman — his "reporting channels."

"Did you ever try to see the President directly," Talmadge asked?

"There is no way that would be possible," Dean replied. Calls to the President, he said, were automatically transferred to Haldeman or a member of Halde-

man's staff and furthermore, Dean said, no one went barging into Mr. Nixon's office because "there are a lot of Secret Service agents around . . ."

Clark Mollenhoff, Washington correspondent for the Des Moines Register and a former White House aide cited earlier by Dean as someone who had experienced similar difficulty getting through Haldeman to Mr. Nixon, commented later to another reporter: "If Haldeman and Ehrlichman wanted something, you could get your memos through."

"Getting to see the President was a constant problem," Mollenhoff said, "because they could put you off for months, weeks at a time."

Dean also testified that it was practice in the White House to shift blame for mishaps on to some subordinate rather than those initially responsible. He raised the issue in connection with his own response last Aug. 29 to hearing Mr. Nixon say that Dean had conducted an investigation that showed no White House involvement in the Watergate affair. Dean has testified that it was then he first began to worry that he might eventually be made a scapegoat.

Talmadge asked for other examples where blame had been shifted.

Dean said that Frederick V. Malek, then the White House chief recruiter, took responsibility in February, 1972, for initiating an investigation of CBS correspondent Daniel Schorr, ostensibly because Schorr was being considered for a job as assistant to the chairman of the Council on Environmental Quality.

Dean said the investigation had been ordered by Haldeman. Schorr was listed on the White House enemy list as a "real media enemy."

In another instance, Charles W. Colson, then the White House special counsel, took the blame for ordering a series of tough advertisements against Democratic senatorial candidates in the 1970 election. Those advertisements were a Haldeman project also, Dean said.