ABSTRACT

THE ORAL COMMUNICATION OF SENATOR SAM J. ERVIN, JR. IN THE WATERGATE HEARINGS: A STUDY IN CONSISTENCY

By

Clifford Kenneth VanSickle

This study was centered in the ethics of communication as it relates to seeking truth for the public at large while protecting individual rights. It was a study of the degree of consistency with which Senator Sam J. Ervin, Jr., Chairman of the Watergate Hearings, engaged his powers of oral communication in a search for the truth. Four major criteria questions were developed, all of which focused on the degree to which Senator Ervin was consistent with his expressed philosophy of truth and freedom while serving as Chairman of the Senate Select Committee investigating Watergate and related activities. The analysis of the Senator's oral communication encompassed his three roles as chairman, as interrogator, and as speaker.

A study of congressional committees, committee chairmen, and hearings revealed a number of serious criticisms had been leveled against their performance which ran counter to Senator Ervin's philosophy of truth and freedom. Two major criteria questions were drawn from these criticisms for use in measuring Ervin's consistency with his

philosophy. In order to be consistent, Ervin had to avoid these criticisms.

An historical sketch of Ervin's life was included in the study to provide a broader perspective of his expressed philosophy. The philosophy, itself, was gleaned from a reading of the Senator's speeches, articles, and his statements on the Senate floor. Three major aspects of his philosophy emerged; these were truth, freedom, and a government of laws. One major criteria question was drawn specifically from his expressed philosophy.

A study of Ervin's speaking style revealed four major stylistic features which lent themselves well to the study of consistency in his oral communication in the Hearings. These included his use of history, literature, the Bible, and anecdotes in his speaking. A fourth criteria question was drawn from this study, focusing on possible influences of sudden national exposure which might have resulted in changes in his speaking style. Any noticeable changes in style were to be measured against Ervin's philosophy of truth and freedom.

The criteria questions taken from the criticisms of past hearings and committee chairmen provided an external measure of consistency. The criteria questions derived from a study of Ervin's expressed philosophy and his speaking style provided an internal measure.

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The results of the analysis of the Hearings transcripts suggested Senator Ervin did not have an unquestionable record of consistency. However, all of the evidence pointing to inconsistency was either implicit in nature or related only indirectly to the criteria questions. On the other hand, the evidence supporting a finding of consistency was both explicit in nature and related directly to the criteria questions. Additionally, there was a significant preponderance of the latter evidence. In view of the findings the writer concluded that Senator Ervin was consistent with his philosophy of truth and freedom during his search for the truth in the Watergate Hearings.

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CHAPTER I

INTRODUCTION

Oral communication is one of the important tools of the human race. It is a powerful tool with potential influence for good of evil, depending upon the purposes for which it is employed and the quality of its use. Because of the potential influence for good or evil, oral communication is rightly studied from a point of view of ethics. The study at hand is primarily a study of ethics in communication as it deals with the degree of consistency with which one man in government sought the truth. The kind of truth seeking with which the study deals involves the frequently opposing needs of society and the individual. The discussion below speaks to this problem and sets the stage for the study.

Both Baird and Nilsen have suggested that the ultimate goal of speech communication ought to be a step toward the highest good--the well being of the individual and of society.[1] In an ideal democracy, the balance between the good of society and the good of the individual is crucial. Baird, speaking to this issue, discussed the goals

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[1]A Craig Baird, Rhetoric: A Philosophical Inquiry (New York: The Ronald Press Company, 1965), pp. 111-12. Thomas R. Nilsen, Ethics of Speech Communication (Indianapolis: The Bobbs-Merrill Company, Inc., 1966), pp. 9,13.

of the ethical speaker.

> If committed to ethical motives, he adopts the individual-social aims comprising the summum bonum, the highest good. . . . His overall aims . . . embrace motives of social amelioration, the good of society. This better society is his ideal, as he weighs the economic, social, political, and other constituents, one or more of those to be set in motion by a particular speech. . . .
>
> This speaker-agent must also account for the divergent needs and interests of the group and of the individual. His commitment to social progress will not lead him to abandon rights and personal growth of the individual. Utilitarian though he is, he still preserves his loyalty to the fulfillment of each individual as a responsible and free thinker, communicator and doer.[2]

The criteria which have been developed for this study take both of the attendant needs of this issue into consideration. They speak to the task of sorting out the truth which is important to both society and the individual, and they also speak to the responsibility of protecting the rights of the individual. Within this setting, it will be helpful to define two key terms in the title of the study: oral communication and consistency.

Definition of Terms

The term "oral communication" refers to Senator Ervin's speeches from the chair, his interrogation of witnesses, and his response to the communication of the other committee members, staff, witnesses, their attorneys, and the audience. The term "consistency" refers to the Senator's degree of success in correlating his communicative acts with

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[2]Baird, p. 111.

his expressed philosophy regarding truth and individual rights. It also refers to his degree of success in meeting his responsibility to both society and the individual by avoiding the criticism leveled against some hearings committees and committee chairmen of the past. In view of the nature of his expressed philosophy regarding truth and individual rights, he must avoid these criticisms of the past in order to be consistent with his expressed philosophy. Both the development of the criteria questions and the analysis of the Hearings have taken these definitions into account.

The discussion which follows in this chapter consists of a history of the events leading up to the Hearings. Other essential, preliminary considerations include a discussion of the purpose of the study, limitations of the study, justification for the study, related studies, and methodology, which includes a listing of the questions for analysis.

A History of Events Leading Up to the Hearings.

The events leading to the Senate Select Committee investigation of 1972 Presidential campaign activities are myriad. Some of the major events leading to that investigation are reported here. It all began on June 17, 1972, when Bernard Barker, Frank Angelo Firorini, Eugenio L. Martinez, Raul Goday, and James McCord were arrested for breaking into the Democratic National Headquarters in the

Watergate Complex in Washington, D.C. carrying cameras, electronic surveillance equipment, and burglary tools. At the time of his arrest James McCord was chief security officer and electronics expert for the Committee to Re-elect the President. Two of the others, Barker and Firorini had previous CIA connections, having taken part in the abortive Bay of Pigs operation. The name Everette Howard Hunt with the notation "W. House" or "W.H." was found in the address books of two of the suspects.[3]

Lawrence O'Brien, Chairman of the Democratic National Committee, filed a one million dollar suit against the Committee to Re-elect the President and the five suspects for invasion of privacy. He charged that the burglary raised the "ugliest questions about the integrity of the political process that I have encountered in a quarter of a century," and stated further that "there is certainly a clear line to the Committee to Re-elect the President and there is developing a clear line to the White House."[4] Other findings revealed that beginning May 15, 1972, at least fifteen telephone calls between Barker's office and home and the Committee to Re-elect the President were made.[5]

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[3]New York Times, 18 June 1972, p. 30; Newsweek, July 3, 1972, pp. 18,21.

[4]Newsweek, July 3, 1972, p. 18.

[5]New York Times, 25 July 1972, p. 1; Newsweek, August 14, 1972, p. 21.

It was discovered later that previous break-ins had occurred and various documents photographed. The son of a camera shop owner testified in Florida that he had developed film and printed pictures which showed surgical gloves holding documents, some of which had the letterhead of the Democratic National Party and the signature of Larry O'Brien. From random mug shots, he identified Barker and Firorini as the men who brought the film to him on June 7, seven days before the Watergate break-in. In another development, reports confirmed that E. Howard Hunt, a former White House consultant and G. Gordon Liddy had been at the Watergate on June 17 but had gone across the street to a monitoring station in the Howard Johnson Hotel before the arrests were made.[6]

The ties between the Watergate break-in and the Committee to Re-elect the President were drawn a little tighter when an investigation revealed that a cashier's check for $25,000, apparently intended for Nixon's re-election campaign along with four Mexican checks totalling $89,000, had been deposited in Barker's Miami bank account.[7] During a House Banking and Currency Committee hearing it was reported that Maurice Stans, Nixon's chief campaign fund-raiser, "personally approved an arrangement whereby $100,000

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[6]Newsweek, September 11, 1972, p. 22.

[7]New York Times, 2 August 1972, p. 17; Newsweek, August 14, 1972, p. 20; Newsweek, September 18, 1972, p. 44.

in secret campaign contributions was routed through a Mexican bank to shield the contributor's identity."[8] According to Stans the $114,000 had been turned over to Liddy and he did not know how the money ended up in Barker's bank account.[9]

It was also reported by Newsweek that the Watergate break-in was not an isolated incident. In the summer of 1971, an intelligence team was formed in the basement offices of the Executive Office Building. It was originally formed to find and stop security leaks which began with the release of the Pentagon Papers. Among these men, who became known as the "plumbers," were E. Howard Hunt and G. Gordon Liddy. Eventually the efforts of these two men were given to intelligence gathering in behalf of the re-election campaign. Their purpose was to find embarrassing or damaging information which could be used against the Democrats.[10] Other kinds of political espionage were reported including the hiring of Donald Segretti by Dwight Chapin, Deputy Assistant to the President, to disrupt the primary campaigns of Democratic candidates.[11] Activities such as

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[8] New York Times, 14 September 1972, pp. 1,42.

[9] U.S. News & World Report, September 25, 1972, p. 28.

[10] Newsweek, September 18, 1972, p. 41.

[11] New York Times, 30 October 1972, p. 22; Time, October 23, 1972, p. 23; Time, November 6, 1972, p. 50.

distributing flyers on Muskie stationery accusing Henry Jackson and Hubert Humphrey of illicit sexual activities; another letter mailed on Muskie stationery to Democrats with a poll report showing Kennedy was unfit for the presidency; the unauthorized cancellation of television talks; ordering exorbitant amounts of liquor, flowers, and food and having them sent C.O.D. to a Democratic fund-raiser; and others became known as dirty tricks.[12]

The Watergate seven were indicted and set to go to trial January 8, 1972, but there was little hope that the government would heed Judge Sirica's request and try to delve into the motive and background behind the Watergate caper. They were satisfied to treat it as another street crime. However, there were many unanswered questions regarding possible attempts by the White House and Justice Department to narrow the investigation and engage in a cover-up. Rumors of complicity on the part of officials high in the ranks of the White House cast an aura of suspicion upon the Nixon administration, and Senator Mansfield and others shared Judge Sirica's concern. Mansfield sent letters to two key committee chairmen, Ervin of the Government Operations Committee and Eastland of the Judiciary Committee, in which he said he would support an extensive Congressional investigation of the case and related events.[13] Senator Mansfield

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[12] Newsweek, October 23, 1972, pp. 35-36.

[13] New York Times, 7 January 1973, p. 26.

and Senator Ervin later introducted a resolution that would grant the Senate Select Committee wide latitude and subpoena power. Ervin promised to conduct "a fair and full investigation without attempting to engage in a political 'witch hunt.'" He said his sole objective would be to get at "the truth of the matter."[14] Joining him on the Senate Select Committee were Democratic Senators Daniel Inouye of Hawaii, Joseph M. Montoya of New Mexico, Herman E. Talmadge of Georgia, and Republican Senators Howard E. Baker of Tennessee, Edward J. Gurney of Florida, and Lowell P. Weicker, Jr. of Connecticut.[15]

When we look at the Watergate break-in of Saturday, June 17, 1972, and try to sort out the implications left in the wake of its discovery, we get a view of what it means for truth and certainty to be seriously challenged. The consequences of the act are wrapped up in a comment by Senator Samuel J. Ervin, Jr. who said

> and if these allegations prove to be true, what they [the accused] were seeking to steal was not jewels, money, or other property of American citizens, but something much more valuable--thier most precious heritage: the right to vote in a free election.[16]

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[14] New York Times, 6 February 1973, p. 16.

[15] U.S. News & World Report, May 21, 1973, p. 18.

[16] Samuel J. Ervin, Jr., Opening Statement, U.S. Congress, Senate, Select Committee of Presidential Campaign Activities. Presidential Campaign Activities of 1972: Watergate and Related Activities, Book 1, Hearings, 93rd Congress, 1st Sess., May 17-August 2, 1973 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 2.

The break-in and related events, whether designed with evil intent or not, were, in principle, an insult to the democratic way of life and a threat to the certainty of truly representative government. Consequently, the general feeling which seemed to prevail among members of Congress was that these infringements were more than ordinary crimes, and warranted more than the usual investigatory procedure of a grand jury. At least, the Senate response to the Watergate affair was to pass a resolution empowering seven Senators to conduct an inquiry into all of the ramifications of the break-in and other campaign activities, to determine whether new legislation was needed in order to protect the rights of all in a free election of the President of the United States. For the record the resolution reads, in part:

> Resolved, Section 1. (a) That there is hereby established a select committee of the Senate, which may be called, for convenience, the Select Committee on Presidential Campaign Activities, to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting either individually or in combination with others, in the presidential election of 1972, or in any related campaign or canvass conducted by or in behalf of any person seeking nomination or election as the candidate of any political party for the office of President of the United States in such election, and to determine whether in its judgment any occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new congressional legislation to safeguard the election process by which the President of the United States is chosen.[17]

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[17] Hearings, p. 427.

Essentially, the Select Committee on Presidential Campaign Activities[18] was charged with the task of seeking information upon which the most adequate approach to truth and certainty could be made; to evaluate and interpret the findings; and, if necessary, to take action in the form of new legislation. They were not charged with the responsibility of persuading the public regarding the guilt or innocence of the accused or others who were implicated or suspected of being involved. The spirit of the responsibility before them was to engage in a pursuit of the truth without bias or pre-judgment.

To carry out their responsibility it became important for them to seek out all the pertinent information possible rather than only that which would affirm what they may have suspected to be true, and to not stop short of any truth regardless of the embarrassment it may bring. It was also improtant that they treat the witnesses before them as fellow citizens who were givers of information, whether reluctant or not. While championing the cause of free election it was important that they not unreasonably impair the welfare and reputation of those before them in the role of witnesses.

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[18]Hereinafter cited as the "Senate Select Committee" for the purposes of this paper.

Purpose of the Study

Consider the fact that the major purpose of the Senate Select Committee was to uncover the truth in the midst of severe political overtones. Yet, history tells us that truth has often gone begging while people have groped about ineffectively because of the handicaps of crippling bias, prejudice, or a poor vantage point due to cultural and societal factors and other deficiencies. While it is possible that men can reach high office with such handicaps, the ethical interests with which this study deals are better served when it does not happen. Without looking very hard, however, we see in the history of Congressional hearings that it has happened. Joseph McCarthy's Voice of America Hearings in 1953[19] and the hearings of the House Committee on Un-American Activities, especially the San Francisco Hearings in 1960,[20] are two examples of the limited perspective and questionable means that have plagued some of those who have represented the citizenry in a search for truth. As late as 1973, Senator Charles Percy of Illinois was chided by a defense attorney for listening to only one side of an issue in hearings growing out of an accusation

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[19] Hermann Georg Stelzner, "The Rhetorical Methods of Chairman Joseph McCarthy in the Voice of America Hearings, 1953" (Master's thesis, University of Illinois, 1955).

[20] Robert S. Smith, "A Case Study of the Speaking of the House Committee on Un-American Activities: The San Francisco Hearings, May 1960) (Ph.D. dissertation, Michigan State University, 1968).

that narcotics agents had violated the civil rights of innocent people.[21]

There have also been some criticisms leveled against the actions of committee chairmen and the performance of some Congressmen in the hearing process by political scientists who have made a study of committee systems in United States government.[22] It has been charged that hearings have taken on an atmosphere of court trials without providing the safeguards of trials. Chairmen have at times been despotic during the course of hearings; committee members have used public hearings for "grandstanding" rather than gathering information upon which to base sound decisions; and some members of Congress have not come to hearings in an earnest search for truth but to present their preconceived ideas and to gather support for them. There is also evidence that the chairman is a determining factor in the success or failure of a committee to meet its objectives in the hearing process; if he is fair there is greater assurance that the purpose will be achieved.

In the view of the above, it is the purpose of this study to evaluate how effectively one man, Senator Samuel J. Ervin, Jr., Chairman of the Senate Select Committee, was

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[21]"Acquitted Narc Agents Blame Percy for Prosecution," Lansing State Journal, 3 April 1974.

[22]See Chapter II, pp. 51-54.

able to engage his powers of oral communication in an unimpaired search for truth on such a crucial occasion as the Watergate Hearings. The general consensus seems to be that the Watergate break-in and the subsequent grand jury investigation, Senate Select Committee Hearings, and the House Judiciary Committee Hearings on impeachment were a critical point in American history. That being so, a heavy responsibility was placed upon Senator Ervin, the other members of the Senate Select Committee, and the members of the other committees to do their utmost to perform adequately the role they played in searching for truth in this particular case.

An attempt will be made to analyze Senator Ervin's efforts to search for truth as observed in his participation in the Watergate Hearings. Attention will be given to his use of oral communication in his function as chairman of the committee, his role as a member of the committee seeking truth through the interrogation of witnesses, and his performance as a speaker. The three roles in which Ervin engages his skill in oral communication, either in speaking or in controlling the communication of others, will not be separated in the analysis. Some of the questions lend themselves quite well to an analysis of one role while others relate to two or more.

Limitations of the Study

As indicated above, this study is limited to the communicative acts of one man. Senator Ervin has been chosen in preference to the others because of his position as chairman, his long history in the Senate, and the unique qualities he has manifested in his speaking. While it might be helpful to subject the entire Watergate Hearings to analysis to determine to what extent the members of the Senate Select Committee adhered to and fulfilled the legislative purpose, it would require more time, effort, and resources than are currently available. A different kind of study, involving the seven Senators would be feasible, but it is this writer's opinion that a closer look at Chairman Ervin carries equivalent validity and value. A justification for this choice is seen more clearly in Chapter II which deals, in part, with the nature and power of committee chairmen.

A second limitation relates to the materials to be used for analysis. Out of mere fact of accessibility, the materials are limited to the transcripts of the public hearings. The proceedings of executive sessions are not automatically published; their purpose precludes it. One factor, especially in reference to the work-up of bills, has to do with

> the free interplay of ideas among committee members. Compromises and alternatives can be shaped in a fluid

> environment that could never be approximated at a public hearing.[23]

Another factor is that the executive or "closed" session allows members to be more candid on sensitive matters. Moreover, witnesses can be encouraged to be more frank on many other matters when testifying in secret. Additionally, witnesses and committee members alike are less apt to make a "grandstand play" rather than to concentrate on giving and weighing data and arguments with as much objectivity as possible.[24]

This poses a problem for the study because a very important dimension is missing if the study is limited to the public hearings only. Yet, if the executive sessions were made public, the freedom that may exist there would be lost and we would suffer the same handicap we do now. The major need here is that it be kept in mind that the study is limited to the public hearings.

A third limitation relates to the historical base which has been laid, both with respect to the events leading up to the Watergate Hearings and with respect to Senator Ervin. The discussion here will serve mainly to set the scene of the study in a broader perspective, to look at possible influences in Ervin's life, and to establish a

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[23]Bertram M. Gross, The Legislative Struggle (New York: McGraw-Hill Book Company, 1953), p. 310

[24]George B. Galloway, The Legislative Process in Congress (New York: Thomas L. Crowell Company, 1953), p. 288.

philosophical base. While influences will be a consideration, the purpose here will not be to sort out influences and apply them in a cause-effect relationship to what the Senator does and says in the Watergate Hearings. To attempt to build such a relationship, in this instance, out of varied individual experience is not a tenable effort in this writer's opinion. When we reach very far into the past or try to gather a great number of differing experiences that supposedly constitute significant influence on what a person does and says, it is not possible to control all the variables and we leave the door open for so many artifacts that an adequate judgment cannot be made in this regard. Bormann alludes to this point in discussing the study of influences in rhetorical and dramatic criticism. He cautions that to assume influence in light of likenesses between the work of two different people is to approach or commit the fallacy of post hoc ergo propter hoc. He adds that "a speaker or playwright might be influenced to react against someone as well as along similar lines."[25] Another possibility is a chance occurrence with no relationship between a past experience and current behavior. If there were enough available studies that would apply here which would show a significant correlation between certain experiences and subsequent

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[25]Ernest G. Bormann, Theory and Research in the Communicative Arts (New York: Holt, Rinehart, and Winston, Inc., 1965), p. 249.

communication characteristics, we might then be able to make statements suggesting cause-effect relationships. As it stands, there are no studies which have been compiled for this kind of task.

A fourth limitation relates to the development of the Senator's philosophy. The concern here will be with a selected philosophy as it is found in his speaking. An attempt will be made to glean from his speaking, over the years, statements that point to the philosophical posture out of which he operates. Two small paperbacks, one edited by Bill M. Wise,[26] and the other by Herb Altman,[27] give insight into the Senator's philosophy. A biography of Senator Ervin, written by Paul R. Clancy, will also contribute to this effort.[28] His speaking on the Senate floor, formal speeches, and articles written by him will be used in this effort.

It is anticipated that the results will permit a profitable discussion of the degree of consistency and effectiveness with which Senator Ervin attempted to arrive at truth, taking into consideration his philosophical posture. Additionally, his participation as chairman will be weighed against his philosophy and those characteristics

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[26]Bill M. Wise, The Wisdom of Sam Ervin (New York: Ballantine Books, 1973), 177 pp.

[27]Herb Altman, Quotations From Chairman Sam: The Wit and Wisdom of Sam Ervin (New York: Harper & Row, Publishers, 1973), 87 pp.

[28]Paul R. Clancy, Just a Country Lawyer (Bloomington, Indiana: Indiana University Press, 1974), 384 pp.

of leadership which seem to provide the best approach to the truth. The concern here will be what is observed compared to what might be expected in the form of influence on the Watergate Hearings.

Justification for the Study

The commentary on committees, chairmen, and hearings in Chapter II indicates that the welfare of the actions of Congress and the ultimate welfare of the citizenry, to the degree it is dependent upon Congressional governance, lie heavily within the care and keeping of these three entities. Since oral communication plays a preponderant role in their function, there is justification to ask, at least, "what" and "how well" with respect to this role. The major concern here is with a chairman, Senator Ervin, as he conducts himself in a hearing. With respect to chairmanship, there is evidence that chairmen fill a principal role in decision-making and merit the attention of the student of communication regarding how well they go about fulfilling the tasks given to them.

A second justification relates to the first one and has to do with the fact that the Watergate Hearings were the major instrument to determine whether new legislation is necessary and, if so, what that legislation ought to be. The effectiveness and appropriateness of new legislation depends on the effectiveness of the Senate Select Committee to arrive at the truth. An evaluation of the means of

communication used will help to determine the degree of probability that could be placed upon the truth that is finally achieved. It is important here to determine if truth is sought or ideas are propounded.

A third justification relates to the impact of the Watergate Hearings on the general public. The Hearings commanded the attention of the public via television and other means through more than thirty days of hearings spanning a period of more than two months. It is reported to have been the longest Congressional hearing in the history of the United States.[29]

A fourth justification, companion to the one above, relates to the cost imposed upon the taxpayer in time and money. A final amount of $1.8 million dollars was allocated to the Senate Select Committee to carry out its mandate. This amount does not reflect other costs such as financial expenditures and time resulting from the involvement of members of Congress, their staffs, and government employees.[30] While $1.8 million dollars may be considered a "drop" in the proverbial "bucket" it is a very significant drop indeed.

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[29]Telephone call to the Senate Select Committee, Washington, D.C., April 5, 1974.

[30]Letter from Victor L. Lowe, Director, United States General Accounting Office, to United States Representative Charles E. Chamberlain, Republican, Michigan, April 22, 1974.

Joe Cook, Director of Public Relations of ABC News, estimated their cost to be $200,000 per six-hour day when all three major networks carried the Hearings. He had no figures available for days when the Hearings were broadcast on a rotating basis. Richard Jenkins of CBS estimated the network's daily cost at $110,000. There was no information available from NBC at the time of the request.[31] As of March 1974, the total cost of all investigation, court actions, and other activities had reached ten million dollars of the taxpayers' money.[32]

These four factors give merit to our looking at what elected officials are doing in the chairmanship of committees in hearings and the effectiveness with which they are doing it.

Related Studies

Hearings have been the subject of much study over the years but few of these studies have been in the area of communication. The political scientists have apparently recognized the need to study the committee system of Congress and have found the transcripts of public hearings to be a valuable source of information. Huitt and Peabody admit to

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[31]Joe Gorman, Legislative Reference Service, Letter to Representative Charles E. Chamberlain, July 12, 1973.

[32]Daniel St. Albin Greene, "Watergate Cost So Far $10 Million," The National Observer, 9 March 1974.

the limitations of studies of transcripts of public hearings, but state they are available in such profusion they provide easy access to a wealth of data that would not otherwise be available to academic persons and others interested in legislative behavior.[33] Wilkes found, however, that even the political scientists have not emphasized the hearings as a communication process but have alluded to them within the larger context of total committee action.[34]

The specific studies reported here, with the exception of one, will be limited to those dealing with a communication emphasis and the use of hearings for data. Wilkes has reported a series of studies conducted by political scientists, among which only one appears to approach the dimension one might expect in a communication study.[35] Smith reports a series of communication studies relating to Congress, restricted to floor debates.[36] These are mentioned in order to recognize that many studies have been directed toward hearings but not necessarily focusing on communication

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[33]Ralph K. Huitt and Robert L. Peabody, Congress: Two Decades of Analysis (New York: Harper & Row Publishers, 1969), p. 82.

[34]Raymond Wilkes, "A Content Analysis of Communication Behavior in Selected Congressional Hearings" (Ph.D. dissertation, Wayne State University, 1971), p. 23.

[35]Ibid., pp. 22-26.

[36]Smith, "A Case Study."

as a primary interest; many communication studies have been conducted using the Congressional scene as a source of information but not focusing on hearings.

The study that Wilkes did himself consisted of a content analysis of selected Senate hearings, some before full committees and others before subcommittees. He attempted to select hearings in keeping with the structural and personnel characteristics imposed on the study in order to get a valid cross-section for purposes of generalization. He found that most category systems in discussion texts were related to leadership and he felt that the categories in Bales Interaction Process Analysis were not suited to printed records; therefore, he developed a set of categories of his own, using Bales' categories as a model. Wilkes concluded that differences in the structure and purpose of the committee hearings affected communication behavior. He asserted further that communication behavior in a single hearing could be predicted by examining its personnel characteristics and its structure.[37]

Smith limited his study to one hearing out of many conducted by the House Un-American Activities Committee. He used, basically, an historical-critical approach to evalute the 1960 San Francisco hearings from both dialectical and rhetorical points of view. Smith concluded that the hearings were more persuasive in nature rather than fact-finding for

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[37]Wilkes, "A Content Analysis."

the purpose of legislation. He also noted that they were ineffectively conducted with poor use and interpretation of evidence and with faulty reasoning.[38]

Volpert studied the House of Representatives Hearings on the Drug Industry Act of 1962, to "determine and clarify the nature of examination utilized in Congressional hearings." She developed a set of categories from a review of law texts, argumentation and debate texts, and speech periodicals, but there was a great deal of overlapping in categories which affected the integrity of the results.[39] For example, three of the categories were those questions dealing with fact, opinion, and inference; other categories such as comparison, summary, and substantiation could be subsumed under all of the first three. Possibly a matrix set-up would have helped to pull more meaningful results from this study. Stelzner elected to focus his study on one member of a committee, analyzing McCarthy's performance as a chairman and as interrogator in the Voice of America Hearings of 1953. He was concerned with the manner in which the hearings were conducted by McCarthy and his methods of evaluating evidence, charges, and witnesses. It is interesting to note that McCarthy and his committee formulated a set of rules of conduct, in part to protect the

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[38]Smith, "A Case Study."

[39]Mary Jo Volpert, "Preliminary Analysis of Examination Methods Utilized in Congressional Hearings" (M.A. thesis, Wayne State University, 1964).

rights of witnesses, yet this hearing was notorious for its abuses.[40] Rives studied hearings before the House Committee on Education and Labor and the Senate Committee on Labor and Public Welfare along with subsequent arguments presented on both the House and Senate floors. His findings supported the concept that dialectic and rhetoric are distinguishable forms of communication which complement each other in hearings and debates.[41]

In a symposium on the Army-McCarthy Hearings, five papers were presented, concluding that the event fit well into the mold of a dramatic theatrical performance, from the point of view of a specialist in drama. The evidence favored a finding of "beneficial" for the efforts of the McCarthy committee although Wham, a lawyer, labeled the hearings, "raucous, redundant, repetitious." Rhetorically, the Army's case was adjudged weak. McCarthy was seen as a negative debater who was intelligent, able, at times coldly analytical, but overly dramatic and emotional. The propriety of advertising and the quality of such programs were considered questionable but it was felt that sponsored, live

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[40] Stelzner, "Rhetorical Methods."

[41] Stanley G. Rives, "Dialectic and Rhetoric in Congress: A Study of Congressional Consideration of the Labor-Management Relations Act of 1947" (Ph.D. dissertation Northwestern University, 1963).

telecasts of hearings was a possibility in the future.[42]

Kleinau's study has nothing to do with hearings but focuses on Senator Ervin, who is also the principal subject of this study. Kleinau did a rhetorical analysis of the use of reasoning and evidence in a speech Ervin delivered before the Harvard Law School Association of New York City, Incorporated, New York, New York on April 28, 1955. In the speech Ervin posed the argument that the Supreme Court had usurped the power to nullify the acts of Congress, stressing the importance of strict adherence to precedent in order to avoid the tyranny of the court. Kleinau carefully detailed Ervin's steps of reasoning and weighed them against the cases and decisions to which Ervin alluded in his speech. He concluded that the Senator's arguments were not all tenable.[43]

The communication studies which have made use of Congressional hearings are few in number and there is evidence that hearings are a critical area of study in light of their frequent use by Congress to conduct the affairs of the nation. Hopefully, this study will be complementary to the few that have been completed in this area.

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[42]Frederick W. Haberman et al., "Views of the Army-McCarthy Hearings," The Quarterly Journal of Speech, XLI, No. 1, 1955, pp. 1-18.

[43]Marvin Dale Kleinau, "Senator Ervin's Speaking on Supreme Court Segregation Decisions: A Study in Evidence" (M.A. thesis, Illinois State Normal University, 1960).

The Method

The study is basically critical in nature but there are some definite empirical elements which have emerged. The major effort here has been to find standards of adequacy upon which Senator Ervin's conduct in the Watergate Hearings can be based. Some of these standards have been developed from negative criticism leveled against chairmen and hearings of the past. Other standards have been developed from Senator Ervin's expressed philosophy and still others from stylistic features manifested in his speaking. In the sense that his performance is measured against these established standards, the study is one of criticism.

It should be noted, however, that empirical data have been used wherever they were available. A number of the questions for analysis were designed in such a way that they permitted the kind of data gathering that befits an empirical study.

There is a strong historical element present in the study in that two of the chapters are historical in nature. Chapter II, A History of Committee Systems, forms part of the basis of the study. It was written primarily as support for the justification of the study but ultimately provided some of the criteria questions with which the analysis has been done. Chapter III is an historical sketch of Senator Ervin's life and was written primarily to provide a backdrop against which to investigate his philosophy. Another short

history of events leading to the Hearings is incorporated in this chapter.

The criteria for the study are incorporated in a series of questions which will be answered in the analysis. There are four general questions with specific questions subsumed under each one. Two of the general questions were derived from a study of committee systems, committee chairmen, and hearings. These questions comprise outside criteria against which Senator Ervin's performance will be examined. However, they also speak to the concept of truth and individual rights found in Ervin's philosophy. One general question has been derived from a study of Ervin's philosophy and another one has been derived from a study of his style in speaking Both of these questions comprise inside criteria upon which the analysis is based.

Upon completion of a study of committees, chairmen, and hearings in government process, the writer discovered a number of negative criticisms which were leveled against hearings in general and chairmen in particular. Some chairmen were charged with being despots, working their own will. Some hearings have been reportedly conducted by committees whose members have used them as platforms from which they expressed what they already believed to be true, rather than engage in an earnest search for the truth of the matter. Additionally, some hearings have taken on the aura of a courtroom trial without offering the witness the safeguards that such a trial would ordinarily afford.

From these criticisms, two general questions have been taken and specific questions have been subsumed under them to make them operational. The first question is:

1. Does Ervin avoid the criticism of despotism leveled against some committee chairmen?
   A. Does he allow each member all of the time he requests for questioning?
   B. If each member is not allowed all of the time he requests, is there information which indicates the denial is a result of rules of procedure rather than the arbitrary discretion of the chairman?
   C. Does Ervin place limitations on the areas in which questions can be asked other than those limitations which ground rules of the Hearings decree?

Both questions A and B can be answered by a reading of the Hearings to determine whether Ervin stops the interrogation of a witness by a committee member before he has finished, or whether he honors the request of a committee member for additional time. A reading of the transcripts will also reveal any special rules applying to time limits which were established prior to the Hearings, or during the Hearings, by the committee. Question C can be answered by a reading of the transcripts to observe whether Ervin limits areas of questioning and whether these limitations are based on the strictures of rules of procedure. If there is

evidence of limitations to which the rules do not pertain, Ervin's actions will be considered arbitrary and despotic unless there is also evidence that his decision to limit questions was in favor of a witness.

The second question, derived from a study of committee systems, relates to the rights of witnesses before hearings committees. This question is:

2. Does Ervin guard the rights of witnesses and others who may have been subject to prosecution for alleged criminal acts?
   A. Does he prohibit the expression of opinion by members of the committee regarding the guilt or innocence of witnesses or those who are suspected of involvement?
   B. Does he prohibit the expression of opinion by witnesses of the guilt or innocence of other witnesses or of those who are suspected of involvement?
   C. Does he respond impartially to the audience reactions in the hearings room regarding the manifestation of strong attitudes in favor of or against a particular witness or other persons (e.g. President Nixon) who are the subject of the questions being asked?

All three questions above can be answered, in part, from an empirical point of view. It is possible to determine whether any explicit expressions of guilt or innocence are

made by committee members or witnesses and, if so, whether Ervin comes to the defense of those accused and requests that such statements not be made in the future. It is also possible to observe, in the Hearings, whether there is audience reaction and whether Ervin responds to it at all. If he does, the transcripts should reveal whether he responds in the same way all of the time and whether he responds some of the time but not all of the time. But any observations beyond the bounds above will be speculative in nature and subject to personal view. For instance, implied guilt is not as open to the empirical experience as explicit guilt. A similar feature exists in question C. There is no guarantee that the transcripts will reveal obvious indications of favorable or unfavorable audience response. If they do not do so, any discussion of this question beyond the bounds mentioned earlier will also be speculative in nature.

One general question was derived from a study of Ervin's philosophy. The question deals with his concept of truth in relationship to hearsay evidence, presumption, and bias. The question is:

3. Does Ervin keep within the strictures of his concept of truth in dealing with the Watergate affair?
   A. Does he prohibit the presentation of hearsay evidence?

B. Does he avoid statements of a presumptive nature regarding the guilt of any persons suspected of being involved in the burglary attempt or the cover-up?

C. Does he avoid bias by asking questions which request new information rather than questions which require an affirmative response to his expressed opinions?

These three questions will also allow the collection of some empirical data. Through a reading of the transcripts, it is possible to determine whether any hearsay evidence is presented, and whether Ervin rejects it or qualifies it. A reading of the transcripts will also reveal whether Ervin himself makes any explicit, presumptive statements about the guilt of anyone and whether he asks questions requiring agreement with statements he has made regarding what he believes to be true about the events or people related to Watergate and about the other activities which were investigated.

The fourth general question was taken from a study of Ervin's style. The aspects of style with which the question deals are Ervin's use of history, literature, the Bible, and anecdotes in his speaking. While a major concern of the question regarding Ervin's style has much to do with the effect of sudden national exposure on his stylistic approach to speaking, it also speaks to the central question of consistency. If Ervin's style is noticeably different,

it will be determined whether this difference works to the detriment of the witnesses or others accused of criminal activities under investigation by the committee. The question regarding style is:

4. Is Ervin's style of speaking during the Hearings different from what it was prior to the Hearings?
   A. Does Ervin make use of history in his speaking? If so, does he use it in any manner different from that described in Chapter IV?
   B. Does Ervin make use of literature in the Hearings? If so, does he use it in any manner different from that discussed in Chapter IV?
   C. Does Ervin make use of the Bible in the Hearings? If so, does he use it in any manner different from that discussed in Chapter IV?
   D. Does Ervin make use of anecdotes during the Hearings? If so, does he use them in any manner different from that discussed in Chapter IV?

A reading of the Hearings will reveal in what instances, if any, Ervin uses history, literature, the Bible, and anecdotes. If he does make use of them, it will be determined if there are any patterns of usage which would suggest a difference from his speaking prior to the Hearings. Since a

study of his speaking has indicated no patterns of use, the presence of patterns in the Hearings would indicate a difference. If any patterns are found which appear to be detrimental to witnesses or others suspected of wrongdoing, it will be concluded that Ervin's use of style is inconsistent with his philosophy of individual rights. For example, if there is a preponderance of instances in which Ervin uses any of the four stylistic features when chiding witnesses or speaking of possible wrongdoing, such a pattern may suggest an infringement on individual rights which is not consistent with his philosophy.

