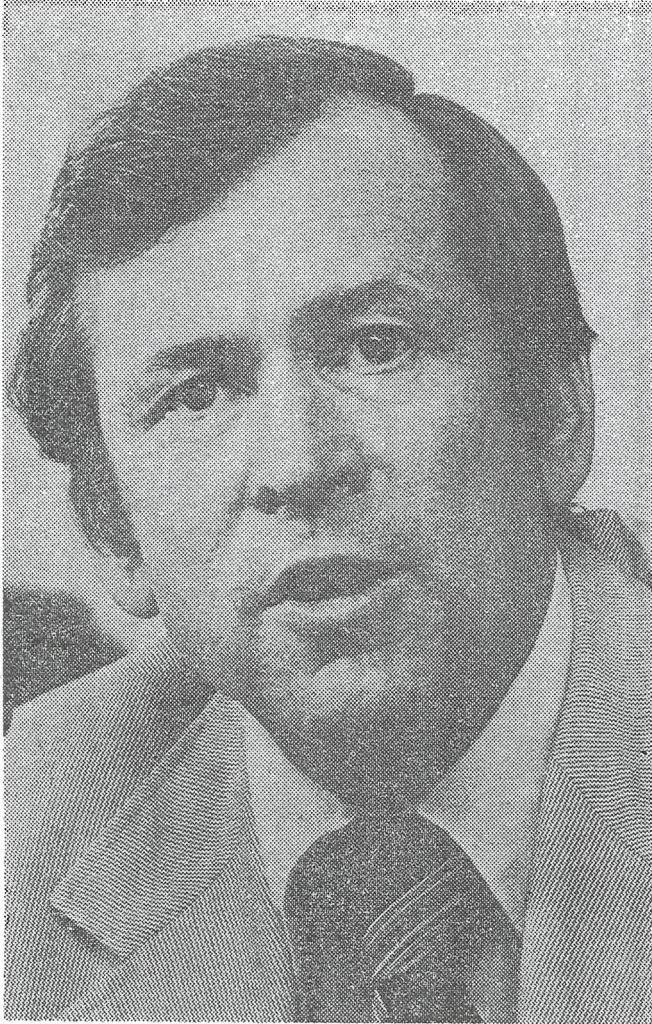
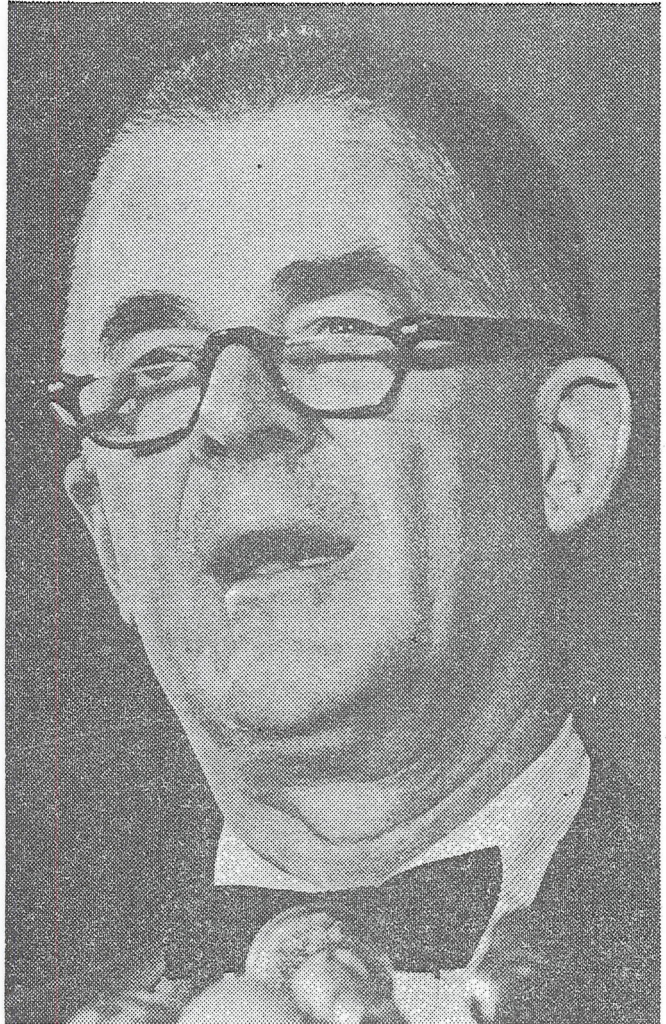


President Refuses Ervin Committee,



Baker: "Brink of a constitutional confrontation."



Cox: "To withhold . . . is without legal foundation."

to Turn Over Tapes; Cox Issue Subpoenas

Action Sets Stage For Court Battle On Powers Issue

By Carroll Kilpatrick
Washington Post Staff Writer

President Nixon set the stage yesterday for a major constitutional confrontation by refusing to turn over presidential tape recordings to either the Senate Watergate committee or to Special Prosecutor Archibald Cox.

