

Editor's Report

A Test Of Power

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NEW YORK —What comes across to me as a pretty dull and windy television show got some dramatic new life breathed into it this week when the Senate Watergate Committee moved directly toward what could be a truly historic legal showdown with President Nixon.

The long-threatened Constitutional power struggle between the White House and Congress, ironically, was interrupted by some microscopic non-Watergate bugs. Mr. Nixon's illness with viral pneumonia thus came as something of an anti-climax to a climax on the verge of erupting.

Barring some seemingly unlikely compromise, that climax has simply been deferred temporarily. Meanwhile it has conjured up a picture in my mind far more fascinating than the expressionless faces of witnesses droning on about what they did or didn't do in events raked over to the point of boredom.

The picture which comes to me is that of Watergate Committee Chairman Sam J. Ervin Jr., the

—Turn to Page B2, Col. 7

—From Page 1

venerable North Carolina Democrat and expert on the Constitution, sitting at a table in a winner-take-all arm wrestling contest with Richard M. Nixon, the Republican President of the United States whose own knowledge of Constitutional law is second to none.

Arrayed behind Ervin and cheering him on are the other six senators on his committee, representing Congress in its entirety. Standing grim and in special silence behind Mr. Nixon are the ghosts of 17 previous refusals to respond to subpoenas or demands for information of various kinds by Congress.

The array of former presidents is awesome. Reading from left to right there are Washington, Jefferson, Monroe, Jackson, Tyler, Polk, Fillmore, Buchanan, Lincoln, Grant, Hayes, Cleveland, Theodore Roosevelt, Coolidge, Hoover, Franklin D. Roosevelt and Truman.

Two former presidents — Lincoln and Wilson — testified before Congressional committees under unusual circumstances. Lincoln once appeared before such a body voluntarily and Wilson, also voluntarily, once invited members of a committee to come and talk with him in his office.

THE FACT IS, however, that never in American his-

tory has any president honored a Congressional Committee subpoena. And in a letter sent to Senator Ervin on July 6, President Nixon categorically declared he takes the same position; that the Constitutional separation of Executive, Legislative and Judicial powers mandates him to preserve Presidential prerogatives intact.

The Ervin Committee has clearly given up on the idea of trying to force the President to testify personally on Watergate. What makes the threatening showdown unique is the committee's belief that Constitutional privilege does not prevent it from demanding access to certain Presidential papers.

Senator Ervin laid out his case on Wednesday. He admitted that certain Presidential papers, such as those relating to national security, clearly were immune from subpoena. But he took the position that White House material relating to election matters or activities involving criminal activity have no such protection. President Nixon takes the opposite view and the fat went in the fire figuratively on Thursday, before he was stricken, when the committee sent him a communication which was — in effect — an ultimatum. The thrust of it was that he reconsider immediately or the papers would be subpoenaed.

Mr. Nixon responded by inviting Senator Ervin to meet with him to discuss the matter. But he declared the meeting would be held as a "courtesy" to the committee and a White House spokesman said the President would not budge from his refusal to respond to any kind of a subpoena.

And there the matter stands. It is possible, of course, that Mr. Nixon may voluntarily give up some documents the committee wants and thereby stave off the threatened Congressional crisis. It seems more likely that he will not, and even if he does the surrendered papers will probably not be all those wanted.

Knowing President Nixon for many years, and being familiar with the redoubtable Senator Ervin's own reputation for strong-willed tenacity, my own feeling is that eventually a subpoena will be issued and the question of its validity then decided by the Supreme Court.

My feeling also is that, if this happens, the court is more likely than not to rule in favor of the President. If it were to rule against him, Mr. Nixon conceivably could refuse to honor the ruling on grounds that his Constitutional powers are as immune from the court as from Congress.

What would happen in such a mind-boggling situation is anybody's guess. Meanwhile the imminent resolution of the present situation — probably in a week or so — is a simply fascinating cliff-hanger for anyone interested in the basic machinery of our government.

There has never been anything quite like it. This is no mere barroom brawl — this is a fight to the jugular which could easily involve not only two but all three branches of the government.

A MAJOR SIDE effect of the showdown maneuvering, as might be expected, has been a welter of new criticism directed at President Nixon. His foes and even some public figures with a reputation for fairness have charged that he is more interested in protecting possibly incriminating material than protecting Presidential powers.

Even Senator Ervin, of all people, has contributed to this chorus. He traditionally has been a model of even-handedness throughout his Congressional career, but he had this response to Mr. Nixon's letter of July 6:

"I think it is very unfortunate that the President of the United States is unwilling to make a full disclosure to the American people of all that he knows in this matter."

This was hitting below the belt with a vengeance, excusable in part only because of the senator's strong conviction that his committee has a legal right to examine White House documents relevant to the Watergate probe.

It is not really excusable even on those grounds. In his position paper the President declared he definitely was acting solely to preserve Presidential powers "and not upon any desire to withhold information relative to your inquiry."

He stated flatly in addition that he will personally and publicly respond "at an appropriate time ... to the subjects you are considering."

This, to me, is a perfectly fair statement. It is quite unreasonable to expect that Mr. Nixon should come out with comment in the wake of every committee witness who may or may not substantiate his previous claim of ignorance about the Watergate mess.

We have his word that when the case is complete, he will make his comment in completed form.

He deserves the courtesy of suspended judgment until that happens. Most certainly he does not deserve to have his position on Constitutional authority and obligations interpreted as an indication of guilt.