One qualification should be mentioned here regarding the uniqueness of the Watergate Hearings. Because it was an investigation of great national moment and high in public interest it probably cannot be considered typical of other committee hearings. Rieselbach's comments about the urgency of the times and other mediating factors that might affect the way chairmen operate in committee investigations are probably relevant to this study.[44] However, the feature which possibly makes this particular committee investigation an exceptional event also speaks to the importance of studying it. If ever there is a need to safeguard individual rights and to seek truth carefully, it is in such a situation as this in which the truth has such pervasive

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[44]Leroy N. Rieselbach, Congressional Politics (New York: McGraw Hill Book Company, 1973), pp. 58-59.

national import and in which the rights of suspects are so vulnerable. Again, while such high national visibility and consequence might tend to temper any defective methods a Congressional investigating team might have, it would be as presumptious for the writer and readers to accept such a fact without study as it would be to take an opposite view. This, among the other reasons discussed earlier in the chapter, is a justification for the study.

The chapter that follows consists of a discussion of Congressional committees, committee chairmen, and hearings. It was originally intended that this discussion would serve as part of the justification for the study. The criteria questions for the analysis, which ultimately emerged, have already been discussed and listed.

CHAPTER II

A HISTORY OF COMMITTEE SYSTEMS

The historical sketch presented here deals with three conditions in Congress which form part of the basis for this study. These have to do with the nature and power of the committee as a means of getting the work of Congress done; the nature and power of the chairman in determining committee structure and action and the welfare of bills that are referred to his committee; and the nature of the hearings as a tool of the committee. The actions of Congress in carrying out its legislative role and other roles are influenced greatly by committees, by chairmen of committees, and by hearings conducted by committees; and a major tool with which they operate is oral communication. As Hance, Ralph, and Wiksell point out, "One way of describing democracy is to refer to it as 'government by talk.'"[45]

In light of this, the original purpose of this chapter was to discuss the development and current status of these conditions in order to provide a clearer view of the justification of this study. A second benefit has accrued in that two of the major questions which comprise the

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[45]Kenneth G. Hance, David C. Ralph, and Milton J. Wiksell. Principles of Speaking 2nd ed (Belmont, California: Wadsworth Publishing Company, Inc., 1969), p. 3.

the standards of measurement of Senator Ervin's performance come from this chapter.

Nature and Power of the Committee

The power of committees in the legislative branch of government has increased to great proportion since the birth of the nation. At first committees were temporary in nature and were "post hoc" in the sense that they were formed "to work out the bugs" and develop phraseology for bills that were already discussed by the Committee of the Whole, and were dissolved as soon as their task was completed. In 1789, the eighty-one members of the First Congress saw the need for special committees to work out the details of bills after they had been considered on the floor. By the time the Third Congress had completed its work "at least 350 were born and died."[46] In 1803, for practical reasons in a growing and increasingly complex Congress, temporary committees began to give way to standing committees,[47] and

> By the early 1820's the revolution was complete. Under Henry Clay the standing committee became the automatic recipient of legislative proposals and the focal point of legislative power.[48]

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[46]Gross, The Legislative Struggle, p. 265.

[47]Diosdado M. Yap (ed.), Know Your Congress 1973, 93rd Congress 1st Session (Washington, D.C.: Capital Publishers, Inc., 1973), p. 141.

[48]Gross, The Legislative Struggle, p. 265.

Standing committees gradually grew in number until, in 1913, there were sixty-one in the House and seventy-four in the Senate. Although there was some trimming in the 1920's, there remained eighty-one standing committees at the end of World War II until an effort to streamline the committee system through the Legislative Reorganization Act of 1946, reduced the number to thirty-four.[49] In the Ninety-third Congress there were thirty-eight standing committees, including twenty-one in the House and seventeen in the Senate.[50]

Wilkes notes that the Legislative Reorganization Act placed some restrictions on standing committees but also gave them certain powers. Among the restrictions were a disallowance of meetings while Congress was in session, a requirement that hearings be public unless a majority of the committee voted otherwise, and a requirement that witnesses submit a written statement in advance of their appearance. A significant power was given especially to all the standing committees of the Senate, and that was the power of subpoena.[51]

Despite the intention of Congress to achieve less bulk, to maintain more control, and to gain more efficiency,

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[49]Galloway, The Legislative Process, p. 273.

[50]Yap, Know Your Congress, p. 11.

[51]Wilkes, "A Content Analysis," p. 13.

the efforts here were less than successful. Again, Wilkes notes:

> While the number of committees has remained close to 34, the number of subcommittees has mushroomed to almost 200. Permission for committees to sit during sessions is almost always granted without question. While most hearings are public, the committees have little trouble calling for executive session when they desire. The power of the subpoena has been exercised to the point of abuse and has led to the McCarthy censure in the fifties and interference with court procedures in the sixties. Even the simple point of requiring witnesses to submit written statements prior to testimony has been largely ignored. In total, committees operate and hearings are conducted pretty much as the committee desires.[52]

The authority delegated to the standing committees and their subcommittees with a kind of consequent supremacy over their parent legislative bodies is needful but yet quite awesome. As Rieselbach points out, the modern Congress is faced with consideration of more than 10,000 pieces of legislation and it is not possible for every legislator to gain sufficient knowledge to make an intelligent decision on each piece. The committee and subcommittee system allows a division of labor and promotes the development of expertise across the broad range of policy areas with which Congress must deal. They also provide for the development of technical acumen which enables Congress to serve more effectively as watchdog on a sophisticated and specialized network of executive bureaucracy, which is one of its key functions.[53] The disadvantage in the trade-off here is that the welfare

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[52] Ibid., pp. 13-14.

[53] Rieselbach, Congressional Politics, p. 25.

of legislation does not tend to rest as much with Congress as with the committees. As early as 1885, Wilson was prompted to write that the House of Representatives

> sits, not for serious discussion, but to sanction the conclusions of its committees as rapidly as possible. It legislates in its committee-rooms; not by the determination of the majorities; so that it is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work.[54]

The condition of which Wilson wrote still prevails today and there is no evidence that it can or will change. Galloway studied the legislative process and found that

> subject to some limitations, the Committees of Congress have come to play a dominant role in policy-making. Each composed of comparatively few members, each acting independently of the others, they now determine the agenda of both houses, which have long since surrendered to their standing committees the power to decide what matters shall be considered on the floor and to control the proceedings there, subject in the lower house to the terms of its Rules Committee. They can amend or rewrite bills to suit themselves. They can report bills or pigeonhole them. They can initiate measure they desire and bury or emasculate those they dislike. . . . Thus the real locus of the legislative power is not in the House or Senate; it is in the standing committees.[55]

Recently a measure to reform the committee system in the House was sidetracked and shelved for further discussion. The reform measure would have spread the authority of some powerful committees over more individual committees to expedite pieces of key legislation which are delayed by the

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[54]Woodrow Wilson, Congressional Government (New York: Meridian Books, 1956), p. 69. Originally published in 1885, 15 edition of 1900 reprinted here.

[55]Galloway, The Legislative Process, p. 288.

present system. The assertion was that House leaders do not want to relinquish their power.[56] This power reaches beyond the legislative affairs of policy-making and outside the halls of Congress. In an earlier statement, Galloway alludes to some powers in addition to the subpoena power to which Wilkes referred, bringing us to that sense of awe.

> Over the passing years the standing committees of Congress have acquired power to hold hearings; to sit and act when and where they deem it advisable during sessions, recesses, and adjourned periods; to send for persons and papers; to take testimony and make expenditures; to investigate and report on any matter within their jurisdiction; to oversee the execution of laws; to certify contumacious witnesses for contempt; to adopt rules and appoint subcommittees; to report in certain places at any time or not to report. . . .[57]

Although the circumstances of government seem to make this arrangement needful if not imperative, the placing of such power in the hands of a few is something we try to avoid, and, when it is unavoidable, the public is obligated to police and control it if it chooses the means of full representation of the citizenry in the operation of the government. One method of control is the power of the ballot exercised by informed voters. Another method is fearless and frequent expression of public opinion. Yap stresses this in an introduction to the 1973 edition of Know Your Congress, urging people to become knowledgeable of the

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[56]"Power Still First Rule for House," (Editorial), Lansing State Journal, Wednesday, May 15, 1974, p. A-16.

[57]Galloway, The Legislative Process, p. 288.

workings of the United States Congress.[58] At the same time, throughout the 1973 edition he points out the function and power of the committee system and the apparent difficulty on the part of the House or Senate to overrule, despite provisions for either one to do so.[59] Harris adds:

> Although many discharge petitions have been filed in the House to force a committee to report bills, only two bills have been enacted into law through this procedure in the last twenty years.[60]

While his statement is at least nine years old it does attest to the contemporary power of the committee. Surely, it is an area of government that warrants continued study.

The Committee Chairman

Going one step further, we can visualize the affairs of government being molded and controlled not only by the "committees of the few" but, in some ways, by the "committee of the one." Over the years the seat of chairmanship has been one of great power, and, while it is not the seat of power it was in the past, it still remains formidable. Again, Wilson wrote that the one who stood the nearest to leadership was the Speaker of the House of Representatives, but even his will and power extended only to the appointment of committees. Beyond that

> The leaders of the House are the chairmen of the principal Standing Committees. . . . in the consideration of every topic of business the House is guided by a special

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[59] Ibid., pp. 9,18,25,141.

[60] Joseph P. Harris, Congress and the Legislative Process (New York: McGraw-Hill Book Company, 1967), p. 63.

> leader in the person of the chairman of the standing committee, charged with the superintendence of measures of the particular class to which the topic belongs.[61]

In another place Wilson referred to "our form of government . . . [as] a government by the chairmen of the Standing Committees of Congress."[62]

Despite the fact there has been knowledge of such power in the hands of a few men and some effort to control it, this condition has tended to continue over the years. Such effort was intended in the Legislative Reorganization Act of 1946, but the opposite happened. Lees found that the influence of committee chairmen was not weakened but strengthened by the Act.

> Reduction in the number of standing committees increased the importance of committee chairmen and increased the number of subcommittees, . . . The failure to dilute the application of the seniority principle or to place additional external controls on the determination of committee rules, along with the success of other changes, produced a situation in which the power and autonomy of committee chairmen were strengthened with little opportunity for party leaders to check or control their independence.[63]

In 1966, the Joint Committee on the Organization of Congress convened to determine how Congress could more effectively serve its basic functions of legislation, oversight, and representation with heavy emphasis on the need for committee

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[61]Wilson, Congressional Government, p. 58.

[62]Ibid., p. 82.

[63]John D. Lees, The Committee Systems of the United States Congress (New York: Humanities Press, 1967), p. 99.

reform. While it was recognized that each committee has its own needs, traditions, and requirements, and so forth, it was felt that there are some common goals and responsibilities which ought to be reflected to some degree in procedures. Among the recommendations were procedures that affected the power of the chairman. Included were such provisions as allowing a majority of the committee to call a meeting if the chairman refused to do so, and making it mandatory for a chairman to report any measure that has committee approval no more than seven days after a majority of the committee has submitted a written request.[64] These, of course, were only recommendations and their enactment was not automatically assured.

Some regulations have been instituted which technically restrict the powers of the chairman although it may be questioned whether all chairmen have complied. Many standing committees now have set times at which they meet but others are still dependent upon the call of the chairman.[65] Harris points out that the Legislative Reorganization Act of 1946 instituted a requirement that all standing committees have regularly scheduled meetings, but not all

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[64] Ibid., pp. 100-01.

[65] See Yap, Know Your Congress, pp. 12-18. In the Senate, committees which meet at the call of their respective chairmen are Appropriations and Judiciary. Those in the House include Committees on Appropriations, Interstate and Foreign Commerce, Public Works, Rules, Standards of Official Conduct, Veteran's Affairs, and Ways and Means.

committees comply.[66] It is also possible for the full House and Senate to overrule the recommendation of a committee or the will of a chairman regarding the investigation of and/or reporting of a bill, but, as stated earlier, they rarely do so.[67]

The power and prestige of the chairman is spelled out quite well by Rieselbach who notes that the chairman is more than a moderator--he has control.

> The chairman decides when the committee shall meet and presides over its sessions, exercising the parliamentary right of recognizing members. Moreover, he sets the committee's agenda, deciding what the committee will consider, when consideration will take place, and when, and under what conditions, hearings will be held. . . He creates [subcommittees,] establishes their jurisdictions, and appoints their members including the subcommittee chairmen. The committee chairman, additionally, wields substantial influence during floor consideration of his committee's product; he manages the committee's bills on the floor, or appoints someone to do so in his stead; he, in fact, decides who will represent the chamber when the bill goes to a conference committee, often including himself on the delegation. Finally, the committee staff is a creature of the chairman: he determines who will be hired, how much assistance will be provided for the minority side, what the majority staff will do, and often the vigor with which it carries out its assignments.[68]

Harris gives some examples of the unfortunate circumstances which can arise due to the peculiar place that the chairman of a committee holds. Even the bills that are

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[66]Harris, Congress and the Legislative Process, pp. 66-67.

[67]Yap, Know Your Congress, p. 25.

[68]Rieselbach, Congressional Politics, pp. 67-68. See also Galloway, The Legislative Process, p. 289; Harris, Congress and the Legislative Process, pp. 66-67; Lees, The Committee Systems, p. 22.

a part of the President's legislative program may be delayed or never be considered by a committee if the chairman is opposed. Representative Wilbur D. Mills, Chairman of the House Ways and Means Committee, opposed bills on taxation and Social Security which were a part of the late President Kennedy's program. As a result, they were not considered for several years. Senator Eastland, Chairman of the Judiciary Committee, an opponent of civil rights legislation, made it necessary for the Senate to attach a civil rights bill as an amendment to another piece of proposed legislation of lesser consequence in order to bypass Eastland's committee.[69]

We are cautioned, however, that not every chairman in every situation is despotic and without control. Rieselbach states "possession of such powers is not the same as their exercise." He elaborates on this point revealing a number of mediating factors which tend to soften the rulership of chairmen. For one, the chairman may need to mute partisanship and consult with the ranking minority member because of widely shared norms. It is also possible that a chairman will not have any interest in riding herd over his colleagues. Moreover, the size of his majority and the limits of what party leadership will support may circumscribe his power. If a majority is not very large, it may not hold

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[69]Harris, Congress and the Legislative Process, pp. 62-63.

up to severe pressures in the committee and there are also some limits to what a majority will tolerate. Additionally, if the chairman does not have the backing of party leadership he may have difficulty in getting positive action out of his committee. The urgency of the times will also tend to force actions upon the chairman that he might not otherwise choose.[70] Rieselbach concludes:

> In the last analysis, the committee chairman is a force to be reckoned with, possessing vast but not unlimited powers over the business of his panel. The use he makes of his potential for influence will depend on his own abilities, his majority, and the demands and pressures of the day. He is ultimately responsible for his actions to his committee colleagues and to the chamber as a whole. Within these limits, he will work out a modus vivendi which, in most cases, will guarantee him a position among the important leaders of the Senate or House.[71]

Chairmen, while not as powerful as they were in the past, are still a potent force, which gives reason for us to be interested in their effectiveness in treating with equity and integrity the people and issues which come before them. This interest should be not only in the performance of the chairmen of standing committees but also the chairmen of subcommittees and special committees.

The criticisms of some hearings in the past suggest that some chairmen failed in their responsibility to the

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[70] Rieselbach, Congressional Politics, p. 68.

[71] Ibid., p. 69.

issues and the people involved. Clapp says

> there is general agreement that the quality of the hearings and the reports that follow depend in large part on the chairman of the committee or subcommittee that conducts them.[72]

He quotes one Congressman as saying that subcommittee chairmen vary. While one may be impartial and democratic, another may be very authoritarian and partial, offering no sympathy to opponents of a measure but giving all the time necessary to proponents for adequate development of their testimony. Clapp adds that the power of the chairman to recognize colleagues and permit them to ask questions of witnesses has been abused in the past. There are times when newer members of a committee would have little or no opportunity to interrogate witnesses. In this particular instance he was apparently alluding to a chairman who also reigned over a standing committee, suggesting that there is a possible transfer of procedural style from the standing committee to the investigative committee.[73]

The power that chairmen hold in the legislative and investigative functions of Congress and the implication of that power is awesome. The recent actions of some members of Congress to make the role of chairmanship a less permanently secure position is undoubtedly a wise move. It would also be

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[72]Charles L. Clapp, The Congressman: His Work as He Sees It (Washington, D.C.: The Brookings Institute, 1963), pp. 264-65.

[73]Ibid.

helpful, if possible, to treat the appointment of subcommittee and special committee chairmen with greater care.

Committee Hearings

Hearings were not always in great abundance nor were they considered necessary for appropriate action on every piece of legislation. In the past, most committee action took place without hearings, but today a bill is considered as good as dead without one since a committee will not generally report a bill unless a hearing has been held.[74]

McGreary lists four functions in which hearings become an important tool of Congress in carrying out its responsibilities. These four functions consist of law-making, supervising the executive branch of government to keep them accountable to the people, serving as an "organ of public opinion," and "judging the qualifications and conduct of the delegates to the legislative assembly."[75] These four functions compare well to the three described by Lees with the exception that McGreary has apparently separated the function of oversight into two separate functions, one involving Congress' serving as watchdog over the performance of executive agencies and conduct of administrative

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[74] Gross, The Legislative Struggle, p. 285.

[75] M. Nelson McGreary, The Development of Congressional Investigative Power (New York: Octagon Books, 1966), p. 23.

personnel, and the other a matter of Congress policing its own ranks.[76]

The need for hearings in the first two areas appears quite obvious. Despite the fact that the committee system provides for a division of labor with the development of specialization and expertise among Congressmen, the complexity of government and the highly specialized nature of much needful legislation along with limitless possibilities of attendant, consequential side-effects, it would be extremely difficult, if not impossible, for lawmakers to make the kinds of decisions demanded of them without the benefit of expert opinion and other information from sources outside Congress. Likewise there is a penchant for persons lost in the maze of a monstrous and complicated administration to develop a narrow perspective and interest, concentrating exclusively on the particular action of their own bailiwick--at times yielding to the temptation of personal gain and favoritism--and to lose sight of the larger dimension of accountability to the interest and welfare of the general public. The Teapot Dome scandal in the 1920's and the Bobby Baker incident in 1964 are examples of the latter problem.[77]

The use of hearings in the third function can be seen in such hearings as the Kefauver investigation of crime

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[76]See p. 43, footnote 64, Lees, The Committee System, pp. 100-01.

[77]Harris, Congress and the Legislative Process, pp. 104-05.

in the 1950's and the Senate investigation of automobile safety in 1966 which engendered public interest and support of legislation. Senator Fulbright's investigation of the administration's foreign policy, especially United States involvement in the Vietnam war, was one in which no legislation was contemplated. It merely established a forum for the spokesmen of the administration and highly informed critics to give the public a keener awareness of the implications of our involvements in such enterprises.[78]

Other uses of hearings, described by Morrow, include the extending and exposing of the committee role systems, giving opportunity to the public to learn about and make judgments upon the views of their representatives, and to bring pressure to bear for a change in a particular lawmaker's position.

> In a nation with such marked social, cultural, and political heterogeneties there is need for several stages of consensus development before ideas are transformed into policies.[79]

The hearings may also take on a "safety valve role" in which individuals and groups can ventilate their demands and frustrations on issues and at least "experience a psychological victory that might be measurably short of an actual victory for their programs." Morrow feels that eventual

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[78] Ibid., p. 103.

[79] William L. Morrow, Congressional Committees (New York: Charles Scribner's Sons, 1969), p. 95.

compromise which is deemed necessary will be more readily acceptabl to "the group and their spokesmen" after the catharis of a hearing.[80]

In terms of information-seeking it is questionable whether hearings are always as efficient and effective as one might hope them to be. According to Harris, there are occasions when Congressmen come to the hearings not as impartial judges but as participants with a preconceived notion of what the answers and decisions ought to be. He stated:

> Often they preface questions by a lengthy statement of their own views and seek to elicit answers that corroborate their opinions. Friendly witnesses are treated deferentially, asked leading questions, and praised for their statements, while opposing witnesses may be badgered by members who wish to discredit their testimony. Such discourtesies to witnesses by a few committee members are often embarrassing to other members and lessen the prestige of Congress, but are accepted as a part of the rough and tumble of the political struggle.[81]

Huitt and Peabody present one set of hypotheses which agree with the participant theory in which Congressmen and all other government officials alike engage in a political struggle in which "no one knows what the 'general interest' is; there is none that everyone shares."[82] They add later that every side has its "own version of the facts" screened

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[80]Morrow, Congressional Committees, pp. 91-92.

[81]Harris, Congress and the Legislative Process, p. 108. See also Morrow, Congressional Committees, pp. 93-95.

[82]Huitt and Peabody, Congress, p. 81.

through preconceptions from an interest orientation, and can sincerely believe it is "stating the facts" and promoting the general interest, while holding the motives of its opponents in question.[83]

If the major concern is getting at the truth, it suffers from some severe limitations, in light of the conditions that are expressed here by students of government. The conclusion of the matter seems to be that bias, including political perspective, is not easily laid aside and the potential benefit of a fact-finding hearings can be significantly impaired. It would seem that the effort to get at the truth with which this paper ultimately deals, would require a more stable arrangement.

In addition to dogged determination, bias, and partisanship noted above, there have been other criticisms leveled against investigations conducted by Congressional committees. While abuses are apparently not widespread, they have been significant enough to raise responses from "bar associations, jurists, law school professors, newspaper editors and students of government, and by members of Congress itself."[84] Harris alludes to the partisanship and bias problems and adds that investigations are expensive and disrupt administrative operation; they are often inefficient

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[83] Ibid., pp. 109-110.

[84] Galloway, The Legislative Process, p. 627.

because of a lack of expert knowledge among the investigators and a lack of time for them to be thorough; and they are often motivated by a desire for publicity rather than fact-finding.[85] Clapp adds to this list the failure of committee members to plan sufficiently, too little effort to evaluate and make use of information gathered, too many repeat performances by the same witnesses, failure of senior members of Congress to accept junior members as full participants during investigation, arbitrary exercise of authority by chairmen, and a failure to give full consideration to controversial issues.[86]

One of the most alarming criticisms is related to putting the rights of witnesses in jeopardy. Galloway noted that

> investigatory committees . . . can assume the aspects of a trial without the safeguards of the individual of regular court proceedsings; the legislators appear in the role of judge and combine the functions of prosecuting and judging which should be separated.[87]

Galloway, Clapp, and Harris all point out that legislation has been passed to establish rules of procedure and protect the rights of witnesses under investigation;[88] but Harris adds that the rules cannot be effectively enforced and "some of

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[85]Harris, Congress and the Legislative Process, p. 77.

[86]Clapp, The Congressman, pp. 266-69.

[87]Galloway, The Legislative Process, p. 630.

[88]Ibid., pp. 627-28; Clapp, The Congressman, pp. 266-67; Harris, Congress and the Legislative Process, p. 108.

the investigations most criticized for violating individual rights have been conducted by committees with admirable rules of procedure."[89]

In summing up the importance placed upon hearings, their frequency of use, and their impairments and abuse, there is support for subjecting them to intensive study. While students of government have good cause to study hearings, it is equally important for students of communication to give them serious attention.

In the next chapter, Senator Ervin is observed from an historical point of view. It was anticipated that a study of the events of his life and his responses to them would provide a more insightful view of his expressed philosophy and the results of the analysis. This anticipation is qualified in the opening remarks in the chapter.

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[89]Harris, Congress and the Legislative Process, p. 108.

CHAPTER III

SAM J. ERVIN, JR.: HIS LIFE AND TIMES

This biography is incorporated in the study primarily to develop a broader perspective of the Senator's expressed philosophy. In that sense, it is an important adjunct to the study of oral communication and consistency which are the major concerns of this study. Biography is history and a great part of history deals with the substance of speech. The last half of this biography is devoted to Ervin's public service as a judge and lawmaker and his private practice as a lawyer, areas in which speech plays a primary role.

While the chapter speaks of influences, these do not carry the same weight of cause-effect relationships that might be expected in an experimental study. Furthermore, the myriad experience which bear upon one's life and one's individual responses to those experiences are so complex that it would be extremely difficult, if not impossible, to isolate key experiences that had been especially effective in molding a person's philosophical outlook. Nevertheless, it is generally accepted that life experiences do influence, to some degree, the development of individual frames of reference, no matter how difficult it might be to measure those influences. It is in that sense that the biography deals with the events of the Senator's life and their

influence upon his approach to living.

The Senator himself talks about different people who have influenced his life. On several occasions he has spoken of his belief in the influences that people bear upon each other's lives, quoting the words of Ulysses: "I am a part of all I have met."[90] In Ervin's view, this statement is a recognition of the fact that we are, in part at least, a product both of our environment and of our heredity. In light of this he says we are also a part of all that our ancestors have met.[91]

Another qualification that should be entered here is that this chapter is not intended to be, nor can it be, an in-depth historical review of the Senator's life. However, the biographical commentary found here has been written with the purpose of the study in view and an attempt has been made to include, without bias, a representative selection of key people and experiences.

There is very little written about the Senator, and, for that reason, the discussion leans heavily upon the biography written by Paul R. Clancy. He appears to have thoroughly documented his book through two approaches. The

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[90]Paul R. Clancy, Just a Country Lawyer (Bloomington, Indiana: Indiana University Press, 1970), p. 18; Sam J. Ervin, Jr., "Shall America's Birthright Be Sold For Pottage?" Address to the Georgia Bar Association, 11 December 1959, quoted in 106 Congressional Record 127 (1960). See also 106 Cong. Rec. 2596 (1960); 112 Cong. Rec. 23143 (1966); 116 Cong. Rec. 36483 (1970).

[91]112 Cong. Rec. 23143 (1966); 116 Cong. Rec. 36483 (1970).

first approach involved extensive interviews with the Senator, his relatives, his associates, and other acquaintances. In the second approach he looked to much written material contemporaneous to various periods in Ervin's life, and several historical works, some relating to North Carolina, South Carolina, and the South in general. He also used a history of the Ervin family in Williamston written by the Senator.[92]

Among other sources that have been used for this chapter are two biographical sketches found in the New York Times Magazine and Time,[93] some of Ervin's speeches and articles, other comments of his in the Congressional Record, the New York Times, and news periodicals.

This chapter consists basically of an historical review of the Senator with commentary on some of the significant people and events in his life. There is a discussion of his early years; his mother and father; his college experiences at the University of North Carolina and Harvard which were interrupted by his service in the United States Armed Forces during World War I; his experiences as a lawyer and judge; and his tenure in public office including the State House of Representatives, United States House of Representatives, and the United States Senate.

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[92]Clancy, pp. 301-04.

[93]John Herbers, "Senator Ervin Thinks the Constitution Should be Taken Like Mountain Whiskey--Undiluted and Untaxed," New York Times Magazine, 5 November 1970, Sec. 6; "Defying Nixon's Reach for Power," Time, 16 April 1973.

Early Years

Samuel J. Ervin, Jr. was born September 27, 1896, the fifth of ten children. The year 1896 marked a critical turning point in the history of the South. The Reconstruction era, along with black Republican rule for the disenfranchisement of whites, was coming to an end. Southern whites were speaking boldly and openly of white supremacy. They advocated and finally effected a blacks-only literacy test for voting, rationalizing that it would be good for the blacks because they would then understand the need for an education. In the year of Ervin's birth, the Supreme Court handed down a decision which declared that separate but equal facilities for blacks and whites were within the law. They reasoned that the United States Constitution could not put two races on an equal plane if one were socially inferior to the other.[94] An aura of harsh racism settled upon the South, but Ervin, as a child, was insulated from this atmosphere.

According to Clancy, the racial climate in which Ervin grew up was one of friendliness and he knew little of the problems that existed. He quoted Ervin as saying, "I knew all the colored people in Morganton when I was growing up, . . . there were very close bonds between the races." The blacks worked year after year for the whites and saw them as their benefactors. However, the atmosphere of

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[94] Ibid., p. 26.

of paternalism, said Clancy, rested ultimately on fear and few ever tested its perimeters."[95] Herbers gives another dimension to the community environment in which Ervin grew up. He states that Ervin's adamant opposition to civil rights legislation might lead one to think he came from plantation country but that is not the case.

> Morganton . . . is in mountain territory where Republicans and moonshiners outnumber blacks and one seldom hears the kind of blatant racism that gave rise to several generations of Southern demagogues.
>
> There, the antipathy for a strong central government stems not so much from the experience of slavery and the bitterness of Reconstruction . . . as from the stubborn pride of the mountain people and a reverence for the Constitution in its original form. In that region where one can still find people who speak Elizabethan English, early traditions have been less diluted and altered by the tides of history than in more open regions.[96]

Life moved slowly and was relatively simple in Morganton. The Ervins owned eighteen acres of land at the edge of the city upon which they built their own house. As the family grew they kept adding to the house until it grew into a large six bedroom home. Out behind the house there was enough room for a large garden, a baseball diamond, and a tennis court. The Ervins also raised chickens, cows, and pigs. Although the household included a hired cook, a nurse, and a weekly wash woman, the children still had their share of chores to do. Sam, Jr. claimed that he helped in the garden but among his brothers and sisters he had the reputation of a loafer. His brother, Hugh, said Sam, Jr.

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[95] Ibid., p. 28.

[96] Herbers, p. 112.

pretended that he could not learn how to milk a cow. Often, when chores were the order of the day, Mrs. Ervin would tell them that Sam, Jr. was studying, and they should leave him alone.[97]

The children walked everywhere they went so they did not go far. Baseball, marbles, and swimming were the main recreational activities. They did not have the overriding concern for survival that plagued their parents in earlier years so they had time to develop other interests and they were encouraged to develop their minds.[98] Education was a major endeavor in the Ervin household.

Man of Resolve. The senior Ervin had been deprived of a formal education when he was a young boy because of the aftermath of the Civil War and he was determined that his children would not also be deprived. His father, John Witherspoon Ervin, although a poet, writer, and educator, proved to be a rather helpless man after the war and was unsuccessful in supporting his family by writing, with newspapers as a primary market. Young Sam, Sr. tried to help out by selling wild game and strawberries and by picking cotton. When he was nineteen his family moved to Morganton where his father, John Ervin, had accepted a teaching position and he obtained a job with the post office. He had

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[97]Clancy, pp. 28,32,35-36.

[98]Ibid., pp. 35-36.

much spare time during which he read law books and, in 1879, when he felt he had read enough law, he took the North Carolina bar examination and passed it. Although times were bad, he demonstrated an obstinate perseverance by not only eking out a living but prospering. When business was slow he spent his spare time reading Sate Supreme Court decisions and, in later years, was able to cite them, chapter and verse.[99]

Sam, Sr. owned only one book as a boy which he received in trade for a string of fish, but as a man he accumulated a sizeable library including works of Shakespeare, Dickens, Scott, and Kipling. He read constantly and loved to read poetry which he encouraged Sam, Jr. to read.[100]

While the senior Ervin had an austere exterior and, on the surface, was not an affectionate man, he was protective of his children and, according to Sam, Jr., was compassionate in his own way. He was not an overt religionist but could not understand anyone disbelieving in the fact of a living God in light of the order and beauty of the universe. He wanted his children to have a purpose in life and urged them always to tell the truth regardless of the consequences. According to his daughter, Eunice,

> he wanted to be sure that in the development of his children, no one would do a dishonest thing. We grew up

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[99] Ibid., pp. 20-25.

[100] Ibid., p. 40.

> with the concept that the law of the land and all its ramifications constituted sort of an invisible place in which we all lived, and the law of the land was the creation of a great many people.[101]

Because of his formidable knowledge of the law and his stern and austere appearance, he was avoided by lesser men. He was often lonely because he was not a sociable man and had few close friends.[102]

Genteel Lady. Ervin's mother, Laura Theresa Powe, was a shy, patient woman with little formal education. She spent two years at a private academy which was opened to girls on a limited basis. Beyond that the only books available to her were the works of Sir Walter Scott, kept by the postmistress at the post office.[103] Despite hard times, and bearing ten children, Mrs. Ervin maintained a sunny, forgiving disposition which Clancy says, she gave to her second son, Sam, Jr. She argued that it was foolish to try to reform people; it was better to try to bring out the good qualities that were already there. Sam, Jr. said, "She had the capacity to love sinners while hating sin."[104]

Not a few were the tragic moments that she had to bear up under. The oldest boy, Edward, developed asthma as a child and spent nights in agonized breathing sitting up in a

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[101] Ibid., pp. 30-31.

[102] Ibid., p. 28.

[103] Ibid., p. 24.

[104] Ibid., p. 32.

chair. He died at age thirty-nine. Margaret, four years older than Sam, contracted tuberculosis and died at age nineteen. She spent the last months of her life in her room isolated from the rest of the family, except for her mother. Joseph, five years younger than Sam, fell from an apple tree at age six, sustaining a hip injury which culminated in painful osteomyelitis. The bone disease drove him to suicide while he was serving as a United States Representative.[105] The second child, Catherine, contracted Hodgkins disease and died at age fifty. Sam's mother kept her grief to herself, but one day she wrote these lines on a piece of scrap paper:

> The only way to live is to live in the circumstances which are about you, whatever they are, and to recognize that they are life for you, for me, for the world of this day. This is the inheritance into which we were born.[106]

When the Senator's mother died in 1956, at almost ninety-one years of age, "the Morganton News-Herald called her 'a grand matriarch of a devoted family.'"[106]

Academics. Ervin used to visit with his maternal grandmother who lived about a mile outside the city. She knew all the residents and their children. She told Sam, Jr. much about the people and much of the history of the county and got him interested in history at a very early age.[108]

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[105] Ibid., p. 38.

[106] Ibid., p. 39.

[107] Ibid.

[108] Ibid., p. 34.

She was also active in advocating an adequate educational system in Morganton and according to Ervin, was partly responsible for the deep concern he developed for education--a concern he felt was inevitable because of his maternal grandmother, paternal grandfather, and his father. He said his grandfather, John Ervin, taught him to read before he was old enough to go to school, and his father, who expressed a desire to give all of his children an education, was chairman of the first board of trustees of the graded school system in Morganton.[109]

Sam, Jr. excelled in history and reading but was very poor in mathematics. Had it not been for his failing the mathematics examination for the Naval Academy his life might have taken a different turn, because he had a yearning for the sea and an early ambition to go to Annapolis. But he also had a deep appreciation for literature which was not only encouraged by his father but was enhanced by his sister, Catherine, and Carey E. Gregory, a northern minister who had come to western North Carolina for his health. His ministry consisted of teaching "the old moral values of hard work, generosity, right and wrong, and the golden rule." Gregory fed Sam, Jr.'s hunger for poetic language, and he felt he owed much to this minister from the north whom he saw as a great scholar with a taste for fine literature.[110]

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[109]113 Cong. Rec. 35568 (1967).

[110]Clancy, pp. 37,40-41.

Ervin had a continuing exposure to the basic concepts of law also. At an early age he went with his father to Washington and was taken to the Supreme Court. There his father pointed to the busts of the great jurists of the past and said in solemn tones, "The Supreme Court will abide by the Constitution though the heavens fall."[111] Ervin, a favorite of his father, spent much time with him. According to Clancy, it had been said that "Ervin's father loved Southern Railroad first, 'Little Sam' second, and all of the rest of the children third."[112] At age fifteen Sam spent much time in his father's law office reading the dry legal texts, much as his father had done years before.[113] After he finished law school at Harvard he returned to practice with his father except for those periods of time he was in public service. During those years his father instilled in him the ideas about law and government and about human freedom which were so much a part of him. Ervin said of his father:

> I have never known any human being who was more devoted to our government and our legal system than he. As his son and law partner I was privileged to have intimate contacts with him. He implanted in my youthful mind and heart a love of law and a hatred of tyranny. All of the experiences I have had throughout life have served to intensify that love and that hate.[114]

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[111] Ibid., p. 32.

[112] Ibid., p. 102.

[113] Time, 16 April 1973, p. 12.

[114] 106 Cong. Rec. 36483 (1960).

Sam, Sr.'s antipathy toward governmental oppression and his love for individual liberty showed clearly in some of the issues to which he responded. Despite the severe privations he suffered in the aftermath of the Civil War, he was incensed at the passage and enforcement of the blacks-only literacy test. He felt that every qualified person should be able to exercise his right to vote. Ervin said his father "had an abhorrence, and I think I acquired a lot of it by example, he had an abhorrence of people in official positions supressing anybody."[115]

During the push for prohibition he wrote a letter to the editor speaking against North Carolina's consideration of the Prohibition Amendment, stating that man cannot legislate what a person can eat and drink. In another letter he wrote a blistering criticism against the anti-saloon leagues, headed by clergymen, saying, "Oh, religion, what crimes are done in thy name!"[116]

When his son was a State Representative in 1923, the anti-evolution bill came before the State legislature. He urged Sam, Jr. to speak against it, feeling it was not only an infringement on a free people but a strike against the soundness of the Christian faith. Sam, Jr. opposed it declaring the Bible and the Christian religion were not so

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[115]Clancy, p. 26.

[116]Ibid., pp. 29-30.

weak that they could not endure in the face of this theory.[117]

As much as Sam, Sr. loved the law he knew it would work no better than a person's effort to get at the truth, so he admonished his son to "salt down the facts; the law will keep." He felt the law would always be there when it was needed, and cases were won or lost depending upon their preparation.[118]

The College Years

Chapel Hill. Ervin was sixteen years old when he left home for Chapel Hill to begin his college career.[119] The University was small at that time and Ervin knew everyone including the faculty. Although the faculty ranged from the "colorless to the peculiar," according to Clancy, they helped Ervin to mold some of the ideas he would carry throughout life. J. G. deRoulhac Hamilton was a principal source of Ervin's understanding of history, especially the history of North Carolina. He was a man who applauded the emancipation of the blacks but viewed the Reconstruction Acts as such despicable events that he considered even the actions of the Ku Klux Klan to be justified. Ervin said the Ku Klux Klan was honorable in its beginning but became

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[117] Ibid., pp. 92-94.

