

NYTimes JAN 5 1974  
Texts of Nixon Letter and Ervin Reply

Following are the texts of a letter from President Nixon to Senator Sam J. Ervin Jr., chairman of the Senate Select Committee on Presidential Campaign Activities, made public yesterday, and of a statement by Senator Ervin:

### Letter From Nixon

Dear Mr. Chairman:

This letter is in response to the three subpoenas issued by you as chairman of the Senate Select Committee on Presidential Campaign Activities and received on my behalf by White House counsel on Dec. 19, 1973.

These subpoenas call upon the President to produce all of the material in his "custody or possession, or the custody of the Executive Office of the President, or the White House, actual or constructive," which are described in extensive attachments.

Only six months ago, your committee concluded that recordings of five conversations were necessary for your legislative determination. Now, in one subpoena alone, you list, with widely varying precision, some 492 personal and telephone conversations of the President ranging in time from mid-1971 to late 1973 for which recordings and related documents are sought; and, in addition, in the same subpoena, recordings and related documents are sought for categories of Presidential conversations, identified only by participants and time spans measured in months and years. A second subpoena seeks production of 37 categories of documents or materials one of which is "President Richard Nixon's daily diary for Jan. 1, 1970, to Dec. 19, 1973," a period of approximately four years.

As I stated in my letter to you of July 6, 1973, "Formulation of sound public policy requires that the President and his personal staff be able to communicate among them-

selves 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 anticipated that even quite limited, selected disclosures of Presidential recordings and documents "would inevitably result in the attrition, and the eventual destruction of the indispensable principle of confidentiality of Presidential papers."

### 'Unconstitutional Usurpation

To produce the material you now seek would unquestionably destroy any vestige of confidentiality of Presidential communications, thereby irreparably impairing the constitutional functions of the office of the Presidency. Neither the judiciary nor the Congress could survive a similar power asserted by the executive branch to rummage through their files and confidential processes. Under the circumstances, I can only view your subpoena as an overt attempt to intrude into the executive to a degree that constitutes an unconstitutional usurpation of power.

As you are aware, substantial numbers of materials have been provided to the office of the special prosecutor for possible use with grand juries. With respect to whatever portions of the materials covered by your subpoena may be relevant to matters now subject to grand jury investigation, and potentially, criminal trials, disclosures to you, and through you to the public, could seriously impair the ability of the office of the special prosecutor to complete its investigations and successfully prosecute the criminal cases which may arise from the grand juries.

Incurring these adverse consequences by complying with your subpoenas would, on the other hand, serve no legislative purpose which I can discern.

I recognize that in the current environment, there may be some attempt to distort my position as only an

effort to withhold information, but I take this position to protect the office of the President against incursions by another branch, which I believe, as have my predecessors in office, is of utmost constitutional importance.

Accordingly, in order to protect the fundamental structure of our government of three separate but equal branches, I must and do respectfully decline to produce the materials called for in your subpoenas.

Sincerely,

RICHARD NIXON

The Honorable Sam J. Ervin, Jr.  
Chairman, Select Committee on  
Presidential Campaign Activities  
United States Senate  
Washington, D.C., 20510

### Statement by Ervin

The committee has no desire to gain access to any confidential communications had between the President and his aides or had among the President's aides for the purpose of enabling the President to perform in a lawful manner his constitutional or legal duties. All the committee is desirous of obtaining is evidence in the possession of the White House which tends to show political activities on the part of the President and his aides and on the part of the committees to re-elect the President and information in the possession of the President of criminal violations on the part of his aides.

There is nothing in the Constitution of the United States that gives the President the power to withhold information concerning political activities or information concerning illegal activities. The committee necessarily had to subpoena tapes and materials believing that the White House would not obey the subpoena and that the committee would have to bring a suit and let the District Court judge examine these tapes and materials in camera and order the President to turn over to the committee only those which are relevant to the matters which the committee is undertaking to investigate.

The committee has no desire and does not seek to obtain any confidential communications between the President and anybody else which would help the President to perform in a lawful manner his constitutional or legal duties.