

Senate Watergate Prober Is Strict Constitutionalist

By JAMES M. NAUGHTON
New York Times Features

WASHINGTON — Tourists peered like innocent cherubim placed there for effect, over the edge of the circular second-floor gallery, and down on the human fresco in the well of the Senate rotunda of the United States Capitol and at the center, a broad-shouldered, white-haired, 76-year-old orator alternately listened to questions with an amused smile creating his McIntosh apple face or barked answers in a cornmeal-mush dialect of the Appalachian South.

That's Senator Ervin of the Watergate Committee, a Capitol guard replied to a woman's question.

Sam J. Ervin Jr. is the investigator who was not indulging in hyperbole when he threatened to send the Senate Sergeant-at-Arms to arrest any White House aide refusing to testify about political espionage and sabotage before the Select Committee on Presidential Campaign Activities.

He is the legislator who drafted a measure to demand that the White House follow congressional instructions on how to spend federal money.

He is the Democratic senator from North Carolina and, after 18 years in the Senate and five decades in public life, he has amassed enough influence, authority and seniority to chair — besides the Watergate inquiry — the Government Operations Committee and three Judiciary subcommittees, enabling him to preside over more than 60 congressional employees with an annual payroll exceeding \$1-million.

Almost by accident — Ervin, a Presbyterian elder, might say by predestination — the senator from North Carolina has become the symbol of the wounded institution trying to recover its strength and its self-respect.

After two decades as hardly more than a caricature of the Southern wing, Sam Ervin at the twilight of his career has become the graven image of Congress.

Nothing that he is doing or saying today is more distant from what he did or said as a freshman Senator in 1954, but suddenly people are watching and listening with the avidity of voyeurs.

ERVIN WAS SNOW-BOUND in Morganton last January when Mike Mansfield, the Senate Democratic leader, persuaded the

From that forum — and later from the Subcommittee on Constitutional Rights, the Subcommittee on Revision and Codification of Law, and the full Committee on Government Operations, all of which Ervin also chairs — he has conducted seemingly contradictory crusades.

He led Southern filibusters against civil rights laws but initiated civil liberties measures. He voted against federal housing subsidies but challenged President Nixon's right to withhold the housing funds. He consistently supported the American military involvement in Indochina but fought bitterly against military surveillance of antiwar dissidents. He opposed court rulings that freed criminal suspects on technical procedural grounds but fought with equal fervor against adoption of the "preventive detention" law that permits the jailing of defendants before trial if the government might commit another offense.

THE CONSISTENCY that Ervin sees throughout such positions is that he bases them all on his reading of the United States Constitution, a stipulation that seemed to rule out nearly every Democrat in the Senate. Mansfield also wanted as chairman an experienced lawyer, preferably

one with investigative or judicial experience.

The logical, perhaps the lone, prospect was Samuel Ervin Jr. He had supported the President on Vietnam and voted to sustain some Nixon vetoes. He was not, clearly, a partisan Democrat. He had practiced law since 1922, served at every level of the criminal and appellate court system in North Carolina, sat on the Senate committees that censured Joseph McCarthy in 1954 and investigated labor racketeering from 1957 to 1960.

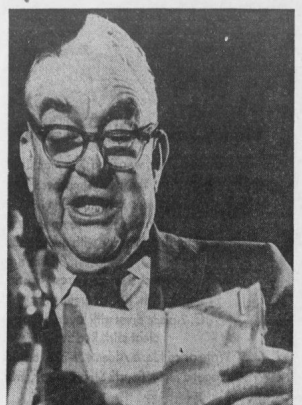
Above all, as Mansfield put it, he "was the only man we could have picked on either side of the aisle who'd have the respect of the Senate as a whole."

In 1964, departing Senator Guy Gillette of Iowa urged freshman Senator Sam Ervin to assume the lead in trying to curtail the encroachment of the executive and judicial branches on the legislative power of Congress. The court was writing law and the administration was disregarding law, they agreed. Ervin mentioned the matter to Senator Mansfield and to Senator Everett M. Dirksen, the influential Illinois Republican, and the two leaders introduced a resolution that led to creation of the Senate Judiciary Subcommittee on Separation of Powers. Ervin has been its only chairman.

Ervin's positions to rationalize, however, is his adamant opposition to the Equal Rights Amendment to the Constitution, which would grant legal parity to women. Ervin's attitude seems less judicial than biological when he explains that "you have got to admit that there are physiological differences between men and women. I stick to my guns that I do not want to see women drafted in this country to serve in the armed forces just as men do."

