

# Nixon Says He Won't Testify

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SAN CLEMENTE — President Nixon formally advised the Senate Watergate Committee yesterday he will not testify before it or permit access to presidential papers lest he damage or destroy the powers of the presidency.

In a letter to Sen. Sam J. Ervin, chairman of the committee, which resumes its hearings Tuesday, the President said that his own testimony or access to "private papers" of his office could jeopardize "the fundamental constitutional role of the Presidency."

## Also Denies Access to Records

Nixon cited as a precedent the refusal in 1953 of then former President Truman to comply with a subpoena from the House Committee on Un-American Activities. Truman in turn had cited precedents dating from President Washington to support his contention that the constitutional separation of powers forbade his appearance.

"This position was not challenged by the Congress," Nixon wrote. "It is difficult to improve upon President Truman's discussion of this matter."

He enclosed a copy of Tru-

man's letter and asked that it be made part of the committee's record.

While Nixon refused to turn over presidential papers, spokesmen said that documents could still be perused by former White House staff members but cannot be taken from the White House or copied.

Reached at his home in Morganton, N.C., Ervin said the President is "hurting himself, the presidency and the country a lot more than he's hurting the committee."

Noting that President Lincoln twice testified before

congressional committees, Ervin added that "when a person doesn't disclose the evidence in their power, the presumption is the evidence would be adverse to them if it were disclosed."

But Sen. Howard Baker, the committee's ranking Republican, said in an interview at his home in Tennessee that the letter does not rule out a possible private meeting between the President and the committee members. "I would still hope for an opportunity for the committee to have a conversation with the President," he said.

The White House already

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has said that it does not expect the President to agree to sit down with the Ervin committee informally to answer questions outside of its hearing room.

Although the President has consistently rejected the idea of formal testimony before the committee, his decision against furnishing documents appeared to be a reversal of policy.

The White House already has furnished some materials to the committee, including logs of 30 to 40 meetings between Nixon and former White House counsel John Dean in the first four months of this year.

Dean's successor, Leonard Garment, had implicitly agreed to grant the committee access to substantial additional documents which Senate investigators are seeking to examine and photocopy. Only a few days ago, Garment asked the committee for more time in meeting its request and cited the sheer volume of papers it wanted.

In his letter to Ervin, delivered yesterday, Nixon said his decision was "based on my constitutional obligation to preserve intact the powers and prerogatives of the presidency and not upon any desire to withhold any

information relevant to your inquiry."

He reminded Ervin his staff is "under instructions to cooperate fully with yours in furnishing information pertinent to your inquiry."

He recalled that on May 22 he ordered that the right of executive privilege involving any testimony concerning any possible criminal conduct or discussions of such conduct no longer be invoked for present or former members of the White House staff.

He recalled that in the case of Dean, whose testimony has been the most damaging to Nixon, he also waived the "attorney-client relationship."

But he said the pending requests from the committee raising the desirability of his testimony and access to papers prepared or received by former members of his staff jeopardizes his presidential role.

"This I must and shall resist," Nixon wrote.

"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 judgment, their exploration

of alternatives, and their frank comments on issues and personalities at home and abroad remain confidential.

Testimony by White House staff members offers a "difficult but different problem," the President said, in which testimony can be limited to matters within the scope of the inquiry. Hence he agreed to "permit the unrestricted testimony of present and former White House staff members."

But on the matter of his own testimony, the President added:

"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."

The President said that "at an appropriate time" during the hearings he intends to "address publicly the subjects you are considering." He did not indicate whether this would be in the form of a speech to the nation, a statement or a news conference.

He has not held a general news conference since March 15 and the White House said a few days ago the President would speak out on Watergate in some form as soon as the current phase of the Ervin hearings ends, probably in August.