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Congress' Duty to Probe

President Nixon has just recognized another major crisis—perhaps the most serious in his whole career—and has acted decisively, if rather belatedly, to meet it. Having said, "No, no, a thousand times no" to Sam Ervin's ardent urging that he let his aides testify before the Senate Watergate committee under oath, he has at last announced: "All members of the White House staff will appear voluntarily when requested by the committee. They will testify under oath and they will answer fully all proper questions." The Congress and the country will be waiting eagerly to hear them. There ought to be no doubt whatever that the Congress has authority, and, indeed, a clear duty, to command this testimony and that in doing so it is discharging a vital aspect of the legislative function.

The power to investigate—and particularly to investigate activities of the executive branch of the government—is an indispensable means by which the legislative branch maintains its equal status in the American tripartite governmental system. In his book, "Congressional Government," written when he was a professor of political science, Woodrow Wilson set it forth very clearly:

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.

Without the power to investigate executive performance, the power to enact laws, to authorize programs and to appropriate funds would be altogether meaningless. Without authority to call executive officials to account for what they were doing, Congress would have no way of knowing whether the policies it had formulated and the public money it has made available were being put into use wisely or foolishly.

It is true that the investigating power can be dangerously abused—as anyone who remembers the mischievous clowning of the House Committee on Un-American Activities or the ugly vindictiveness of the late Sens. Joseph McCarthy and Pat McCarran must fully realize. It is essential, therefore, that the employment of the investigating power should be jealously watched and kept within its appropriate boundaries. Investigators must keep scrupulously to the subject assigned to them; and they must accord full respect to the rights of witnesses called before them.

There has not yet been, however, the slightest warrant for confusing the conduct of the Senate Watergate committee with the conduct of any of those inquisitorial bodies which gave congressional investigations such a bad name in the 1950s. Sam Ervin bears about as little resemblance to Joe McCarthy as any man who has ever sat in the United States Senate. And there is nothing whatever in the background and behavior of the Watergate committee counsel, Sam Dash, that could justify bracketing him with McCarthy's counsel, Roy Cohn.

Of even greater significance, however, is the striking difference between the aims of the investigating groups in the 1950s and the aims of the Watergate committee. Messrs. McCarthy, McCarran and the assorted HUAC chairmen were engaged in the public pillorying of men and women whose past political opinions and associations they disliked. In very large part—there were some exceptions, of course—the people paraded before the committees inquiring into "subversion" were people accused—generally by paid, professional informers—of having joined the Communist Party in the remote past when it was lawful, however foolish, to do so, or of having been members of something called "Communist fronts" of which the committees disapproved. Most of those called before these investigating bodies were not charged with, or even suspected of, any violation of the law. Most of them were private citizens.

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The central, essential vice of the "subversive activities" investigations was that their real aim was to punish people by publicity for offenses which, under the Constitution of the United States, were not punishable by law. They were devices for getting around the normal safeguards built into the American system of justice. Apart from its injury to individuals, this kind of investigation, the late Judge Henry Edgerton remarked, "restricts the freedom of speech by uncovering and advertising expressions of unpopular views."

The projected investigation by the Ervin committee is totally different. It is aimed at discovering the ramifications of an undoubted crime which involved a hideous corruption of the political process; and it is aimed at discovering whether high officials of the government—men intimately associated with the President of the United States—bore responsibility for this crime. The crime was not political, although it was committed as an aspect of politics; no one will ask witnesses before the Ervin committee whether they are Republicans.

In the 1950s, many men avoided testifying before committees by pleading the Fifth Amendment's privilege against self-incrimination. This won for them some immunity from possible prosecution growing out of their past affiliations. But it left them subject to the suspicion that they had something guilty to conceal.

For a while, the Nixon administration sought for the President's associates the protection of executive privilege. Executive privilege, like the privilege against self-incrimination, has important legitimate uses, of course; the one protects confidential communications between the President and his aides, the other assures men that they need not be their own executioners. But when either of these privileges is used to frustrate legitimate inquiry, it invites the same suspicion—that it is being used to cover up guilty knowledge.

Atty. Gen. Richard Kleindienst's conception of executive privilege as allowing any employee of the executive branch to refuse to testify before Congress about anything not only reduced the privilege to an absurdity which would have completely nullified the congressional power to investigate; it also focused the finger of suspicion on the administration as a whole. It made it seem as though it were going into hiding.

It testifies at once to President Nixon's political judgment and to his sense of personal probity that he has at last undone this nonsense and has said that the White House will cooperate with the Ervin committee. It should have been eager to do so from the moment the Watergate bugging operation was discovered. The Ervin committee has a task of the utmost importance to perform. Let it move ahead, after the most thorough preparation, with relentless insistence upon the whole story, with careful concern for the rights of witnesses called before it—and with a full commitment to the right of the American people to know how their Presidents get elected.