"Our greatest possession," he has told the students and faculty of Davidson College in North Carolina, "is not the vast domain; it's not our beautiful mountains, or our fertile prairies, or our magnificent coastline. It's not our great productive capacity. It is not the might of our Army or Navy. These things are of great importance. But in my judgment the greatest and most precious possession of the American people is the Constitution."

viewpoint



Sam J. Ervin Jr. would send Sergeant-at-Arms to arrest White House aides.

— despite congressional appropriations — in order to avoid a deficit that would exceed the national debt ceiling or the tax increase that an "irresponsible" Congress would force with profiting spending. But Ervin, who has voted against every increase in the national debt and many of the Democratic-sponsored social spending proposals of the last decade, insists that the President simply does not have the constitutional right to refuse to spend as Congress directs.

Small wonder that even before Ervin got under way with the Watergate investigation, the White House was fretful over the senator's potential to shape the public perception of the clash between the President and the Congress. A political associate of Ervin's in Charlotte, N.C., a contributor who had also supported President Nixon's candidacy for reelection, tells of receiving a call from "Washington" to inquire if there wasn't some way that he and "other Nixon friends" could persuade Ervin to back off a bit. Instead, the Charlotte man passed the information on to Ervin.

INEVITABLY, when Ervin quizzes a witness, the discussion gets down to basics: the Constitution of the United States. The senator is never without at least one blue paperbound copy and frequently has enough extras to pass out to grand juries is grounded in his interpretation of the First Amendment. He would except newsmen from giving testimony on anything other than first-hand observation of a crime and would stipulate, in the legislation he has prepared, that any unpublished data is immune from examination.

The most difficult of Ervin's positions to rationalize, however, is his adamant opposition to the Equal Rights Amendment to the Constitution, which would grant legal parity to women. Ervin's attitude seems less judicial than biological when he explains that "you have got to admit that there are physiological differences between men and women. I stick to my guns that I do not want to see women drafted in this country to serve in the armed forces just as men do."

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That is why, he said, he initiated legislation this year to compel the President to follow congressional instructions on spending. "This is not a confrontation that's primarily concerned with money," insisted Ervin.

Mr. Nixon has contended that he was forced to cut back on some spending programs and eliminate others

right to veto if he thinks it is improper.

MR. SNEED: This is specifically conferred.

SENATOR ERVIN: And is it not a rule of construction of statutory and constitutional provisions that the exclusion of another? MR. SNEED: Well, it is a canon of interpretation, and frequently followed.

SENATOR ERVIN: You mean that the President can refuse to execute an act of Congress without vetoing it?

MR. SNEED: Senator, what I have really said is (that) the President, we believe, has the power by virtue of all the acts that have been enacted by Congress to which I have made reference (on the national debt limitation, the mandate to seek full employment and the requirements to curtail inflation) to impound funds in the White House to read "One is the Constitution of the United States and the other is Dale Carnegie's book on 'How to Win Friends and Influence People.'"

MR. SNEED: Well, as I say, when we get down to, as I mention in my formal statement, situations in which all of the statutory justifications for impounding were stripped away and we have simply a question of whether there is any constitutional power of the President to impound and Congress has said you must spend, it is our contention that he may refuse to spend and that the collision in that case between the Congress and the President is a political question that is not justiciable.

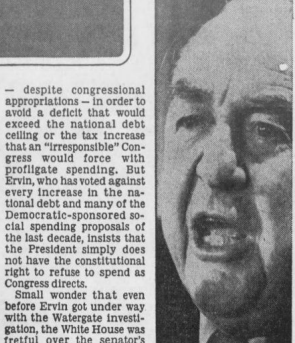
SENATOR ERVIN: I am reminded of the story of the deacon who desired to preach. The deacon went to the board of deacons and wanted to know why they fired him, and he asked the chairman, "Don't I argue?" He said, "Yes, you argue, yes." He said, "Don't I sputter?" The chairman said, "Yes, you sure do sputter." He said, "What's the trouble with my preaching?" The chairman said, "You don't show wherein." I wish you would show wherein there is any provision other than the veto power that the President has the right to ignore any provision of Congress.

MR. SNEED: There is no explicit power of impoundment.

SENATOR ERVIN: The power has to be either expressed or implied. Now, tell us where it is implied. If you will tell us where it is, we will facilitate this.

MR. SNEED: We have to go, as far as the Constitution is concerned, to Article Two in Sections One and Two and Three.

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are faithfully executed. I cannot reconcile (your) conclusion with what the words say. If there is any other provision of the Constitution that provides that power —

MR. SNEED: Senator, I have done my best to contribute to this discussion.

SENATOR ERVIN: Somebody told me once when I was representing a case, he said, "You put up the best possible defense for a guilty client."

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Crusades Seemingly Contradictory ... but based on his reading of Constitution

I made it myself — so I guess it's like, organic!