[118] Ibid., pp. 101-02.

[119] Time, 16 April 1973, p. 12.

violent through the secrecy of its operation.[120]

Hamilton impressed upon him the need to know the underlying conditions that brought into being such principles as those in the Constitution. Ervin was impressed more by the libertarian history of North Carolina than he was by the Civil War. The State guarded closely the civil and religious liberty of the individual and refused to ratify the Constitution in 1778 until a bill of rights guaranteeing these protections was also assured of passing.[121]

He generated enough interest in history to do a serious search of local history and his own origins.[122] His interest in family geneology has continued into the present years. He belongs to the Society of Mayflower Descendants and the Sons of the American Revolution, and apparently enjoys spending hours tracing the family geneology.[123]

Lusius Polk McGehee taught constitutional law and Ervin credits him, in part, for instilling in him the need to be thorough and to study hard every case which would come before him as a lawyer.[124] Other historical notes and Ervin's performance on the Senate floor attest to the fact that he was a diligent student.

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[120]Clancy, pp. 47-50.

[121]Ibid., pp. 49-51.

[122]Ibid., pp. 47-51.

[123]Herbers, p. 122.

[124]Clancy, pp. 51-54.

Henry Horace Williams was one of the more bizarre professors that Ervin had at Chapel Hill but an influential one. In philosophy, Ervin recalled Williams saying repeatedly that choosing between a clear-cut good and a stark evil is not the difficult issue; it is choosing between conflicting loyalties. Williams also taught ethics and impressed upon Ervin the need to analyze the logic of even those things that appear to be nailed down. "He was a great teacher in that he never tried to teach you his thoughts," Ervin said. "He tried to teach you to think and to make your own conclusions, not to accept a thing merely because it was alleged to be so."[125] Truth was the first priority.

Ervin had a natural love for English literature and might have succumbed to Edwin A. Greenlaw's urging for him to return to Chapel Hill to teach, but he had already made a firm decision to pursue law. Nevertheless, Clancy says, he followed this advice of Sir Walter Scott: "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."[126] He went one step farther in admonishing an audience at Wake Forest Law School:

> If you truly would serve the law, if you would be more than practitioners, then it is imperative to learn something beyond what you will discover in your

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[125] Ibid., pp. 52-54.

[126] Ibid., p. 55.

> casebooks. It is mandatory that you learn something of man and his society; of philosophy, religion, sociology, science, and those other disciplines by which man's relation to his environment is explained.[127]

He lived by his own admonition. His prepared speeches, articles, and his speaking on the Senate floor, in hearings and other places are replete with quotations and opinions out of history, literature, the Bible, philosophy, and great legal minds, among others.

Military Interlude. Ervin would have been graduated in June 1917, but the United States entered the war and he, along with other students, enlisted and was accepted for officer training one month before graduation. There was no commencement that year and his diploma was mailed to him.[128] During the war he was wounded twice, cited for heroism and was awarded the Dintinguished Service Cross.[129] The biography released by his Senate office reveals he was also awarded the French Fourreagere, Purple Heart with Oak Leaf Cluster, and Silver Star.[130]

The Senator's experiences taught him to hate war but he never doubted the reasons for America's entry into it nor

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[127]Sam J. Ervin, Jr., "Remarks of Sam J. Ervin, Jr. of North Carolina at Law Day Observance, April 28, 1962," at Wake Forest Law School, Winston-Salem, North Carolina, quoted in 108 Cong. Rec. 8307 (1962).

[128]Clancy, pp. 57-58.

[129]Ibid., pp. 60-77; Time, 16 April 1973, p. 13; Herbers, p. 117.

[130]"Sam J. Ervin, Jr. of North Carolina, Biography," Pamphlet from Senator Ervin's office, June 1973.

his obligation to join the battle. His feelings about preparedness and strength have continued over the years and he supported the military expenditures even when the cause seemed vain and questionable at times. Borrowing a phrase from Kipling, he has often stated, "America must keep her heart in courage and patience and lift up her hand in strength."[131] While he hoped to always find his country in the right, he would stand behind her, right or wrong.

The Harvard Days. After returning from the war, Ervin studied briefly at Chapel Hill in the summer of 1919, and took the North Carolina bar examination. He had hoped to enter law practice with his father but felt he needed more training and decided to go to Harvard. He had one concern in going so far away to school; someone might win the affection of his girl friend, Margaret Bell. Although she had waited patiently for him all of the time he was fighting in the war, he was not sure she would wait another three years. For that reason, he enrolled in the third year law courses. After finding he was still on good terms with Margaret Bell he enrolled for the second year courses and finally the first year, receiving his law degree in 1922 and marrying Margaret Bell on June 18, 1924.[132]

During World War I freedom of speech was curtailed quite severely. People who were openly opposed to the war

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[131]Clancy, pp. 76-83.

[132]Ibid., pp. 79,88; Time, 16 April 1973, p. 13; Herbers, p. 118.

were prosecuted and others were afraid to speak out. Additionally, the Red scare of the twenties and its unnerving effects resulted in governmental oppression of people with questionable allegiances.[133] This was the atmosphere in which Ervin attended Harvard, but he found in such men as Roscoe Pound and Zachariah Chafee, Jr., champions of individual liberties. Pound, like Ervin's father, was able to cite cases, chapter and verse, but his knowledge of law covered the States of the Union and a few other countries as well. He warned of the consequences when liberties were surrendered, writing:

> A generation which is willing to give up the legal inheritance of Americans and set up an absolute rule of the majority may find in the event that it is under the absolute rule of a leader of the majority.[134]

Chafee introduced Ervin to the works of men such as Judge Learned Hand and Thomas Jefferson who championed the right of free speech--men who felt that truth would ultimately win if left free to combat error and that bad thinking could be better dealt with by good counterargument than by legislative strictures.[135] In the years to follow, Ervin alluded to these men in his defense of First Amendment freedoms.

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[133] Clancy, p. 78.

[134] Ibid., pp. 79-80.

[135] Ibid., pp. 83-84.

Public Service

The State House. Having been nominated as the Democratic candidate for the North Carolina legislature while he was still at Harvard, Ervin reluctantly accepted and won.[136] He served for three sessions, 1923, 1925, and 1931. It was during the 1925 session that legislation was proposed to prohibit the teaching of evolution. Ervin, in a floor speech opposing the proposal said, "I don't see but one good feature in this thing, and that is that it will gratify the monkeys to know they are absolved from all responsibility for the conduct of the human race." He apparently did not mean to be funny because he continued, "This is a serious matter . . . it is an attempt to limit freedom of speech and thought and for that reason I am opposed to it."[137]

In addition to the bonding for a black school in Morganton, Ervin pushed for more funds for education and legislation to meet special employment needs of the deaf. He opposed a state sales tax which passed.[138]

Private Practice. After his stint as a lawmaker, he spent fifteen years practicing law with his father. He was a student of the law and found it easy to delve into the books and commit much of what he read to memory. But law was not the only thing that found its way into the courtroom. Often,

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[136] Ibid., pp. 86-87; Time, 16 April 1973, p. 13.

[137] Clancy, pp. 94-95.

[138] Ibid., p. 96.

in a flight of oratory, Ervin would quote from Shakespeare or some other literary source to bolster his case.[139]

Ervin felt the sting of the depression and was impressed with Franklin Delano Roosevelt despite his fear of the bureaucratic tyranny of federal government. He was an avid listener to the Fireside Chats. But his father appeared to have more fear for Roosevelt than the depression and was tempted to renounce his lifelong allegiance to the Democratic Party because of his irritation over the New Deal. When Roosevelt ran for a fourth term, however, Sam, Jr. thought it was a mistake because Roosevelt was not well at the time.[140]

During his practice of law he was persuaded to teach a men's Bible class at the Presbyterian Church. As a result he spent much time reading the Bible regularly and retained many portions because of his keen memory. He also joined the Scottish Rite Masons, whose major purpose is to teach "precepts of morality, charity, and obedience to the law of the land." Their one political interest is the maintenance of separation of church and state.[141]

He favored capital punishment but when it came down to his own involvement in a case he found it difficult to be instrumental in sending people to their death, whether they

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[139] Ibid., pp. 101-06.

[140] Ibid., pp. 112-13; Time, 16 April 1973, p. 12.

[141] Clancy, p. 109.

were clients or those over whom he sat in judgment. His aversion to the reality of capital punishment surfaced in the case of a black man who had been accused of raping a sick twelve year old girl in the infirmary of the North Carolina School for the Deaf. He had been found asleep in the infirmary and the mood in Morganton was very ugly. Ervin, his father, and another lawyer were assigned to defend the man but a verdict of guilty was returned. Ervin, although severely criticized, appealed the case on technical grounds. The court paid him $12.50 for his services in defending the client and the appeal cost him $80.00 of his own money in a losing battle.[142] He alluded to this in an article in which he appeals for compensated counsel.[143]

Superior Court Judge. In 1935, he served part-time as a county judge and, in 1937, was appointed to the Superior Court as a special judge. This was one position that interested him and he pursued it by quietly asking friends to mention his name to the Governor. But it was during his tenure as Superior Court Judge that he developed the involuntary twitching of his eyebrows. Sitting in judgment on those who passed through his court made him sick at heart. He was so full of emotions that he found it hard to contain them when he was faced with another pleading

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[142] Ibid., pp. 113-14.

[143] Sam J. Ervin, Jr., "Uncompensated Counsel: They Do Not Meet the Constitutional Mandate," American Bar Association Journal, Vol. 49, No. 5, May 1963, p. 436.

human being. In two cases in which he handed down a sentence of death, he gave the defense attorneys an additional fee on the condition they would appeal the case to the State Supreme Court. He wanted to be sure he was not in error.[144]

Ervin spent much time away from home and his only companions were his law books or local lawyers and the other judges. During many evening hours Ervin sat on the porches of hotels and rooming houses, sharing courtroom stories--stories full of humor, pathos, and absurdity--with his companions in law. Ervin remembered these mountain stories and retold them so often they became a part of him.

A Short Trip to Washington. In December 1945, Ervin was jolted by a telephone message from Washington informing him that his younger brother, Joe, a freshman Congressman, had committed suicide. He gave no reason for his death in the notes he left behind, but most people felt it was despondency due to the recurring osteomyelitis. At first Ervin rejected the idea that he run for Congress to fill the vacancy left by his brother's death, but he finally accepted on the condition that he would not seek re-election. His conservative politics surfaced in his opposition to federal housing programs, his condemnation of a strike by coal miners, and his vote in favor of increasing funds for the

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[144]Clancy, pp. 119-133.

House Un-American Activities Committee, whose actions he later came to abhor.[145]

State Supreme Court. Upon completing his term in Congress, he had hoped to return to his law practice but a vacancy occurred on the bench of the State Supreme Court and Governor Cherry called Ervin to ask him to fill it. After a day of thought and reflection he declined the offer, but shortly afterward he received another call from a friend, Fred Hutchins, who persuaded him to take the job which he held from 1948 until 1954. It was a position he learned to love because of the opportunity to research cases to the fullest and because of the opportunity to make judgments in the abstract rather than by confronting defendants and plaintiffs. His view of the law and respect for individual liberty was manifested in one of his first opinions. In that opinion he wrote:

> The organic law of this state has contained the solemn warning that "a frequent recurrence to fundamental principles is absolutely essential to preserve the blessings of liberty."[146]

Of those who wrote the North Carolina State Constitution he said:

> They loved liberty and hated tyranny, and were convinced that government itself must be compelled to respect the inherent rights of the individual if freedom is to be preserved and oppression is to be prevented.[147]

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[145] Ibid., pp. 135-140.

[146] Ibid., p. 148.

[147] Ibid.

He wanted his decisions to be so clear that they would not need interpretation and he gained a reputation for making clear, well-reasoned decisions and for sound judgment.[148]

The United States Senate. For six years, Ervin sat on the Supreme Court bench before he was summoned by Governor William B. Umstead to accept an appointment to the United States Senate to replace Clyde R. Hoey who had died. Although he did not want to go back to Washington or leave the field of law, he accepted the appointment out of a sense of duty.[149]

One of the first tests that faced him in the Senate was serving on a special committee which considered whether Senator Joseph McCarthy of Wisconsin should be censured for his alleged abuses of witnesses and others in his impassioned hunt for Communists. When other Senators turned down the thankless task Ervin accepted, with accustomed reluctance. He and others on the committee were soon being villified by McCarthy who called them "unwitting handmaidens of Communism." There was much opposition to censure and when it came time to speak for the resolution on the floor, Arthur Watkins, the chairman of the censure committee, avoided the task and Ervin found himself speaking in his place.[150]

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[148] Time, 16 April 1963, p. 13.

[149] Clancy, pp. 151-53.

[150] Ibid., pp. 156-64; 100 Cong. Rec. 16018-25 (1954); Time, 16 April 1973, p. 13.

Ervin said he did not wish to propose Senator McCarthy's expulsion from the Senate but wished to make the following observations about the "fantastic and foul accusations" the Senator leveled against the members of the investigating committee.

> First, if Senator McCarthy made these fantastic and foul accusations against the members of the select committee without believing them to be true, he attempted to assassinate the character of these Senators and ought to be expelled from the membership in the Senate for moral incapacity to perform the duties of a Senator.
>
> Second, if Senator McCarthy made these fantastic and foul accusations against the six Senators who served on the select committee in the honest belief that they were true, then Senator McCarthy was suffering from mental delusions of gigantic proportion and ought to be expelled from the Senate for mental incapacity to perform the duties of a Senator.[151]

After McCarthy was censured he appeared to be broken in spirit and Ervin spent much time with him at meetings of the Government Operations Committee. When McCarthy died three years later, his wife requested Ervin to be one of the Democrats present at his funeral but he was sick in bed and unable to attend.[152]

Ervin was not in the Senate very long before his mountain folklore began to show and he gained the reputation of the Senate "raconteur." The New York Times gave him the title stating:

> Although he has been in the Senate for less than two years, Mr. Ervin has built up such a repertory of folk

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[151] 100 Cong. Rec. 16020-21 (1954).

[152] Clancy, p. 164.

> humor as to qualify him to continue the Barkley mission of leavening the pompous business of politics.[153]

Almost a year later the New York Times gave him the title "Dixie's Jester Knight" stating he could not only call upon the mountain folk heroes at will "to deflate a pompous speaker or needle a reluctant witness," but could also just as easily take on "the portrait . . . of a country prosecutor in Dixie armor" when responding to civil rights legislation.[154]

The never-ending flood of civil rights bills that emerged was a thorn in Ervin's flesh. Whether it was open housing, public accommodation, employment, school integration, or voting, Ervin stood in its path waving the constitutional flag of freedom from governmental tyranny and for individual rights. During a midnight filibuster he confessed that integration was probably not so bad and could be worked out on a state and local basis but federal legislation forced public officials to take an extreme position either for or against compulsory integration. He fought against it in more lofty terms than the Southern demagogues and, with careful legal arguments, won some concessions from the North.[155]

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[153] New York Times, 13 May 1956, p. 61.

[154] New York Times, 25 March 1957, p. 12.

[155] Clancy, pp. 169-177; New York Times, 25 March 1957, pp. 1,12.

When speaking against the literacy test issue Ervin called down Constitutional provisions and Supreme Court decisions which indicated that the states had sole power to set qualifications for their electors. He also gave an interpretation to the Fourteenth and Fifteenth Amendments demonstrating that they were not violated by literacy tests.[156] When opposing the authorization of discretionary power for the Attorney General's use in the prosecuting of election officials who violated the rights of voters, Ervin pulled out the Constitutional right to trial by jury for the accused.[157] When quota systems were proposed to increase the percentage of minorities in the work force, Ervin declared that such systems would be a violation of the Civil Rights Acts themselves because quota systems would involve preference on the basis of race, color, sex, religion, or national origin.[158]

In answering the demands for school integration Ervin pointed to an interpretation of the Fourteenth Amendment which suggests that integration is not commanded; involuntary

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[156]Sam J. Ervin, "Political Rights as Abridged by Pending Legislative Proposals," Federal Bar Association Journal, (1964); 4; Idem, "Literacy Tests for Voters: A Case Study in Federalizing," Law and Contemporary Problems, Vol. 27, No. 3., Summer 1962, pp. 483-93; 100 Cong. Rec. 7084-85 (1964); 116 Cong. Rec. 5542-48 (1970).

[157]103 Cong. Rec. 11818-19 (1957); 106 Cong. Rec. 2866-88, 3778-79, 7319-20 (1960).

[158]115 Cong. Rec. 27092-93 (1969); 116 Cong. Rec. 20934-46 (1970).

segregation is merely prohibited. He alleged further that forced busing is a violation of the Fourteenth Amendment because some children are arbitrarily denied the right to attend their neighborhood school on the basis of race.[159] With respect to open housing legislation, Ervin charged that such laws robbed the states of the power to control transfer of real estate and placed discretionary powers in the hands of one man, the Secretary of Housing and Urban Development. He argued further that land owners would be denied due process in the event of litigation.[160]

But some questioned whether Ervin saw the issues clearly. Terry Sanford, a former Governor of North Carolina, said:

> I think Sam didn't have clear in his mind either the conditions of the South or his own position. . . . The South needed more creative leadership and his was a position that was definitely no longer valid. The time had come for the liberation of the black man.[161]

His own children disagreed with him on civil rights but recognized that he belonged to another generation. Despite their different views, they respected their father for the way he went about opposing civil rights--without a detectable trace of racism.[162]

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[159] 117 Cong. Rec. 39577 (1971); 118 Cong. Rec. 4395 (1972).

[160] 114 Cong. Rec. 3248 (1968).

[161] Clancy, pp. 180-81.

[162] Ibid., p. 132.

The conditions of the country soon changed while Ervin stood his Constitutional ground and metamorphised into one of the great libertarians. Civil rights was still the issue but in a different form. The problems did not stem primarily from alleged racial injustice but from governmental infringements on individual freedom. Interestingly, Ervin's opposition to the District of Columbia's Crime Bill, which incorporated preventive detention and no-knock provisions, made him a champion of the blacks because they were the ones primarily affected by the bill. For his efforts, a group of black students from Howard University gave him an award on behalf of the Washingtonians.[163] Ervin also found himself fighting against military surveillance of dissidents, computerized data-gathering systems, other encroachments upon privacy, and the use of lie detectors in screening government employees. He supported measures to revise the Uniform Code of Military Justice which gave greater assurance of justice to servicemen; was responsible for legislation which guaranteed Indians the full protection of the Constitution in tribal courts; and he supported bail reform to give the poor the same privilege of pre-trial freedom the wealthy enjoyed.[164]

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[163]Herbers, p. 107; James K. Batten, "Sam Ervin and the Privacy Invaders," New Republic, 8 May 1971, p. 20.

[164]Herbers, p. 107; Time, 16 April 1973, p. 14; "The Senate's Mr. Liberty," Newsweek, 19 February 1973, p. 23; Batten, pp. 19-23.

A libertarian stand that appeared most unusual for a conservative from one of the country's Bible belts was Ervin's opposition to a school prayer amendment sponsored by the late Everett Dirksen, Senator from Illinois. Ervin was critical of the Supreme Court's decision against school prayer, but after careful study, he changed his mind and opposed the Dirksen amendment which would have allowed it. Instead he supported the Supreme Court decision, using the protection of religious liberty as grounds for his position. He opposed Federal aid to church-related educational institutions on the same grounds.[165]

What appeared to be a metamorphosis was not as complete as some groups may have preferred. His old conservative image came to the fore on a few issues. While he opposed wiretapping on the federal level, he upheld it on state and local levels.[166] He opposed legislative proposals to reduce the voting age to eighteen, stating that such action should come by way of a Constitutional amendment rather than by legislative fiat.[167] He infuriated women's groups in his opposition to the equal-rights-for-women amendment. His argument was that the Fourteenth Amendment

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[165]Herbers, p. 107; 112 Cong. Rec. 23122ff (1966).

[166]New York Times, 17 January 1958, p. 1; New York Times, 13 May 1961, p. 17; Time, 16 April 1973, p. 14.

[167]116 Cong. Rec. 5952, 6930 (1970); Herbers, p. 107.

already provided adequate protection and any further amendment was not only unnecessary it would possibly open up "Pandora's box" and deprive women of many rights which they now enjoyed.[168]

In an interview with John Herbers, Lawrence Speiser, the Washington representative of the American Civil Liberties Union, said that Ervin's positions on issues were pretty evenly divided between favorable and unfavorable with respect to ACLU positions but the favorable had the edge because of Ervin's conservative image which made him a more credible proponent.[169] The first words Speiser uttered, when asked his opinion of Ervin, were from a nursery rhyme:

> When he's good,
> He's very, very good,
> But when he's bad,
> He's horrid.[170]

There were times when Ervin's "horrid" ways were quite exasperating. Although he did not usually avoid confrontation with an issue he disliked, he occasionally resorted to methods other than logic and mountain stories in an attempt to win a battle, if not the war, or to soften the blow of defeat. Lawrence Baskir, chief counsel of the

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[168]116 Cong. Rec. 35623-26 (1970); Robert Sherill, "That Equal Rights Amendment--What Exactly Does It Mean?" New York Times Magazine, 20 September 1970, Sec. 6, p. 98.

[169]Herbers, p. 107.

[170]Ibid.; Clancy, p. 217.

Senate Subcommittee on Constitutional Rights, said the hearings are expedited if a bill in question is endorsed by Ervin, but when he is opposed to a particular bill, "we have witness after witness all saying the same thing over and over."[171] During an eleven day hearing before the Senate Judiciary Committee in 1963, Ervin testified against an omnibus civil rights bill for two days and then questioned former Attorney General Robert F. Kennedy for the remaining nine days allowing no other Senator to ask any questions.[172]

During the push for election reform Ervin demonstrated, once again, his "horrid" ways. After hearings, the Senate Subcommittee on Constitutional Amendments reported out a resolution to eliminate the electoral college and institute direct election of the President by popular majority. Ervin thought this would endanger the two-party system and would further eliminate State borders, among other consequences. Despite overwhelming House support of the resolution, forty-six sponsors in the Senate and a national poll showing 80 per cent of the public in favor of it, Ervin decided the truth was not yet out so he arranged for his own hearings with the assistance of Robert Bland Smith, Jr., a young staff attorney. According to Clancy Smith was adept at cross-quotemanship (i.e., in this instance, finding liberals who held a conservative view on

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[171]Herbers, p. 125.

[172]New York Times, 24 March 1965, p. 34.

the issue) and when Senator Birch Bayh, author of the resolution finally learned of the new hearings, he discovered that the witness list was stacked. Bayh said he did not think Ervin knew about the arrangement because of Ervin's reputation for fair-play so he directed his wrath toward the staff. When the resolution came to the floor, Ervin conducted his own little filibuster, not allowing even the consideration of his own amendment, until other pressing matters forced the abandonment of Bayh's resolution.[173]

When the Equal Rights Amendment, banning discrimination based on sex, had passed the House and was endorsed by eighty-one Senators, Ervin introduced a series of amendments and finally got one passed which prohibited the Armed Forces from drafting women. Ervin said with delight, "I am trying to protect women from their fool friends and themselves."[174] The amendment tied up the House and Senate and the amendment was dropped. But by 1972, the amendment had gained such momentum that it passed, despite seven attempts by Ervin to amend it.[175]

Ervin gained a reputation as the Senate's leading authority on the Constitution. He was also labeled a strict

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[173]Clancy, pp. 237-39. See also New York Times, 16 April 1970, p. 20.

[174]Herbers, p. 125; New York Times, 14 October 1970, pp. 1,48.

[175]Clancy, p. 242; New York Times, 23 March 1972, pp. 1,26.

Constructionist, although he disagreed,[176] and was mentioned as a possible nominee to the United States Supreme Court.[177] In response to this suggestion Ervin told a story he heard a North Carolina attorney, Tom Rollins, tell his father in the 1920's. According to Ervin, Tom had a lawyer friend from Alabama who had been nominated to a Federal judgeship. The day after the President announced his intention to appoint the Alabamian to the judgeship the appointee disappeared and was never heard from again. Tom reportedly said:

> The only clue they had to the cause of his disappearance was the fact that the day he disappeared, and just a few moments before he disappeared, he received a telegram reading as follows: "All is discovered. Flee at once."[178]

Ervin continued, if the President were to nominate him he would flee at once, knowing all of the charges that would be made against him--both valid and invalid. He added that he would also be ineligible because of a Constitutional provision that prohibits a member of Congress from accepting appointment to the United States Supreme Court if he had voted to increase the emoluments of a position other than the one he occupies. Senator Harry F. Byrd of West Virginia corrected Ervin, stating that a member of Congress could not be appointed to a civil office during the term in which he

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[176] Time, 3 August 1970, p. 10; 116 Cong. Rec. 5677 (1970).

[177] New York Times, 9 April 1970, p. 38; New York Times, 2 October 1971, p. 30.

[178] 116 Cong. Rec. 5677 (1970).

had voted to increase the emoluments of that particular office.[179]

From a Constitutional point of view one of Ervin's greatest concerns was the important role that separation of powers played in the integrity of democracy. He had watched with growing alarm the increase in executive power and the lessening of legislative clout and perogative.[180] He was angered by the secrecy under which the executive branch was operating, refusing to let aides testify in Congressional hearings and bypassing Congressional participation in foreign policy by the use of executive agreement which was carried out in secret meetings.[181] He was also angered by the intimidation of Congress by the executive branch such as in the investigation of Senator Gravel who initially made public the Pentagon Papers,[182] and by the President's impoundment of funds that had been appropriated through

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[179] Ibid.

[180] Clancy, pp. 245-62.

[181] Sam J. Ervin, Jr., "Separation of Powers," Vital Speeches, Vol. 35, No. 6, 1 June 1969, pp. 189-192; Idem. "Secrecy in a Free Society," The Nation, Vol. 213, No. 15, 8 November 1971, pp. 454-57; 118 Cong. Rec. 12030-31 (1972).

[182] Ervin, "Separation of Powers," Idem. "The Gravel and Brewster Cases: An Assault on Congressional Independence," Virginia Law Review, Vol. 59, No. 2, February 1973, pp. 174-95; Idem. "Brief of Unitarian Universalist Association, Council for Christian Social Action, United Church of Christ, American Friends Service Committee, National Council of Churches, Amici on behalf of respondents," Records and Briefs, United States Supreme Court, Vol. 1821, October 1971; 117 Cong. Rec. 32445-49 (1971); 118 Cong. Rec. 28465-70 (1972).

legitimate legal process.[183] He became a leading foe of these abuses operating from some of the subcommittees of which he was chairman especially the Subcommittee on Constitutional Rights and the Subcommittee on Separation of Powers.[184] But he did not really have the power base that he needed until 1972 when he assumed the chairmanship of the Government Operations Committee. With ease he moved his projects in this committee and began to hammer away at executive abuse, through a series of hearings. It was during a hearing on impoundment that Ervin formulated a resolution he had throught of the night before--to investigate the Presidential campaign activities of 1972.[185]

Because of his wide ranging respect in the Senate, Ervin was asked to serve as chairman of the Select Committee. He had so many other important problems to deal with he did

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[183]Sam J. Ervin, Jr., "The Path to Fiscal Responsibility." Speech by Senator Sam J. Ervin, Jr. at the Executive Club Meeting, High Point, North Carolina, April 24, 1973; Idem. "Impoundment: A Legislative Point of View." Lecture by Senator Sam J. Ervin, Jr., Colloquium on President and Congress in the Seventies, North Carolina State University at Raleigh, February 25, 1975; 117 Cong. Rec. 8567-68 (1971).

[184]During his Senate career, Senator Ervin served as Chairman of the Government Operations Committee; Second Ranking Democrat on the Judiciary Committee and Chairman of its Subcommittee on Constitutional Rights, Revision and Codification of the Laws, and Separation of Powers; Third Ranking Democrat on the Armed Forces Committee and Chairman of its Subcommittee on Status of Forces Treaty; and Chairman of the Select Committee on Presidential Campaign Activities. "Biography," Pamphlet.

[185]Clancy, pp. 253-60.

not want the job, but out of a sense of duty he accepted.[186] He was vaulted into the national spotlight as a result of his chairmanship but was not a man with higher political ambition.[187] He rested all doubts by making it known that he intended to retire at the end of his term in 1974, and by doing what he said he would do.[188]

In the following chapter, the discussion of the Senator's style of speaking tends to reflect his deep interest in history, his love for both literature and mountain stories, and his broad knowledge of the Bible. The discussion also gives a preview of Ervin's expressed philosophy which is covered in Chapter V.

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[186] Clancy, pp. 255-67.

[187] Time, 16 April 1973, p. 11.

[188] New York Times, 23 May 1974, p. 34.

CHAPTER IV

SAM J. ERVIN, JR.: THE SPEAKER

Ervin's sense of duty and his penchant for hard study were probably two important factors in his ability to bring a great deal of evidence to bear upon any issue. His prepared speeches and remarks on the Senate floor contain a plethora of legal opinions from court decisions, allusions to politicians, judges, philosophers and others out of the past, historical events, quotations from literary sources, and a pinch or two of mountain folklore. The whole mixture is generously salted with references to the Bible.

The primary concern of this chapter will be to look at four of these features, namely Ervin's use of history, literature, anecdotes, and the Bible in his speaking. While style is the major focus in the chapter, the discussion centering in Ervin's use of history deals with materials of development. It is included here because of the high position Ervin gives to history among his tools of communication. In the broad sense of the word, his use of history as evidence is also a part of his style. While examples of his use of quotations from men of the past could be incorporated here, they are omitted because of their extensive use in Chapter V.

Two other features which will be discussed in the first part of this chapter are "What one sees and hears" when Ervin speaks. The reporting of the visual and aural observations by the writer and others will not figure directly in the comparison between Ervin's speaking prior to and during the Hearings, but is included for purposes of perspective.

The discussion is limited to these six items to keep the discussion within reasonable proportion to the rest of the study. Additionally, it is the opinion of this writer that a discussion of the four major items which will figure in the analysis provide a sufficient sample to make possible an objective comparison between Ervin's speaking before the Hearings and during the Hearings.

What One Sees

One of Ervin's trademarks that has endured over the years is actually a manifestation of a nervous reaction according to Clancy. That is the twitching of his large eyebrows.[189] Herbers spoke of clashes between Ervin and Senator Joseph S. Clark of Pennsylvania whose speeches were punctuated with dancing eyebrows. He said the press gallery called these frequent encounters the "battle of the eyebrows."[190] Others alluded to his eyebrows "dancing in tempo with his remarks," "twitching with indignation," "flash[ing]

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[189]Clancy, p. 133.

[190]Herbers, p. 51.

with particular amusement," "dancing in amusement," "lifted in surprise," "intent but somehow distracted," and "aquiver."[191] It is interesting to note that different people read different kinds of emotions into the movement of Ervin's eyebrows. This, of course, may be partly due to the context in which they made the observation.

Several video tapes were temporarily available which gave opportunity for the writer to make some visual observations of Ervin in the Hearings. At first blush it appeared comments on Ervin's eyebrows were overdone, but a reading of the notes of the observations revealed that there is significant movement which could easily be noticeable to the casual observer. During Ervin's opening statement on May 17, 1973[192] the writer recorded five instances in which there was a little dancing of the eyebrows. At other times there were broad movements of the eyebrows or else he alternately held them raised or squinted.

He had a serious, intent look on his face as he held his statement up in front of him and read it, with his glasses resting about midway down his nose and cocked above

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[191] New York Times, 26 February 1971, p. 8; Time, 19 February 1973, p. 22; Newsweek, 2 April 1973, p. 100; Time, 30 July 1973, p. 8; Stuart Alsop, "The Sam Ervin Show," Time, 2 April 1973, p. 100; Newsweek, 6 August 1973, p. 24.

[192] Video tape recording of the CBS telecast of the opening session of the Watergate Hearings from Channel 6, Lansing, Michigan, May 17, 1973, recorded by Michigan State University, Instruction Television, See Appendix I, Exhibit 1.

his ears. In one instance when he stumbled over a word his lips moved before he spoke. Similar movement of his eyebrows and also movement of his lips prior to his speaking were noticed during a viewing of his interrogation of James McCord on May 18, 1973,[193] and his remarks prior to John W. Dean's statement on June 25, 1973.[194] When entering the caucus room and during a request to one of Dean's attorneys, Ervin appeared to be smiling graciously.[195] During the McCord testimony, there were times when he appeared to be smiling or smirking and another instance in which he appeared to be engaged in silent laughter.[196] One gets the impression that these are features peculiar to Ervin and give no clue as to his emotion.

During the McCord testimony Ervin often glanced from one side to the other, as though he were somewhat distracted. Periodically, he motioned with his hands in front of him while speaking; at times he held a pencil in his closed right fist; sometimes put his right fist to his chin, or his right hand to his cheek while listening or talking. He put his glasses on, half-cocked on his nose and head, as before, to

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[193]Video tape recording of the CBS telecast of the Watergate Hearings from Channel 6, Lansing, Michigan, May 18, 1973, recorded by Michigan State University, Instructional Television. See Appendix I, Exhibit 2.

[194]Video tape recording of the ABC telecast of the Watergate Hearings from Channel 12, Flint, Michigan, June 25, 1973, recorded by Michigan State University, Instructional Television. See Appendix I, Exhibit 3.

[195]Ibid.

[196]Appendix I, Exhibit 2.

read, and then removed them. Add this to his white hair and the mannerisms above and his own label fits him well--"just a country lawyer."

What One Hears

There are contrasting views regarding Ervin's eloquence, or the lack of it. If his critics are to be believed, he has flashes of eloquence with alternating periods of defectiveness as a speaker. It is possible, however, that some of his critics have been influenced by their view of him or his stand on the issues at hand. Another possibility is that their criteria were different and the seemingly contradictory statements are not contradictory at all. Two views that do not seem to fall in this category are the opposing views of Senator Joseph Tydings and the New York Times. Tydings, a leading proponent of the District of Columbia Crime Bill commented that he was glad it survived "all the flame and rhetoric."[197] But the New York Times, while admitting that Senator Ervin was a flamboyant orator, stated that his arguments against the bill, "however colorful, were a good deal more than 'flame and rhetoric.'"[198] Another example which fails to fall into the category above consists of two appraisals by Tom Wicker, although he alludes, first, to Ervin's speaking, and second, to the

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[197] Ibid.

[198] New York Times, 26 July 1970, Sec. 4, p. 10.

substance of his speech. In applauding Ervin for his opposition to the District of Columbia Crime Bill, Wicker wrote of the "organ tones of one of the most impressive rhetorical talents in the Senate . . ." but, in criticizing him for his views on the Electoral College, Wicker labels Ervin "a remarkable bag of constitutionalism and contradiction."[199]

It is because some critics may be talking about the substance of his speech and others about certain aspects of his performance that the contrasting views may not be contradictory. In 1957, the New York Times reported "that the judicial robes fall over his shoulders when he rises to speak,"[200] and Bill M. Wise wrote of Ervin:

> A thoughtful man who still seems to believe that the force of logic and the truth of arguments have a place in Senate debate, Ervin speaks in stately phrases that recall the golden age of oratory.[201]

Ervin's penchant for reciting opinions from court decisions could easily bear out the New York Times' comment[202] and the statement by Wise is confirmed again and

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[199]Tom Wicker, "In the Nation: Will the Real Conservatives Please Stand Up?" New York Times, 29 March 1970, Sec. 4, p. 15; Idem. "Sabotaging the System," New York Times, 29 September 1970, p. 43.

[200]"Dixie's Jester Knight," New York Times, 25 March 1973, p. 12.

[201]Wise, Wisdom of Sam Ervin, p. xxvii.

[202]See Appendix II, p. 297 for an example.

again in the substance of Ervin's speeches.[203] In a speech at Chapel Hill in 1973, Ervin reached to the "golden age of oratory" when he admonished his audience:

> Let books be your friends, for, by so doing, you can summon to your fireside in seasons of loneliness the choice spirits of all ages. Observe mankind through the eyes of charity, for, by so doing, you will discover anew the oft forgotten fact that earth is peopled with many gallant souls. Study nature, and walk at times in solitude beneath the starry heavens, for, by so doing, you will absorb the great lesson that God is infinite and that your life is just a little beat within the heart of time. Cling to the ancient landmarks of truth, but be ever ready to test the soundness of a new idea. Accept whatever your mind finds to be true, and whatever your conscience determines to be right, and whatever your heart declares to be noble, even though your act in so doing may drive a hoary prejudice from its throne. And, above all things, meditate often upon the words and deeds of Him who died on Calvary for, by so doing "ye shall know the truth and the truth shall make you free." [John 8:32][204]

Clancy wrote that Ervin moistened several eyes at his class reunion at Chapel Hill in 1929. Upon being introduced to the widow and ten year old son of a friend and classmate of his who was killed in World War I, he spoke of duty and heroism and quoted the words of Rupert Brook about those who

> Poured out the red, sweet wine of youth,
> Gave up the years of work and joy,
> And that unhoped serene that men call age.
> And these that would have been their Sons,
> They gave their immortality.[205]

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[203]See Appendix II for an example of Ervin's force of logic.

