

Senate Democrats Ask Inde

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The Senate Democratic caucus overwhelmingly approved a resolution last night calling for an independent special prosecutor to continue the investigation and prosecution "of criminal actions arising out of the Watergate affair and all of its related activities."

The resolution, sponsored by Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate select Watergate Committee, was approved following a 2½-hour meeting in which a wide variety of proposals for continuing the Watergate investigation were reportedly discussed.

The Democratic caucus' vote came on the eve of the resumption of the Watergate committee's hearings. The committee will open its investigation into campaign financing with testimony from Berl Bernhard, 1972 presidential campaign manager for Sen. Edmund Muskie (D-Maine).

Ervin's resolution was approved after Senate Majority Leader Mike Mansfield (D-Mont.) had opened the discussion by bringing up the future of Ervin's committee in conjunction with President Nixon's action on Oct. 20 ordering the dismissal of Special Watergate Prosecutor Archibald Cox.

"Now," Mansfield said in a statement he released and read to the caucus, "it is no longer possible, in my judgment, to contemplate the shutdown of the Ervin committee. On the contrary, I would hope and expect that the Senate would consider forthwith the extension of the committee, with a mandate enlarged to include all the matters which were under consideration by the special prosecutor's office in the Justice Department at the time of the summary dismissal of Mr. Archibald Cox."

President Nixon announced last Friday night that acting Attorney General Robert H. Bork this week would appoint a new special prosecutor who will have "independence."

Mr. Nixon also said, however, that the new special prosecutor would not have access to presidential documents—the issue that ultimately precipitated the firing of Cox. Bork reportedly

has insisted that whoever he appoints must have access to whatever evidence he needs to investigate and prosecute in the Watergate affair and other matters coming under his jurisdiction and that no procedural restraints should be placed on his actions by the White House.

Mansfield, who received a standing ovation after he spoke, told the caucus that the Ervin committee is presently the only "duly-constituted and equipped (body) to continue an independent, impartial inquiry into the Watergate affair. That will remain the case unless and until there is at least designated a new special prosecutor whose powers are as broad and whose integrity are as great as that which surrounded Archibald Cox."

Mansfield also endorsed legislation introduced by Sen. Birch Bayh (D-Ind.) and sponsored by a majority of the Senate calling for the creation of a special prosecutor by act of Congress, with the prosecutor to be appointed by the courts.

The effect of the Ervin resolution, which directs Mansfield to consult with minority leader Hugh Scott (R-Pa.) "with a view to the creation of the office of an independent prosecutor," is to endorse the concept of Bayh's legislation without taking up—for the moment at least—the question of extending the life and expanding the jurisdiction of the Ervin committee, which is now required to file a report and end its business by February 1974.

Mansfield, who was the prime force behind the creation of the Ervin committee, told a reporter that he favored giving the committee a new, long-term mandate "if we don't get the right kind of a special prosecutor."

Mansfield was described by one knowledgeable Senate source as being "fully in accord" with the resolution that the caucus passed. This source said the resolution, coupled with Mansfield's statement, could be read as a message to President Nixon that he should modify his position on the powers of the special prosecutor. "The problem's not going to go away, I think that's the signal," this source said.

A senator present at the caucus disagreed, however, that the caucus action carried any implied threat to President Nixon but rather was aimed at lining up support for a move to override a veto of a special prosecutor bill passed by Congress if Mr. Nixon does not go along and sign it. This senator said that Mansfield's suggestion that the Ervin committee be given more time and more authority was not discussed.

Ervin, who was understood to be opposed to extending the life of his committee, said after the caucus that the Senate still had four months to act on extending and expanding the probe if the need arises.

According to reliable sources Mansfield did not tell Ervin about his proposal prior to presenting it to the caucus. The resolution that Ervin finally presented for a vote—the only resolution put up to the caucus on the subject—"just sort of evolved" after 2½ hours of discussion, according to one source. The Ervin resolution was accepted with only a

few voices heard voting against it, according to one senator.

