

Few Precedents for President on Capitol Hill Today

By ANTHONY RIPLEY
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WASHINGTON, Oct. 16—When President Ford goes before a Congressional subcommittee tomorrow, there will be few paths to guide him, for the history of such events holds only murky precedents.

The White House has said that this meeting with the Subcommittee on Criminal Justice of the House Judiciary Committee will set no precedents because Mr. Ford is going voluntarily.

Junius, the anonymous writer of letters to the editor of the London Public Advertiser in the mid-18th century, observed:

"One precedent creates another. They soon accumulate and constitute law."

Mr. Ford's appearance will become tomorrow's precedent, according to almost all involved except the White House.

No Formal Vote

Technically, it is an informal appearance. Information from Mr. Ford was requested by letter, not by any formal vote in the House. This, perhaps, will determine the way his visit is seen historically and legally.

But there are technicalities involved. He will be responding to "resolutions of inquiry" that were introduced on Sept. 16 in the House by Representative Bella S. Abzug, Democrat of Manhattan, and on Sept. 17 by Representative John Conyers Jr., Democrat of Michigan.

The resolutions were referred to the subcommittee, which is headed by Representative William L. Hungate, Democrat of Missouri. Mr. Hungate has held hearings but no vote has been taken on the matter.

The two resolutions call on Mr. Ford to answer 14 questions about his pardoning of former President Richard M. Nixon.

Such resolutions are a rare form of inquiry, recently revived by Mrs. Abzug. There are very specific rules on their use. They can go only to an individual, not an agency, and must be directed to the President or the head of the executive department. Also, they call for

factual answers to questions, without any expression of opinion.

The House Parliamentarian's office could find no other resolutions of inquiry sent to a President in this century, though they were widely used after the Civil War.

President Andrew Johnson refused. However, none of those Presidents appeared on Capitol Hill in person.

When the White House announced on Sept. 30 that Mr. Ford would go before the subcommittee, a Presidential spokesman cited precedents for such an appearance on the part of Presidents Abraham Lincoln and George Washington. But like many antiques, these precedents seem too fragile to bear much weight.

Closest Precedent

Researchers at the Library of Congress could find little reliable documentation and the closest precedent that anyone has cited came from Raoul Berger, the Harvard University Law School legal historian.

Mr. Berger, in his book, "Executive Privilege: a Constitutional Myth," cites the journals of Senator William Maclay, Democrat of Pennsylvania, which detailed President Washington's attempt to sit personally with the first Senate in 1789 as members went over proposals for a treaty with the Creek Indians. Both sides were exploring their way under terms of the new Constitution.

The Senators wanted to scrutinize the proposals and voted to put the matter off over a weekend.

"I saw no chance of a fair investigation of subjects while the President of the United States sat there, with his Secretary of War to support his opinions and overawe the timid and neutral part of the Senate," Senator Maclay wrote in his journal.

When the motion for delay carried, Washington left in a "violent fret" and when he returned on Monday, "shamefacedness, or I know not what, flowing from the presence of the President kept everybody

silent," Senator Maclay recorded.

That ended, Mr. Berger noted, attempts by the President to appear in person prior to drawing up a treaty. Washington continued to seek advice from the Senate before opening treaty negotiations, but he did it in writing, Mr. Berger noted.

Another precedent was an alleged appearance by Washington before a special House committee investigating the disastrous military expedition of Maj. Gen. Arthur St. Clair against a group of Indians. However, most historians now agree that the President never appeared, but instead agreed to submit some of his papers relating to the expedition.

The Lincoln precedents are tinged with romanticism and conflicting reports.

Carl Sandburg, the poet and Lincoln biographer, wrote in "Abraham Lincoln: the War Years" that the President appeared before Senate members of a joint committee on the conduct of the war.

They were meeting in secret, Mr. Sandburg wrote, and Lincoln appeared voluntarily to deny that his wife was disloyal to the Union.

Not Authenticated

The Library of Congress can find no authentication beyond Mr. Sandburg's words.

In February, 1862, Lincoln is said to have appeared before a committee investigating the premature leak to the New York Herald of part of his annual message to Congress.

The New York Tribune, a competing newspaper reported on Feb. 14, "President Lincoln today voluntarily appeared before the House Judiciary Committee and gave testimony in the matter of the premature publication in the Herald of a portion of his last annual message."

The newspaper also reported that another witness before the committee testified that a paragraph of Lincoln's message had been stolen by his gardener and given to The Herald.

The Tribune version of Lincoln's appearance was disputed by "Perley's Reminiscences of the National Metropolis," written by Ben "Perley" Poore.

Mr. Poore reported that the President had met only with Republican members of the committee, and it is unclear whether that meeting took place on Capitol Hill, the Library of Congress reported.

There are other reported meetings between Lincoln and members of the joint committee on the conduct of the war, but all were apparently in formal meetings because there are only brief newspaper accounts of them, and no committee records of them. The newspaper accounts, the Library of Congress reported, show that Lincoln brought his entire Cabinet with him.

Tomorrow, President Ford is appearing alone.