Cox immediately served a subpoena for the tapes on presidential counsel J. Fred Buzhart, who must respond in federal court by Thursday. The Senate Committee followed suit, serving two subpoenas on another presidential lawyer, Leonard Garment.

The committee chairman, Sen. Sam Ervin (D-N.C.), reacted to the President's decision with an emotional statement, saying:

"I deeply regret that this situation has arisen, because I think that the Watergate tragedy is the greatest tragedy this country has ever suffered. I used to think that the Civil War was our country's greatest tragedy, but I do remember that there were some redeeming features in the Civil War in that there was some spirit of sacrifice and heroism displayed on both sides. I see no redeeming features in Watergate."

The committee's vice chairman, Sen. Howard H. Baker (R-Tenn.), expressed disappointment at being "on the brink of a constitutional confrontation between the Congress and the White House." He added that the material sought by the subpoenas is "essential, if not vital, to the full, thorough inquiry mandated and required of this committee."

It seemed certain last night that the confrontation between the President and the investigators ultimately would have to be decided in the Supreme Court. How the court might rule on the central issues— executive privilege and the separation of governmental powers—is unknown.

The President made no concessions on those issues in a letter to Ervin yesterday. He would reply "at an appropriate time" to the issues raised by the Watergate affair and to charges concerning his own involvement, Mr. Nixon said in the letter. But "the special nature of tape recordings of private conversations is such that these principles (of executive privilege) apply with even greater force to tapes of private Presidential conversations than to Presidential papers," he declared.

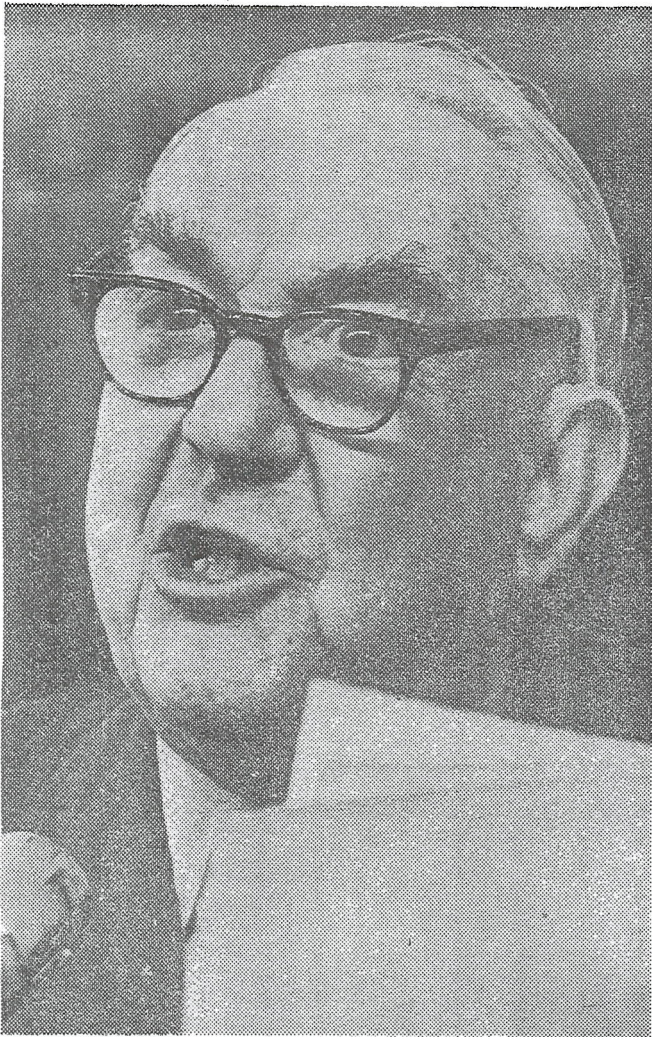
The tapes in question were made secretly and involved alleged conversations between Mr. Nixon and various of his assistants on matters relating to the Watergate break-in and the subsequent efforts to cover up that crime.

The President said that contrary to the Ervin committee's assumptions, the "tapes would not finally settle the central issues before your committee. Before their existence became publicly known, I personally listened to a number of them.

"The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth. However, as in any verbatim recording of informal conversations, they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways.

"Furthermore, there are inseparably interspersed in them a great many very frank and very private comments on a wide range of issues and individuals, wholly extraneous to the Committee's inquiry."

See PRESIDENT, A17, Col. 1



Photos by Joe Heiberger and Charles Del Vecchio—The Washington Post

Ervin: "Greatest tragedy this country has ever suffered."

PRESIDENT, From A1

Thus the stage was set for a great constitutional struggle between a President determined not to give up executive documents and materials and a Senate committee and a federal prosecutor who are determined to get them. The ultimate arbitration, it was believed, would have to be made by the Supreme Court. Even if the court were to rule against the President, it has no independent power to compel him to act. He is, however, subject to the impeachment powers of Congress.

Deputy press secretary Gerald L. Warren said Mr. Nixon had not heard the tapes before issuing his statement of May 22 that he had no knowledge of the Watergate cover-up and had never offered executive clemency to Watergate defenders.