During a morning executive session of the committee, the committee authorized Ervin to introduce a bill that would clearly give the United States District Court here jurisdiction to hear a suit by any congressional committee to enforce a subpoena it had issued to anyone, including the President.

The legislation is designed to overcome a ruling by Chief United States District Judge John J. Sirica in the suit brought by the committee seeking to enforce its subpoena of five White House tape recordings relating to the Watergate fair.

Sirica dismissed the suit earlier this month, ruling that he had no jurisdiction over it. Ervin said he hoped that the bill could be passed by the Senate "within 48 hours" without referring it to committee and that the House of Representatives would approve the measure promptly in order to expedite the committee's suit, which is now before the

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United States Court of Appeals.

Sen. Howard H. Baker (R-Tenn.) vice-chairman of the committee, that the power of a committee to issue a subpoena is an "idle power" if the committee cannot enforce its subpoena in court.

Besides dealing with the issue of the tapes, the legislation also is understood to be adequate to resolve the difficulty the committee is having obtaining President Nixon's bank records from the Key Biscayne bank of Charles G. (Bebe) Rebozo, Mr. Nixon's close friend. Rebozo hasn't responded to a subpoena from the committee for the records.

The committee will resume its hearings today with the testimony of Bernhard, former Muskie campaign manager. Bernhard will be followed by Clark MacGregor, former director of the Committee for the Re-election of the President.

Bernhard and MacGregor were described yesterday as "transition witnesses" who will help move the committee from the second phase of its hearings, concerned

with so-called campaign "dirty tricks," into the third and final scheduled phase of campaign financing.

The committee announced that it had applied for limited immunity from prosecution for three prospective witnesses — Robert Lilly, Robert Isham and John Meier.

Lilly and Isham are officials of the Associated Milk Producers Inc., a dairy farmers' cooperative that gave more than \$200,000 to President Nixon's re-election campaign prior to the implementation of an increase in government price supports for milk. Meier is a former employe of billionaire recluse Howard Hughes, whose contributions in 1969 and 1970 of \$100,000 to Mr. Nixon through Rebozo are being investigated by the committee.

Following a morning executive session of the committee, Ervin and Baker discussed with reporters the meeting that they had had with President Nixon at the White House on Oct. 19 when he proposed his arrangement to turn over par-

tial transcripts of the tapes to the committee.

Although their remarks were set in a conciliatory context, with both senators expressing hope that the offer from Mr. Nixon would be reinstated, Ervin and Baker both stressed that they had made no agreement to accept the offer on behalf of the committee. "It was a proposal, not a compromise or an agreement," Ervin told reporters.

Ervin said he and Baker told Mr. Nixon that they would recommend to the committee that it accept the offer but that they made it clear that they have no authority to accept the offer for the committee.

Both senators recalled again that they had been called hurriedly to the White House from out-of-town speaking engagements — Ervin in New Orleans and Baker in Chicago — and that they had had no opportunity to consult with their staffs before the meeting.

Although Baker said in response to a question that "I do not feel that we were used by the White House,"

both senators made it clear that when they met with Mr. Nixon they were not told that a similar offer had been made to Cox and that he had not accepted it.

From a political point of view, that knowledge could have been significant since Mr. Nixon asserted at his press conference last Friday night that "Mr. Cox was the only one" who rejected the proposal.

Ervin said yesterday that "We took the position that we had nothing to do with Mr. Cox's investigation," and that during the White House meeting "we were told that they would contact Mr. Cox to work out a suitable agreement . . . We were never asked to approve any agreement to which Mr. Cox was a party," Ervin said.

Asked if he thought Cox was correct in refusing the President's offer, Ervin noted that the Cox's investigation, unlike the committee's, is bound by the federal rules of evidence. "I do not believe that Mr. Cox could agree to alter the rules of evidence," he said.