[204]Sam J. Ervin, Jr., "Light and Liberty." Remarks prepared for delivery at the University Day Celebration at Chapel Hill, North Carolina, October 12, 1973, p. 4. See Appendix II, pp. 309-10 for another example of Ervin's "oratory."

[205]Clancy, p. 111.

Ervin quoted these same lines in a dedicatory address at Richmond, Virginia, giving honor to the Civil War dead of both the North and the South "whose silent tents are spread 'on Fame's eternal camping ground.'"[206]

With respect to Senator Howard Baker's statement over against those of Judge Carlyle Higgins, Lloyd Presler, and Paul Clancy, reconciliation is a little more difficult. Senator Baker said the Senator was the only man he knew who could "read the transcript of a telephone conversation and make it sound like the King James version of the New Testament."[207] On the other hand, Judge Carlyle Higgins of the North Carolina Supreme Court, who was a colleague of Ervin when he delivered his speech in opposition to the anti-evolution bill of 1923, remembered that his speech was "typically Ervin: stumbling and nervous but effective."[208] Lloyd Presler, in an editorial, said that Ervin "was not an eloquent man on his feet but his . . . speech in opposition

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[206]Sam J. Ervin, Jr., "Our Inheritance: An Indestructible Union of Indestructible States," Remarks at the dedication of the Visitor Center and Headquarters for the Richmond National Battlefield Park, Richmond, Virginia, May 16, 1959. Quoted in 105 Cong. Rec. 8541 (1959).

[207]Senator Howard Baker, Introduction to The Wisdom Of Sam Ervin, by Bill M. Wise, p. xxiv.

[208]Clancy, p. 94.

to . . . Dirksen's prayer amendment read well . . ."[209] Clancy, in reference to a Founder's Day speech in 1973, said the Senator read it in a stammering monotone, although he admitted it was the best of Sam Ervin.[210]

The writer listened to tape recordings of Ervin's opening statement,[211] his comments prior to John W. Dean's opening statement,[212] and parts of his interrogation of James C. McCord.[213] Ervin literally read his opening statement, much of it with dispatch, but there was periodic stammering or stumbling over words. For instance, in attempting to say "incredulity" Ervin said "in-cred-ih-uh-in-cru-incred" at which time he chuckled softly, cleared his throat and tried again, "incredu-dulty," never clearly pronouncing the word. Shortly thereafter, he tackled "citizenry" and said "citizery-citizery." On one occasion he said the wrong word and changed it--"phrase-phases;" and on another occasion changed the pronoun in an adjective clause--"whi-that still is the first, best hope . . ." At other times Ervin tended to stammer saying such things as

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[209]Lloyd Presler, "Sam Ervin Had the Senate With Him in Stand Against Prayer Amendment," Winston-Salem Journal, 25 September 1966, quoted in 112 Cong. Rec. 26348 (1966). See Appendix II.

[210]Clancy, p. 44. See also Ervin's, "Light and Liberty."

[211]See Appendix I, Exhibit 1.

[212]See Appendix I, Exhibit 3.

[213]See Appendix I, Exhibit 2.

"demo-democracy," "wi-widespread," and "ins-instrumentalities." He occasionally mispronounced words either leaving a sound out or changing the sound as in "her'er'tage" for "heritage," "accoosations" for "accusations," and "substantuated" for "substantiated." Periodically he left the "g" off as in "breakin'," "wiretappin'." These pronunciations along with others might be no more than a regional speech pattern but they do add a dimension of non-fluency to his communication.[214]

Ervin's remarks prior to Dean's testimony were probably impromptu and there is a greater presence of the vocalized pause "uh" along with his tendency to stammer, or stumble, over words. He says such things as "he might-uh-uh-might-ah-might give," "the-the chairman-the chairman," and "re-ra-rule."[215] The McCord testimony in Appendix I, Exhibit 2, reveals features of Ervin's speaking similar to those found in his remarks prior to Dean's opening statement.[216]

So then, Sam Ervin, the speaker, from a visual and aural point of view, adds a dimension that cannot be found in the cold print of recorded speeches or transcripts of the

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[214]For a complete reading of the opening statement as heard on tape recording see Appendix I, Exhibit 1.

[215]For a complete reading of Ervin's remarks prior to Dean's opening statement see Appendix I, Exhibit 3.

[216]See Appendix I, Exhibit 2.

Hearings. Ervin himself felt that the establishment of truth was best served through oral testimony because it afforded those deciding the issue an opportunity to observe the demeanor of the witnesses. Ervin said:

> When we take the testimony of Goerge Washington and Ananias, and put them down on a cold record, it is impossible to tell which is the testimony of George Washington and which is the testimony of Ananias.[217]

In his view, what one saw and heard was an essential element of the message. Again, while the discussion above does not figure in the analysis, it gives us another dimension of the Senator.

The discussion following consists of Ervin's attitude toward history and his use of it as evidence, and his use of literature, anecdotes, and the Bible in his speaking. The discussion will reveal that literature and the Bible are used more indiscriminately than the anecdote. While the comments of this writer suggest Ervin made broader use of anecdotes than indicated in this chapter, the context of those anecdotes found by the writer was usually one of debate or controversy.

The Importance of History

Ervin's love affair with history appears to be more than an aesthetic appeal. While it is apparent that he has found historical research to be a favorite pastime, he has

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[217] 104 Cong. Rec. 18483 (1958); 111 Cong. Rec. 1257 (1965); "Dixie's Jester Knight," New York Times, 25 March 1957, p. 12. The account of Ananias lying to Peter is found in Acts 5:1-5.

also placed a high value on the knowledge of historical events as a means of making better decisions in the present. He avers that the deeper dimension of a present-day truth has its foundation in the historical setting, and only as an event is considered from an historical point of view can it be perceived aright, whether it is an established law, a legislative proposal, a judicial decision, or an executive decree.

In his speaking and writing there are few instances in which he does not make reference to some event which illustrates or supports an argument he is presenting.

The most frequent reference is made to the Founding Fathers who are his idols, and in most references Ervin speaks of their keen awareness of the history of man's struggle to be free, or problems surrounding governments of the past that comprised freedom, and of efforts to change those conditions. Ervin says of them:

> With due deference to all men of all generations, I confess my belief that the world has never known any group as well qualified as the Founding Fathers to write organic law for a people dedicated to freedom of the individual.[218]

And in another place he said they

> were more knowledgeable in the fundamentals of sound government than are many of those who now occupy high office in the United States.
>
> They had more time to think. They spent more time reading history than they did political platforms. They were not subject to a whole lot of pressure groups. So

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[218] 112 Cong. Rec. 14103 (1966).

> they wrote their own convictions and they studied the history of mankind's fight for freedom and the right of self-government and they had learned important lessons.[219]

An example of Ervin's own esteem for history is found in his opposition to the use of Federal taxes to support religious institutions of higher education and his opposition to the Dirksen school prayer amendment. In opposing these issues on the basis of the first amendment he stated:

> We must recur to history. This is so because we cannot understand the institution and laws of today unless we understand the historical events out of which they arise.
>
> As we recur to history, we will do well to remember that a nation which ignores the lessons history teaches is doomed to repeat the tragic mistakes of the past.[220]

In keeping with his admonition, Ervin used as a major material of development, an historical view of the abuses of freedom in situations where the established church was in existence, and the resolute effort of the framers of the Constitution to guard against such a condition occurring again in the States of the Union. He began with the Founding Fathers who, he said, remembered the Spanish Inquisitions, and the tragic plight of the Huguenots in France, the Waldenses in Italy, the English-Irish Catholics in Protestant England, the Covenanters in Scotland, the

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[219] Sam J. Ervin, Jr., "Invasion of Privacy How Big a Threat?" Interview with Senator Sam J. Ervin, Jr. of North Carolina, U.S. News & World Report, 6 March 1972, pp. 44-45.

[220] 109 Cong. Rec. 19468 (1963); 112 Cong. Rec. 23122 (1966); Appendix II, pp. 296ff.

Quakers, and the Baptists in Puritan Massachusetts. He spoke of marriages being annulled and children being declared illegitimate because people spoke their vows before their own ministers rather than the clergy of established churches. He spoke of the act of denying people the right to hold public office or serve in the military unless they adhered to the faith of the established church. He told of the many people who migrated to America to be free from taxation for the support of state churches and to secure religious liberty, only to find that predominant groups had already established churches in many colonies and their problem remained. Because of these conditions, he said, the Founding Fathers included provisions in the Constitution to prohibit any religious test as a qualification to hold office or public trust and to prohibit any establishment of religion or prohibition of its free exercise.[221]

In support of his argument that the establishment of a religion statement in the first amendment had the broadest application and prohibited the arrangements against which he was speaking, Ervin inserted into the Record an excerpt from a book by R. Freeman Butts which detailed the history of the separation of church and state. He followed this with an observation that in some of the states there had been an establishment of all of the churches that were deemed

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[221] 109 Cong. Rec. 19468-69 (1963); 112 Cong. Rec. 23123 (1966); Appendix II, p. 297.

respectable. To nail down further the idea that the first amendment meant no relationship whatsoever between any or all religions and government, Ervin discussed a bill James Henry presented to the Virginia legislature in 1779 in which virtually all churches would have been considered part of the established church and would have been entitled to tax support. He said that during the same session, James Madison introduced Thomas Jefferson's "Bill for Religious Freedom" which stated clearly it is tyrannical to tax people for the propagation of opinions in which they disbelieve or even those to which they adhere. Ervin also inserted into the Record a bill entitled "A Bill Establishing a Provision for Teachers of Christian Religion," which Patrick Henry introduced in the Virginia legislature in 1784. This bill, said Ervin, provoked James Madison to write, "Memorial and Remonstrance Against Religious Assessment to the Honorable The General Assembly of the Commonwealth of Virginia." After entering Madison's Memorial into the Record Ervin asserted that no man could read it without understanding the clear meaning of the phrase "establishment of religion" in the first amendment which he declared meant no relationship between the government and any church, many churches, or all churches.[222]

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[222] 109 Cong. Rec. 19468-79 (1963); 112 Cong. Rec. 23123-27 (1966). For a complete reading of Ervin's remarks in opposition to the Dirksen prayer amendment, see Appendix II.

Ervin added, to the materials above, a number of Supreme Court decisions that supported his view and concluded with comments about his own historical roots and his own feelings about the importance of freedom of religion and his own faith in God. But the bulk of this speech is a development of history and demonstrates Ervin's use of it as a major material of development.

Other examples of his use of history as a major material of development are found in his opposition to an amendment to Rule XXII which would have reduced the two-thirds vote necessary for cloture. In this speech he led his colleagues through a bit of Civil War history culminating his remarks with a moving story about the Senate trial of Andrew Johnson and his rescue from conviction by one vote.[223] In an article on the need for judicial independence, Ervin reached back to Aristotle, John Locke, Montesquieu, and William Paley to develop the concept of separation of powers. He followed this with a recounting of the impairment of justice resulting from the dependency of judges on the King in England and royal governors in the colonies. He discussed the efforts of Parliament in England and the delegates of the Constitutional Convention in America to make the judiciary independent and argued that any change which compromised the independence of the judiciary was, in

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[223] 113 Cong. Rec. 550-63 (1967).

effect, an attack of a free society.[224]

An example in which history is not the major tool but is still significantly laced throughout the speech is found in Ervin's address to the California State Bar Association on "Fear of Freedom." He begins, again, with the Founding Fathers who esteemed freedom to be the supreme possession, and who knew that the tyrannies of the past would be attempted in the future. Speaking against preventive detention, he reminded his audience of the Bastille in France. In reference to the no-knock laws he pointed to the common-law of England that declared every man's home is his castle, and added that the Founding Fathers had incorporated this principle in the Fourth Amendment.[225] At times Ervin laid an historical foundation as a means of introducing an issue or theme,[226] and on one occasion, he merely reviewed some major battles of the Civil War, during a dedicatory address at Richmond, Virginia.[227]

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[224]Sam J. Ervin, Jr., "Separation of Powers: Judicial Independence," Law and Contemporary Problems, Vol. 35, No. 1, Winter 1970, pp. 108-09.

[225]Sam J. Ervin, Jr., "Fear of Freedom," Remarks delivered at the Morrison Lecture before the Annual Convention of the California State Bar, San Diego, California, p. 2.

[226]Idem. "Light and Liberty." Idem. "Alexander Hamilton Phantom," Delivered to Harvard Law School Association of New York City, April 28, 1955, Vital Speeches, Vol. XXII, No. 1, October 15, 1955, p. 24.

[227]Ervin, "Our Inheritance," quoted in 105 Cong. Rec. 8541 (1959).

No matter what the issue was, Ervin usually had an historical reference to bolster his position, either with one or many quotations, or an extended discussion of some event of the past, or by reading or inserting an excerpt from a book which bore upon the question at hand. Examples of his use of quotations out of history are found in Chapter V.

Literature

Ervin does not allude to literature as frequently as history but his abiding interest in the subject is vividly reflected in his speaking. He brings a wide range of literary material to bear upon the particular message he is trying to get across, and there is no apparent pattern to his use of it. Literary material seems to fall at random wherever and whenever the spirit moves Ervin to use it to amplify a point, or merely to give expression to his feelings, or to do both. At times the allusion is simply a spring-board for comment.

Whether pleading mercy for a guilty client in the courtroom or discussing his view of the afterlife, Ervin could quote lines from Shakespeare or recite, without flaw, Kipling's "L'Envoi" in its entirety.[228] If called upon to state his principles for living he would reach to this bit

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[228]Clancy, pp. 106,110.

of homespun philosophy by Edgar Guest, at the drop of a hat:

> I have to live with myself, and so
> I want to be fit for myself to know,
> I want to be able, as days go by
> Always to look myself straight in the eye.
> I don't want to stand with the setting sun
> And hate myself for the things I've done.[229]

While in special occasion speaking, Ervin was more likely than not to allude to literature, his use of it varied. At times there were no quotations; only short references. At other times there were more extensive references to literature. For example, in a Law Day speech Ervin alluded briefly to Faulkner's statement that man would not only endure, he would prevail and, therefore, the law would prevail. He made one other brief allusion to George Bernard Shaw's note that progress depended upon unreasonable men who would not adapt to society but would try to adapt society to themselves.[230] On the other side of the coin, in a commencement address, Ervin quoted Thomas Carlyle, Joanna Baillie, Robert Louis Stevenson, a line from Oscar Hammerstein's "Ol' Man River," and the first stanza of Annie Johnson Flint's "What God Hath Promised." There were other references that had a literary ring to them--statements by such men as Thomas Jefferson, Oliver Wendell Holmes, Learned

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[229] Ibid., p. 236.

[230] Sam J. Ervin, Jr., "Remarks of Senator Sam J. Ervin, Jr., of North Carolina, at Law Day Observance, April 28, 1962," Wake Forest Law School, Winston-Salem, North Carolina. Quoted in 108 Cong. Rec. 8306-07 (1962). See also Chapter III, footnote 127.

Hand, and Robert E. Lee.[231] Some readers would probably consider these statements literary, but they were legal opinions or statements directly relating to government.

Ervin often quoted Kipling and considered him one of his favorite poets because he was also a statesman, and Ervin thought he depicted so eloquently, the old issues and the contest between government and individuals.[232]

In an address on freedom, Ervin concluded with Kipling's "The Old Issue:"

> All we have of freedom, all we use or know
> This our fathers bought for us long and long ago.
> Ancient right unnoticed as the breath we draw
> Leave to live by no man's leave, underneath
> the law.
> Lance and torch and tumult, steel and grey-
> goose wing,
> Wrenched it, inch and ell and all, slowly
> from the King.
> Til our fathers 'stablished, after bloody years,
> Now our King is one with us, first among his peers.
> So they bought us freedom--not at little cost--
> Wherefore we must watch the King, lest our
> gain is lost.[233]

Ervin said this poem expressed what he was trying to say about freedom, its supreme value, and the vigilance required to keep it.

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[231]Idem. "The Everlasting Things," Address at commencement exercises of Converse College, May 30, 1960. Quoted in 106 Cong. Rec. 11649-50 (1960).

[232]Herbers, p. 122.

[233]Idem. "Our Heritage Is Freedom," Address at the Federal Bar Association National Convention, September 15, 1972, quoted in 118 Cong. Rec. 31509 (1972).

The examples below indicate the varied methods with which Ervin incorporated literature in his communication. There is no narrow use but rather a broad random use of literary material with no consistent pattern.

During a speech in opposition to preventive detention Ervin attempted to sharpen awareness to the sad state of affairs in prison by quoting from Oscar Wilde's "The Ballad of Reading Gaol" which he felt not only depicted the English jail of seventy-five years ago but the American prison of today:

> The vilest deeds like poison weeds
> Bloom well in prison air;
> It is only what is good in man
> That wastes and withers there
> Pale anguish keeps the heavy gate,
> And the warden is Despair.[234]

In a speech on the problem of privacy, Ervin pooh-poohed the justification given by officials for their policies and techniques of gathering information by alluding to John Webster's scholar in The Duchess of Malfi who

> studied to know the number of knots on Hercules' club, the color of Achilles' beard, and whether Hector were not troubled with the toothache; and "he studied himself half blear-ey'd to know the true symmetry of Caesar's nose by a shoeing-horn; and this he did to gain the name of a speculative man."[235]

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[234]117 Cong. Rec. 3406 (1971).

[235]Sam J. Ervin, Jr., "Privacy and Employment," Address to Conference on "The Right of Privacy," Institute of Governmental Affairs, The University of Wisconsin, Milwaukee, Wisconsin, April 15, 1967. Quoted in 113 Cong. Rec. 10664 (1967).

On several occasions Ervin made passing mention of Aesop's Fables to illustrate the nature of a position he thought unwise. In speaking against a Medicare program that served all people regardless of their means, he alluded to the goose that laid the golden egg and asked if this were not a similar situation.[236] In opposition to shifting more responsibility to the Federal government he alluded to the animal who would not accept the lion's dinner invitation because he noticed that all tracks led into the cave but none led out.[237]

During one of his many laments over the Supreme Court's forsaking the impersonal law and handing down decisions based upon their personal notions, he said such decisions were becoming "as thick as autumnal leaves that strow the brooks in Vallombrosa,"[238] borrowing a figure of speech from Milton.

Speaking to the subject of civil disobedience and his concern that even church groups were involved, Ervin quoted a line from "Green Pastures" in which the Angel

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[236]111 Cong. Rec. 18185 (1965).

[237]Sam J. Ervin, Jr., Introductory remarks at the First Hearing of the newly created Senate Subcommittee on Intergovernmental Relations, 108 Cong. Rec. 19908 (1962).

[238]Sam J. Ervin, Jr., "The Role of the Supreme Court: Policy Makes or Adjudicator?" Remarks which Senator Ervin propose[d] to deliver to the Walter F. George School of Law, Mercer University, Macon, Georgia, April 30, 1971, p. 7.

Gabriel said: "Everything what's nailed down is coming loose."[239] It is a homely statement, but apparently met Ervin's need, at the time, to illustrate that anything less than obedience to the law is anarchy in which a democracy cannot exist.

During the debate on Rule XXII Ervin began by quoting Mark Twain's, "Truth is precious. Use it sparingly." He then stated that he was not going to take Mark Twain's advice but intended to treat his colleagues to a heavy dose of the truth.[240]

To express his personal reaction to serving on the Select Committee which considered the censure of Senator Joseph McCarthy, Ervin reached once again to Shakespeare who obersved that "adversity, like a toad, wears yet a precious jewel in his head."[241] He used this statement to illustrate his feeling that there was a difference between the task which was unpleasant, and the association with the committee, counsel, and staff which was not.

During a hearing in 1955, Ervin expressed his irritation over Harold E. Stassen's ruling that the employees of the Foreign Operation Administration were not to submit

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[239]Sam J. Ervin, Jr., "The Duties of the Citizen, the Lawyer, and the Judge in a Government of Laws." Address at the annual convention of the Florida Bar Association, Hollywood, Florida, June 18, 1966, quoted in 112 Cong. Rec. 13770 (1966); 112 Cong. Rec. 10140 (1966).

[240]113 Cong. Rec. 550 (1967).

[241]100 Cong. Rec. 16018 (1954).

to subcommittee staff interviews unless he or his lawyer were present. Rephrasing Shakespeare, Ervin pondered aloud, "What meat doth this Caesar eat, that he hath grown so great."[242]

More often that not, Ervin appeared to make deliberate use of material from literature to intensify an idea, but there were times when he appeared to make a reflexive response to the circumstance at hand by reciting a line or two that he remembered out of the past. Whatever the occasion, there was a piece of literature available to help him say what he wanted to say.

The Anecdote

While some of Ervin's friends think his storytelling is a coverup for shyness, Ervin's own thoughts on the anecdote reveal another purpose. Ervin said of his storytelling:

> I found that an apt story is worth an hour of argument. A story that fits a point that you're trying to make sort of tends to arouse your audience, to get their attention if you are about to lose it. And a good story is a good way to relieve tension.[243]

Most of the examples of Ervin's use of anecdotes were found in his speaking on the Senate floor, but he also used them in prepared speeches at times, and was not beyond

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[242] New York Times, 1 April 1955, pp. 1,8. The correct phrasing of the quotation is, "Upon what meat doth this our Caesar feed that he is grown so great?" Julius Caesar I ii 149-50.

[243] Time, 16 April 1973, p. 13.

pulling one off the shelf during a committee hearing. On one occasion he used an anecdote to emphasize why he would not want appointment to the Supreme Court.[244]

In the introduction of a speech on computers and privacy Ervin was illustrating the fact that he knew very little about the electronic and mechanical intricacies of computers. He told about his first job out of high school with a construction crew. According to Ervin, he was pushing a wheelbarrow and the boss asked him what he was doing. Ervin said, "I replied, 'They told me to carry dirt in the wheelbarrow.' "The boss said, 'You put tht right down --you know you don't know anything about machinery.'"[245] Ervin confessed he still knew little about machinery but he knew a lot about privacy.

During his speech recommending the censure of Senator Joseph McCarthy, Ervin told two stories to illustrate a point, and during the debate he reached into his bag of mountain folklore for another one. While explaining McCarthy's tactics of diversion he said:

> The following story is told in North Carolina. A young lawyer went to an old lawyer for advice as how to try a lawsuit. The old lawyer said, "If the evidence is against you, talk about the law. If the law is against you, talk about the evidence." The young lawyer said, "But what do you do when both the evidence and the law

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[244]See Chapter III, p.88, footnote 178.

[245]Sam J. Ervin, Jr., "The Computer: Individual Privacy," Address before the American Management Association, New York, March 6, 1967, Vital Speeches, Vol. 33, No. 14, May 1, 1967, p. 421.

> are against you?" "In that event," said the old lawyer, "give somebody h--l. That will distract the judge and the jury from the weakness of your case."[246]

Ervin continued, saying that McCarthy was using that method by insisting that the Senate and everybody else be put on trial except McCarthy, himself, on the issue.

With reference to McCarthy's penchant to lift things out of context, Ervin told the following story about a preacher, seventy-five years past, who deplored the habit of women wearing their hair in topknots:

> He preached a rip-snorting sermon one Sunday on the text "Top Knot Come Down." At the conclusion of his sermon an irate woman, wearing a very pronounced topknot, told the preacher that no such text could be found in the Bible. The preacher thereupon opened the Scriptures to the 17th verse of the 24th chapter of Matthew and pointed to these words: "Let him which is on the house-top not come down to take anything out of his house.[247]

Ervin said any out-of-the-context-practitioner could find the text in that verse.

Because of the severe verbal abuse that McCarthy directed toward the Senate, especially against the members of the Select Committee, Ervin told a story about Uncle Ephraim Swink, an Old South Mountaineer with his body all bent and distorted by arthritis who attended a religious meeting where the oldest members were testifying to their religious experiences. When the moderator asked Uncle Ephraim to tell what the Lord had done for him, he arose and

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[246] 100 Cong. Rec. 16018 (1954).

[247] Ibid., p. 16019.

said, "Brother, he has mighty nigh ruint me."[248] And that, said Ervin, is about what McCarthy had done to the Senate, if it allowed him to intimidate it and failed to respond to the issues.

Ervin was continuously issuing a warning that the law of the land, and the Constitution in particular, had been compromised or was in danger of being compromised because of a judicial decision or a legislative act. To emphasize this problem he often told one of two stories, or told them together. One of these stories was about a man named Jim:

> Some years ago, Jim's administrator was seeking to hold a railroad company civilly liable for Jim's death on circumstantial evidence. The administrator called to the stand a witness who testified that he was walking along the railroad track just after the train passed and that he observed Jim's severed head lying on one side of the track and the remainder of Jim's remains on the other. The counsel for the administrator then put this question to the witness:
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> "What did you do after discovering these gruesome relics?"
>
> The witness replied, "I said to myself, something serious must have happened to Jim."[249]

With this, Ervin remarked that something serious had happened to the law of the land (or is going to happen).

The other story is told as a bit of true history. To give impetus to the idea that the law in general or some

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[248] Ibid., p. 16022.

[249] Ervin, "Alexander Hamilton's Phantom." Idem. "Shall Americ'a Birthright Be Sold For Pottage?" Address to the Georgia Bar Association in Atlanta, Georgia, December 11, 1959, quoted in 106 Cong. Rec. 126 (1960); 116 Cong. Rec. 6646, 35623 (1970).

specific statute was in danger of being severely impaired, Ervin called on Job Hicks to help him out:

> John Watts took a notion that he was called to preach. John was skilled in the science of bricklayer, but was sadly deficient in the art of an exhorter. He was nevertheless expounding the gospel in a rural church one Sunday when Job Hicks who had partaken too freely of Burke County corn, happened to stagger by. Upon observing John in the pulpit, Job Hicks entered the church, dragged John to the door and threw him out upon the ground. When Job Hicks was called to the bar to be sentenced for his offense, Judge W. S. O'B. Robinson, the presiding judge, remarked to him in a stern tone of voice: "Mr. Hicks, when you were guilty of this unseemly conduct on the Sabbath day, you must have been so intoxicated as not to realize what you were doing."
>
> Job made this response to His Honor: "Well, Judge, I had several drinks. But I wouldn't want your Honor to think I was so drunk I could stand by and see the Word of the Lord being mummicked up like that without doing something about it."[250]

Ervin would then tell how the law was being "mummicked up" by a piece of legislation or a judicial decision.

Getting information from witnesses in committee hearings was often difficult and Ervin responded to this condition with a story. He chided Attorney General Brownell for dodging his questions and quipped that he thought Brownell would be quite successful as a circus employee who sticks his head through a hole in a canvas and dodges baseballs. "I don't think they'd ever hit you," Ervin said.[251]

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[250]Ervin, "Alexander Hamilton's Phantom," p. 23; Idem. "America's Birthright," p. 126; 105 Cong. Rec. 6288 (1959); 116 Cong. Rec. 35623 (1970).

[251]New York Times, 16 February 1957, p. 13.

Ervin responded in more general terms when a high-ranking government official was evasive in answering questions on foreign aid spending. He said the witness reminded him of a story about a man who wanted to divorce his wife although he conceded she was beautiful, a fine cook, and a model mother. When asked why he wanted a divorce he said his wife talked all the time. When asked what she talked about, he said, "That's the trouble, she never says." And that, said Ervin, was the way many witnesses talked at a committee hearing.[252]

The anecdote is a very significant part of Ervin's materials of experience and is generously sprinkled throughout his speaking. The title of Senate "Raconteur" given to him by the New York Times fits him well.[253]

The Bible Says

Ervin makes varied use of the Bible in his speaking. Most frequently, he uses a direct quotation, citing the reference, to highlight or support a particular idea he is presenting. At other times he may quote a verse and allude generally to the book from which it comes or the person who said it; or he may narrate a Biblical incident without any direct quotation. He occasionally uses a Biblical phrase in order to make a figurative statement for added emphasis, at

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[252]New York Times, 25 March 1975, p. 12.

[253]New York Times, 13 May 1956, p. 61.

times borrowing the phrase without citing a reference or mentioning the Bible in any other way. There are also times when he merely uses the Bible as a springboard for other comments as he does with literary quotations.

Ironically, he expresses his view of the Bible in a speech opposing the Dirksen school-prayer amendment. During his concluding remarks he said:

> I think that the greatest book, from a literary as well as from a religious standpoint, ever made available to mankind, is the King James version of the Bible. As soon as my forebears obtained the King James version of the Bible, they adopted it as a guide for their religious faith, and they recorded within its covers their marriages, their births, and their deaths. They found something within that old book which revealed to them the promises of God, and something which made them fear God and nothing else.[254]

Ervin's use of the Bible suggests that this is no mere, passing, palliative statement but an honest confession. In another instance, in which he argued against long-term loans to religious institutions of higher education, he stated his belief that the Bible is the primary source of religious education.[255] In that same Senate speech he professed that he was strongly tempted to vote for the measure because of his devotion to the cause of higher education, but he understood that temptations are never presented in ugly fashion but as something that is desirable. He read from Genesis 3:1-6, the account of Eve's being told

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[254]112 Cong. Rec. 23143 (1966); 116 Cong. Rec. 36503 (1970).

[255]108 Cong. Rec. 1643 (1962).

by the serpent that the fruit of the tree of the knowledge of good and evil would make her wise. He added that, in similar fashion, the bill in question presented a temptation to do Constitutional evil in order that youth could gain knowledge and be wise.[256]

In a speech at Chapel Hill, Ervin spoke of the importance of education and reached to the Bible to answer the question, "What personal attainment should I make my chief good in life?" Ervin said, "The Bible answers this question in this way: 'Wisdom is the principal thing; therefore get wisdom and with all thy getting get understanding.'" (Proverbs 4:7) He followed with an account of Solomon's encounter with the Lord in which Solomon, who was promised whatever he desired, asked for an understanding heart. He also alluded to Psalm 8:5, which speaks of man's being a little lower than the angels, and quoted the Psalmist's prayer: "So teach us to number our days that we may apply our hearts to understanding." (Psalm 90:12) But in none of these instances did he cite the reference.[257]

In a speech on the rights and responsibilities of the press Ervin introduced his remarks with the account of Pilate asking Jesus, "What is truth?" (John 18:38), and with Jesus' statement to his disciples, "Ye shall know the truth

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[256] Ibid.

[257] Ervin, "Light and Liberty," p. 3.

and the truth shall make you free."[258] (John 8:32)

In stressing the freedom that the press enjoy and their resultant capacity to deliver the truth to the public, Ervin emphasized their responsibility by quoting Luke 12:48: "Unto whomsoever much is given, to him shall much be required; and to whom men have committed much, to him they will ask the more."[259] Ervin told his audience that the responsibilities of the press entailed conveying information which taught that truth makes men free, and to communicate information and ideas which would enhance the provision of good government. In order to do this he said the press would have to uncover accurate information, present it objectively and be as fair as the humanity of newsmen would allow.[260]

In a Senate floor speech advocating speedy trials, Ervin called upon the preacher in Ecclesiastes who said "Because sentence against an evil deed is not executed speedily, the heart of some of men is fully set to do evil."[261] (Ecclesiastes 8:11) Ervin used this verse to illustrate that the problem was age-old and that the answer was also there--expedite the trial process.

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[258]Sam J. Ervin, Jr., "The Rights and Responsibilities of the Press," Remarks prepared for delivery to the meeting of the West Virginia Press Association, White Sulphur Springs, West Virginia, September 8, 1972, p. 1.

[259]Ibid., p. 6.

[260]Ibid., pp. 6,7.

[261]117 Cong. Rec. 3406 (1971).

Speaking to the issue of civil disobedience and decrying the advocating of such acts by church groups, Ervin quoted parts of I Peter 2:13 and 15: "Submit yourselves to every ordinance of man for the Lord's sake . . . for so is the will of God."[262]

He also called upon Luke 20:22-24 in which Jesus told those questioning him to "render therefore unto Caesar the things which be Caesar's, and unto God the things that be God's."[263] He quoted these verses to show that Christ emphatically denied the validity of civil disobedience. Interestingly, Ervin borrowed these same verses out of Luke to suggest that early dissenters pondered these ideas and concluded that the attempt to regulate religion by law was not only tyrannical but sinful.[264] In another speech opposing Federal support to religious instiutions of higher education Ervin alluded to this Scripture in a figurative statement, suggesting

> that religious institutions sacrifice much of their spiritual power whenever they look to the taxes of Caesar rather than to the voluntary contributions of their adherents for their support.[265]

There is no apparent discrepancy of his use of this Scripture to support two different ideas but it is, nevertheless, interesting.

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[262]Ervin, "The Duties of the Citizen, the Lawyer, and the Judge," p. 13770; 112 Cong. Rec. 10140 (1966).

[263]Ibid.

[264]113 Cong. Rec. 35388 (1967).

[265]109 Cong. Rec. 19468 (1963).

Another instance in which Ervin makes figurative use of the Bible is found in his charge that the Supreme Court was amending the Constitution on the false premise that the power to amend and the power to interpret were identical. Ervin said: "The distinction between these powers is as wide as the gulf which yawns between Lazarus in Abraham's bosom and Dives in hell."[266] (Luke 16:26)

Other instances show Ervin's use of the Bible in figurative statements without identifying the Bible as the source of the statements. Such is the case in an early article on segregation in which Ervin spoke of the unfamiliarity with the South among outsiders who were spearheading the attack on racial segregation. He said their unfamiliarity caused them to "darken counsel words without knowledge,"[267] a statement from Job 38:2. In a speech at the commissioning of the U.S.S. Durham, he told his audience: "The day has not arrived when the nations of the earth are willing to beat their swords into plowshares and their

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[266]Sam J. Ervin, Jr., "The Role of the Supreme Court As Interpreter of the Constitution." Address before a meeting of the Trust Division of the American Bankers Association, New York City, quoted in 105 Cong. Rec. 2834 (1959); 106 Cong. Rec. 4503 (1960); 116 Cong. Rec. 6649 (1970).

[267]Sam J. Ervin, Jr., "The Case For Segregation," Look Vol. 20, April 3, 1956, p. 32.

spears into pruning hooks."[268] This statement from Isaiah 2:4 was used negatively to emphasize the fact that the harsh realities of the world scene require a strong defense.

Ervin gleaned the title of a speech out of an incident that is recorded in the Bible. The title, "Shall America's Birthright Be Sold For Pottage,"[269] is an allusion to the account in Genesis 25:29-34, of Esau's selling his birthright, as the older son, to his younger brother, Jacob, for a mess of pottage. He had used this incident previously, in a figurative sense, issuing a warning to Americans of all races that civil rights advocates were "trying to sell their Constitutional and legal birthright for a sorry mess of political pottage."[270]

Ervin's use of a Bible verse as a springboard for comment is found in his speech in favor of the censure of Senator Joseph McCarthy. Borrowing from Ecclesiastes 1:9 Ervin said, "The writer of Ecclesiastes assures us that 'there is nothing new under the sun.'" He added that McCarthy's technique of lifting things out of context was not new and followed with his story about "Top Knot Come Down."[271]

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[268]Sam J. Ervin, Jr., "Our Perilous World," Address at the commissioning of the U.S.S. Durham, Norfolk Naval Shipyard, Portsmouth, Virginia, May 24, 1969, quoted in 115 Cong. Rec. 13968 (1969).

[269]Ervin, "America's Birthright."

[270]105 Cong. Rec. 19353 (1959).

[271]100 Cong. Rec. 16019 (1954). See also p.117.

Later, Ervin was not so sure that the writer of Ecclesiastes was right, when he saw some of the voting rights legislation and school desegregation cases. He opined that the writer of Ecclesiastes would not have written "There is nothing new under the sun," if he had been living during these actions.[272]

The examples above give some indication of the different ways in which Ervin uses the Bible in his speaking and writing. He appears to be at home with the Bible and seems to use it quite indiscriminately in his writing and speaking. At times he nails down a point with effectiveness by relating a Bible incident. At other times he just seems to allude to it in passing. Whether to indicate that every man's home is a place of refuge and safety, or work is inevitable, or that he, himself, is an unrighteous man, Ervin has a verse of Scripture to flavor his remarks.

The Bible takes a prominent seat, along with history, literature, and anecdotes in Ervin's arsenal of communicative tools. While patterns of use are not visible, it will be of interest to determine whether Ervin's sudden national acclaim in the Watergate Hearings and his television exposure to the nation influence his employment of these tools.

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[272]106 Cong. Rec. 4504, 7320 (1960).

No definite patterns are observable in the four major features of Ervin's style which have been discussed here. One thing that does emerge, although not unexpectedly, is a view of Ervin's philosophy of truth, freedom, and a government of laws which will be discussed in Chapter V.

CHAPTER V

SAM J. ERVIN, JR.: A SELECTED PHILOSOPHY

The philosophy with which one goes about his living is a difficult item to fence in. A person's outlook on life, the values he establishes, and his consequent responses comprise a very complex network which puts the challenge to simple categorization. The effort in the chapter has been limited to a discussion of three basic features of Ervin's philosophy. Granted, it is a philosophy that might fit many people, but it is, at the same time, an important part of Ervin's expressed philosophy. Other features of his philosophy are quite visible in the biography and the chapter dealing with his speaking. Their exclusion here is not an oversight nor is it an indication that the writer does not consider them important. The material here is merely being limited to a discussion of three fundamental principles which emerged quite strongly during a reading of news items and Ervin's speeches, articles, and comments on the Senate floor. While articles written by Ervin are also used here, it should be kept in mind that this study centers in his oral communication.

