

# Nixon Tells Senate He Will Not Testify

## WXPPost JUL 8 1973 Ervin Hits President's Decision

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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," 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.

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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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hear Mr. Nixon's version of the Watergate affair.

Baker was the first to bring up publicly the possibility of a presidential appearance before the committee. In a television interview May 13, just before the committee hearings began, Baker said the President might be invited "to state his side of the case . . . through counsel, by statement or otherwise." Baker said then he did not believe it was legally possible to subpoena the President to appear before the committee.

Interviewed by The Washington Post last night by telephone from his home in Huntsville, Tenn., Baker re-

stated his belief that the doctrine of separation of powers "probably would preclude the compelling of testimony from a President."

But he noted that Mr. Nixon, in his letter, "does not exclude other possibilities of gaining information from him pertaining to those special circumstances involving one on one conversations and the like. . . ."

Baker said he believed the purposes of both the committee and the President

would be best served "by thorough ventilation of these matters."

"It is urgently important to the committee, to the President and to the Presidency that we find a way around this problem," Baker asserted.

"What we really need is conversation (between the President and the committee)," Baker said. He said he would "not be pleased with a simple statement" from the President.

The suggestions that Mr. Nixon should testify before the committee emerged again two weeks ago, after former White House counsel John W. Dean III told the committee that he is "convinced" that the President knew of an alleged cover-up of the Watergate scandal as early as September, 1972.

Both Ervin and Baker made the suggestions during the course of Dean's testimony, which directly challenged Mr. Nixon's assertion that he first learned White House aides might be involved in the Watergate scandal last March.

In the telephone interview, Ervin said the committee could "reach its own conclusions" even without

testimony from the President.

"For the life of me, I can't imagine why a President would not want to appear," Ervin said.

Ervin said he would not accept a written statement from the President as evidence before the committee.

"You can't cross-examine a written statement," he said.

The precedents cited by Ervin included an 1807 ruling by Chief Justice Marshall that President Jefferson should produce certain documents in connection with the trial of Aaron Burr for treason.

Marshall, whom Ervin called "a pretty good judge of the Constitution," ruled that in determining whom could be subpoenaed, the crucial issue was "the character of the evidence and not the character of the witness," Ervin said.

Ervin also cited President Abraham Lincoln's decision in 1862 to appear voluntarily before the House Judiciary Committee. "President Nixon's interpretation of the Constitution is quite different from President Lincoln's," Ervin said, adding that Lincoln was "one of the country's greatest lawyers."