

THE WHITE HOUSE

WASHINGTON

The Western White House
San Clemente

July 6, 1973

Dear Mr. Chairman:

I am advised that members of the Senate Select Committee have raised the desirability of my testifying before the Committee. I am further advised that the Committee has requested access to Presidential papers prepared or received by former members of my staff.

In this letter I shall state the reasons why I shall not testify before the Committee or permit access to Presidential papers.

I want to strongly emphasize that my decision, in both cases, is based on my Constitutional obligation to preserve intact the powers and prerogatives of the Presidency and not upon any desire to withhold information relevant to your inquiry.

My staff is under instructions to co-operate fully with yours in furnishing information pertinent to your inquiry. On 22 May 1973, I directed that the right of executive privilege, "as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation," no longer be invoked for present or former members of the White House staff. In the case of my former Counsel, I waived in addition the attorney-client privilege.

These acts of cooperation with the Committee have been genuine, extensive and, in the history of such matters, extraordinary.

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The pending requests, however, would move us from proper Presidential cooperation with a Senate Committee to jeopardizing the fundamental Constitutional role of the Presidency.

This I must and shall resist.

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 judgments, their exploration of alternatives, and their frank comments on issues and personalities at home and abroad remain confidential. I recognize that in your investigation as in others of previous years, arguments can be and have been made for the identification and perusal by the President or his Counsel of selected documents for possible release to the Committees or their staffs. But such a course, I have concluded, would inevitably result in the attrition, and the eventual destruction, of the indispensable principle of confidentiality of Presidential papers.

The question of testimony by members of the White House staff presents a difficult but different problem. While notes and papers often involve a wide-ranging variety and intermingling of confidential matters, testimony can, at least, be limited to matters within the scope of the investigation. For this reason, and because of the special nature of this particular investigation, I have agreed to permit the unrestricted testimony of present and former White House staff members before your Committee.

The question of my own testimony, however, is another matter. 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. My position in this regard is supported by ample precedents with which you are familiar and which need

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not be recited here. It is appropriate, however, to refer to one particular occasion on which this issue was raised.

In 1953 a Committee of the House of Representatives sought to subpoena former President Truman to inquire about matters of which he had personal knowledge while he had served as President. As you may recall, President Truman declined to comply with the subpoena on the ground that the separation of powers forbade his appearance. This position was not challenged by the Congress.

It is difficult to improve upon President Truman's discussion of this matter. Therefore, I request that his letter, which is enclosed for the Committee's convenience, be made part of the Committee's record.

The Constitutional doctrine of separation of powers is fundamental to our structure of government. In my view, as in the view of previous Presidents, its preservation is vital. In this respect, the duty of every President to protect and defend the Constitutional rights and powers of his Office is an obligation that runs directly to the people of this country.

The White House staff will continue to cooperate fully with the Committee in furnishing information relevant to its investigation except in those instances where I determine that meeting the Committee's demands would violate my Constitutional responsibility to defend the office of the Presidency against encroachment by other Branches.

At an appropriate time during your hearings, I intend to address publicly the subjects you are considering. In the meantime, in the context of Senate Resolution 60, I consider it my Constitutional responsibility to decline to appear personally under any circumstances before your Committee or to grant access to Presidential files.

I respect the responsibilities placed upon you and your colleagues by Senate Resolution 60. I believe you and

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your Committee colleagues equally respect the responsibility placed upon me to protect the rights and powers of the Presidency under the Constitution.

Sincerely,

Honorable Sam J. Ervin, Jr.
Chairman
Select Committee on Presidential
Campaign Activities
United States Senate
Washington, D. C. 20510

Enclosure

cc: Honorable Howard H. Baker

November 12, 1953

TRUMAN LETTER

Dear Sir:

I have your subpoena dated November 9, 1953, directing my appearance before your committee on Friday, November 13, in Washington. The subpoena does not state the matters upon which you seek my testimony, but I assume from the press stories that you seek to examine me with respect to matters which occurred during my tenure of the Presidency of the United States.

In spite of my personal willingness to cooperate with your committee, I feel constrained by my duty to the people of the United States to decline to comply with the subpoena.

In doing so, I am carrying out the provisions of the Constitution of the United States; and am following a long line of precedents, commencing with George Washington himself in 1796. Since his day, Presidents Jefferson, Monroe, Jackson, Tyler, Polk, Fillmore, Buchanan, Lincoln, Grant, Hayes, Cleveland, Theodore Roosevelt, Coolidge, Hoover and Franklin D. Roosevelt have declined to respond to subpoenas or demands for information of various kinds by Congress.

The underlying reason for this clearly established and universally recognized constitutional doctrine has been succinctly set forth by Charles Warren, one of our leading constitutional authorities, as follows:

"In this long series of contests by the Executive to maintain his constitutional integrity, one sees a legitimate conclusion from our theory of government. ***Under our Constitution, each branch of the Government is designed to be a coordinate representative of the will of the people. ***Defense by the Executive of his constitutional powers becomes in very truth, therefore, defense of popular rights--defense of power which the people granted to him.

"It was in that sense that President Cleveland spoke of his duty to the people not to relinquish any of the powers of his great

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office. It was in that sense that President Buchanan stated the people have rights and prerogatives in the execution of his office by the President which every President is under a duty to see 'shall never be violated in his person' but 'passed to his successors unimpaired by the adoption of a dangerous precedent.' In maintaining his rights against a trespassing Congress, the President defends not himself, but popular government; he represents not himself but the people."

President Jackson repelled an attempt by the Congress to breakdown the separation of powers in these words:

"For myself I shall repel all such attempts as an invasion of the principles of justice as well as the Constitution, and I shall esteem it my sacred duty to the people of the United States to resist them as I would the establishment of a Spanish Inquisition."

I might commend to your reading the opinion of one of the committees of the House of Representatives in 1879, House Report 141 March 3, 1879, Forty-fifth Congress, Third Session, in which the House Judiciary Committee said the following:

"The Executive is an independent of either house of Congress as either house of Congress is independent of him, and they cannot call for the records of his actions, or the action of his officers against his consent, any more than he can call for any of the journals or records of the House or Senate."

It must be obvious to you that if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President.

The doctrine would be shattered, and the President, contrary to our fundamental theory of constitutional government, would become a mere arm of the Legislative Branch of the Government if he would feel during his term of office that his every act might be subject to official inquiry and possible distortion for political purposes.

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If your intention, however, is to inquire into any acts as a private individual either before or after my Presidency and unrelated to any acts as President, I shall be happy to appear.

Yours Very Truly,

HARRY S. TRUMAN

Honorable Harold H. Velde
Chairman
Committee on Un-American Activities
House of Representatives
Washington, D. C.