Repeatedly, Ervin expresses his views of government in light of these three fundamental principles--freedom, truth, and a government of laws--leaving the strong inference

that they form the basis for his preferred social structure --the one he feels is closest to the ideal. No effort will be made to discuss all of his positions, every nuance of his expressed views, nor all of the implications behind the positions he takes.

Ervin expresses his belief that freedom is the highest value of civilization, the most supreme possession of mankind,[273] while truth[274] and a government of laws[275]

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[273]110 Cong. Rec. 1337 (1964); 111 Cong. Rec. 22305 (1965); Sam J. Ervin, Jr., Remarks made in accepting the George Washington Award at the meeting of The Government Society, Washington, D.C., May 1, 1966, quoted in 112 Cong. Rec. 9637 (1966); Idem, "The duties of the Citizen, the Lawyer, and the Judge," quoted in 112 Cong. Rec. 13770 (1966); Idem. "Fear of Freedom," p. 14; Idem. "Our Heritage is Freedom," Address delivered to The Frederal Bar Association National Convention, Washington, D.C., September 15, 1972, quoted in 118 Cong. Rec. 31507 (1972); Idem. "Light and Liberty," p. 4.

[274]Sam J. Ervin, Jr., "The Everlasting Things," quoted in 106 Cong. Rec. 11649 (1960); Idem. "Privacy and Employment," Address at Conference on "The Right of Privacy," Institute of Government Affairs, The University of Wisconsin, Milwaukee, Wisconsin, April 15, 1967; Idem. Amicus Brief filed in Army Surveillance Case, Records and Briefs, United States Supreme Court, Vol. 8121, Nos. 71-280-71-289, October Term, 1971, p. 13, in 118 Cong. Rec. 8023 (1972); Idem. "The Rights and Responsibilites of the Press and Broadcast Media," p. 1; Time, 16 April 1973, p. 15.

[275]106 Cong. Rec. 4502,4515,4517 (1960); Sam J. Ervin, Jr., Address delivered at Law Day Celebration, The Pentagon, Washington, D.C., May 1961, quoted in 107 Cong. Rec. 7081 (1960); 108 Cong. Rec. 7208 (1962); Idem. "The United States Congress and Civil Rights Legislation," North Carolina Law Review, Vol. 42,1963, p. 4; 111 Cong. Rec. 11066 (1964); Idem. "The Duties of the Citizen, the Lawyer and the Judge;" Idem. "Separation of Powers: Judicial Independence," p. 121; Idem. "The Role of the Supreme Court: Policy Maker of Adjudicator," pp. 1,2; Idem. "Our Heritage is Freedom," quoted in 118 Cong. Rec. 31507 (1972); Idem. "Light and Liberty," pp. 5,6.

are its guarantors. He constantly speaks of freedom whether he is opposing or supporting a piece of legislation, accepting an award, delivering a commemorative address, or penning an article on some point of law. He often made strong statements on freedom especially when he felt its surrender was the price that would be paid for an alternative convenience or security. Over and over again he quoted William Pitt the Younger's admonition that "necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves."[276]

Just as strongly as he advocated freedom in preference to safety and convenience, he stressed the importance of truth found in government open to public view, the need of the public to have access to information, and the need for a full view of the available facts in criminal and civil matters. He also stressed the need for impersonal laws, safe from the uncertain desires of men who govern, upon which a government of the free can be based. He did not flinch at the inconvenience which might result from such an arrangement. The safeguarding of freedom was much more important. The discussion below will attest to Ervin's adherence to these three features despite the inconvenience

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[276]Sam J. Ervin, Jr., "America's Birthright;" Idem. "Privacy and Employment," quoted in 113 Cong. Rec. 10665 (1967); Idem. "Constitutional Casualties in the War on Crime," Denver Law Journal, Special Magazine Issue, 1971, p. 1; 117 Cong. Rec. 21999 (1971); Idem. "Fear of Freedom," p. 2.

and inefficiency that might arise because of their presence.

Freedom

In several speeches Ervin used freedom as the major topic of his remarks. In 1955 and again in 1962 he delivered an address entitled, "Our Heritage: A Blessing and an Obligation," in which he spoke of those who gave up the security of an old country that they might find freedom in a new one. In this address Ervin said liberty was revealed in a three-fold guise as economic liberty, political liberty, and religious liberty.[277] He said those who brought the love of liberty to this country learned economics the hard way under despotic governments who robbed them of the fruits of their labors through heavy taxation. These were people who knew that free men cannot be induced to produce things of value unless they can retain a fair share of the fruits of their labor. They also knew that one can be free only by accepting the responsibility for his own life, said Ervin.[278]

With respect to political liberty, he alluded to the Founding Fathers who, he said, knew of the desperate struggle

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[277]Sam J. Ervin, Jr., "Our Heritage: A Blessing and an Obligation," Address delivered at the Jefferson-Jackson Day Dinner, Richmond, Virginia, March 4, 1955, quoted in 101 Cong. Rec. 2678-79 (1955); Idem. "Our Heritage: A Blessing and an Obligation," Remarks to the United Daughters of the Confederacy Convention, Richmond, Virginia, November 12, 1962, quoted in United Daughters of the Confederacy Magazine, Vol. 25, No. 12, December 1962, pp. 13-14.

[278]Ibid., p. 2678 and p. 13.

of the English-speaking race to gain some measure of human dignity and freedom. He spoke of their intense belief that the government itself would need the compelling force of fundamental law if the inherent rights of the individual were to be respected. For this reason, said Ervin, they incorporated the first ten amendments in the Constitution and declared that "all political power" would be "vested in and derived from the people."[279]

On the issue of religious liberty Ervin said:

> The most heart-rending story is that of man's struggle against civil and ecclesiastical tyranny for the simple privilege of bowing his own knees before his own God in his own way.[280]

His remarks here are similar to those in the introduction of his speech in opposition to the Dirksen school prayer amendment.[281] He concluded that the only way to secure religious liberty was to keep the hands of religion out of government and keep the hands of government out of religion.[282]

In a final note he said the men and women who built America knew that freedom was granted only to those who loved it and were ready to guard and defend it. He said a "frequent recurrence to fundamental principles is absolutely

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[279]Ibid., p. 2678 and pp. 13,14.

[280]Ibid., p. 2678 and p. 14.

[281]See Chapter IV, p. 104. See also Appendix II, p.297.

[282]Ervin, "Our Heritage: A Blessing and an Obligation," p. 2079 and p. 14.

necessary to preserve the blessings of liberty." The reason they laid down this warning, said Ervin, was because

> they had read the history of the long and bitter struggle of men for some substantial measure of dignity and freedom for the individual, and had found this shocking but everlasting truth inscribed upon each page of that history: Government itself is the deadliest foe of liberty.[283]

In 1972, Ervin delivered a similar speech entitled "Our Heritage Is Freedom," but in this speech he spoke of the four-fold guise of economic freedom, political freedom, religious freedom, and intellectual freedom.[284] To emphasize his fierce love of intellectual freedom Ervin borrowed a statement from Thomas Jefferson who said: "I have sworn upon the altar of God, eternal hostility against every form of tyranny against the mind." He added that Jefferson's contemporaries also abhorred tyranny over the mind, and for that reason they adopted the First Amendment. He said the substance of the First and Fourteenth Amendments provides for every human being within the borders of the United States these intellectual, political, and religious freedoms:

> 1. Freedom to think what he pleases.
> 2. Freedom to speak and publish his thoughts with impunity provided what he says or publishes is not obscene or does not falsely slander or libel another, or tend to obstruct the courts in their administration of justice, or create a clear and present danger that it will incite others to commit crimes.
> 3. Freedom to associate with others to accomplish any lawful objective.

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[283] Ibid., p. 2679 and p. 14.

[284] Ervin, "Our Heritage is Freedom," p. 31507.

> 4. Freedom to meet peaceably with others for consultation and protest, and to petition those invested with powers of government for redress of grievances real or imagined.
>
> 5. Freedom to entertain such religious beliefs as appeal to his conscience, to practice his religious beliefs in any form of worship not injurious to the rights of others, to endeavor by peaceful persuasion to convert others to his religious beliefs and to be exempt from taxation for the support of any institution which teaches religion of any character.[285]

Ervin was not so much concerned whether a judicial decision, legislative act, or executive decree would provide smoother governmental operation, or the accrual of greater benefits to the citizenry; his major concern was what effect any such events would have on individual freedom. Because of his efforts in opposition to busing school children and integration of schools, open housing, no-knock legislation, and preventive detention, and his support of bail reform, compensated counsel, and revision of military justice, it would seem appropraite for him to have included social freedom and legal freedom, making six categories. Nevertheless, he sees intellectual freedom, political freedom, and religious freedom as being inextricably intertwined and the three being dependent upon economic freedom for their full enjoyment.[286]

In the following discussion attention will be given to some of the issues with which Ervin dealt and their relationship to freedom. Although no attempt will be made to

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[285] Ibid.

[286] Ibid.

place them in a particular category of freedom, some of them will easily fall into only one, while others will span the several categories that Ervin gives.

The World of Work. To Ervin, free enterprise is the best economic system in the world. Although it is defined as an economic and political doctrine based on the theory that a capitalistic economy can be self-regulatory within a freely competitive market where the relationship of supply and demand exists with little regulation or intervention by government, to Ervin it is simply economic freedom. He said the American free enterprise system was founded on three basic ideas:

> 1. The needs of our people are best met by free men freely competing in a free market.
> 2. The worth of our country depends on the worth of the individuals residing in it. Consequently, each individual owes to our country as well as himself and his family, the duty to develop and use his faculties and his talents.
> 3. There are prerequisites to the performance of this duty. Since freedom means responsibility, the individual must accept responsibility for his own life, and since man is not born to be idle and work is indispensable to the growth of his spirit, he must have a worthwhile task to dignify his days. If he is to develop his abilities and use them with diligence in the performance of his task, he must receive a profitable return for his efforts and be allowed to retain a fair share of it for himself, his family, and the causes he holds dear.[287]

In 1964, Ervin defended the right of a textile owner to close one of several plants without interference from, or

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[287] Sam J. Ervin, Jr., "Free Enterprise," Remarks before the Tobacco Association of the United States and the Leaf Tobacco Exporters Association at White Sulphur Springs, West Virginia, June 24, 1968, quoted in 114 Cong. Rec. 26361-62 (1968).

accountability to, a governmental agency. Ervin said every American had a Constitutional guarantee of the "economic freedom to go out of business at any time and for any reason."[288] In opposition to a bill dealing with the licensing and control of pharmaceutical firms, Ervin said he was not only in favor of cheaper drugs but in bringing the price of everything down because he thought it was too high. But he added that his convictions about what makes the free enterprise system work brought him to the conclusion that improvements in drugs, automobiles, or any other commodity could be best achieved only by assuring men that they would enjoy the fruits of their labor.[289] In a different vein, Ervin introduced an amendment to limit the draft system in professional sports, stating that professional athletes should have the right to sell their skills to the highest bidder in the free marketplace.[290] When the National Basketball Association and the American Basketball Association requested permission to merge, Ervin opposed the merger, reminding his colleagues that if such a merger occurred, basketball players would follow their fellow athletes in football and baseball into economic slavery.[291]

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[288] New York Times, 10 December 1964, p. 54.

[289] 108 Cong. Rec. 10118 (1962).

[290] 111 Cong. Rec. 22304 (1965).

[291] 118 Cong. Rec. 27718 (1972). See also New York Times, 3 October 1971, Sec. 5, p. 32; New York Times, 24 1972, p. 22; New York Times, 8 September 1972, p. 24.

To Ervin, free enterprise meant allowing workers to decide for themselves whether they wanted to join a union or not. It meant limiting the efforts of union organizers to persuasion rather than various forms of coercion. It meant giving union workers a full voice in the operation of their union.[292]

The Power of the Ballot. Ervin felt strongly about the right to vote but his track record in civil rights did not reveal it on the surface. This was one area in which Ervin appeared to have a severe blind spot. In his fight against governmental tyranny, he failed to see the tyranny of State governments.[293] But his opposition was based upon the expressed fear that the proposed legislation violated Constitutional principles which were the bulwark of freedom from governmental tyranny. To pre-empt the authority of the states to set voter qualifications, and to deny election officials the right of due process, were serious Constitutional crimes in Ervin's opinion, and the only legal way to implement a change was through Constitutional amendment.[294]

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[292]105 Cong. Rec. 6285,89 (1959); 114 Cong. Rec. 392 (1968).

[293]Time, 16 April 1973, p. 14.

[294]Sam J. Ervin, Jr., "Political Rights As Abridged By Pending Legislation," Federal Bar Journal, Vol. 29, No. 1, 1964, pp. 4-17; 103 Cong. Rec. 11333 (1957); 106 Cong. Rec. 2866-67, 7319 (1960).

Ervin argued that he supported any legislation designed to protect voting rights that was constitutionally sound. Regarding the voting franchise he said:

> All my life I have sought to insure that every qualified citizen is permitted to register, granted the right to vote, and encouraged to vote. That is the essence of democracy, and the only true guarantee that constitutional government will survive.[295]

He stated that any person who wrongfully denied anyone the right to vote ought to be prosecuted to the full extent of the law. But he felt there were already sufficient laws under which this could be accomplished.[296]

The Right of Association. In his response to the integration issues involving busing and open housing, Ervin alludes to the right of association which, in the writer's mind, is a social freedom, as mentioned before, but Ervin does not label it as such. Repeatedly he declared that segregation was right because the nature of both races would decree that it should be so, if left to their own choices.[297] In his opinion, the Fourteenth Amendment did not demand integration; it only prohibited forced

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[295]116 Cong. Rec. 5544 (1970).

[296]111 Cong. Rec. 7084 (1965); 116 Cong. Rec. 5543 (1970); New York Times, 25 July 1963, p. 10; New York Times, 2 April 1964, p. 18.

[297]Sam J. Ervin, Jr., "The Case for Segregation," Look, 3 April 1956, p. 32; Idem. "Conpulsory Integration is Fundamentally Wrong," Interview in U.S. News & World Report, Vol. 39, 18 November 1955, p. 98; 110 Cong. Rec. 1338 (1964); 116 Cong. Rec. 5547 (1970).

segregation. He felt that the "busing of school children deprived them of the right to determine by their own voilition, who their associates would be."[298] According to Ervin, social problems could not be solved by impersonal legislation; they could be solved only by frank discussion between men of good will.[299] With respect to legislation dealing with affirmitive action to integrate federally assisted housing and other private real estate transactions, Ervin responded again with his belief in the inherent freedom a person possesses to choose his associations.[300]

The Law and Order Problem. Ervin's response to preventive detention, bail reform, uncompensated counsel, "no knock" laws, and military justice were based, in typical Ervin style, on Constitutional principles which related to human freedom.

With respect to preventive detention he contended that America would have to take certain risks that a person might jump bail or commit a crime while free on bail, if it wishes to remain a free society.[301] He presented evidence

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[298]105 Cong. Rec. 18492 (1959); 115 Cong. Rec. 39353 (1969); 116 Cong. Rec. 4399 (1970); 117 Cong. Rec. 39577 (1971); 118 Cong. Rec. 4395 (1972).

[299]Ervin, "Compulsory Integration," p. 98; Idem. "The United States Congress and Civil Rights Legislation," North Carolina Law Review, Vol. 43, 1963, p. 7.

[300]105 Cong. Rec. 18494 (1959); 114 Cong. Rec. 3249 (1968).

[301]115 Cong. Rec. 31492 (1969); 117 Cong. Rec. 14713 (1971).

to the fact that preventive detention was unnecessary and ineffective, and would yet be harmful to individual liberty.[302] In a speech on the Senate floor he listed nine Constitutional defects of preventive detention,[303] and, in other places, spelled out the personal infringements of detention, namely: depriving the accused the right to assist in his defense, possible loss of his job, the detrimental effects on his family, and the psychological and physical deprivations of jail life.[304] In another Senate speech in support of speedy trials, he decried the fact that more than half of the inmates in jails across the country were imprisoned without having been convicted of a crime.[305]

On the bail reform issue Ervin was concerned with similar problems of a defendant's ability to prepare his defense, the severe handicaps imposed on the indigent in terms of raising bail, and the fact that it deprives a person of the right to be held innocent until proven

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[302]Sam J. Ervin, Jr., "Failure of Preventive Detention," New York Times, 19 August 1972, p. 23; Idem. "Foreward: Preventive Detention--A Step Backward for Criminal Justice," Harvard Civil Rights-Civil Liberties Law Review, Vol. 6, March 1971, p. 290.

[303]118 Cong. Rec. 20777 (1972).

[304]New York Times, 12 July 1969, p. 52; Sam J. Ervin, Jr., "The Constitutional Perils of Preventive Detention," Address to the University of Chicago Center for Continuing Education, Chicago, Illinois, October 29, 1969, quoted in 115 Cong. Rec. 34048 (1969).

[305]117 Cong. Rec. 3405 (1971).

guilty.[306] The problem of uncompensated counsel imposed an impairment on the indigent similar to that of the bail issue, in Ervin's view. He argued that justice may be served and the right of liberty can be enjoyed both by society and defendants only when competent counsel is available and has the economic facility to properly prepare and present a case before the courts.[307]

Ervin saw in the "no knock" provisions an infringement upon privacy and the right to be secure in one's own home. To emphasize his position he reached to the poignant words of William Pitt the Elder who said during a debate in Parliament, incident to a proposal to allow officers of England to enter homes without search warrants or apprising the inhabitants of their presence in order to discover illegal cider manufacturing equipment:

> The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail--its roof may shake--the wind may blow through it--the storm may enter--the rain may enter--but the King of England cannot enter--all his force dares not cross the threshold of the ruined tenement.[308]

Ervin said the Fourth Amendment guaranteed the right to people to be "secure in their houses, papers, and effects

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[306] New York Times, 2 April 1965, p. 34; New York Times, 16 September 1965, p. 30; 110 Cong. Rec. 10875 (1964); 111 Cong. Rec. 4098, 12975 (1965).

[307] Sam J. Ervin, Jr., "Uncompensated Counsel: They Do Not Meet the Constitutional Mandate," American Bar Association Journal, Vol. 49, No. 5, May 1963, pp. 435-38

[308] 116 Cong. Rec. 999 (1970); Ervin, "Fear of Freedom," p. 9; 117 Cong. Rec. 17976 (1971).

against unreasonable searches and seizure," but the "no knock" law would not mean "using the keys of the King to open all the doors but using the King's axe to knock down the door and break the windows." This was an allusion to an opinion from Semayne's Case adjudicated in 1603, to which he referred in his speech on "Fear of Freedom."[309]

Ervin was well aware of the fact that other alternatives did not offer the security or safety that these measures might offer, but he felt there was a greater danger in accepting these provisions and others such as wiretapping, opening mail, and other kinds of surveillance. In response to a clamor against the dangers of crime, violence, and political unrest Ervin gave this admonition:

> There is no clear line between freedom and repression. Freedom is a fluid, intangible condition of our society. It thrives in some periods and is beset at others. It is lost not all at a time but by degrees.
>
> Ours is not a country in which government can become a tyranny against the people. But tyranny can come just as surely if the people are willing to deliver over their freedom in search for safety.[310]

Ervin's law and order philosophy did not end with the rights of defendants, however. He expressed a genuine concern for the public's right to a certain degree of safety also. While his case for speedy trials was partly to eliminate long term pre-trial incarceration of suspects which deprived them of certain Constitutional rights, it was

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[309]Ervin, "Fear of Freedom," pp. 9,12; New York Times, 28 January 1970, p. 1.

[310]Ervin, "Constitutional Casualties," p. 11.

also freighted with the argument that prompt conviction and sentencing of the guilty would act as a deterrent to crime and result in a better quality of justice both for the accused and for society.[311] He also leaned in favor of society with respect to voluntary confession, even when it was given in the absence of an attorney acting as counsel for the accused. Ervin felt there was no stronger evidence than voluntary confessions, and he contended that the only necessary measure of acceptability was whether it were actually voluntary. To turn a self-confessed criminal back to society because he confessed without the presence of counsel or had been detained a few hours too long by human error was abhorrent to Ervin.[312] His feelings about the rights of society are summed up in his statement that

> enough has been done for those who murder, rape, and rob; and it is about time for Congress to do something for those who do not wish to be murdered, raped, or robbed.[313]

Ervin contended that he was deeply concerned about the crime problem and the safety of the law-abiding citizen, and wanted every possible measure to be used to apprehend, convict, and punish the guilty. He wanted this because in

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[311] 118 Cong. Rec. 35295 (1972). See also Chapter IV, p. 123, footnote 261. Ervin, "Foreward: Preventive Detention," p. 299.

[312] 109 Cong. Rec. 3599 (1963); 113 Cong. Rec. 1173 (1967).

[313] 104 Cong. Rec. 18481 (1958); 106 Cong. Rec. 8590 (1960).

the words of the prophet Micah, it gave greater assurance that Americans would be able to "enjoy the right to dwell under their own vine and under their own fig tree with none to molest them or make them afraid."[314] But, at the same time, he saw greater danger to liberty if the measures established were unconstitutional, no matter how expedient they might be.[315]

First Amendment Freedoms. There were two basic reasons for the adoption of the First Amendment according to Ervin. The first one, as mentioned earlier, was to insure that Americans would be politically, intellectually, and spiritually free. The other was to insure that government would function effectively as a system designed to be responsible to the will of an informed public.[316] In the latter sense, the First Amendment was a guarantee of the public's right to have access to information.

Ervin indicated that the First Amendment freedoms applied to all within the boundaries of the United States

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[314]10 Cong. Rec. 18481 (1958); 114 Cong. Rec. 13215 (1968). See also 117 Cong. Rec. 14713 (1971) and Ervin, "Fear of Freedom," p. 3.

[315]117 Cong. Rec. 14713 (1971).

[316]Sam J. Ervin, Jr., "Introductory Remarks of Senator Sam J. Ervin, Jr. Before Panel on 'Press Rights vs.' Press Responsibilities,'" American Society of Newspaper Editors Convention, April 19, 1973, p. 1; Idem. "Pressure on the Press," New York Times, 14 February 1973, p. 42; Idem. "Is the Press Being Hobbled?" Remarks at a panel discussion sponsored by the North Carolina Press Association, Chapel Hill, North Carolina, January 19, 1973, quoted in 119 Cong. Rec. 2283 (1973).

In his own words:

> These freedoms are exercisable by fools as well as by wise men, by agnostics or atheists as well as by the devout, by those who defy our Constitution and laws as well as by those who conform to them, and by those who hate our country as well as by those who love it.
>
> We cannot over-magnify the value of these freedoms. This is so because they are the fundamental freedoms which make it possible for America to endure as a free society.[317]

A very important aspect of free speech is the freedom to dissent from the prevailing view or form of action. Ervin felt that people had an inherent right, within the strictures of the law, to demonstrate against governmental action or inaction, or to associate with those who did, without being placed under surveillance as if they were politically and intellectually dangerous.[318] He did not accept civil disobedience or campus riots as a means of exercising First Amendment freedoms,[319] but he did grant that those who preached violence were entitled to the same protection of free speech as those who adhered to non-violence. With respect to those who practice violence he said:

> I love the Constitution so much that I am willing to stand on the floor of the Senate and fight for their right to think the thoughts and speak the words that I hate. If we ever reach the condition in this country

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[317]Ervin, "Light and Liberty," p. 9. See also Idem. "Rights and Responsibilities of the Press," p. 2; Idem. "Press Rights vs. Press Responsibilities," p. 2; Idem. "Amicus Brief, pp. 13,8023.

[318]117 Cong. Rec. 42316 (1971); New York Times, 25 December 1969, p. 11; New York Times, 5 October 1971, p. 27.

[319]Ervin, "Duties of the Citizen, the Lawyer, and the Judge," p. 13770; 115 Cong. Rec. 15672-74 (1969).

> that we attempt to have free speech for everybody except those whose ideas we hate, not only free speech but freedom itself are out in our country.[320]

During the Executive Administration's investigation of the release of the Pentagon Papers by Senator Gravel, Ervin defended the broad grant of immunity given to legislators while being fully aware of its potential abuse. He reached back into history once again to point out that legislative immunity grew out of a need to protect members of Parliament from being harassed, even imprisoned for opposing the king.[321] In Ervin's view members of Congress had to be protected from judicial, executive, and private interference if the people's interests were to be represented at all.[322]

Ervin championed causes which were not always convenient, but in his view they were the more sure road to freedom of the individual.

With respect to the press, Ervin was just as adamant as he was with free speech. He said that the phrase "freedom of speech or the press" was meant to

> secure to publishers of newspapers, magazines, books, pamphlets, and the like the constitutional right to communicate information or ideas to the people irrespective of whether their action in so doing is pleasing to government or any segment of society.

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[320]Robert Sherill, "The Nation: The Hunt for Subversives Resumes," New York Times, 3 August 1971, Sec. 4, p. 3.

[321]117 Cong. Rec. 32446 (1971); 118 Cong. Rec. 28466 (1972).

[322]117 Cong. Rec. 32445 (1971).

> Publishers may exercise this constitutional right without the consent of government and even against its will.[323]

Ervin did not object to open criticism of the press. In fact he, himself, criticized the press during the voting rights battles of the 1960's charging that the press should tell "the truth, the whole truth, and nothing but the truth" if it wanted to tell the truth at all.[324] He felt that criticism did not necessarily constitute an attack on freedom of speech and of the press[325] but the investigation of newsmen such as the one conducted by the FBI on Daniel Schorr, the proposed control of the renewal of broadcast licenses, and the invasion of newsmen's privilege not to reveal sources of confidential information were all considered a kind of intimidation.[326]

Ervin confessed that a free press would not always be "responsible" but "any attempt by government to make it more 'responsible' inevitably makes it less free."[327] To illustrate his feelings about a free press he quoted these

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[323]Ervin, "Rights and Responsibilities of the Press," p. 3.

[324]New York Times, 1 March 1960, p. 18.

[325]Ervin, "Rights and Responsibilities of the Press," p. 8.

[326]Sam J. Ervin, Jr., "The President and the Press," Remarks at Texas Tech University, February 16, 1973, pp. 6-10. See also Idem. "Pressure on the Press," p. 42 and Idem. "Is the Press Being Hobbled?" p. 2284.

[327]Ibid., p. 17.

words of Thomas Jefferson:

> The basis of our government being the opinions of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate to choose the latter.[328]

Ervin did lay down the admonition that the press and broadcast media had a grave responsibility to present all the views as accurately and as objectively as possible, to provide a "free and full interchange of information and ideas concerning the problems of government," and to "ferret out corruption and inefficiency in government and to expose the offending public officials."[329]

Another area in which Ervin stood with the rights of the public versus one accused of a crime was pre-trial publicity. He admitted that pre-trial publicity could and did prejudice some cases to the point that a fair trial could not be obtained, and expressed a deep concern about the problem. Yet his feelings about the Constitutional guarantee of a free press and the right of the public to know outweighed placing restrictions on a few irresponsible newsmen. And he argued that no restriction should be placed on the press that would limit its ability to contribute to a system of responsible government and to the proper

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[328] Ibid., p. 1.

[329] Ervin, "Rights and Responsibilities of the Press," pp. 6,7.

administration of justice, noting that in many cases coverage by the press resulted in exonerating the innocent and revealing the identity of the true criminal.[330] He did accept the regulations set forth by the Judicial Conference of the United States in 1966 which recommended restrictions on the release of prejudicial information by court personnel, and barring photography and radio and television broadcasting in the courtroom or its environs. This action made information less accessible but did not place direct restraints on the publication of material by the press or broadcast media.[331]

Ervin's view of religious freedom has been amply discussed in other parts of the paper and is not considered further here. But whether religious freedom, free speech, free press, or the right to assemble and associate for any purpose, Ervin championed the guarantees established for every individual by the First Amendment.

The examples above which illustrate Ervin's view of freedom and his response to various issues in light of that view are not an exhaustive list. But they do give insight into the value that Ervin places on freedom. The specific issues discussed here point sharply to those freedoms he outlined in his speech or possibly to the two the writer suggested earlier in this chapter.

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[330] 111 Cong. Rec. 3577 (1963). See also Ervin, "Pressure on the Press," p. 42.

[331] 114 Cong. Rec. 30919-20 (1968).

Truth

Ervin propounded the idea that truth is essential to the preservation of a government of free people. In speaking of the relationship of the press and of academic endeavor to truth, Ervin alluded to a statement by Jesus found in John 8:32: "And ye shall know the truth and the truth shall make you free."[332] This becomes a springboard from which Ervin declared that the Founding Fathers and he, himself, believed that freedom could be found only where truth was not restrained or compromised. In a commencement address at Converse College in 1960 he said, "It is impossible to over-magnify the importance of seeking the truth. This is so because truth alone can make us free."[333] He was well aware of the fact that truth, by nature, was elusive at times and, in speaking of the Founding Fathers' staking political, intellectual, and spiritual freedom on truth he said:

> In the nature of things, they could not guarantee that Americans would actually know the truth. But they could guarantee that Americans would have the right to know the truth, and make that right effective by

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[332]Ervin, "Rights and Responsibilities of the Press," p. 1; Idem. "Light and Liberty," p. 4. See also Chapter IV, p. 98.

[333]Sam J. Ervin, Jr., "The Everlasting Things," Address at commencement exercises, Converse College, May 30, 1960, quoted in 106 Cong. Rec. 11649 (1960). See also Idem. "Amicus Brief," p. 13; Idem. "Rights and Responsibilities of the Press," p. 1.

> conferring on the people and denying to the government the power to determine what truth is.[334]

Since the determination of truth is to lie with the public, he felt they had a right to access of all the information necessary to make that determination. This being the case, government open to public view is also essential.[335] Again, perhaps because of its elusive nature, Ervin felt that truth was best achieved by an expression of all views in a free marketplace of ideas, and by basing judgments and decisions on a full view of all the available facts.

The discussion below will cover these several areas of concern in Ervin's network of truth, namely, an open government, the elusive nature of truth, an expression of all views, and a full view of all the facts.

Open Government. Ervin indicated that government by secrecy was tyrannical and allowed for severe abuse of the Constitutional intent to keep the power of government within the hands of the people. He was distressed over the use of executive privilege by the administration to keep information from public view. In his own words:

> The practice of executive privilege, it seems to me, clearly contravenes the basic principle that the free flow of ideas and information, and the open and full

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[334]Ervin, "Rights and Responsibilities of the Press," p. 1.

[335]111 Cong. Rec. 11898 (1965); Ervin, "Is the Press Being Hobbled?" p. 2283.

> disclosure of the governing process are essential to the operation of a free society.[336]

According to Ervin, if our system of government is based upon the will of the people, they have a need and a right to get at the truth for themselves, and not have to rely on an officially sanctioned truth.[337] Interestingly, Ervin and Senator Joseph McCarthy teamed together to demand that the White House explain how a newsman gained access to government documents for use in a story on the Eisenhower administration, which were more secret than some denied Congress.[338] Efforts to get information from the executive branch were often in vain because the potential witness could easily hide behind executive privilege. Such was the case in Ervin's attempt to get information from Herbert G. Klein, director of communications for the executive branch, regarding freedom of the press.[339] The same frustrations existed in his efforts to get written documents from the Justice Department on FBI surveillance of American citizens.[340]

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[336]Sam J. Ervin, Jr., "Secrecy in a Free Society," The Nation, Vol. 213, No. 15, November 18, 1971, p. 455.

[337]Ervin, "The President and the Press," pp. 1,19. See also 111 Cong. Rec. 11899 (1965).

[338]New York Times, 27 June 1956, p. 15.

[339]New York Times, 28 September 1971, p. 16.

[340]New York Times, 11 April 1971, p. 17.

When the Defense Department's general counsel, Fred J. Bushardt denied a request to have several Army generals testify in the surveillance case, because of possible violation of due process in the event of criminal proceedings against those involved, Ervin countered in a letter that he was aware of the need to protect the rights of anyone who was under possible indictment. He again asked for the generals to testify stating that no citizen should have any reason to believe that the full story about surveillance had not been told.[341] But he was especially concerned with the rationale for the executive branch's refusal to give information on the President's war-making powers. In response to the reasoning that "no useful purpose" would be served, Ervin said the administration had an apparent "disdain for the right of the American people to be informed fully."[342]

He was determined to get a full disclosure from the executive branch on the matter of political contributions from International Telephone and Telegraph to the Republican National Convention coffers, and the Justice Department's subsequent favorable decision in an anti-trust suit against the corporation with evidence implying that the contribution might be quid pro quo for the decision. In fact, his concern was great enough that he was willing to hold hostage the confirmation of Richard G. Kleindienst as Attorney General

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[341] New York Times, 15 March 1971, p. 18.

[342] New York Times, 18 July 1971, p. 8.

until the desired witnesses appeared and testified.[343] At the same time he defended the right of members of Congress to immunity from investigation by the executive or judicial branches when they obtained and published information that he felt Congress and the public needed but the administration refused to release.[344] Ervin admitted that Congress was partly to blame for acquiescing to the shifting of power from itself to the executive branch, but this condition, in his mind, left the door open for a tyrannical "government of men, not of laws."[345] Every effort was necessary to keep government open to public view because out of such an arrangement truth could thrive and men could be free. Because of this, Ervin's attack on executive privilege was frequent and severe.[346]

The Elusive Nature of Truth. Ervin presents a strong image of a man dealing in logic and evidence but he admits that truth cannot always be found within those boundaries. There are times when it seems to lie beyond what appears to be reason and fact. He spoke to this characteristic during his commencement address at Converse College in which he said:

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[343] New York Times, 13 April 1971, p. 30; New York Times, 15 April 1971, Sec. 4, p. 6.

[344] 118 Cong. Rec. 28469 (1972); Sam J. Ervin, Jr., "The Gravel and Brewster Cases: An Assault on Congressional Independence," Virginia Law Review, Vol. 59, February 1973.

[345] Clancy, p. 249.

[346] Ibid., pp. 245-62.

> If we seek truth with diligence and the right attitude of mind, we will make a surprising discovery. It is this: there are some truths, which human reason cannot pry open or explain.[347]

He spoke to this problem in a similar way during a speech on privacy during which he spoke of his amazement at the ability of the computer to meticulously and logically interrelate bits of information. Because of its almot limitless memory, its infallible logic, and its superhuman speed, he thought it would make a perfect President. But then he thought again:

> Certainly the computer would always come to perfectly logical conclusions. But what about the conclusions affected by inspiration, by compassion, by humanity? And what about seemingly irrational decisions based on love of justice, or hatred or tyranny? A computer just cannot draw illogical conclusions from logical facts.
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> . . .
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> It seems to me that our system of democratic government depends at least in part on the uniquely human capacity of those who govern to come on occasion to what appear to be irrational conclusions. The ability to abandon logic for the sake of humanity and to insist that human existence cannot be reduced to even the most sophisticated of mathematical formulas is as much a part of our system of government as the Constitution itself.[348]

In practice, however, he did not appear to be one to venture beyond the perceived facts at hand. He had an understanding of the difficulty in achieving the facts alone, let alone making decisions based upon the noble dimensions of

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[347]Ervin, "The Everlasting Things," p. 11649.

[348]Sam J. Ervin, Jr., "Justice, the Constitution, and Privacy," Delivered in a series of discussions on "Computers and Privacy," Miami University, Hamilton, Ohio, June 28, 1973.

emotion which he lists above. He claimed that the quest for truth was not easy and, again, admitted, at least indirectly, to his own fallibility.[349] In speaking of the difficulty in achieving truth he quoted a North Carolina poet, John Charles McNeil, who said, "Teasing truth a thousand faces claims as in a broken mirror."[350]

Ervin was aware that bias was a compounding factor in the quest for truth. Speaking of courts of law he said:

> Truth does not come to all witnesses in naked simplicity. It is likely to come to the biased or interested witnesses as the image of a rod comes to the beholder through the water, bent and distorted by his bias and interest.[351]

Bias, itself, is a difficult condition to measure according to Ervin. He recognized truth as a personal thing and felt one man's bias was another man's truth. "Bias, like beauty," said Ervin, "is largely in the eyes of the beholder."[352] Because of this factor Ervin saw merit in a person's privilege to decide whether he would be exposed to a particular idea; to turn off the television or cancel a magazine, and not have the government decide for him.[353]

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[349]104 Cong. Rec. 18481 (1958); 108 Cong. Rec. 7205 (1962).

[350]Ervin, "Press Rights vs. Press Responsibilities," p. 2. Idem. "Rights and Responsibilities of the Press," p. 3.

[351]Clancy, p. 145.

[352]Ervin, "The President and the Press," p. 17.

[353]Ibid.

Within the frame of elusiveness, there can be seen good reason for Ervin to feel that an expression of all views and a look at all the available facts of a situation were imperative. Any judgment based upon less than a full view of the facts was presumption which Ervin considered to be in violation of the spirit of truth except in limited situations.

An Expression of All Views. Ervin seemed to feel that truth would eventually emerge through a free and full expression of ideas. From Justice Oliver Wendell Holmes he quoted, "The best test of truth is the power of thought to get itself accepted in the competition of the market."[354] Repeatedly he made the assuring statement that our country did not have to fear the full exercise of First Amendment freedoms despite the fact that such exercise would inevitably result in citizens putting up with a lot of "intellectual rubbish" and false opinions. He felt abuses of First Amendment freedoms would be innocuous as long as truth was left "free to combat error."[355]

Whether in press coverage, or in the academic institution, or on the Senate floor, or in the work of special interest groups, Ervin felt that all views should be given

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[354]Ervin, "The Everlasting Things," p. 11649.

