

Nixon's Letter: 'I Shall

SAN CLEMENTE, Calif., July 7 (UPI)—Text of a letter from President Nixon to Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate Select Committee on Presidential Activities.

Dear Mr. Chairman:

I am advised that members of the Senate Select Committee have raised the desirability of my testifying before the committee. I am further advised that the committee has requested access to presidential papers prepared or received by former members of my staff.

In this letter I shall state the reasons why I shall not testify before the committee or permit access to presidential papers.

I want to strongly emphasize that my decision, in both cases, is based on my constitutional obligation to preserve intact the powers and prerogatives of the presidency and not upon any desire to withhold information relevant to your inquiry.

My staff is under instructions to cooperate fully with yours in furnishing information pertinent to your inquiry. On 22 May 1973, I directed that the right of executive privilege, "as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation," no longer be invoked for present or former members of the White House staff. In the case of my former counsel, I waived, in addition, the attorney-client privilege.

These acts of cooperation with the committee have been genuine, extensive and, in the history of such matters, extraordinary.

The pending requests, however, would move us from proper presidential cooperation with a Senate committee to jeopardizing the fundamental constitutional role of the presidency.

This I must and shall resist.

No President could function if the private papers of his office, prepared by his personal staff, were open to public scrutiny. Formulation

of sound public policy requires that the President and his personal staff be able to communicate among themselves in complete candor, and that their tentative judgments, their exploration of alternatives, and their frank comments on issues and personalities at home and abroad remain confidential.

I recognize that in your investigation, as in others of previous years, arguments can be and have been made for the identification and perusal by the President or his counsel of selected documents for possible release to the committees or their staffs.

But such a course, I have concluded, would inevitably result in the attrition, and the eventual destruction, of the indispensable principle of confidentiality of presidential papers.

The question of testimony by members of the White House staff presents a difficult but different problem. While notes and papers often involve a wide-ranging variety and intermingling of confidential matters, testimony can, at least, be limited to matters within the scope of the investigation. For this reason, and because of the special nature of this particular investigation, I have agreed to permit the unrestricted testimony of present and former White House staff members before your committee.

The question of my own testimony, however, is another matter.

I have concluded that if I were to testify before the committee irreparable damage would be done to the constitutional principle of separation of powers. My position in this regard is supported by ample precedents with which you are familiar and which need not be recited here. It is appropriate, however, to refer to one particular occasion on which this issue was raised.

In 1953 a committee of the House of Representatives sought to subpoena former President Truman to inquire about matters of which he had personal knowledge while he had

served as President. As you may recall, President Truman declined to comply with the subpoena on the ground that the separation of powers forbade his appearance. This position was not challenged by the Congress.

It is difficult to improve upon President Truman's discussion of this matter. Therefore, I request that his letter, which is enclosed for the committee's convenience, be made part of the committee's record.

The constitutional doctrine of separation of powers is fundamental to our structure of government. In my view, as in the view of previous Presidents, its pres-

Not Testify ...'

ervation is vital. In this respect, the duty of every President to protect and defend the constitutional rights and powers of his office is an obligation that runs directly to the people of this country.

The White House will continue to cooperate fully with the committee in furnishing information relevant to its investigation except in those instances where I determine that meeting the committee's demands would violate my constitutional responsibility to defend the office of the presidency against encroachment by other branches.

At an appropriate time

during your hearings, I intend to address publicly the subjects you are considering. In the meantime, in the context of Senate Resolution 60, I consider it my constitutional responsibility to decline to appear personally under any circumstances before your committee or to grant access to presidential files.

I respect the responsibilities placed upon you and your colleagues by Senate Resolution 60. I believe you and your committee colleagues equally respect the responsibility placed upon me to protect the rights and powers of the presidency under the Constitution.