

NYTimes JUN 5 1973
Texts of Cox and Ervin Views on Watergate Inquiry

WASHINGTON, June 4 — Following are the texts of a letter from Archibald Cox, special prosecutor in the Watergate case, to Senator Sam J. Ervin Jr., chairman of the Senate committee investigating Watergate, and of a statement by Senator Ervin replying to the letter:

Letter From Cox

I am writing you as chairman of the Select Committee on Presidential Campaign Activities to urge the national importance of at least temporarily suspending public hearings. The continuation of hearings at this time would create grave danger that the full facts about the Watergate case and related matters will never come to light, and that many of those who are guilty of serious wrongdoing will never be brought to justice.

I am not suggesting that the hearings now be called off. I am urging that the special prosecutor be given to assess this enormously complex case and to advise the select committee about the consequences of the appearance of particular witnesses at televised hearings.

I

Today, we all face a new situation — which requires new thought. When the select committee began its hearings, the executive branch had not undertaken an exhaustive investigation with adequate resources. Now a special prosecutor has been given full authority, the assurance of adequate resources, and absolute independence in investigating and prosecuting not only the Watergate affair but also all other offenses during the 1972 campaign and all allegations against the President, members of the White House staff, and Presidential appointees. I have pledged myself to pursue every avenue of investigation wherever it leads.

The creation of a special prosecutor was largely the work of the Senate, including the select committee. The select committee and I have the same goals: to get at the truth whatever it may be, to have the truth brought out in public fairly and responsibly, and to restore public confidence in the integrity and capacity of our governmental institutions. I have the additional duty of prosecuting the wrongdoers.

II

My reasons for believing that a suspension of the hearings will promote our mutual goals fall into four groups.

[1]

Immediate public hearings will impede investigation. They make it impossible to get the truth from bottom to top.

(a) Witnesses often come forward with testimony because of fear of heavy prison sentences. Additional publicity through televised hearings will relieve this fear by

increasing the chance that pre-trial publicity will forestall successful prosecution, and this will, in turn, reduce the chance of getting truthful testimony. The pressure on witnesses to tell the truth would also be diminished by other impediments to successful prosecution (discussed below) that may result from immediate continuation of hearings.

(b) Premature disclosure of testimony and other leads in the possession of investigators aids anyone disposed to fabricate explanations, and it increases the difficulty of getting truthful information from potential witnesses.

(c) Witnesses torn between conscience, on the one hand, and awe of office or loyalty to superiors, on the other, are likely to be more willing to give information to the special prosecutor than to make full disclosure in front of television cameras.

(d) I have been assured of access to all documents, files and other papers in the executive branch. This assurance, plus the determination to publicize any withholding, gives my office great power to develop evidence of this character.

[2]

Public hearings prior to the further development of the investigation will increase the risk that major guilty parties will go unpunished. Quite possibly, all would go free.

Each of the points made above supports this proposition. There are two additional, important considerations: (1) The danger that pre-trial publicity will prevent fair trials from ever being held; (2) The risk that the committee's granting immunity to major potential defendants will bar successful prosecution. Prosecution of a Senate witness may be impossible if he testified under use immunity before a record can be made by the special prosecutor demonstrating that the case was developed without leads from the immunized testimony.

There is much more to this question than whether one or two people go to jail. Confidence in our institutions is at stake. We must find a way both to expose the truth and to punish the wrongdoers. Failure to convict in high office shown guilty of crime—even as a consequence of Senate hearings—could well shatter public confidence in our governmental institutions, particularly confidence in our system of justice. At a time when the nation's concern about crime has focused attention on our system of justice, it would be discriminatory and therefore demoralizing for the powerful to go scot-free while ordinary citizens are sentenced to prison.

[3]

Both the Senate committee and the special prosecutor should preserve for the present, freedom to bring out at one time in a comprehensive

presentation all the facts concerning the President of the United States.

Allegations have been made concerning the implication of the President of the United States. It seems unlikely that all the facts are known and all the available evidence has been assembled. There is grave danger of confusion if bits and pieces emerge from day to day or week to week. This method of disclosure also makes it more difficult to develop additional information.

I do not now know what facts will develop or the best place, time or procedure for a comprehensive presentation. Perhaps it is before the select committee. Quite possibly it will turn out that no such presentation can be made, and that the Senate should later resume its hearings as planned. My only point is that, for the present, this option should be preserved.

[4]

We should also remember that innocent persons can be questioned and exonerated within the confines of grand jury secrecy while even the most careful public hearing may injure the innocent.

III

I must emphasize that I am not requesting—and have never requested—the select committee immediately to call off all hearings. My only request is that the committee—having forced a broad, vigorous and independent investigation — now enable the special prosecutor to pursue his responsibilities unimpeded until an appropriate time for reviewing the situation together and deciding in cooperation how next to proceed.

It is very difficult to specify the exact amount of time needed before discussing the problem again with the select committee. Three months seems reasonable, but I would be grateful for any significant period. The more time I can have, the more accurately I can later advise the select committee on the likely effect of resumption of the hearings upon the full development of information and the best way to assure the possibility of fair trials. I would expect, of course, to keep the select committee advised of the general progress of our work.

I realize that this is a very trying request to put to the select committee because granting it might give rise to unwarranted charges that the committee was delayed or diverted in bringing out the truth. It is an even more difficult request for me to make because there will be false charges that I am attempting to cover up the truth.

Only the conviction that the above points have critical importance induces me to write this letter—and to hope that upon full consideration the select committee will grant my request.

If you think it useful, I would value the opportunity

to explore these points with the select committee in executive session in more detail.

Ervin Statement

I am opposed to the Select Committee on Presidential Campaign Activities acceding to the request of the Watergate's special prosecution forces that the committee postpone its scheduled hearings for an indefinite period of time.

If the select committee were to postpone these hearings for an indefinite period of time in order to permit the return of indictments by the grand jury, then in case indictments were returned the select committee would again be requested to postpone further hearings during the five or six or seven months or more while the prosecution was awaiting trial of the indictments and trying the indictments.

The select committee has been ordered by the unanimous vote of the Senate to proceed with this investigation and to complete it and make a final report by Feb. 28, 1974.

For these reasons, agreeing to the request of the prosecution would, for all practical intentions and purposes, put the committee out of business and disable it to comply with the order of the Senate.

I do not accept the suggestion of the prosecution that the Senate investigation will impede the search for truth. On the contrary, the preparation for the investigation on the part of the committee has greatly accelerated the revelation of the truth.

The Department of Justice and those acting under its authority or undertaking to discharge its duties have had an opportunity to deal with the Watergate affair for almost a year.

The right of the people of the United States to learn, as speedily as possible, whether any persons occupying important offices were implicated in the Watergate affair or any of its ramifications, and to know whether or not members of the Government have indulged in wrong doing is of paramount importance.

This is true because government has come to a virtual standstill as a result of the dark cloud which the watergate affair and its ramifications has cast over the land. The most important problem pending before this country at this present moment is for the people to learn the truth, and the truth can only be revealed by the carrying out of the Senate investigation in a full and fair and courageous manner.

We cannot afford the delay incident to awaiting further action by the Department of Justice. The people of this land are entitled to know the truth without further delay and are entitled to have their government resume its operations in a manner to promote their interest.