[355]Ibid.; 115 Cong. Rec. 15673 (1969); 117 Cong. Rec. 42316 (1971); Idem. "Press Rights vs. Press Responsibilities," p. 2; Idem. "Our Heritage is Freedom," p. 31508; Idem. "Is the Press Being Hobbled?" p. 2283; Idem. "Light and Liberty," p. 9.

equal consideration. He told the Virginia Press Association that the fairness doctrine was established primarily to

> promote the people's right to know the truth by requiring that discussion of public issues be presented on broadcast stations and that all sides of the issues be given fair coverage.[356]

In his remarks at Chapel Hill during a University Day Celebration, Ervin reminded his audience of the anti-evolution campaign of 1925. He said the University President, Dr. Harry Woodburn Chase successfully opposed the enactment of a statute which would have outlawed the teaching of evolution. Ervin quoted part of a statement Dr. Chase made to the faculty and students which speaks to the issue of truth:

> When men have attempted to curtail thought, to hold it in bondage to authority, they have achieved only sterility and stagnation. . . . If men are to be educated men, they must learn to look the world squarely in the face, to respect the facts, to weigh evidence, to follow truth wherever it may lead.[357]

Ervin did not think people ought to be reckless in reaching out for new ideas, however. In these same remarks and in other commentary he talked about "clinging to the ancient landmarks of the past" while being "ready to test the soundness of new ideas."[358] Within courts of law especially, he thought that adherence to established legal precedents and

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[356]Ervin, "Rights and Responsibilities of the Press," p. 4.

[357]Ervin, Light and Liberty," p. 2.

[358]Ibid., p. 4. See also Chapter IV, p. 98. Idem. "The Everlasting Things," p. 11649; 104 Cong. Rec. 18482 (1958); Clancy, p. 154.

rules was of the utmost importance and he was not merely speaking of isolated cases with respect to precedence but the doctrine of stare decisis which involved the establishment of authoritative principles of law out of many similar cases.[359]

Speaking again to the expression of all views, Ervin felt that any attempt to thwart the right of a congressional minority was, in fact, an attack on the establishment of truth. He declared that the term "filibuster" was often used to describe what was actually educational debate. He made a distinction between the two stating that a filibuster involved using dilatory tactics to prevent the action by the majority whereas educational debate involved substantive arguments which were germane to the issue at hand.[360] To remove the privilege of unlimited debate, in Ervin's view, would be tantamount to an assumption that truth always lies with the majority.[361] It is interesting to note that he gives the cloak of acceptability to filibuster in this latter instance, as noted by the title of the article.

One puzzling example of his belief that all views should be considered is found in his opposition to the

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[359]Ervin, "Alexander Hamilton's Phantom," pp. 24-25; Random House Dictionary of the English Language, unabridged edition (1966), s.v. "stare decisis."

[360]110 Cong. Rec. 5040 (1964).

[361]Sam J. Ervin, Jr., "Useful Function of the Filibuster," Letter to the Editor, New York Times, 8 February 1971, p. 32.

women's rights amendment. During a floor debate he presented evidence taken from the hearings of the full Senate Judiciary Committee which were apparently conducted after Senator Bayh had declined to conduct further hearings. Ervin stated the information should be made available to all of the Senators before they voted.[362] But there is some question as to whether the hearings of the Judiciary Committee allowed free expression of all views. Clancy says Ervin was acting chairman and did almost exactly the same thing as he did with direct elections, although Clancy does not state that Ervin actually stacked the witness list.[363] One thing to consider here, of course, is the fact that Ervin may have been trying to balance out the evidence if he actually did stack the witness list with those opposed to the amendment.

With respect to special interest groups, Ervin spoke directly to the question of the expression of all viewpoints, especially those involving issues of public concern. He indicated it was vital that this happen for two reasons: to permit an outlet for the expression of all political points of view and to enable "courts . . . to reach their decisions on the basis of the fullest presentation of all the relevant information."[364] This particular incident dealt

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[362]116 Cong. Rec. 35624 (1970).

[363]Clancy, p. 240. See also Chapter III, p. 87.

[364]116 Cong. Rec. 39308 (1970).

with his opposition to the Internal Revenue's consideration of removing tax exempt status from public interest law firms.

No matter how imperfectly he may have approached the idea of expression of all views, his remarks suggest that this is indeed a part of his concept of truth-seeking.

A Full View of All the Available Facts. The law was Ervin's first love and it, in essence, was a matter of seeking truth upon which to base equitable decisions. And the one effective method of getting at the truth was to obtain every available fact within reason that might pertain to the case being litigated. Ervin admonished a group of lawyers that, before they researched the basic legal principles which pertained to their clients' cases, they needed to acquaint themselves with the facts upon which their clients' rights depended. "Out of the facts, the law arises," said Ervin. And he followed this with his father's admonition that a lawyer should "salt down the facts; the law will keep."[365]

Ervin declared that the principle upon which the American system of jurisprudence is based is that "truth is most likely to be revealed and justice is most likely to be done in adversary judicial proceedings"[366] where the attorney for each litigant presents his case in the most favorable light. Furthermore, because the presumption of innocence is

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[365]Ervin, "The Duties of the Citizen, the Lawyer, and the Judge in a Government of Laws," p. 13770.

[366]Ibid., p. 13771.

a Constitutional right, it becomes necessary for prosecuting bodies to present full and convincing proof in individual cases of wrongdoing before a decision of guilt can be reached.[367]

Rules of evidence are an important feature of the adversary system and Ervin felt they were violated along with the presumption of innocence guarantee especially in preventive detention. In response to an administration-sponsored bill to provide hearings for those placed under preventive detention measures, Ervin stated the hearings proposed were adversary in nature but did not enforce the rules of evidence. While it was ostensibly designed to protect the individual's rights it would actually do him harm. "Hearsay and other incompetent evidence would be admissable and the hearing would not truly be an evidentiary one."[368] In another place Ervin said:

> These cases show that the lack of rules of evidence means preventive detention is proved by rumor, unsupported and incorrect records, and extremely prejudicial hearsay against which there is no possible defense.[369]

Another problem with preventive detention is that it involved a presumption of guilt rather than innocence. Judges were

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[367]Ervin, "The United States Congress and Civil Rights," p. 6; 117 Cong. Rec. 29036 (1971).

[368]Ervin, "Constitutional Perils," p. 3404; 115 Cong. Rec. 31493 (1969); 118 Cong. Rec. 20778 (1972).

[369]118 Cong. Rec. 20778 (1972).

put in the position of presuming that defendants would commit crimes at some time in the future, thereby depriving them of the Constitutional guarantee of presumed innocence.[370] Yet another problem with preventive detention was the use of "substantial probability" rather than "beyond reasonable doubt" in determining "conviction."[371]

During the civil rights battles of the 1960's, Ervin pressed hard on the concept of presumption stating that the civil rights proponents always operated on

> the general presumption that every member of the Caucasian race who happened to reside below the Mason-Dixon line is a dishonorable character unworthy of the same constitutional protection commonly accorded "murderers, thieves, dope smugglers, and kidnappers."[372]

During Senate debate on a voting bill directed toward literacy tests, the New York Times reported Ervin's concern that six Southern states and thirty-four counties in North Carolina were being condemned on the

> presumption that literacy tests were used to prevent Negroes from registering and voting. He contended this was a denial of judicial recourse to determine the facts.[373]

One of the principal grounds upon which he opposed the "automatic trigger" was that the formula was based on the

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[370]Ervin, "Bail Reform," Wall Street Journal, 30 October 1969, p. 18; Idem. "Constitutional Casualties," p. 7; 117 Cong. Rec. 14713 (1971); 118 Cong. Rec. 20778 (1972).

[371]Ervin, "Foreward: Preventive Detention," p. 298; 118 Cong. Rec. 20778 (1972).

[372]New York Times, 1 April 1960, p. 1.

[373]New York Times, 23 April 1965, p. 16.

"presumption of discrimination." Rather than determine only whether a state had a voting test in November of 1965, had less than 50 per cent of the voting age population registered or voted, and a Negro population greater than 20 per cent, Ervin suggested that more convincing evidence could be made available through a three-judge Federal District Court.[374]

In these instances and similar ones, Ervin implies that to make a judgment on less than convincing evidence is in violation of the spirit of truth and the only way to assure freedom while administering justice is to know the truth.

Of the two exceptions that he allows, one stands on the side of individual freedom, and that is the presumption of innocence unless guilt is proven beyond reasonable doubt. In reference to the other exception which deals with gathering evidence, Ervin says:

> One rule, based on decision after decision, is that if a charge is made against a person which he would naturally answer or explain, and such person fails to answer that charge or offer an explanation, the findings of the facts may assume he has thereby impliedly admitted the truth of the charge.[375]

Ervin appeared to reach to this rule of evidence when government officials refused to appear before investigating committees. A case in point is the clash between Ervin and the White House in the Senate Judiciary Committee's investigation of the International Telephone and Telegraph Company's

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[374] New York Times, 7 May 1965, pp. 1,27.

[375] 100 Cong. Rec. 16021 (1954).

contributions to the Republican National Convention. When White House aides were not permitted to testify, Ervin said, "nobody is ever anxious to suppress the truth unless the truth will hurt him."[376]

One last aspect of obtaining all the available facts, in Ervin's thinking, is to have witnesses appear in person to relate what they know. He felt investigating and judicial bodies might not reach the same conclusions by relying on written testimony rather than personal testimony.[377] In personal testimony Ervin felt it could be determined whether a person was telling the truth or not by observing him while he was giving his testimony.[378] This is a little puzzling because he was strongly opposed to the use of lie detectors, calling them "20th century witchcraft."[379] According to Ervin,

> a brazen liar or hardened criminal, or a person with no cultural belief about right or wrong, may breeze through the lie detector test, while an innocent, honest, introspective person might be nervous or hostile and make the machine register the "wrong" answer.[380]

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[376] New York Times, 15 April 1972, p. 63; New York Times, 16 April 1972, Sec. 4, p. 6.

[377] 104 Cong. Rec. 18483 (1958); 111 Cong. Rec. 1257 (1965); "Dixie's Jester Knight," New York Times, 25 March 1957, p. 12; Time 15 April 1973, p. 12.

[378] 104 Cong. Rec. 18483 (1958).

[379] New York Times, 24 June 1971, p. 20.

[380] 117 Cong. Rec. 2199 (1971). See also 113 Cong. Rec. 25442 (1967).

It would appear that the same circumstances would arise in testimony before human evaluators with the compounding factor of possible bias on the part of the judge or jury. But Ervin, for some reason, places more faith in human judgment than electronic recordings which, according to experts, are less likely to present a biased report.

Laying this seeming inconsistency aside, Ervin's belief regarding the law is that all the available evidence which can speak to the truth must be brought forth to insure justice and the greater right of freedom.

Truth, then, has these specific features within Ervin's thinking. A free society calls for a government whose actions are open to public view; the elusive nature of truth requires that all the views have adequate voice whether the issue is political, academic, personal, or otherwise; and any judgment based on less than the available facts is presumption and a violation of the spirit of truth.

A Government of Laws

Ervin spent the greater part of his life in the field of law as a lawyer, a judge, and a legislator. For this reason it might seem natural that law would become a major feature of his philosophy. To determine whether his work in law was the cause and his philosophical emphasis on law the effect, or to determine whether the reverse is true, would be a difficult task. There is information that suggests he may have chosen another career if the circumstances had been

right,[381] but his affinity to the law developed at a very early age also.[382] Whatever the case may be, he developed a keen appreciation for the law--not just the surface, legal guidelines for living but the organic law found in the Constitution, and the spirit of law found in history.

He spoke of the external truths, gleaned out of the history of human experience, which laid down the warning that a government of laws, free from the caprice of human nature, was necessary to insure the preservation of individual freedom. He said the men who brought the Constitution into being were fully aware of the "everlasting political truth that no man or group of men can be safely trusted with governmental powers of an unlimited nature."[383] Quoting Daniel Webster, he said, "Whatever government is not a government of laws is a despotism, let it be called what it may."[384] From William Pitt the Elder he borrowed the statement: Where law ends, there tyranny begins."[385] And from

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[381]See Chapter III, p. 64.

[382]See Chapter III, p. 65.

[383]Ervin, "Remarks at Law Day, Wake Forest," p. 8306.

[384]103 Cong. Rec. 5098 (1959); Ervin, "Congress and Civil Rights Legislation," p. 11; Idem. "Duties of the Citizen, the Lawyer, and the Judge," p. 13770; Idem. "The Role of the Supreme Court," p. 2; Idem. "Our Heritage is Freedom," p. 31507; Idem. "Light and Liberty," p. 5; 110 Cong. Rec. 1337 (1964).

[385]110 Cong. Rec. 1337 (1964).

William Murray, Earl of Mansfield, he quoted these words: "To be free is to live under a government of laws."[386]

He was careful to point out that the mere existence of a set of legal regulations was not enough. He had a clear understanding of the fact that totalitarian societies also had a system of laws, but he was concerned about a system which met the demands of a free society. Reiterating his view of the relationship between law and the free society Ervin spelled out the requirements of such a law to an audience at Wake Forest Law School:

> The rule of law is an essential ingredient of any civilized society. It is the difference between order and chaos, between harmony and anarchy; without law and order there can be no civilization. The mere existence of law, however, is not sufficient to attain fruition of the fullest potentialities of society. To command the respect of its peoples, and to inspire them to uphold it, the law must be fair and just. The law must be more than a set of rules and regulations by which men are governed; it must be a product of the express consent of the people who are to be governed by it, and it must never overlook nor forsake the inalienable right of the individual to what the Declaration of Independence calls "life, liberty, and the pursuit of happiness."[387]

He told the same audience of his belief in the spiritual aspects of the law.

> As you seek the law here, you will find at least a portion of it. You will never find it all. No man ever has. I understand that scientists are attempting to put the law on punch cards and dispense it by means of a computer system, but I doubt that this can ever be done.
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> So much of the law is in our hearts. It thrives and flourishes because it is so substantially a thing of the spirit.[388]

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[386] Ibid.

[387] Ervin, "Remarks at Law Day, Wake Forest," p. 8306.

[388] Ibid., pp. 8306-07.

Out of this frame of reference Ervin speaks of the law and what it means to American democracy--to freedom. While he admits to the inability of man to completely comprehend the law, he sees it as a working force which can be effectively, albeit not perfectly, harnessed and directed to the ends that free men desire. More specifically he see the Constitution of the United States, with its amendments, as the most effective document of law ever written. In addition, he looks to the doctrine of separation of powers as a guarantor of freedom. He understood that this form of government is not popular among people who are interested in immediate social change or those who see the need for strong, centralized governments which can respond to crises with dispatch. He also concedes that there is an inherent inefficiency embedded in a government in which powers are divided, but he feels it is a small price to pay for the individual freedom which this Constitutional principles guarantees.[389]

The Constitution. Ervin leaves no question about his attitude toward the Constitution. In his Law Day Observance speech at Wake Forest Law School he spoke of his "deep and abiding respect for the blueprint of our system of government, the Constitution with its Bill of Rights," and his constant awareness of "its vitality."[390] During his

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[389] 113 Cong. Rec. 20663 (1967).

[390] Ervin, "Remarks at Law Day, Wake Forest," p. 8306.

recommendation of the censure of Senator Joseph McCarthy, he referred to the Constitution as the "greatest living instrument of government on the face of the earth."[391] He called it "that immortal document"[392] during a speech in opposition to a change in the required vote for cloture. And in an address at the Pentagon he called it "the greatest charter ever conceived by man for a free republic."[393]

To Ervin the Constitution was not merely the outcome of a convention. It had deep historical roots in man's striving to be free. In one reference to the Constitution he said:

> In my judgment, William Gladstone was clearly right in the main when he said that the Constitution of the United States was the greatest instrument ever struck off at a given time by the brain and purpose of man.
>
> As a matter of fact, however, he was partly in error in that statement. The Constitution was not struck off at a given moment, although it was reduced to writing at a given moment. It embodied, however, the experience of many generations of men in their quest for a system of government in which man should be guaranteed the right to self-rule and also the right to protection from government tyranny.[394]

Borrowing the words of Jeremiah Black, chief counsel for the defense in Ex Parte Milligan, Ervin said that the Founding

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[391] 100 Cong. Rec. 16324 (1954).

[392] 113 Cong. Rec. 552 (1967).

[393] Sam J. Ervin, Jr., "Address Delivered by Senator Sam J. Ervin, Jr., Law Day, May 1, 1961, The Pentagon, Washington, D.C." p. 7081.

[394] Sam J. Ervin, Jr., "Introductory Remarks at the First Hearing of the Newly Created Senate Subcommittee on Intergovernmental Relations," p. 9908.

Fathers did not want one drop of blood which was shed for freedom during seven centuries of conflict across the Atlantic to be shed in vain. For that reason they studied the Magna Carta, the Petition of Right, the Bill of Rights, and the rules of the common Law, and from those documents they gleaned whatever favored individual liberty and incorporated it in the Constitution.[395]

He knew that there were many men who, in the words of George Washington, had a "love of power and the proneness to abuse it."[396] But he also knew well-intentioned people, zealous majorities, and stressful times were also a direct danger to freedom. Quoting the words of Daniel he said:

> Good intentions will always be pleaded for every assumption of power. It is hardly too strong to say that the Constitution was made to guard the people against good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.[397]

Ervin often talked about the impatience of the well-intentioned and the fact that not only liars figure but these men of zeal and good intentions often figure amiss.[398]

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[395] 110 Cong. Rec. 1337 (1964).

[396] 116 Cong. Rec. 6930 (1970); Ervin, "Separation of Powers," p. 121; Idem. "The Role of the Supreme Court," pp. 1,2; Idem. "Light and Liberty," p. 5.

[397] Ervin, "The Role of the Supreme Court," p. 9; Idem. "Remarks in Accepting the George Washington Award," pp. 9637-38.

[398] 104 Cong. Rec. 14064 (1958); 115 Cong. Rec. 38743 (1969).

To him,the Constitution guarded against the sacrifice of the slow movement of truth for the haste of error. He also saw the saving feature of established laws when heated emotions of hostility were the rule of the day and people responded to the affairs of life with a closed, narrow view.

Again, during his Senate speech in opposition to a change in the required vote for cloture Ervin quoted extensively from the opinion of Associate Supreme Court Justice Davis in Ex Parte Milligan who said, in part:

> These great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that principles of constitutional liberty would be in peril, unless established by irrepealable law.[399]

To Ervin the Constitution and its amendments were meant to be constantly abiding precepts, safely tucked away from the influence of "the varying moods of public opinion."[400] In regard to the Bill of Rights he quoted the words of Justice Jackson, saying they withdrew "certain subjects from the vicissitudes of political controversy," subjects which could "not be submitted to vote," and "depend on the outcome of no election."[401]

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[399]113 Cong. Rec. 556 (1967). See also 112 Cong. Rec. 14102 (1966).

[400]Ervin, "Remarks in Accepting the George Washington Award," p. 9637. See also 116 Cong. Rec. 6648 (1970).

[401]116 Cong. Rec. 36503 (1970).

Ervin saw much safety in the amendatory process which rested in the hands of the public and the legislature together. It made change possible but not easy. Ervin argued that this process provided in Article V was the only safe way. He did, however, have some apprehension about the convention method which had not yet been tested.

Ervin believed that the framers of the Constitution had intended both the Congressional method and convention method of amending the Constitution to have equal status and, at the same time, observed that all amendments had been heretofore initiated by Congress. But, in the wake of petitions from thirty-two states requesting a convention to propose an amendment to override the Supreme Court's one-man-one-vote requirement for apportionment of state legislatures, Ervin developed another concern. He felt that Congress would be obligated to call a convention if the required number of states petitioned for one but he also observed that there were no precedents to establish what constituted a legitimate petition nor were there any ground rules for such a convention if it were convened. He stated there were many misconceptions voiced regarding the convention method and he feared that they could lead to dangerous precedents which could destroy the Constitution. Because of this threat he suggested that ground rules should be established which would give a convention the authority and flexibility it needed to formulate amendments called for by the states without being able to engage in a wholesale

overhauling of the Constitution.[402]

To Ervin, the Constitution is the bedrock upon which freedom in the United States rests. He reveres it as a sound document which is alive with the history of man's struggle to be free. It incorporates the best of the ideas of the past and insures an effective social system in which personal prerogatives are viable. If the constiution were severely altered in haste, regardless of the motives for doing so, freedom would lose, according to Ervin.

While Ervin expressed concern about any efforts to alter the Constitution, he was especially vocal about the doctrine of separation of powers. He often quoted Thomas Hobbes' statement that "freedom is political power divided into small fragments."[403] With this quotation as ammunition he argued for both the separation of powers within the federal government itself and for a division of authoirty between both federal and state governments. This second concept is technically labeled federalism and Ervin alludes to it as such, on occasion, but it is a part of the larger

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[402]Sam J. Ervin, Jr., "Proposed Legislation to Implement the Convention Method of Amending the Constitution," Michigan Law Review, Vol. 66, No. 5, March 1968, pp. 875-95.

[403]Ervin, "Remarks in Accepting the George Washington Award," p. 9647p Idem. "Should the Power of the Supreme Court Be Curbed?" American Legion Magazine, Vol. 88, No. 2, February 1970, p. 20. See also 116 Cong. Rec. 4399 (1970); Idem. "Our Heritage Is Freedom," p. 31507; Idem. "Separation of Powers," p. 121; Idem. "The Role of the Supreme Court," p. 2; Idem. "Light and Liberty," p. 5; 110 Cong. Rec. 1337 (1964).

doctrine of separation of powers and is included under that heading.

Ervin, himself, speaks of the two-fold way in which the doctrine of separation of powers was incorporated in the Constitution referring to the two concepts above.[404]

Separation of Powers and Federalism

Ervin made constant references to the doctrine of separation of powers as menas of insuring freedom. Once again he reached back into history to demonstrate the enduring belief that a government tempered by the distribution of authoirty was preferred over one in which authoirty rested with one official body or one person. He argued that separation of powers was as old as Aristotle who described three branches of government in Politics. He pointed out that a republican Rome also operated under a similar system with a principle of checks and balances. This form of government died with the fall of Rome but emerged again with the birth of the English Parliament in the eighteenth century, according to Ervin. He stated that John Locke expounded the theory of separation of powers in Two Treateses of Government, dealing with three branches of government, and Baron de Montesquieu further elaborated on the three distinct branches, executive, legislative and judicial, in his Spirit

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[404]Ervin, "America's Birthright," p. 128.

of Laws.[405] He said that Locke and Montesquieu, among others, had viewed "the concept of separation of powers as a fundamental principle of political science," but the ideals as they theorized them were first attempted, in practice, in America. This was especially true because of federalism--a concept never before attempted in a country the size of the United States.[406]

To Ervin both features of separation of powers were important. Repeatedly he stressed the idea that each branch of federal government needed its own independence and safeguards from encroachment by the other two branches in order to assure a government of free people. Yet, the line of defense that state sovereignty provided was also essential in Ervin's thinking. On at least two occasions he quoted this statement attributed to Justice Brandeis:

> The States are the only breakwater against the ever-pounding surf which threatens to submerge the individual, and destroy the only society in which personality can exist.[407]

He also often quoted in full or in part, Chief Justice Salmon's statement that "the Constitution, in all of its provisions, looks to an indestructible Union composed of

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[405] Ervin, "Separation of Powers," pp. 108-09.

[406] 113 Cong. Rec. 20663 (1967).

[407] Ervin, "Remarks at Subcommittee on Intergovernmental Relations," p. 9908; Idem. "The Supreme Court," p. 8.

indestructible states."[408]

During the long Civil Rights battle in the 1950's and 1960's, Ervin argued vociferously for the Constitutional integrity of state governmental prerogative. He was especially protective of the right of the states to set qualifications for voting through the use of literacy tests.[409] While most of the voting rights battles centered in the Southern states, Ervin was just as adamant about state prerogative in New York's literacy test battles.[410] He also opposed proposals in Congress to prescribe residency requirements for voting and to lower the voting age to eighteen years, by Congressional statute, which to him were infringements upon state's rights and were tantamount to amending the Constitution by Congressional fiat.[411]

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[408]Ervin, "Alexander Hamilton's Phantom," p. 24; Idem. "Compulsory Integration," p. 95; Idem. "Our Inheritance: An Indestructible Union," p. 8541; Idem. "America' Birthright," p. 128; Idem. "Remarks at Subcommittee on Intergovernmental Relations," p. 9908; Idem. "The Role of the Supreme Court," p. 3.

[409]Ervin, "America's Birthright," p. 28; Idem. "Literacy Tests," pp. 493-94; Idem. "Congress and Civil Rights Legislation," pp. 5-6; 106 Cong. Rec. 2596 (1960); New York Times, 19 March 1962, p. 33; New York Times, 7 May 1965.

[410]111 Cong. Rec. 11064 (1964); 116 Cong. Rec. 6646 (1970).

[411]116 Cong. Rec. 3248,49 (1968).

The housing issue also gave rise to Ervin's defense of states rights to regulate real estate,[412] and he opposed consumer protection programs whose provisions amounted to federally supported warfare against state policies.[413] To Ervin, such programs were a direct attack on the principle of federalism which limited federal authority and granted certain rights to the states as sovereign units of government. One other issue of interest which relates to states rights is Ervin's stand on anti-riot legislation. While traditional civil rights advocates were supporting a bill to make it a Federal crime to cross state lines to incite a riot, Ervin was contending that states in which riots occurred should prosecute those who violated the law.[414] His concern for the integrity of state boundaries also reached to the concept of direct election. Among his other reasons for opposing such a method was his belief that it would further obliterate state boundaries[415] which he considered to be such important "breakwaters."

Ervin's support of separation of powers on the Federal level is also very visible. Again, with the words of Montesquieu he expressed his view that not only is it imperative that executive, legislative, and judicial powers

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[412] 114 Cong. Rec. 3248,49 (1968).

[413] 116 Cong. Rec. 39307-09 (1970).

[414] New York Times, 21 July 1967, p. 35.

[415] Clancy, p. 237.

not rest in one body or one man, but that any two of these powers resting in one body would present the threat of a potentially tyrannical government.[416] He expressed strong displeasure whenever any branch or two branches of federal government appeared to encroach upon the other. He criticized what he perceived as the Supreme Court's usurpation of the power to amend the Constitution, which is reserved to the Congress and the states.[417] He also criticized the Supreme Court for trespassing in the legislative domain of Congress, calling them judicial activists.[418] Judicial activists in Ervin's words are those judges who are legislators at heart rather than judges, and who seek to make laws and constitutions rather than interpret them.[419]

Despite his argument that justices had flagrantly abused their office, he defended their need to have the degree of independence they enjoyed under the Constitution. He felt that anything short of the cumbersome process of impeachment and Senate trial for reasons established in the Constitution would be a serious threat to separation of powers. Even the use of a judicial council to determine the

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[416]Ervin, "Separation of Powers," p. 109.

[417]Ervin, "Alexander Hamilton"s Phantom;" Idem. "The Role of the Supreme Court;" 106 Cong. Rec. 4502-06 (1960); 114 Cong. Rec. 13214-15 (1968).

[418]Ervin, "The Role of the Supreme Court."

[419]106 Cong. Rec. 4506 (1960).

fitness of a fellow judge could be erosive to judicial independence.[420]

He did suggest one remedy to the problems he saw within the judiciary and that was to establish a different procedure for the selection of judges in order to insure the selection of only the best qualified people who had long years of experience in the adjudicating process--men who would give credence to established precedents and mete out decisions based on the impersonal law rather than their own notions. He proposed that nominees for filling Supreme Court vacancies be made by a panel of judges from the states' highest courts and the chief judge of each judicial circuit of the United States. The President could then present the name of one of the five for confirmation or disconfirmation by the Senate.[421]

Ervin also expressed displeasure over encroachments on legislative territory by both the Executive and Judicial branches of government. He felt that Congressional independence was at stake in the case of Senator Daniel B. Brewster who allegedly solicited and accepted a bribe in a postal rate decision, and in the case of Senator Mike Gravel who read portions of the Pentagon Papers at a subcommittee

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[420]Ervin, "Separation of Powers."

[421]Sam J. Ervin, Jr. "The Selection of Justices to the U.S. Supreme Court: Unfinished Constiutional Business," Trial Judges' Journal, Vol. 9, No. 1, January 1970, pp. 19-21. See also 116 Cong. Rec. 7298-99 (1970); Idem. "The Role of the Supreme Court," pp. 10-11.

meeting and included them in the subcommittee record. In the Brewster case the Supreme Court reversed a lower court's dismissal. The dismissal had been based upon the argument that part of the evidence was protected by the "speech or debate" clause. In the Gravel case the Supreme Court held that a grand jury could inquire into Senator Gravel's acquisition of materials which he read into the minutes. The grand jury investigation was convened at the behest of the Executive branch. Ervin contended that the action of the Judicial and Executive branches undermined Congressional independence under the doctrine of separation of powers.[422] At the same time he spoke against the practice of executive privilege to withhold information from Congress which he felt it needed in order to make legislative decisions and perform the function of oversight. He argued that the privilege exists only as a matter of practice and is not an explicit Constiutional prerogative of the Executive branch.[423]

Among other examples of Ervin's defense of Congressional prerogative is his opposition to the use of executive order in broadening the scope of the Subversive Activities Central Board. Ervin felt the Board was unnecessary in the

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[422]Ervin, "The Gravel and Brewster Cases," pp. 175-95;" 118 Cong. Rec. 28465-70 (1972); 117 Cong. Rec. 32445-49 (1971). See also New York Times, 20 April 1972, p. 8; New York Times, 22 March 1973, p. 32.

[423]Ervin, "The Gravel and Brewster Cases," pp. 193-94; 117 Cong. Rec. 32448.

first place and felt further that permitting the President the power to determine the limits of the Board's activity would amount to a surrender of the Constitutional authority of Congress to legislate in this matter.[424] In the area of international agreements, Ervin contended that Congress was empowered by the Constitution to exercise its discretionary powers in concert with the Executive branch. He said the Founding Fathers knew that unrestrained Executive power could lead to despotism.[425] He became very defensive of the Constitutional role of Congress when agencies such as the National Labor Relations Board allegedly overstepped their legislative mandate, at times with the aid of Supreme Court rulings, and changed the statutory meaning of the law.[426] To Ervin, this represented another example of the weakening of Congressional influence while the power of the Judiciary, the Executive branch, and Federal agencies were increasing.

One last example of Ervin's concern for the preservation of Congress' Constitutional role in government relates to the impoundment of monies that have already been appropriated for legislation which has been passed into law. Ervin

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[424]Sam J. Ervin and William Proxmire, "An 'Alien Creature,'" New York Times, 23 June 1972, p. 37; New York Times, 20 July 1971, p. 1; New York Times, 4 August 1971, p. 8; New York Times, 6 October 1971, p. 27; New York Times, 16 June 1972, p. 42.

[425]118 Cong. Rec. 12031 (1972).

[426]Sam J. Ervin, Jr., "Separation of Powers: Congressional Interest," Vital Speeches, Vol. 35, No. 6, June 1, 1969, pp. 189-92; 115 Cong. Rec. 8803-04.

argued that the President held the power of veto if he could not accept a piece of legislation but if he signed a bill into law or if Congress overrode his veto, he had no choice but to fund the programs. Impoundment, in Ervin's view, was an affront to Congressional power over the purse and a direct attack on the doctrine of separation of powers.[427]

Most of Ervin's protestations dealt with encroachment by the other two branches upon the Congressional domain, but his statements, in general, reveal his reverence for the doctrine of separation of powers in its fullest dimension. To him it is essential to a government of laws which assures freedom to the individual.

To Ervin freedom is the supreme possession. It is more to be desired than convenience, comfort, or safety. It has been sought after and fought for throughout the ages and will continue to be the most cherished possession and the greatest legacy. According to Ervin it is maintained by truth upon which the best decisions can be made for self-rule within the framework of a government of impersonal laws which are safely kept from the inconstant will of those who

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[427]Sam J. Ervin, Jr., "The Path to Fiscal Responsibility," Speech at the Executive Club Meeting, High Point, North Carolina, April 24, 1973; Idem. "Impoundment: A Legislative Point of View," Lecture at Colloquium on President and Congress in the Seventies, North Carolina State University at Raleigh, February 25, 1972; Idem. "Opening Statement," Hearings on Executive Impoundment of Appropriated Funds, March 23, 1971, quoted in 117 Cong. Rec. 8567-68 (1971); New York Times, 14 April 1971, p. 28.

rule--those who not only have their hearts set on freedom but also have a penchant to reach for power. It is maintained best by a government in which powers are tempered by diversity--by separation into small units with checks and balances to protect the integrity of self-rule. It is freedom guaranteed by truth and a government of laws.

CHAPTER VI

ANALYSIS

The criteria questions which have been formulated for the analysis comprise four areas of focus. As mentioned in the discussion in Chapter I, the effort here will be directed toward Ervin's degree of success or failure in avoiding despotism, guarding the rights of witnesses, and staying within the strictures of his own expressed philosophy of truth. The fourth focus is on his speaking style as it relates to his use of history, literature, the Bible, and anecdotes. The major concern with respect to this fourth focus centers in the question of the influence of his sudden national acclaim on his speaking.

Despotism

In Chapter II the criticism has been made that some chairmen of hearings committees have been despotic in their rule, giving partial treatment to some members of the committee and withholding it from the others. Additionally, such chairmen have been accused of making arbitrary decisions regarding the length of time afforded to committee members to interrogate witnesses and it is inferred that such chairmen may also control the information that comes to bear upon the

issue at hand, favoring their own point of view.[428] These criticisms have a strong tie to the concept of truth-seeking in that such an approach described in the criticism suggests that all of the available facts and every perspective, within reason, cannot be obtained.[429]

An association can be made between these criticisms and Ervin's concept of truth which gives merit to the first major question raised in this analysis. Ervin feels all views need to be given attention and every available piece of data, within reason, ought to be collected. In light of that association, the writer has searched for Ervin's responses to the Hearings with respect to his success in avoiding despotism, as measured by the three questions subsumed under the first major question.

1. Does Ervin avoid the criticism of despotism leveled against some committee chairmen?
   A. Does he allow each member all of the time he requests for questioning?
   B. If each member is not allowed all of the time he requests, is there information which indicates the denial is a result of rules of procedure rather than the arbitrary desire of the chairman?

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[428]See Chapter II, pp. 31-49, especially pp. 48-49.

[429]See Chapter V, pp. 155-167.

C. Does Ervin place a limit on the areas in which questions can be asked other than those limitations which the ground rules of the Hearings decree?

The first two questions are considered together because Question B is dependent upon Question A. A review of the Hearings revealed a number of events which relate to these two questions. Some events relate to time allotments, and others to the sequence in which Senators were scheduled to interrogate the witnesses.

Time Alltoments. In the early stages of the Hearings a ten-minute rule was established by common consent. This rule allowed each member of the committee ten minutes during every round of interrogation. Each Senator would have as many opportunities, in sequence, as he needed to get all of his questions asked.[430] Senator Ervin did not enforce the rules with a rigid hand, however. During the McCord testimony, Senator Herman Talmadge finished his interrogation stating he did not want to usurp the time of other Senators. Ervin informed him he had used thirteen minutes, but did not stop him at the end of ten minutes.[431]

The rule apparently fell by the wayside because much later in the Hearings, Senator Baker stated he was going to impose the ten-minute rule on himself without suggesting

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[430] Hearings, Vol. 1, p. 117.

[431] Ibid., p. 210.

that other committee members ought to do so.[432] Not too long after Senator Baker's self-imposed ten-minute rule, Senator Ervin imposed a twenty-minute rule on each Senator's first "go-around," and he asked Senator Baker to keep time on him.[433] When he finished his questioning he realized he had gone over the twenty-minute limit, and Senator Baker confessed he did not have the courage to cut Ervin off at twenty minutes.[434] Apparently a ten-minute rule came into effect again because during one of the rounds in which Senator Montoya was interrogating H. R. Haldeman, Senator Ervin interrupted, stating he wanted to be fair, and if he were going to enforce the ten-minute rule on the other Senators, he would have to enforce it on Senator Montoya and himself.[435] Following this last imposition of the ten-minute rule, the committee members held to it more closely.

With the exception noted above, Ervin tended to be flexible with the other time limits that were established. There were several occasions in which he granted more time to Senators although they acknowledged their time was up. During Robert Mardian's testimony, Senator Lowell Weicker indicated he would stop and save some questions dealing with a different area for another time. Senator Ervin invited

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[432] Ibid., Vol. 6, p. 2387.

[433] Ibid., p. 2570.

[434] Ibid., p. 2578.

[435] Ibid., Vol. 8, p. 3113.

him to ask the questions at that time, but he deferred to Senator Montoya.[436] During John Erhlichman's testimony, Senator Talmadge was running through a series of questions when he realized his time had expired. When he stated that it had, Senator Ervin told him to go ahead and finish the series.[437] Later, during Erhlichman's testimony, Senator Edward Gurney indicated that his time had also expired, but Erhlichman stated he had not finished giving the reasons behind John Mitchell's resignation. Senator Gurney begged the indulgence of the committee for a few more minutes, and Ervin granted it.[438] Senator Gurney questioned Erhlichman again, after Senator Inouye had finished, which is somewhat unusual because there is no indication that it is out of sequence. When he reached a point at which he thought his time was up, Senator Ervin said he would not want to cut him off because the investigation was a serious one. He suggested that Senator Gurney continue until noon if he had further questions.[439]

Sequencing. The order in which Senators questioned the witnesses was not always the same but a sequence was set up so that each Senator had the same number of opportunities

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[436] Ibid., Vol. 6, p. 2410.