Mr. Nixon first began listening to some of the tapes in early June, Warren said. He would give no further details.

Warren also confirmed reports that the taping of presidential conversations has been stopped. Asked why, he said that they had been "compromised" by public disclosure that they were being made.

In a separate letter yesterday to Ervin, the President said he did not believe any "useful purpose . . . would be served by our having a meeting at this time."

The President earlier had agreed to confer with the senator on the issue of presidential papers and Ervin had said he sought the meeting to avoid a "constitutional crisis" between the executive and legislative branches.

Ervin said yesterday that in view of the President's

refusal of the tapes he agreed that nothing would be gained by a meeting at this time.

Expressing deep regret over the President's decision, Ervin said, "I love my country, I venerate the office of President and I have best wishes for the success of the present incumbent," but he said he had very different ideas from Mr. Nixon about separation of powers.

The President had written Ervin July 6 that he would not testify before the committee or make presidential documents available to it. The President wrote yesterday that he had "concluded that principles stated" in the earlier letter also applied to the request for the tapes.

It came to public knowledge last week that presidential telephone and office conversations were recorded on a daily basis when FAA Administrator Alexander Butterfield testified before the Ervin committee. Butterfield was the person responsible for setting up the operation in the spring of 1971, when he was a White House aide.

The tapes will remain "under my sole personal control," Mr. Nixon wrote in the letter received by the committee during its noon recess yesterday. "None has been transcribed or made public and none will be."

He said that "inseparably interspersed" in the tapes relating to Watergate are "a great many very frank and very private comments, on a wide range of issues and individuals, wholly extraneous to the committee's inquiry."

The President's most startling admission was that the tapes, while supporting his

interpretation of his Watergate role, nevertheless might be interpreted in different ways by different persons.

They can be "accurately understood or interpreted only by reference to an enormous number of other documents and tapes," he said, "so that to open them at all would begin an endless process of disclosure and explanation of private presidential records totally unrelated to Watergate, and highly confidential in nature.

"They are the clearest possible example of why presidential documents must be kept confidential."

In the letter, Mr. Nixon again promised to "address publicly" the Watergate issue at an appropriate time. It is now believed that he will make his statement sometime next month after the committee concludes the current phase of its hearings.

The statement will be made, Mr. Nixon said, "in a way that preserves the constitutional principle of separation of powers, and thus serves the interests not just of the Congress or of the President, but of the people."

After the committee voted to subpoena the tapes, Ervin said the doctrine of executive privilege that Mr. Nixon claimed, existed only in connection with official duties and under no circumstances could be invoked in connection with alleged illegal activities.

"I am certain that the doctrine of separation of powers does not impose upon any President the duty or the power to undertake to separate a congressional committee from access to the truth concerning alleged

criminal activities," Ervin said.

The senator called the President's letter "rather remarkable about the tapes.

"If you notice, he says he's not going to let anyone else have them for fear they might draw a different conclusion . . . I was in hopes that the President would accede to the request of this committee."

Charles Alan Wright, a special White House consultant, wrote a separate letter to special prosecutor Cox denying the tapes to him.

"I am instructed by the President to inform you that it will not be possible to make available to you the recordings that you have requested," Wright wrote.

Cox had said the separation of powers argument should not bar his access to the tapes because he is a member of the Executive Branch.

Cox later added, according to Wright, that his role was hard to define since he is not subject to the direction of the President and the Attorney General.

Wright said that if Cox is a part of the Executive Branch "you are subject to the instructions of your superiors, up to and including the President, and can have access to presidential papers only as and if the President sees fit to make them available to you."

But even more significant, Wright added, is the fact that production of the tapes for Cox would lead to their use in court, "and questions of separation-of-powers are in the forefront when the most confidential documents of the presidency are sought for use in the Judicial Branch."

Cox said after receiving Wright's letter, "Careful

study before requesting the tapes convinced me that any blanket claim of privilege to withhold this evidence from a grand jury is without legal foundation."

"It therefore becomes my duty promptly to seek subpoenas and other available legal procedures for obtaining the evidence for the grand jury . . .

"The effort to obtain these tapes and other documentary evidence is the impartial pursuit of justice according to law. None of us should make assumption about what the tapes will show.

"They may tend to show that there was criminal activity—or that there was none. They may tend to show the guilt of particular individuals or their innocence.

"The one clear point is, that the tapes are evidence bearing directly upon whether there were criminal conspiracies, including a conspiracy to obstruct justice, among high government officials."

The Senate committee asked for four tapes of conversations the President held with former counsel Dean to determine if they supported Dean's contentions that the President knew of the Watergate cover-up.

Cox requested eight tapes, including two with Dean, one involving a telephone conversation between the President and former Attorney General John N. Mitchell and one a meeting with Mitchell. The others involved meetings with former aides John D. Ehrlichman and H. R. Haldeman.



United Press International

Sen. Ervin signs an erroneous subpoena for Mr. Nixon's appearance before his committee. A second one, asking his ap-

pearance with the tapes, was also an error. Finally, a third subpoena, requesting only the tapes and other data, was signed.