

Ervin Chides Nixon About Tapes and

Says It Does Not Apply To Watergate Charges

Separation of Powers

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WASHINGTON, July 23—

Senator Sam J. Ervin r., after signing subpoenas today for tape recordings and documents President Nixon has refused to yield voluntarily, declared at the Senate Watergate hearings that the constitutional doctrine of separation of powers did not apply to "alleged criminal activities."

Referring to a letter the Senate Watergate committee received shortly after noon from the President, in which he declined to turn over materials the committee considers relevant to its inquiry, Senator Ervin brought laughter from the standing-room crowd at the hearings when he remarked:

"This is a rather remarkable letter about the tapes. If you will notice, the President says he has heard the tapes or some of them, and they sustain his position. But he says he's not going to let anybody else hear them for fear they might draw a different conclusion."

Conflicts In Testimony

The committee has eagerly sought the papers and tapes personal and telephone conversations in an effort to resolve conflicts in the testimony of several witnesses. For instance, John W. Dean 3D, former counsel to the President, testified that he believed Mr. Nixon knew about the Watergate cover-up, and said this belief was based on several conversations with the President since last Sept. 15. Others have said Mr. Nixon was surprised when Mr. Dean filled him in on the cover-up last March 21.

In his letter today to Senator Ervin, the President based his refusal to accede to the committee's request for the tapes on the principle of separation of powers, as he did on July 6 when declined to make Presidential documents available.

Mr. Nixon added, however, that the tapes "would not finally settle the central issues before your committee." He said he had played some of them and that they were "entirely consistent with what I know to be the truth." But he also said that there were comments that some persons "would inevitably interpret in different ways."

A Grim Expression

After chiding the President about his fear of misinterpretation, Senator Ervin, with a grim expression, said, "I am certain that the doctrine of separation of powers does not impose upon any President either the duty or the power to undertake the separate a Congressional committee from access to the truth concerning alleged criminal activities."

The letter from the President was delivered after the committee had heard testimony all morning from Gordon C. Strachan, a former assistant to H. R. Haldeman, who was the White House chief of staff

until he resigned April 30. The letter was accompanied by a copy of another letter, addressed to Archibald Cox, special prosecutor in the Watergate case, refusing a similar request for Presidential tapes and documents.

A few minutes after 2 P.M., the four Democratic and three Republican Senators on the committee met in executive session in Mr. Ervin's office down the hall from the hearing room in the Old Senate Office Building. In a session interrupted twice by calls to the Senate to vote, they voted unanimously to subpoena the Presidential tapes and documents.

Meanwhile, in the red-carpeted, third-floor caucus room where the hearings are being

held, staff aides and newsmen milled about, awaiting the outcome of the committee meeting. Spectators, most of whom had stood in long lines waiting to get in, shuffled impatiently, wondering what was causing the delay. Some who were not fortunate enough to have seats left as the minutes dragged on.

Finally, at 3:24 P.M., Senator Ervin arrived and made his way to the long hearing table, where he sat alone as the television lights went back on. The crowd applauded.

Three or four minutes later, as the other Senators arrived, a hush fell over the room and Mr. Ervin began to read the first of two communications from the President.

It was a brief letter to Senator Ervin in which Mr. Nixon said that, in view of the second letter, in which he refused the committee's request, he could see "no useful purpose" in a meeting with Mr. Ervin that the North Carolina Democrat had proposed.

Agrees With President

"Well, at long last, I have something I agree with the President on in connection with this matter," Senator Ervin said. "If the President does not think there is any useful purpose that can be obtained by our meeting together, I will not dissent from that view, so I will not ask for the privilege of visiting the White House."

Over the weekend, Senator Ervin told newsmen in North Carolina that, if the President withheld the tapes, "those seeking the truth will draw the inference—and a justified inference—that his reason for not producing the tapes is because the evidence would be adverse to him."

After reading the second letter today, the white-haired Senator left little doubt that he was drawing the inference of which he had warned.

Mrs. Ervin in Audience

As Mrs. Ervin, wearing a light brown polka dot dress, sat in an aisle seat in the first row of the visitor's section, her head inclined and her eyes closed, the Senator said:

"I love my country. I venerate the office of the President, and I have the best wishes for the success of the incumbent, present incumbent of that office, because he is the only President this country has at this time."

He added, however, that he thought the President "owes an obligation to furnish a high standard of moral leadership to this nation."

"And I think," Mr. Ervin continued, "that high moral leadership demands that the President make available to this committee any information in the form of tapes or records which will shed some light on the crucial question: How did

it happen that burglars were caught in the headquarters of the opposition party with the President's campaign funds in their pockets and in their hotel bedrooms at the time?"

Mr. Ervin said he thought the people were more interested in "finding the answer to that question" than in "abstruse arguments about the separation of powers or executive privilege."

"I think that Watergate is the greatest tragedy this country has ever suffered," the senator concluded. "I used to think that the Civil War was our country's greatest tragedy, but I do remember 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."



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Senator Sam J. Ervin Jr., right, signing subpoenas for White House materials yesterday afternoon in the Senate Caucus Room. Assisting him are Rufus L. Edmisten, left, deputy counsel, and Prof. Arthur Miller.