[437] Ibid., Vol. 7, p. 2717.

[438] Ibid., p. 2725.

[439] Ibid., p. 2750.

to question a witness as the other Senators had. There were occasions, however, when Senators interrogated witnesses out of sequence or were allowed to interject a question or two out of turn. During Robert Odle's testimony, the questioning went farther afield than Senator Baker thought it would on the first round, and he had failed to ask a question he would have brought up otherwise. Senator Ervin offered to let him ask the question out of turn. He deferred to Senator Montoya who had not yet had an opportunity to interrogate Odle. After Senator Montoya finished, Senator Ervin again made the offer and Senator Baker asked his questions.[440] During Alfred Baldwin's testimony, Senator Baker suggested that the committee defer to Senator Weicker because he had interviewed Baldwin previously. Senator Ervin agreed.[441] During Sally Harmony's testimony, Senator Ervin transferred his turn to Senator Inouye for no given reason.[442] Again, during Hugh Sloan's testimony, Senator Ervin "swapped" his turn with Senator Talmadge because Senator Talmadge was floor manager for an agriculture bill that was pending on the Senate floor.[443] During Alexander Butterfield's testimony, Senator Weicker was gone during his

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[440] Ibid., Vol. 1, pp. 35,41.

[441] Ibid., p. 391.

[442] Ibid., p. 468.

[443] Ibid., p. 559.

regular turn. When he arrived, Senator Ervin apologized for calling Senator Montoya ahead of him and assured him he would give him an opportunity to examine Butterfield.[444]

With respect to time allotments and sequencing, there is every indication that each Senator was given ample time to interrogate each witness. Ervin passes the test with high marks.

Question C deals with limitations placed on areas in which questions are asked. There are two incidents which are of particular interest, both of which deal with the timing of questions. While the substance does not relate directly to Question C, Senator Ervin's response in both of these cases does tend to relate to this area of the analysis. Just prior to Herbert Porter's testimony, Senator Ervin indicated he would be called again and Ervin hoped that, during the first interview, the committee would limit questions to Porter's "knowledge or lack of knowledge of the budgeting and break-in of the Watergate and any alleged attempts to cover up that episode."[445] During the testimony of Anthony Ulasewicz, Senator Baker decided to save a certain line of questioning for another round. Senator Weicker felt that the questions Senator Baker intended to ask were quite relevant to the issue at hand and he requested him to

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[444] Ibid., Vol. 5, p. 2086.

[445] Ibid., Vol. 1, p. 631.

continue. He was concerned to the point that he stated if Senator Baker did not take up that particular line of questions at the moment, he, Senator Weicker, intended to do so himself when his turn came. Senator Baker indicated he was trying to follow the rule of compartmentalizing the inquiry but would not object to Senator Weicker taking up the questioning. The following exchange took place.

> SENATOR WEICKER. I only say this to the Senator from Tennessee in that I think it is very much within this category to show that the actions taken by Mr. Ulasewicz in the case of the payoff was not a particularly unusual activity at all in relation to other assignments which he was given.
>
> I am aware that the Senator from Tennessee has done considerable background work, as has the committee, on this, and I didn't want in any way to have you stop, if you will, and then go ahead when it came my turn to pick up the ball and run with it, because that is exactly what I intend to do and I wish you would pursue the line of questioning that you started.
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> SENATOR BAKER. My distinguished chairman whispered in my ear, if we don't get on with this hearing, we'll still be here when the last trembling tones of Gabriel's trumpet fades into ultimate silence.
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> SENATOR ERVIN. The Chair will not undertake to control any Senator. The Chair will express the sincere hope that we will confine our interrogation of Mr. Ulasewicz at this time to the phase of involvement in the break-in and the alleged coverup of the Watergate burglary.
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> The witness is a most intriguing witness and the temptation to interrogate him is very strong. I am going to resist succumbing to the temptation however, because I think he has been fully interrogated as to the matters relating to the distribution of this money and I know that the committee has some other witnesses it needs to interrogate and who are awaiting interrogation.[446]

The interesting observation in these two incidents is that Senator Ervin does not give an order but merely makes his

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[446] Ibid., Vol. 6, pp. 2266-67.

wishes and desires known. In the last incident, he indicates he will not attempt to control any of the members of the committee and it is difficult to determine whether he is referring to time, areas of questioning, to both, or to every aspect of the Senators' conduct.

There are several incidents which relate to the strictures of Senate Resolution 60 regarding the areas of questioning. They are included here to give additional insight into the nature of Ervin's response to the issue. There is no heavy-handed decision but an aura of deference.

In the first incident, Senator Weicker was interrogating Mardian regarding possible political activities of the Internal Security Division under his leadership before he left to join the Committee to Re-Elect the President. Mardian's attorney questioned whether Senator Weicker's line of questioning might be beyond the scope of Resolution 60. The following exchange ensued.

> SENATOR ERVIN. Well, while the Chair hates to make a ruling which might be disapproved by any member of the committee, the Chair is bound to confess it agrees with your interpretation of the questioning.
>
> SENATOR WEICKER. I will only say that under the circumstances that Mr. Mardian did not hesitate to go ahead and issue orders to former associates at the Internal Security Division to deliver materials to the White House. That has been established by Mr. McCord's testimony.
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> SENATOR ERVIN. But that is not the question you are asking him. You are asking about the organization or reorganization of several divisions of the Department of Justice while he was Assistant Attorney General in charge of internal security. It has been held by the U.S. Supreme Court on a number of occasions that a congressional committee has no authority to make any inquiry except inquiries which are within the scope of the matters it is authorized to investigate.

Now it would be germane to the testimony to show that the Department of Justice was cooperating with one of the persons involved in some of the activities that the committee is authorized to investigate. But I am compelled to agree with counsel that this has gone outside of the scope of that.

SENATOR WEICKER. Although, Mr. Chairman, his division was responsibile for the prosecution of the Ellsberg matter and Mr. Mardian himself was involved in the handing over of the Kissinger tapes. What I mean to say is that I think the political activity of this Division was quite extensive, both under his leadership and when he departed to join the Committee to Re-Elect the President.

SENATOR ERVIN. Well, I think the testimony about the Ellsberg matter is only admissable to show the plan harmonizing with the break-in of the Watergate and to raise an inference that the same people, that the identities of the parties were responsible. I think it is competent if you want to ask him about anything he knows about the Ellsberg thing. But this other matter is going rather far outside the scope of authority, I think.

SENATOR WEICKER. I return again to the statement that has been made and is a matter of evidence before this committee:

> The Watergate matter was an inevitable outflow of a complement of excessive concern over the political impact of demonstrators, excessive concern over leaks, and an insatiable appetite for political intelligence, all coupled with do-it-yourself White House staff regardless of the law.

I think, Mr. Chairman, it has been pointed out very clearly by this witness and by others as to the insatiable appetite for political intelligence. It has been pointed out very clearly as to the excessive concern over leaks. It is now my intention to go ahead in this line of questioning, and I will certainly be subject to the Chairman's ruling, to fill in the third piece of the puzzle, specifically, the excessive concern of the political impact of demonstrators and that this was one of the reasons why we ended up in the matter of Watergate. . . .

SENATOR ERVIN. I certainly sympathize with the position stated by Senator Weicker. One of the things that has puzzled me is why some people in the White House didn't trust the Department of Justice to prosecute and the FBI to investigate the Ellsberg affair.

I am puzzled by that and I think that is germane to our investigation, because it is right along with, and is very, very closely related to matters that we certainly have express authority to investigate. I recognize it is the duty of the President, the Constitution says

he shall take care that the laws shall be faithfully executed, but I don't think that it justifies, for example, taking over trying to get records of a psychiatrist's opinion of the mental or emotional state of Ellsberg. As a matter of fact I don't know who commissioned that activity; the evidence doesn't quite show it, but whoever did it, if he was a lawyer, he ought to surrender his law license if he didn't know that there was no legitimate way that he could get the record of the psychiatrist without either bribing the psychiatrist to violate the Hippocratic oath, or by theft of some species.

I have a great deal of sympathy for the position of Senator Weicker.

MR. BRESS. Mr. Chairman, my objection in no way relates to any question of his looking into the burglary of the Ellsberg psychiatrist. But the Pentagon Papers--the questions might as well deal with Mr. Mardian's duties as General Counsel of Health, Education, and Welfare.

SENATOR WEICKER. May I point out to counsel that upon questioning of Mr. Mardian this morning when he first denied Mr. Liddy's presence in the Internal Security Division, upon questioning it was established that Mr. Liddy indeed had been there on more than just the matter he testified to in response to an earlier question. I think this very much goes to Mr. Mardian's knowledge of Mr. Liddy, and the fact that the two had worked together on other matters, specifically the Pentagon Papers case.

MR. BRESS. No objection to that kind of inquiry.

SENATOR ERVIN. Senator, suppose you proceed and see if the questions, if they can be brought within the orbit of the Senate Resolution 60, which is rather broad.[447]

In the second incident, Senator Inouye was questioning Haldeman about illegal and unethical campaign activities in the California gubernatorial race of 1962. Haldeman's attorney eventually interposed an objection on the basis it was not relevant and was outside the scope of Resolution 60. The following exchange ensued.

SENATOR ERVIN. Well, it may be relevant but I believe it would be advisable, I hate to say this, but to

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[447] Ibid., pp. 2425-27.

refrain from interrogating that far back.

SENATOR INOUYE. May I respond, Mr. Chairman?

SENATOR ERVIN. Yes, sir.

SENATOR INOUYE. I believe it is relevant to the investigation to have some understanding of Mr. Haldeman's approach to political campaigning, and, second, Mr. Chairman, these hearings began on May 197, 1973, and since then I believe we have had 32 days of intensive questioning of witnesses and we have had before us men and women of high standing in our community, men and women supposedly with unimpeachable characters, and to the confusion of all of us here, Mr. Chairman, many of these witnesses have time and again contradicted other witnesses, in other words, suggesting that one witness was faulty in his recollection or committed outright perjury, and I think it is relevant to this investigation to determine a witness' credibility.

For example, when Mr. Dean was before us, no one objected to a question posed about reasons for his dismissal from his first job and I believe this touched upon his credibility.

SENATOR ERVIN. Well, Senator, I would approximate this to the rule in criminal cases, though we are not trying a criminal case, but it is a good guide to follow. I do think you can ask the witness about his attitude but I do not believe we ought to go back that far to ask him about specific acts just like trying a man for one thing and then proving he did some other things. If we do this with Mr. Haldeman, then anybody in the committee would be entitled to recall every witness here and do the same thing, go back into their past actions and things, and I just think it is unwise to open the door and--

SENATOR INOUYE. I shall abide by the Chair's rulings. I just wanted to compare these two depositions, one which says--

MR. WILSON. I object to discussion of the deposition.

SENATOR ERVIN. Well, I do not know very well how I could keep you from saying something that was within the sphere of your responsibilities even though I thought it was wrong to do the same for the Senator from Hawaii the same way.

MR. WILSON. A description of these depositions is to let in the very thing I say is irrelevant.

SENATOR ERVIN. Well, I have ruled that the Senator will not--

SENATOR INOUYE. I will not ask the question, Mr. Chairman. I thought it might be a good opportunity for Mr. Haldeman to provide some clarification. These depositions are a matter of record. Anybody can pick this up and quote from this.

SENATOR ERVIN. Yes; but they are res inter alia acta, something like that. [Laughter] So I think we had better desist at this point.[448]

In the third incident, the witness, Gordon Strachan, brought up the 1970 Senate races in answer to a question from Senator Montoya. Again, the following exchange took place.

SENATOR ERVIN. I don't believe we are entitled to investigate 1970. I think we are restricted to 1972 and the campaign proceding the 1972 election.
SENATOR MONOYA. I didn't mean to ask you that question in respect to the 1970 races.
SENATOR ERVIN. I just raise that point in the interest of time is all.[449]

The writer did not observe any instances of an arbitrary decision on the part of Ervin to restrict questions. In those instances, observed by the writer, in which decisions were made regarding questions, they were usually made at the behest of a committee member or a counsel of the witness and not by Ervin's own initiative. Ervin does not demonstrate any despotic tendencies with respect to the time allowed to each Senator for questioning, nor with respect to the areas in which questions are asked.

Individual Rights

The question of individual rights relates not only to criticisms leveled against some hearings of the past[450]

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[448] Ibid., Vol. 8, pp. 3170-71.

[449] Ibid., Vol. 6, pp. 2474-75.

[450] See Chapter II, p. 53.

but also to Ervin's concept of truth.[451] While the nature of the Watergate Hearings allows the presentation of hearsay evidence, as will be seen later, the statement of guilt without the benefit of every piece of evidence that will be derived from the Hearings runs counter to Ervin's view. Additionally, audience demonstration has its place in determining the effectiveness of reaching an adequate grasp of the truth. Admittedly, the influence of audience demonstration on the establishment of truth is difficult to measure and no attempt will be made to do this, but its potential effect on the fidelity of truth as it relates to presumption or prejudgment places an ethical burden upon Ervin to at least respond impartially to audience demonstration. Going a step further, he has a responsibility to restrain, within the limits of his authority, audience demonstration which is detrimental to the rights of witnesses or other people who are subject to investigation.

2. Does Ervin guard the rights of witnesses and others who are under suspicion or subject to prosecution for alleged criminal acts?

   A. Does Ervin prohibit the expression of opinion by members of the committee regarding the guilt of any witness or others who are suspected of involvement in the Watergate affair or related events?

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[451] See Chapter V, p. 162.

One incident is outside the Hearings themselves but speaks to this question; therefore, it is included here. Senator Weicker had his own investigating team going during the Hearings and appeared to be boring in on Haldeman in light of the nature of his questioning.[452] Prior to the public Hearings Senator Weicker charged that Haldeman was probably aware of "political sabotage that was far broader than Watergate eavesdropping."[453] Ervin, along with Senator Baker, responded to the charges by issuing a short press release that stated:

> In the interests of fairness and justice, the committee wishes to state publicly that it has received no evidence of any nature linking Mr. Haldeman with any illegal activities in connection with the presidential campaign of 1972.[454]

Senator Weicker admitted he had no evidence but thought Haldeman ought to resign because "he is chief of staff . . . and I hold him responsible for what happened."[455]

With the exception of the example above, the writer did not discover other incidents which directly relate to the question; however, there were three incidents within the Hearings which appear to have an indirect relationship. One deals with Senator Weicker's interrogation of Mitchell, one deals with a remark made by Senator Inouye, and a third one

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[452] New York Times, 30 May 1973, p. 18.

[453] Time, 16 April 1973, p. 14.

[454] Ibid., p. 15.

[455] Ibid.

deals with Senator Gurney's interrogation of Dean.

Senator Weicker admits to being excitable and was probably one of the most vocal members of the Senate Select Committee. Senator Weicker pressed Mitchell very hard regarding his knowledge of Liddy's participation in the Watergate break-in and his failure to either report to the President or to have Liddy arrested after his initial presentation of a plan to engage in political espionage. The excerpts which follow contain descriptive words which tend to demean and statements that are moralistic in nature.

> SENATOR WEICKER. All right. Let's start at the beginning here, if we can, in going over the testimony that has been presented by you, and do some probing. I must confess, Mr. Mitchell, that as I have sat here and listened to your testimony the only difficulty I find with it is that it sometimes is difficult to realize that we have sitting before the committee not some administrative assistant to some deputy campaign director but we have the campaign director sitting before this committee, and indeed we don't have some Deputy Assistant Attorney General sitting before the committee, we have the Attorney General of the United States sitting before the committee.
>
> Now, on the 27th of January, 1972, Gordon Liddy presented a plan in your office, in the office of the Attorney General of the United States, and that plan, complete with visual aids, included elaborate charts of electronic surveillance and breaking and entering and prostitution and kidnaping and mugging. Now you have indicated that in hindsight you probably should have thrown him out of the office. . . .
>
> SENATOR WEICKER. Well, the fact is, forget for 1 minute, politics, let's just talk about your position as Attorney General of the United States. I find it inconceivable, unless there seems to be at least some willingness to share a portion of the mentality that you didn't go ahead and have the fellow arrested for even suggesting this to the Attorney General of the United States.
>
> MR. MITCHELL. Senator, I doubt if you can get people arrested for suggesting such things but, as I said--

SENATOR WEICKER. For suggesting illegal acts to the Attorney General of the United States, I think that is probably grounds for arrest.

MR. MITCHELL. Do you really, Senator?

SENATOR WEICKER. I do, I do.

MR. MITCHELL. I would have some doubts. I don't know what part of title 18 would cover that but that is not the point that I am sure you are trying to get at.

. . .

SENATOR WEICKER. Well now, it is true that the elements of the plan contained considerably more than just actions against demonstrators.

MR. MITCHELL. There is no question but that the plans presented did, but it was not the intention that the activities of Mr. Liddy and the gathering of information intelligence and the protection of the campaign against demonstrators was the concept in which we were looking forward to and which we understood would be the case.

SENATOR WEICKER. Now, since your sensibilities as Attorney General were not overly offended in this matter what about your sensibilities as the shortly-to-be-appointed director of the President's campaign effort. Here is a man who is standing before you as the chief counsel of his reelection effort, I mean it didn't occur to you to call up the President and say, "I have got some pinwheel in my office here that is going to be the counsel to your reelection campaign and I think I ought to warn you--I think I ought to warn you--you have got a lot of trouble on your hands."

In other words, in a political sense, it didn't occur to you to go ahead and warn anybody to get this fellow off the boat, if you will.

MR. MITCHELL. Senator, it never occurred to me that anybody would carry out such activities particularly without any authorization to do so.

SENATOR WEICKER. Did it ever occur to you that anybody would present such a thing, Mr. Mitchell?

MR. MITCHELL. It was pretty hard to conceive but I do not know why it was done or who was the author or the sponsors of it. The fact of the matter is that it was turned down and turned down very hard and terminated on that very day on which it was presented.

SENATOR WEICKER. Well, in any event, he still had sufficient standing before the Attorney General and the then-to-be director of the campaign so that he was back in your office on February 4, with, admittedly, a scaled-down plan. But let us get back to the 27th of January 1972. At 11:15 in the morning, you go through this presentation, which both of us would describe as incredible. At 2:30 that afternoon, you talked to the President of the United States, and no mention is made at all of what had transpired in the office of the Attorney General that morning?

MR MITCHELL. Absolutely, Senator. I do not know how often you get to talk to the President of the United States, but he is the one that normally initiates the conversation and the subject matters that are discussed.

SENATOR WEICKER. But no conversation, as incredible --I have never heard, and I am sure that you have never heard of such a plan in all your career in politics. Certainly, I have never heard of such a plan. So this is not just something that stands just over the line, if you will. This is fantasy, this is unbelievable. And this man is holding a responsible position in the Committee to Re-Elect the President. You have the option of talking to the President hours after this idiot is in your office, and you say nothing. Is that right?

MR. MITCHELL. That is correct.[456]

Ervin did not intercede in situations such as the one above in which committee members reached beyond the substance of their questions and indirectly cast aspersions on the witness. There are a number of reasons why this may be the case. For one, Ervin's comment that he did not intend to control any Senator may fit this situation. Perhaps this fits an ongoing problem of Congressional hearings in which discourtesies are accepted as a way of life by other Congressmen.[457]

During Erhlichman's testimony, Senator Inouye allegedly said "What a liar." According to news reports, he made this statement in an aside following his questioning of Erhlichman. His statement was picked up by a microphone that he apparently thought was dead. Although a person certainly has a right to his personal opinion, the fact of its national exposure was potentially damaging. During the

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[456]Hearings, Vol. 5, pp. 1870-73.

[457]See Chapter II, pp. 51-52.

Hearings in the following week, John J. Wilson, an attorney for Erhlichman referred to Senator Inouye as "a little Jap." Later he said he would not mind being called a "little American" and he had "no intention to insult Senator Inouye;" but he refused to apologize to the Senator until he apologized for calling Erhlichman a liar.[458] During the August 2 session both Senator Ervin and Senator Baker gave Senator Inouye high praise for his patriotism and his service to America during World War II.[459] Senator Mansfield referred to Senator Inouye as "the biggest American in this body." Other Senators praised Senator Inouye and attacked Wilson. An aide of Senator Inouye said the Senator felt "an apology would serve no purpose at this time."[460] Wilson was also an attorney for Haldeman and when his testimony was through, Wilson requested that he be allowed to make a motion. The following exchange ensued.

> SENATOR ERVIN. Mr. Wilson, we don't ordinarily entertain motions, but if you will indicate the nature of your motion, I will be glad to take it up with the committee.
>
> MR. WILSON. Well, I wish Senator Inouye had been present because he has injured my client, John Ehrlichman.
>
> MR. HALDEMAN. Now, you did it. [Laughter]
>
> MR. WILSON. I am so pent up about this I don't believe I can be so articulate.
>
> Senator Inouye has injured my client, John Ehrlichman, on one occasion, and this morning he injured this

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[458] New York Times, 3 August 1973, p. 10.

[459] Hearings, Vol. 8, pp. 3231-34; New York Times, 3 August 1973, p. 10.

[460] New York Times, 3 August 1973, p. 10.

client of mine by what I think was a blow below the belt, and I wanted to discuss both of them.

SENATOR ERVIN. I would suggest that you take this up with Senator Inouye and see if you all can reach a satisfactory adjustment in the matter.

MR. WILSON. I don't think it is possible we can do so.

SENATOR ERVIN. We can't do it in his absence, I don't believe.

MR. WILSON. Would you like to hear the grounds, sir?

SENATOR ERVIN. No, sir. I don't believe the committee will pass on criticism about committee members.[461]

Senator Baker suggested that Haldeman would be responding to some questions of a legal or technical nature at a later date, and the committee would be glad to hear Wilson's motion at that time. Wilson indicated his motion related to expunging certain things from the record before it was printed. Senator Ervin replied the record would not become immediately permanent, and there would be ample time for the issue to be taken up in the committee and executive session.[462]

Again, it is possible that the unwritten rule of Congress prohibited a request from the committee for Senator Inouye to rectify the error however innocently it was made. The remark of Wilson was equally unfortunate, perhaps more so, but the failure of the committee, especially Senator Ervin, to respond to the error appears to be a serious omission.

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[461] Hearings, Vol. 8, p. 3228.

[462] Ibid.

During Dean's testimony Senator Gurney pressed him on two issues. Senator Gurney asked Dean whether he told the Grand Jury the whole story; Dean admitted he had invoked the Fifth Amendment. Mr. Shaffer, counsel to Dean, raised an objection stating that it was proper for a witness to take his Fifth Amendment right on one occasion and testify on another. Senator Gurney said no question had been posed which interfered with Dean's constitutional rights.[463]

> MR. SHAFFER. I did, Mr. Chairman, and my suggestion is, simply stated, it is improper to raise the question that on a previous occasion he raised the fifth amendment.
>
> SENATOR ERVIN. I would state it a little differently. The Supreme Court has held that if a witness can be impeached by testimony that on the previous occasion he pleaded the fifth amendment, then the value of the fifth amendment to the witness would be virtually destroyed.[464]

The other instance involving Dean's testimony dealt with his admission that he had used $4,850 from some monies that he held in trust. Senator Gurney asked him if he did not think that was embezzlement. His counsel, Shaffer, objected stating any lawyer would know that Dean's actions did not constitute embezzlement, considering the circumstances surrounding his use of the money. He stated it was unfair for the record to show that Dean had embezzled any money. Dean indicated he was prepared to account for the money at any time.[465]

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[463] Ibid., Vol. 4, pp. 1518-20.

[464] Ibid., p. 1520.

[465] Ibid., p. 1376-77.

Perhaps it would be impossible for a chairman to respond to all of these deficiences. Certainly the human frame does not allow each committee member to be perfect in his interrogation of witnesses. Nevertheless, these incidents, however great or small, speak to the question at hand: Does Ervin guard against Senators' infringing on the rights of witnesses.

B. Does Ervin prohibit the expression of opinions by witnesses regarding the guilt of any witnesses or others who are suspected of involvement in the Watergate affair or related events?

There are two incidents within the Hearings that relate directly to the question and three which have a definite indirect bearing upon it. The two incidents which bear directly upon the question deal with the testimony of McCord and Dean in which they implicated members of the White House staff, members of the Committee to Re-Elect the President, or the President himself. Of the other three incidents, two involve the accusation leveled against Gerald Alch, a former attorney of McCord, and Congressman Gary Brown. The third incident involved a newspaper report of Haldeman's alleged attempt to discredit Ervin in his home state of North Carolina because of his chairmanship of the Watergate Hearings.

During McCord's testimony, he implicated Mitchell, Dean, Magrueder, and the President, but all on the basis of

hearsay evidence. The excerpts below reveal Ervin's response to McCord's testimony.

> SENATOR ERVIN. We will adhere as much as possible to the rules of evidence which have been established and used in all the courts and I would say that your testimony is to the effect that you were assured by Mr. Liddy that John Mitchell and John Dean and Jeb Magruder had approved Mr. Liddy's proposed operations and you also received assurance not only as to Mr. Dean from Mr. Liddy but also from Mr. Hunt. That was based on what you were told by Mr. Liddy and Mr. Hunt.
>
> MR. MC CORD. That is correct, sir.
>
> SENATOR ERVIN. I would say that under the rules of evidence this, at the present stage of this hearing, will not be admissable to show any connection with this matter by John Mitchell, John Dean, or Jeb Magruder but that the testimony which Mr. McCord is giving is relevant to show the motives which prompted Mr. McCord to participate in the matter.[466]

> SENATOR ERVIN. I would like to state at this point that the testimony of Mr. McCord as to what was told to him by John Caulfield would not be accepted in a court of law to connect the President with what Mr. Caulfield was doing, but it is admissable to show whether or not Mr. Caulfield was a party to any agreement to connect the President for any information on what is known as the Watergate affair, but it is not received in connection to the President at this stage.
>
> SENATOR GURNEY. I hope we can correct these things as we go along. You have all kinds of inferences here that are inaccurate and are casting aspersions that are going to damage people's reputations.
>
> MR. MC CORD. I only say in my statement that political pressure was conveyed to me by Mr. Caulfield which he attributed to the White House without citing--
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> SENATOR BAKER. May I ask the counsel if Mr. Caulfield is under subpoena?
>
> MR. DASH. Mr. Caulfield is under subpoena and will be brought right after this witness.
>
> SENATOR BAKER. Is he under subpoena at the present time?
>
> MR. DASH. His counsel has been informed that he wants to testify and he will accept a subpoena.
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> SENATOR BAKER. The answer is that he is not under subpoena, and my request of the chairman is that a subpoena be issued in standard form for Mr. Caulfield to

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[466] Ibid., Vol. 1, p. 129.

testify and that he be scheduled to testify immediately next succeeding this witness.

MR. DASH. This was our understanding.

SENATOR BAKER. Mr. Chairman, will you take care of that request?

MR. ERVIN. Yes, I will sign it as soon as I can get somebody to prepare it.

MR. DASH. We have contacted his counsel and have been told by him that he is prepared to accept the subpoena.

Will you please proceed with your reading of the statement, Mr. McCord.

SENATOR ERVIN. I would like to reiterate that what Mr. McCord says Caulfield told him is admissible to show what Caulfield did and said to you, sir, as a witness taking action or a friend taking action. It is not relevant to prove any connection with the White House or the President.[467]

MR. MC CORD. He further stated that "I may have a message to you at our next meeting from the President himself."

I advised Caulfield that I had seen the list of witnesses for the trial and had seen Jeb Magruder's name, appearing as a Government witness. I advised him that it was clear then that Magruder was going to perjure himself and that we were not going to get a fair trial. Further I told him that it was clear that some of those involved in the Watergate case were going to trial, and others were going to be covered for--I was referring to John Mitchell, John Dean, and Magruder--and I so named those individuals incidentally in the conversation, and I said that this was not my idea of American justice. I further--

MR. ERVIN. The same ruling applies so far as John Mitchell, John Dean, and Magruder are concerned, that is that it does not connect them legally speaking.[468]

In each of these instances Ervin makes it clear that the testimony should not be construed to implicate anyone whose alleged actions were known second-hand.

When Dean read his opening statement he made some severely incriminating statements in regard to the time and

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[467] Ibid., pp. 132-33.

[468] Ibid., pp. 138-39.

extent of President Nixon's knowledge and participation in the Watergate cover-up. Some of his testimony was uncorroborated but some of it also had the appearance of first-hand knowledge on the part of Dean. One of the critical meetings, although not the only source of Dean's evidence, was a meeting he had with President Nixon on September 15, 1972.

MEETING WITH THE PRESIDENT--SEPTEMBER 15, 1972

> On September 15 the Justice Department announced the handing down of the seven indictments by the Federal grand jury investigating the Watergate. Late that afternoon I received a call requesting me to come to the President's Oval Office. When I arrived at the Oval Office I found Haldeman and the President. The President asked me to sit down. Both men appeared to be in very good spirits and my reception was very warm and cordial. The President then told me that Bob--referring to Haldeman--had kept him posted on my handling of the Watergate case. The President told me I had done a good job and he appreciated how difficult a task it had been and the President was pleased that the case had stopped with Liddy. I responded that I could not take credit because others had done much more difficult things than I had done. As the President discussed the present status of the situation I told him that all that I had been able to do was to contain the case and assist in keeping it out of the White House. I also told him that there was a long way to go before this matter would end and that I certainly could make no assurances that the day would not come when this matter would start to unravel.
>
> Early in our conversation the President said to me that former FBI Director Hoover had told him shortly after he had assumed office in 1969 that his campaign had been bugged in 1968. The President said that at some point we should get the facts out on this and use this to counter the problems that we were encountering.
>
> The President asked me when the criminal case would come to trial and would it start before the election. I told the President that I did not know. I said that the Justice Department had held off as long as possible, the return of the indictments, but much would depend on which judge got the case. The President said that he certainly hoped that the case would not come to trial before election.
>
> The President then asked me about the civil cases that had been filed by the Democratic National Committee and the common cause case and about the counter suits

that we had filed. I told him that the lawyers at the reelection committee were handling these cases and that they did not see the common cause suit as any real problem before the election because they thought they could keep it tied up in discovery proceedings. I then told the President that the lawyers at the reelection committee were very hopeful of slowing down the civil suit filed by the Democratic National Committee because they had been making ex parte contacts with the judge handling the case and the judge was very understanding and trying to accommodate their problems. The President was pleased to hear this and responded to the effect that, "Well, that's helpful." I also recall explaining to the President about the suits that the reelection committee lawyers had filed against the Democrats as part of their counteroffensive.

There was a brief discussion about the potential hearings before the Patman committee. The President asked me what we were doing to deal with the hearings and I reported that Dick Cook, who had once worked on Patman's committee staff, was working on the problem. The President indicated that Bill Timmons should stay on top of the hearings, that we did not need the hearings before the election.

The conversation then moved to the press coverage of the Watergate incident and how the press was really trying to make this into a major campaign issue. At one point in this conversation I recall the President telling me to keep a good list of the press people giving us trouble, because we will make life difficult for them after the election. The conversation then turned to the use of the Internal Revenue Service to attack our enemies. I recall telling the President that we had not made much use of this because the White House did not have the clout to have it done, that the Internal Revenue Service was a rather democratically oriented bureaucracy and it would be very dangerous to try any such activities. The President seemed somewhat annoyed and said that the Democratic administrations had used this tool well and after the election we would get people in these agencies who would be responsive to the White House requirements.

The conversation then turned to the President's post-election plans to replace people who were not on our team in all the agencies. It was at this point that Haldeman, I remember, started taking notes and he also told the President that he had been developing information on which people should stay and which should go after the election. I recall that several days after my meeting with the President, I was talking to Dan Kingsley, who was in charge of developing the list for Haldeman as to people who should be removed after the election. I told Kingsley that this matter had come up during my conversation with the President and he said he had wondered what had put new life into his project as he

> had received several calls from Higby about the status of his project within the last few days. The meeting ended with a conversation with the President about a book I was reading.
>
> I left the meeting with the impression that the President was well aware of what had been going on regarding the success of keeping the White House out of the Watergate scandal and I also had expressed to him my concern that I was not confident that the coverup could be maintained indefinitely.[469]

The committee members questioned him closely, acknowledging the seriousness of his accusation, and indicated they would need to test his credibility very carefully. Senator Inouye expressed the concern of the committee in an opening statement.

> Mr. Chairman, the charges contained in Mr. Dean's testimony are extremely serious with potentially grave consequences. The President of the United States has been implicated, and because of the gravity of these charges, I believe that the witness, Mr. John Dean, should be subjected by this committee to the most intense interrogation to test his credibility.
>
> It would appear to me that a most appropriate credibility test would be one prepared by the White House and as you, Mr. Chairman, know the White House has prepared a memorandum and a set of questions for use by this committee. These questions should serve as a substitute, admittedly not the very best, but a substitute for cross-examination of Mr. Dean by the President of the United States.
>
> Accordingly, I believe that it would be most appropriate to use these questions and to use the memorandum and I am certain that all of us here will agree that the President is entitled to his day in court.[470]

The White House had sent a set of questions to the committee for use in cross-examining Dean. Because of Senator Inouye's public expression of his willingness to use a set of

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[469] Ibid., Vol. 3, pp. 957-59.

[470] Ibid., Vol. 4, p. 1412.

questions from the White House, a set was sent to him. Senator Inouye quizzed Dean for one and one-half hours, using the set of questions from the White House and interjecting the follow-up questions he assumed the White House would have posed if a member of the staff had questioned Dean in person.[471]

The significance of this incident is the willingness of the Committee to permit President Nixon a modified rebuttal in the form of questions. Senator Ervin apparently participated in the favorable response of the Committee to the request of the White House. He thanked Senator Inouye for asking the questions and for informing Dean of the contentions of the White House counsel.[472]

In the two incidents presented above, there was an explicit effort on the part of Ervin to guard the rights of people who had been implicated on hearsay evidence only, and there was implicit effort on his part to give the President an opportunity to answer the charges leveled against him. Ervin's role in guarding individual rights is explicit in the three incidents cited below.

Because of the serious charges McCord leveled against his former attorney, Alch--charges which impugned his professional reputation--Alch was called before the Committee giving him an opportunity to respond to the

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[471] Ibid., pp. 1412-51.

[472] Ibid., p. 1452.

charges and answer other questions.

Although Alch's appearance involved more than answering McCord's charges, Ervin's efforts were directed toward convincing Alch that McCord may have misunderstood him. His effort served a double purpose. It permitted Alch to exonerate himself and also served as a possible means of clearing McCord with Alch. Only excerpts are given below because of the length of the interview.

> SENATOR ERVIN. Well, the first thing, as you stated to Mr. Dash, you were offended by his apparent charge that you had suggested to him that they blame this on the CIA.
>
> MR. ALCH. That is correct.
>
> SENATOR ERVIN. Let us see if there was not a little justification for him in making a mistake on that.
>
> You testified you attended a meeting of all of the lawyers involved in the case.
>
> MR. ALCH. Yes, sir.
>
> SENATOR ERVIN. As I understand, Mr. Bittman was appearing for Mr. Hunt. Mr. Henry Rothblatt was appearing for Sturgis and Martinez and Gonzales and Barker, and you were appearing for McCord and who was appearing for Liddy?
>
> MR. ALCH. Mr. Peter Margoulis.
>
> SENATOR ERVIN. Yes. Now, there was a meeting of most of these lawyers and it had been pointed out in the press that Mr. Sturgis had apparently CIA credentials issued in the name of Mr. Martin, I believe.
>
> MR. ALCH. That is correct, sir. . . .
>
> SENATOR ERVIN. Now, do you not think that it is possible that a man who had read in the newspapers about the alleged involvement of the CIA or the suggestion involving the CIA, who is asked by his attorney about the matter might think that his attorney was indicating to him that that was a possible defense?
>
> MR. ALCH. No, for this reason: If it was that type of potential--if it was that type of potential misunderstanding, assuming arguendo this might be so. But in Mr. McCord's statement he brought this out under the general heading of pressure, my brining pressure upon him, which to me negated or diminished the chances of it being a misunderstanding. To me, it implied more, it sounded more of intentional misrepresentation.
>
> SENATOR ERVIN. Well, the word "pressure" is used by different people. There are all kinds of pressures, are there not? There are heavy pressures and light pressures.
>
> . . .

SENATOR ERVIN. Now let's see, you also, if I infer from your statement, you also took offense of the fact that Mr. McCord had stated that you had recommended he enter a plea of guilty. Am I correct in that?

MR. ALCH. No, sir. I specifically pointed out that in response to your question, he said I did not.

SENATOR ERVIN. Let's talk about this plea of guilty a minute. You stated in your statement that you learned from Bittmann that Hunt was contemplating pleading guilty? . . .

SENATOR ERVIN. I will have to confess that I have recommended to many clients that they plead guilty and I felt like I was serving their cause the best.

MR. ALCH. I am not saying that anything like that was improper. All I am saying, in this particular instance, Senator, I just brought it back to him and said, "Here is what is available to you."

