

THE CONGRESS

Right Man, Right Time

"The history of mankind shows that governments have an insatiable thirst for power. This desire for power will carry them to tyranny unless it is prevented."

So says the venerable Senator Samuel James Ervin of North Carolina, denouncing the Nixon Administration with characteristic senatorial rhetoric. What makes it more than rhetoric is that Sam Ervin is the widely respected chairman of the Senate Government Operations Committee and the Judiciary Subcommittees on Separation of Powers and Constitutional Rights. As such, he is the man the Senate is counting on to lead its struggle against what is increasingly seen as presidential encroachment on congressional powers, including impounding of funds and government by decree. "Sam Ervin," says Senate Majority Leader Mike Mansfield, "is the man to watch in this Congress." Or as Hubert Humphrey put it: "Ervin is the right man at the right time in the right place."

Indeed, Ervin seems to be commanding almost every battlefield against the Administration. Last week alone:

► Ervin's bill to require congressional approval of any new Director and Deputy Director of the Office of Management and Budget was overwhelmingly passed on the Senate floor.

► He concluded five days of stormy hearings on another bill of his that would force the President to seek the consent of Congress before impounding any more funds.

► He laid plans to begin hearings Feb. 20 on a bill to protect newsmen from official interrogation about confidential sources.

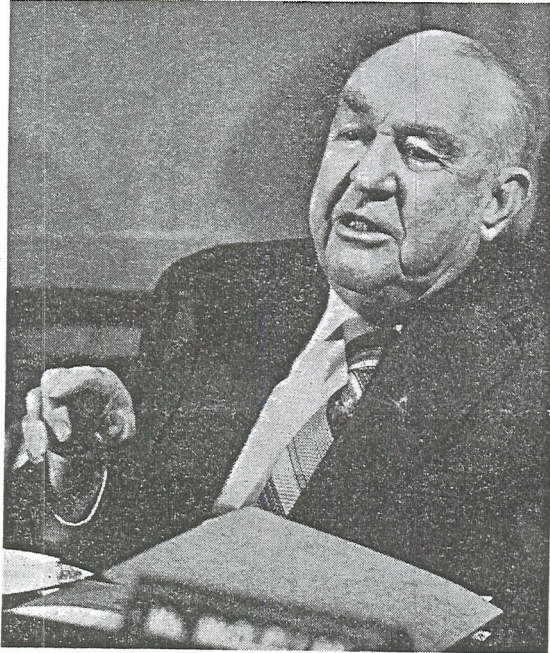
► The Senate voted 77 to 0 to set up a special committee, chaired by Ervin, to investigate all aspects of the Watergate bugging case, including questions of White House ties to the conspirators. Says Ervin: "There will be no witch hunt [but] I am going to get to the bottom of this thing—and the top."

Why has Ervin, at 76, rather than more obvious leaders like Senators Mike Mansfield or Ted Kennedy emerged as the *enfant terrible* of Congress? In part, because of his seniority: his 19 years in the Senate have brought him the appropriate chairmanships. But beyond this, Ervin is known as one of the most eminent constitutionalists in the Senate, a man of such personal prestige, of such judicial temperament, that

he cannot easily be attacked. Kennedy, for instance, whose subcommittee staff has been working long and hard on the Watergate investigation, realizes his own vulnerability and has hoped all along that Ervin would take it over. "He is a man who is beyond ambition," says Kennedy.

Ervin grew up in the small mountain community of Morganton, N.C., served with distinction in World War I, went to Harvard Law School and rose to become an associate justice on the state supreme court. He was appointed to the Senate in 1954 to fill the vacancy caused by the death of Clyde Hoey, the last of the frock-coated Senators, and has remained there ever since. Fancying himself more as a constitutional lawyer than a politician, Ervin

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ERVIN AT HEARINGS ON EXECUTIVE POWER  
They're treading on our Constitution.

prefers browsing through obscure legal texts in his extensive law library to the back-room intrigue that is so popular among his brethren. Although he has acquired a remarkable book knowledge of the law over the years, he is hardly an innovative constitutional thinker. Says one Northern liberal Senator, "Sam stopped reading cases after 1938." Ervin is such a worker that he has few close friends, even in the Senate. "Sam sticks pretty close to his wife and the Constitution," says Mansfield. "He's married to both." Their three children grown, Ervin and his wife live quietly in an apartment near Capitol Hill.

Heavy-set and rosy-jowled, the picture of the trusted, white-haired country doctor, Ervin has thrown himself wholeheartedly into the mounting battle with the Administration. As a constitutional fundamentalist, he believes that the President is precipitating a crisis between the executive and legislative branches. "I feel that the Constitution

gives all legislative power to Congress," he told TIME last week. "An appropriation bill is as much a law as any other law. After an appropriation bill is passed by Congress, the Constitution gives the President only one way to express his disapproval—the veto."

As Ervin himself has made plain, he agrees that much of the money Nixon has impounded should not be spent. He voted against many of those bills. He even regards Nixon as something of a spendthrift, and he has voted against some of Nixon's own spending plans, like revenue sharing. But to Ervin, that is not the issue. "He is treading," he said, "on our Constitution. I would suggest two books that should be in the White House. One is the Constitution of the United States, and the other is Dale Carnegie's book *How to Win Friends and Influence People*."

Last week as his subcommittee interrogated newly appointed Deputy Attorney General Joseph Sneed, Ervin demanded to know—waving a copy of the Constitution like a Southern revivalist with a Bible, his eyebrows twitching with indignation—where the Constitution gave the President the right to impound funds. Despite an embarrassing hole in the Administration's argument—a memorandum written by Supreme Court Justice William Rehnquist when he was an Assistant Attorney General, stating that neither "reason nor precedent" gave the President constitutional powers to decline spending appropriated funds—former Duke Law School Dean Sneed replied, "We rest on Articles I, II and III." They outline the duties and powers of three branches of government. "I can't reconcile that conclusion with what the words say," Ervin countered. "Well," Sneed replied weakly, "I've tried." At this, Ervin's eyebrows flashed with particular amusement. "You put up the best defense possible," he said grandly, "for a guilty client."