SENATOR ERVIN. You are not taking any offense at any possibility that McCord may have said that you recommended to him that he should plead guilty?

MR. ALCH. No, because he said just the opposite.[473]

The issue of executive clemency also came up.

SENATOR ERVIN. I used to be a trial lawyer. I was always interested when I had a client, especially one who had no defense. I was always glad of the prospect of getting any kind of clemency. I do not see that it reflects on you. It might be a glory to your competence as a lawyer or to your judgment as a counsel to try to do so. It is no reflection on you. It is to your credit.[474]

Ervin made a noble attempt to assure Alch not only that McCord may have legitimately misunderstood him, but that some of the advice, if it had been true, would have been good advice as far as the Senator was concerned.

Another incident relates to Dean's opening statement in which he suggested that Congressman Gary Brown and other members of the House Banking and Currency Committee, had been

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[473] Ibid., Vol. 1, pp. 326,27,29,30.

[474] Ibid., p. 333.

involved in a "cover-up" of the Watergate matter being investigated by their committee. A specific charge leveled by Dean was that Congressman Brown had sent a letter which was in fact written by Parkinson, a member of the White House staff. Congressman Brown sent a letter vehemently denying the charge and stated that he, and he alone, was the author of the letter he sent. He requested an opportunity to appear before the Committee to respond to the charges and indicated that he would also submit a sworn statement. Senator Baker suggested that the Committee take under advisement whether additional testimony should be received after the sworn statement was submitted. Dean added that his statement was based upon hearsay with respect to that particular issue. Senator Ervin asked the following questions.

> You stated that there was an attempt at the White House and the committee to Re-Elect the President, to prevent the Patman committee from investigating that?
> MR. DEAN. That is correct, Mr. Chairman.
> SENATOR ERVIN. And the Patman committee did, at least a majority of them did refuse to investigate it?
> MR. DEAN. Th
> SENATOR ERVIN. So regardless of motives, it had the same effect as what the White House and the committee were trying to do?
> MR. DEAN. That is correct.
> SENATOR ERVIN. But of course a Congressman has got a perfect right to vote his own convictions. That is his function.[475]

The Senator's effort here, again, appeared to be one of amelioration and an attempt to clear the name of Congressman Brown.

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[475] Ibid., Vol. 4, p. 1599.

In the third incident Senator Inouye read into the record a newspaper article which implicated Haldeman in an attempt to discredit Senator Ervin in his home state of North Carolina. Not only did it implicate Haldeman but former White House aide Harry Dent as well.

> SENATOR INOUYE. I refer to an article which appeared in the Charlotte Observer, dated May 17, 1973, and it reads as follows: "High officials in the North Carolina Republican Party confirmed Wednesday that H. R. (Bob) Haldeman, at the time President Nixon's chief of staff, made two attempts to get local party officials to 'dig up something to discredit Ervin and blast him with it.' According to the sources, Haldeman placed two phone calls to former White House aide Harry Dent and asked Dent to relay the suggestion to State Republican Chairman Frank Rouse."
>
> Who is Harry Dent?
>
> MR. DEAN. Mr. Dent is a former special counsel to the President. His principal area of activity was in the political area with regard to Southern States. I believe he is from the chairman's State. He has departed from the White House staff and is in private practice of law. He was on the Whie House staff for a number of years. I believe he was in the 1969 campaign, and he operates his law practive in both North Carolina and Washington, D.C.[476]

Ervin's immediate response to this news, while not germane, is of interest.

> I sort of regret that anything was brought out about the alleged attempt, the request, of Bob Haldeman about me, but I am glad it happened because President Nixon's campaign manager in 1968 and again in 1972 Charles R. Jonas, Jr., made this statement, and I cannot refrain from reading it because I am very grateful to him for it. He said, "Charles R. Jonas, Jr., who headed Nixon's re-election campaign in North Carolina, and has recently said he might run for Ervin's Senate seat, said he had not been contacted by anyone to discredit Ervin. 'That would be an impossible task and almost foolish to attempt,' Jonas said when reached by phone. 'I think that Senator Ervin is one of the

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[476] Ibid., p. 1533.

> handful of people in the Senate whom it would be impossible to discredit. I think that is why he was chosen. He has a record of impeccable honesty and integrity. If I had to depend on any one person in the Senate to proceed fairly and in a way that would protect the innocent it would be Senator Ervin.'"
>
> I am deeply grateful for that compliment. [Applause.]
>
> And furthermore [laughter] when I was asked about this I said it did not disturb me at all and I deeply regretted to say that all the indiscretions I had committed were barred by the statute of limitations and lapse of time. [Laughter.] And that I had lost my capacity to commit further indiscretions. [Applause and laughter.][477]

Later, the Committee received a letter from Senator Strom Thurmond, dated June 29, 1973, requesting that the record show that Dent had declined to engage in any research involving finding information to discredit Ervin. He suggested that this could be done by questioning Dean closely on the subject or by obtaining permission to insert into the record a number of news stories which indicated that Dent had declined the request. Senator Ervin added that he contacted Dent and was assured that Dent had declined the offer.[478] Ervin also made the following statement in defense of Haldeman.

> Senator, I would like to state that my impression of this matter that referred to the allegation Mr. Haldeman had called down to North Carolina should be reference to the time I was fighting the impoundment of funds and had no reference whatever to this committee. I was very sorry it was brought out here. I never attributed any importance to it, and it didn't bother me at all, and my understanding is that it had no relation whatsoever to my service on the Senate Select Committee but was, Mr.

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[477] Ibid., p. 1536.

[478] Ibid., p. 1563.

> Haldeman was, kind of distressed because I was taking a very strong stand in respect to the President's power under the Constitution to impound funds.
>
> I think that is what it was. If he did anything, I think that this is what provoked him, and not my service on this committee and I just think in fairness to everybody that I would state that.[479]

In each of these three incidents, Ervin puts forth a positive effort to clear misunderstandings or suspicion that hung over Alch, McCord, Congressman Brown, Dent, and Haldeman. While he did not suggest that Haldeman did not engage in an effort to discredit him, he removed the alleged effort from the Watergate investigation and tended to soften the force of the implicating report.

All of the incidents which fall under Question B suggest that Ervin concerned himself with truth as it relates to the rights of those who were suspected of involvement in the Watergate affair and those such as Congressman Brown, Dent, and others who were unfortunately swept into the wake of the Hearings.

C. Does Ervin respond impartially to the audience reactions in the Hearings room regarding the demonstration of strong attitudes in favor of or against a particular witness or other persons (e.g. President Nixon) who are the subject of questions being asked?

The question of audience reaction was a difficult one to work with. The Hearings are well salted with much

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[479] Ibid., p. 1562.

laughter and some applause. Much of the laughter appears to be no more than a response to the report of a comical event or humor of the moment with no observable intent to demean. Some applause appears to fall within a positive context while other applause (and laughter) is in an equivocal setting. And therein lies a significant danger regarding the rights of witnesses or others suspected of being involved in the Watergate affair. This last point will be expanded in the discussion of applause.

Only four examples of apparently innocuous audience reaction are given here. The first came early in the Hearings during the testimony of Anthony Ulacewicz who proved to be an intriguing witness. During an exchange with Senator Baker he evoked a great deal of laughter from the audience.

> SENATOR BAKER. Senator Montoya has no question. Let me ask one question or one line of questions, it really does not bear much on the matter at hand though; did I understand you to say McCord was a pretty good wireman?
>
> MR. ULASEWICZ. Well, from what I have read in the case and from the fact that Mr. Caulfield hired him, I would say he was one of the best wiremen in the business. [Laughter.]
>
> SENATOR BAKER. I am not familiar with the term, what do you mean a pretty good wireman?
>
> MR. ULASEWICZ. Well, a wireman in police parlance would be anyone who is familiar with applying wiretaps, any type of surveillances by electrical means, and so forth in a room, on a person, in an automobile, in a tire, or any place and I would say he was a good man.
>
> SENATOR BAKER. Is that a term of general usage in your trade?
>
> MR. ULASEWICZ. Yes, sir. However, I was never a wireman. [Laughter.]
>
> While I was in the police department many of the functions that we did, of course, they were all legal with proper papers, et cetera, and judicial permission, we have some of the finest wiremen in the department. [Laughter.]

So it would be a thing of common knowledge to myself or anyone else. . . .

SENATOR BAKER. How could you have gained the information, how could you have gained the information that Mr. McCord obviously or apparently was seeking, that is, a telecommunication link with what was going on in any Democratic National Committee without going in there with an army and taping the doors and all the rest.

Describe to us how else that might have been done by a good man.

MR. ULASEWICZ. Well, a wireman would only do wires. He might not necessarily be a good man for a different type of investigation. If it is a question of obtaining information from the Democratic Party, Republican Party, or anybody else the easiest way is to write a postal card asking them to mail you all their leaflets, they will put you on their mailing list and you will have everything. If it is all written they will do it.

SENATOR BAKER. Politicians are pretty anxious to add to their mailing list.

MR. ULASEWICZ. Politicians are the most vulnerable people in the world, in my last 3 years of experience, to any kind of scandal, et cetera. I do not say they are guilty of it because I still have to come back here. [Laughter.]

But because of the type--

SENATOR BAKER. The last thing on earth I would want to do is to convert your testimony into self-serving purposes for this committee but you do not have any good wiremen on us, do you? [Laughter.]

MR. ULASEWICZ. It looks like there are plenty of them here. [Laughter.]

SENATOR BAKER. You know that is not a very good answer. You are heightening my concern. [Laughter.]

MR. ULASEWICZ. I have none on anybody. Thank you.

SENATOR BAKER. Thank you.[480]

On two occasions statements evoked laughter because they were associated with President Nixon's well-worn phrase "perfectly clear."

SENATOR ERVIN. Well, in the absence of any objection to the contrary from any member of the committee, I would state as chairman of the committee, that you have made it perfectly clear. [Laughter.]

Please refrain from laughing. You made it perfectly clear and Mr. Stans has made perfectly clear to the committee that he is not voluntarily appearing to

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[480] Ibid., Vol. 1, pp. 292-93.

testify and that any testimony he may give to the committee is given to the committee merely because the committee orders him to give such testimony.[481]

MR. HELMS. Well, it is. I want to make that clear. It is.
SENATOR BAKER. Perfectly clear.
MR. HELMS. Perfectly clear. [Laughter.][482]

On another occasion Senator Baker asked Dean about the time a newspaper or television reporter tried to interview him through the mail slot.

MR. DEAN. No; that was rather recently when I refused to open the door and she kept pounding on the door and so I finally opened up the mail slot and, to correct the record on that, I was not on all fours, I was merely on my, [sic] bending down [laughter]. Just to keep accuracy in the media [laughter].[483]

The fourth example is one of Ervin's many humorous statements. The question of Saturday sessions had arisen and this was his response.

The committee will come to order. There have been a number of inquiries as to whether the committee would have a Saturday session, and since I am the only person, among all of the inhabitants of this country, who still believes people ought to work at least to noon Saturday, there will be no Saturday session of the committee because I am afraid nobody would be here except myself. [Laughter.][484]

According to Newsweek, the audience was highly partisan and grew increasingly vocal as the Hearings progressed. The audience reaction was especially severe during

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[481] Ibid., Vol. 2, p. 686.

[482] Ibid., Vol. 8, p. 3262.

[483] Ibid., Vol. 4, p. 1551.

[484] Ibid., Vol. 8, p. 3177.

Erhlichman's testimony.[485] A tally of the incidents of laughter and applause revealed that laughter occurred at least 213 times during the entire Hearings and 38 times during Erhlichman's testimony. Applause occurred at least 14 times in the entire Hearings and 6 times during Erhlichman's testimony. Newsweek reported that there was "openly jeering laughter" when Erhlichman made a claim of honesty. The only claim to honesty observed by the writer was one which Erhlichman made in reference to Ron Ziegler.

> On almost a regular basis, one thing we were scrupulous about was never to have Ron Ziegler out and say something that was erroneous. [Laughter.][486]

One weakness of the transcripts is that they indicate only that laughter or applause occurred. It is not possible to determine clearly whether the reaction is derisive in nature or of some other quality.

Some of the audience reaction most likely resulted from Erhlichman's penchant to engage in a "tit for a tat." His responses appeared to have a flavor of sarcasm at times. A few examples follow.

> MR. DASH. And what function did the tour director have?
>
> MR. EHRLICHMAN. Well, that is largely dealing with problems of scheduling, advancing, and logistics. And the care and feeding of the press. [Laughter.][487]

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[485] Newsweek, 6 August 1973, p. 24.

[486] Hearings, Vol. 7, p. 2721.

[487] Ibid., Vol. 6, p. 2523.

MR. EHRLICHMAN. Well, here I am dueling with a professor.

MR. DASH. I am not dueling with you. I am just trying--

MR. EHRLICHMAN. Professor, if you say actual, it is actual. [Laughter.][488]

MR. DASH. I take it that those times you did discuss it it was in anticipation of both of you appearing before this committee.

MR. EHRLICHMAN. Mr. Dash, you are not the only girl in town. There are lots of other inquiries going on.

MR. DASH. In anticipation of testimony to all the other girls. [Laughter.] I have no further questions, Mr. Chairman.[489]

Erhlichman was not without fault, but if the reaction of the audience was as partisan as Newsweek reported, "cheer[ing] the panel's barbed questions and hiss[ing] furiously when the witness snapped at Ervin's interruptions,"[490] Ervin had a responsibility, as Chairman, to intercede.

Before dealing with Ervin's efforts to persuade the daily audience to refrain from being demonstrative, the matter of applause will be taken up. It is noted again that applause was found in 14 instances whereas laughter was recorded at least 213 times. While the figures may not be exact because of human error, the ratio between applause and laughter can be considered reasonably precise. But, regardless of its infrequent occurrence, applause is a potential force for benefit or disadvantage. The discussion below includes two instances in which applause is considered to be

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[488] Ibid., p. 2530.

[489] Ibid., Vol. 7, p. 2860.

[490] Newsweek, 6 August 1973, p. 24.

at least neutral if not positive, and three instances in which applause is potentially negative. One instance of positive applause (with laughter) is given below.

> SENATOR BAKER. To begin with, the chairman is fond of pointing out from time to time that he is just a country lawyer. He omits to say that he graduated from Harvard Law School with honors. [Laughter and applause.]
> SENATOR ERVIN. If the Senator from Tennessee will yield, I would like to say a word in my own defense on that point. [Laughter.] I had a friend introduce me to a North Carolina audience. He said he understood that I was a graduate of Harvard Law School, but by God, nobody would ever suspect it. [Laughter.][491]

Another instance of positive applause occurred following country stories by both Senator Ervin and Senator Baker. When Senator Inouye was recognized he said, "Mr. Chairman, I regret I have no Hawaiian stories to tell." The audience applauded following his statement.[492]

There is probably little question among the readers that such audience reaction is positive in nature. At least it is neutral with respect to witnesses and others. But the examples below are difficult to measure with respect to their positive or negative force. In the first example, Ervin is interviewing Herbert Porter who was involved in the destruction of documents and withholding the truth on the premise that loyalty to the President was involved. When he later sought a job with the government he ran into difficulty. He finally obtained one on his own initiative and then rejected

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[491] Hearings, Vol. 6, p. 2595.

[492] Ibid., Vol. 4, p. 1526.

it. Ervin soliloquised:

> It was a wise man named "William Shakesphere" who wrote a play called Henery the IV and in that he has one of his characters, Cardinal Woolsey, say after Cardinal Woolsey instead of serving his church had served his king and he was cast out in his old age by the king, and he said, "Had I but served my God with half the zeal I served my king he would not in mine age left me naked to mine enemies." [Applause.] Please cut out the applause.[493]

In another instance, following the interrogation of Erhlichman by Fred Thompson, minority counsel, regarding the payment of $450,000 to the Watergate burglars and their attorneys, Ervin asked Erhlichman:

> Do I understand that you are testifying that the Committee To Re-Elect the President and those associated with them constituted an eleemosynary institution that gave $450,000 to some burglars and their lawyers merely because they felt sorry for them? (Applause and laughter.][494]

In a third instance Ervin yields to the temptation to philosophize about Watergate. He had been questioning Fred LaRue about the use of campaign monies to keep burglars silent and said:

> I can't resist the temptation to philosophize just a little bit about Watergate.
> The evidence thus far introduced or presented before this committee tends to show that men upon whom fortune had smiled benevolently and who possessed great financial power, great political power, and great governmental power, undertook to nullify the laws of man and the laws of God for the purpose of gaining what history will call a very temporary political advantage.

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[493] Ibid., Vol. 2, p. 676.

[494] Ibid., Vol. 6, p. 2570.

> The evidence also indicates that the efforts to nullify the laws of man might have succeeded if it had not been for a courageous Federal judge, Judge Sirica, and a very untiring set of investigative reporters. But you come from a State like the State of Mississippi, where they have great faith in the fact that the laws of God are embodied in the King James version of the Bible, and I think that those who participated in this effort to nullify the laws of man and the laws of God overlooked one of the laws of God which is set forth in the seventh verse of the sixth chapter of Galatians.
>
> Be not deceived, God is not mocked; for whatsoever a man soweth, that shall he also reap. [Applause.][495]

Again, it is stated that these particular instances are equivocal. It is difficult to determine whether the audience reaction is positive toward the substance of the remarks or the speaker of the remarks, or whether the reaction is a negative one toward the witness or others, or whether it is a combination of both. But if Newsweek is correct and the audience was a partisan one, the circumstances surrounding these kinds of statments are potentially negative and do not fit Ervin's concept of truth.

Ervin did not comment on every response to the audience but he did request from time to time that the audience refrain from giving approval or disapproval to any person or anything in the Hearings. At times he made just a short statement at the time of the audience reaction.[496] During Dean's opening statement the audience laughed twice and Ervin asked them to please refrain from laughter

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[495] Ibid., pp. 2343-44.

[496] For example see footnote 494, p. 226.

or demonstrating with respect to the testimony.[497] During Erhlichman's testimony Ervin made several requests for the audience not to respond in any way toward the witness or the conduct of the Hearings. On one occasion he admitted that he and Senator Baker were probably guilty of "contributory negligence" because they became so interested they laughed and probably set an example. But he continued that in all fairness to the witnesses, the audience should not demonstrate approval or disapproval in any audible way.[498] Not long after that he was compelled to make a similar request of the audience and in doing so evoked laughter.

> I am going to respectfully request the audience not to make any kind of demonstration or indicate in any way their approval or disapproval of anybody or anything, including myself. [Laughter.][499]

He continued to make requests to the audience but without apparent success. He finally placed a more firm request.

> I have on a number of occasions requested the audience to refrain from any action which indicates approval or disapproval of anybody or any question or any answer, and I am going to have to with much reluctance. It does not assist the committee for people to demonstrate, and I am going to have to instruct the officers to eject from the hearing room anybody who engages in any demonstration in the future.[500]

Apparently he did not carry through with his threat because the audience continued to respond with laughter or

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[497] Hearings, Vol. 3, pp. 984,1018.

[498] Ibid., p. 2630.

[499] Ibid., p. 2630.

[500] Ibid., Vol. 7, p. 2795.

applause. During Haldeman's testimony the audience laughed at a question posed by Senator Weicker. Wilson, counsel for Haldeman, said he thought silence was going to be enforced. Ervin replied:

> Mr. Wilson, I wish you would tell me some way I can keep people from laughing. I don't approve of it, and I wish they would restrain themselves and I have tried to restrain them but I don't know; I have been told that the only thing that distinguishes humanity from a lofty attitude of disdain called a brute creation, is the fact that man laughs and brute creation does not, but I am going to request everybody to try to restrain their laughter, and it will help us to proceed in a more orderly fashion.
>
> While I am on this, I hate to hear all of this about things like this supposed to be happening in the Garden of Eden, North Carolina, and nobody must laugh at that [laughter] because I believe that.[501]

Ervin's attempts to maintain proper decorum in the Hearings suggest that he did have the best interests of the witnesses in mind. His efforts were not successful and he apparently did not exercise his perogative to have the audience removed from the Hearings room. It is interesting to note that Ervin was as concerned about signs of approval as he was of disapproval.

A review of the discussion which speaks to the first two major questions regarding despotism and individual rights indicates that Ervin tends to defer to others in many respects. He expresses a willingness to let the committee rule on decisions he makes on legal opinions, and he tends to be apologetic when ruling against the line of questioning posed by a committee member, or when interrupting them for a

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[501] Ibid., Vol. 8, p. 3151.

vote on the Senate floor. He also demonstrates an interest in the physical comfort of witnesses. In at least two instances during Dean's lengthy opening statement he spoke to the possible need for Dean to have a break.

> The committee will come to order. Mr. Dean, I realize that sometimes it gets pretty hard on your voice and any time that you feel like you need a little break to sort of relieve your voice, let us know and we will certainly grant it to you.[502]

Later, as Dean continued reading his statement, Ervin asked him if he would like to take a little recess and he accepted.[503] Once during his testimony Ervin offered him another rest break.[504] He treated other witnesses in a similar manner.

If Ervin, in his role as Chairman, were to be categorized he would probably fall somewhere between democratic and laissez-faire. His spirit of deference reaches to the extreme of placing no controls on the committee members regardless of their behavior.

Strictures of the Truth

Ervin's philosophy of truth consists not only of a full view of all of the available facts within reason but also an avoidance of hearsay evidence and presumption. His expression of truth involves holding to the old landmarks

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[502] Ibid., Vol. 3, p. 953.

[503] Ibid., p. 972.

[504] Ibid., p. 1031.

but, at the same time, looking at new discoveries with an open mind. In that sense he indicates that a person should not enter the forum of fact-finding with his mind already made up. The four questions subsumed under the third major question below speak to these views.

3. Does Ervin keep within the strictures of his concept of truth in dealing with the Watergate affair?

   A. Does he prohibit the presentation of hearsay evidence?

One of Ervin's concerns regarding hearings relating to preventive detention was the fact that they were adversary proceedings but did not hold to the rules of evidence which would prohibit the presentation of hearsay evidence.[505] But the proceedings in the Watergate Hearings were supposed to be investigative in nature rather than prosecutorial or judicial according to Ervin.[506] Senator Montoya refers to it as a legislative inquiry as opposed to a court proceeding.[507] The problem here, of course, would be to avoid the aura of the courtroom trial which uses an adversary approach. Such an approach with the allowance of hearsay evidence would impinge upon the rights of the accused.[508]

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[505]See Chapter V. p. 163.

[506]Hearings, Vol. 1, p. 4. See also Appendix I, Exhibit I, p. 284.

[507]Hearings, Vol. , p. 9.

[508]See Chapter II, p. 53.

During Dean's testimony, the issue of hearsay evidence came up. Senator Baker, Senator Ervin, and Mr. Dash, majority counsel, all spoke to the issue. Although it is quite extensive it is incorporated into the body of the analysis in order to provide a better view of their concept of hearsay evidence as it relates to the Hearings and to judicial response to certain criminal actions.

> MR. DASH. I think the question has come up from time to time and has been mentioned either by witnesses or by member of the committee as to admissibility of certain hearsay evidence. A memorandum of law has been submitted to all members of the committee. The leading case of the supreme Court is Krulewitch v. United States and that case has been the position of the committee and the counsel working on the committee that even hearsay testimony, and most of the hearsay testimony admitted falls within this rule, is an exception to the hearsay rule.
>
> The Supreme Court has ruled time and time again that where there is a conspiracy and there are overt acts--and I think at this stage of our hearings, there has been sufficient testimony which would go to a jury in a criminal case indicating that a conspiracy has occurred and that there have been overt acts--that therefore, the statements of a co-conspirator in the furtherance and in the course of the conspiracy, although hearsay, is an exception to the hearsay rule and is admitted in every court in this country.
>
> Therefore, even Mr. McCord's testimony, which was initially hearsay, following up on the evidence of other witnesses which established the conspiracy and overt acts, that the Supreme Court has rules in Krulewitch and other cases that that testimony is admissable and goes to a jury and is used against the defendants that may be charged as conspirators as any other testimony and is an exception to the hearsay rule.
>
> Therefore, I think it should be made very clear and a memo has been given to every member of the committee that the hearsay evidence that has been admitted before this committee would be admissible in any court of law in this country under the Krulewitch decision, excepting conspiracy and co-conspirator's statements from the hearsay rule. . . .
>
> SENATOR BAKER. I do not mean to be facetious and I do not mean this to be critical of Mr. Dash, who is a fine lawyer, and Senator Gurney who is a fine lawyer and a fine Senator, but this committee is too far gone to

start worrying about hearsay and we are too deep into the business of finding the facts to try to second-guess what a court will admit or will not admit. I have spent a lifetime being surprised on what a court would admit or would not admit, depending on my point of view. I think it was Oliver Wendell Holmes who said lawyers spend their professional careers shoveling smoke and I have no desire to shovel smoke.

So I really recommend, Mr. Chairman, and once again, this is not a criticism of the committee or counsel, I recommend that we not think of ourselves as a court or a jury or a judge, and that we try to follow the facts wherever they lead us with the full foreknowledge that what we do will have little, if any, effect on how the rules of evidence are applied if there is in fact litigation, either civil or criminal, based on these same facts.

So I think that rules of this committee are important and the rule against hearsay and its exceptions--and the hearsay rule is virtually emasculated by the hundreds of exceptions to it--but I think the rules themselves are far less important than us getting along with the business at hand. So I very much hope that we do not fall into the business of extensive objections, the argument of objections, and the arguments about rules of law that may apply. If we get too far out of bounds, I think we ought to qualify the quality of the evidence so that we can take that into account. But I do not think, and I hope we do not start admitting and excluding evidence. . . .

SENATOR ERVIN. I would just like to make the observation that Felix Frankfurter wrote a very interesting article at the time about the Teapot Dome and he laid great stress on the wisdom of the fact that congressional committees should not be bound by technical rules of evidence. I do think, however, that it was well for Mr. Dash to make his statement, because I have read several articles by commentators who are not lawyers and who were criticizing the committee on the ground that it had received hearsay testimony. I am not concerned much about criticism, because I have been criticized very much over the years and I am sort of immune to it, but I think it is well for the general public to know that under the rules governing the admissibility of declaration of co-conspirators, the great bulk of the hearsay testimony that has been received in this case would have been admissible in a court of law for an indictment charging a conspiracy to obstruct justice.

I think the observations of my friend from Tennessee are correct, that we are not judges and we are not juries. We are members of a legislative body seeking to determine whether or not the facts before us indicate that new legislation may be necessary.

> SENATOR BAKER. I might say, Mr. Chairman, that by explaining my point of view, I have fallen into the trap that the chairman just warned me against. He and I had a brief conversation a moment ago, and I am sure he will not think it a breach of confidence to repeat it. He said, "Howard," he said, "do not try to explain; your friends do not require it and your enemies will not believe it."
>
> SENATOR ERVIN. I agree with you. I was not trying to explain, I was just trying to enlighten some of our commentators.
>
> I would like to put in the record a legal memorandum which sustains the points made by Mr. Dash.[509]

Ervin, in his opening remarks, stated that the business of the Senate Select Committee would not be to "intensify or reiterate unfounded accusations . . ."[510] A short review of the discussion in this chapter will suggest that he has pursued a course in keeping with this statement. While much hearsay evidence has been presented, Ervin has tempered some of it, especially in regard to McCord's testimony, and he has made an effort to straighten out possible misunderstandings and erroneous information in a number of ways which are quite visible in the chapter.

The second question is one about which Ervin has been quite vocal. It speaks not only to his philosophy of truth but his philosophy of freedom as well. It is interrelated with other aspects of Ervin's truth because it requires every judgment to be held in abeyance until all of the available evidence within reason is in.

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[509] Hearings, Vol. 4, pp. 1523-25.

[510] Ibid., Vol. 1, p. 3.

B. Does Ervin avoid statements of a presumptive nature regarding the guilt of any person suspected of being involved in the burglary attempt or the cover-up?

A good focus for this question is President Nixon in that he became a central figure in the Hearings. Senator Baker put it succinctly during Erhlichman's testimony, saying the central question was, "What did the President know and when did he know it?"[511] Later, Senator Ervin led Richard Moore through a series of leading questions about the news coverage of the break-in, the use of campaign monies to pay for the defense of the suspects, the routing of campaign monies through a Mexican bank, and other related items. He also asked Moore if President Nixon and his staff read the newspapers.

> Now, I will ask you if you did not state on page 20 of your records that "In one of my talks with the President, the President kept asking himself whether there had been any sign or clue which should have led him to discover the true facts earlier"--that is, earlier than March 21, 1973.
>
> MR. MOORE. Yes, sir.
>
> SENATOR ERVIN. I will ask you, during the approximately 2 months after the burglary at the Watergate was discovered if the news media--that is, the newspapers, TV and radio--did not contain many statements concerning the Watergate matter?
>
> MR. MOORE. That the newspapers when, sir?
>
> SENATOR ERVIN. During the 2 months following the morning of June 17, 1972?
>
> MR. MOORE. Yes, they did.
>
> SENATOR ERVIN. I will ask you if this first fact did not appear in the news media.

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[511] Ibid., Vol. 4, p. 1466.

First, I ask you, can we safely assume that Mr. Haldeman, Mr. Ehrlichman, Mr. Chapin, Mr. Colson, Mr. Strachan, Mr. Ziegler, Mr. Dean, Mr. Mitchell, and Mr. Stans, Mr. Magruder, Mr. Sloan, and Mr. Porter and the President, read the newspapers? [Laughter.]

MR. MOORE. I am not an eye witness to that, sir, but I would make that assumption.

SENATOR ERVIN. Well, you certainly do not know that Mr. Dean did anything to keep those parties from reading the newspapers and watching television and listening to the radio?

MR. MOORE. No, sir. [Laughter.]

SENATOR ERVIN. The audience will please be less demonstrative.

I will ask you if during these 2 months, one of the first facts that came out was that of the five burglars caught redhanded in the Watergate, one of them was James W. McCord, Jr., the security officer of the political Committee To Re-Elect the President.

MR. MOORE. That is right, sir.

. . .

SENATOR ERVIN. You do not have any information that anybody, any aide of the President, kept either Mr. Haldeman or Mr. Ehrlichman or the President from reading the newspapers or listening to the radio or watching television during this time?

MR. MOORE. I have heard it alleged, sir, but it is not true. The President reads newspapers and--or course.

SENATOR ERVIN. And even Mr. Dean could not keep him, or anybody up there, from reading the newspapers or listening to the radio.

MR. MOORE. The grand jury was also reading the same newspapers and--no.

SENATOR ERVIN. Thank you, Mr. Moore.[512]

Senator Ervin appeared to be pushing Moore to state what he already thought to be true--the President knew much earlier than he said he did. But Senator Baker saw Ervin's questioning differently and amended his central question on the heels of Ervin's interrogation.

SENATOR BAKER. And the chairman, as I understand his line of questioning, has now put the question: What did the President know or should have known?

MR. MOORE. Yes, sir.

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[512] Ibid., Vol. 5, pp. 2010, 2018-19.

> SENATOR BAKER. And when did he know it?
> And, of course, it is an established principle of the tort law of the United States that a man is charged with knowing or having constructive knowledge of in that he should have known of certain circumstances under certain conditions. So I interpret, and I do not presume to interpret unduly, the questioning of the chairman to be was not in fact the great body of publicity in the Washington newspapers--the Washington Post, the Star, the New York Times, and the other great daily newspapers of the country that find their way into the White House--should not the President have known?[513]

Senator Ervin pressed very hard on this concept during his interrogation of witnesses such as Mitchell, Erhlichman, and Haldeman, who would have access both to the President and knowledge about the details of the Watergate affair. During his questioning of Mitchell the following exchange took place.

> SENATOR ERVIN. But isn't it a rule of evidence that when a person refuses to produce evidence within his power to produce that an inference may be drawn that the reason he does not produce it is because he knows it will be unfavorable to him?
> MR. MITCHELL. This I believe is a rule of evidence in the courts of law. When you are dealing with the separation of powers involving the President, I think it has to be looked at perhaps in a different light.
> SENATOR ERVIN. Well, isn't that a rule that applies just as much to the search for truth as it does in courts of law? It is a rule of logic, it seems to me.[514]

Add the statement above to Ervin's intense method of interview, often using leading questions, and it can give the impression he is suspicious of the President and possibly already has made up his mind and is trying to get others to admit to it. These views of Ervin's may easily stand out in

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[513] Ibid., p. 2019.

[514] Ibid., p. 1867.

bold relief and enshroud other views that are just as important. For instance, his qualification of the McCord testimony speaks of a man who is holding his decisions in abeyance.[515] During an interview on "Issues and Answers" on May 20, 1973, Ervin stated that he did not plan to make a final decision regarding the President's involvement in the Watergate affair until all the evidence was in. At that time he did not see any competent evidence to connect the President in any way and he added that he hoped he would not.[516] On July 29, 1973, during an interview on "Face the Nation," Ervin made the following statement:

> No, I would say, as far as I'm personally concerned, that I indulge the presumption that he's innocent of any complicity, either in the Watergate affair or its cover-up. Nothing would give me greater pleasure than to be able to say conscientiously and find as a fact that the President had no connection with either of these matters. I have seen the charge that the committee is out to get the President, and for that--and therefore, the excuse is given by some of them that the President ought not to give us the tapes. It seems like to me that's--if anybody thinks that the committee is out to get the President, then the White House ought to give us things that show that we have no grounds for getting him.[517]

The findings are somewhat contradictory in terms of Ervin's actions in interviewing, but there appears to be a preponderance of evidence on the side of what he says rather than what he appears to do.

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[515]See pp. 208-09.

[516]"ABC's Issues and Ideas," May 20, 1973, pp. 3.5

[517]"Face the Nation," July 39, 1973, p. 3.

C. Does Ervin avoid bias by asking questions which require new information rather than questions which require affirmative response to his expressed opinions?

The third question relates to the second one in that it suggests the presence of presumption. It becomes a difficult question to handle in light of the fact that Ervin often uses the leading question as a means of interviewing witnesses. His use of the leading question is quite obvious in his interview of Moore during which he impressed upon Moore and everyone within earshot that the news media provided a great deal of information for the President on the Watergate affair much earlier than the date he said he first knew of the deeper dimension of it.

There were, of course, many questions posed by Ervin which were intended for eliciting new information, but there were times when he gave the appearance of falling into the trap with which this question deals. Ervin's interrogation of Stans is a good example. The interview is very long and only short excerpts are included here.

> SENATOR ERVIN. Well, are the records now in existence without having to have them reconstructed that would disclose the names and amounts of each contributor?
> MR. STANS. There are a considerable amount of records now in existence that would show that, yes.
> SENATOR ERVIN. Why are there not complete records in existence that would show that?
> MR. STANS. Well, at one time, Mr. Chairman, some of the records were removed from the committee's files and destroyed.
> SENATOR ERVIN. Why were they destroyed?
> MR. STANS. They were destroyed because there was no requirement that they be kept, and insofar as constributors were concerned we wanted to respect the anonymity

that they had sought and that they were then entitled to under the law. We are talking now about contributions before April 7, 1972.

SENATOR ERVIN. Were they destroyed before or after the break-in?

MR. STANS. They were destroyed after the break-in and I would insist, Mr. Chairman, that there is no relevance between the two.

SENATOR ERVIN. Well, in other words, you had no desire to hide the records?

MR. STANS. No; may I make the point here--

SENATOR ERVIN. Destroy and hide them?

. . .

SENATOR ERVIN. And you swear upon your oath that there is no connection between the destruction of these records and the break-in of the Watergate or any fear that the press or the public might find out from these records what the truth was about these matters?

MR. STANS. Well, let me speak only with respect to myself. I will say to you that there was no connection between my destruction of the summary sheets given to me by Mr. Sloan and the Watergate affair.

SENATOR ERVIN. Well, it was quite a queer coincidence, was it not?

MR. STANS. It would--

SENATOR ERVIN. Rather a suspicious coincidence that the records which showed these matters were destroyed 6 days later.

MR. STANS. Mr. Chairman, the adjectives are yours.

SENATOR ERVIN. Sir?

MR. STANS. The adjectives that you are using, queer coincidence and suspicious.

SENATOR ERVIN. Don't you think it is rather suspicious?

MR. STANS. No; I do not think so, Senator.

. . .

SENATOR ERVIN. Well, why destroy your previous records and why destroy your subsequent records and reduce yourself to the necessity of reconstructing something that you already had and destroyed?

MR. STANS. Very simply, for the reason--

SENATOR ERVIN. It is too simple for me to understand, really.

MR. STANS. Mr. Chairman, for the reason that we were seeking to protect the privacy, the confidentiality of the contributions on behalf of the contributors.

. . .

SENATOR ERVIN. In other words, you decided that the right of the contributors to have their contributions concealed was superior to the right of the American citizens to know who was making contributions to influence the election of the President of the United States.

MR. STANS. We did not evaluate it in those terms. We evaluated it in the terms that it was the Congress of

the United States in 1925 that gave the option to a contributor to remain anonymous and that we had no right to give away his anonymity.

SENATOR ERVIN. Well, Mr. Stans, do you not think that men who have been honored by the American people, as you have, ought to have their course of action guided by ethical principles which are superior to the minimum requirements of the criminal laws?

MR. STANS. I do not have any quarrel with that, but there is an ethical question in whether or not I can take your money as a contributor with an understanding on your part that you are entitled to privacy in that contribution and then go around and release the figure to the public.[518]

Following the interview, Senator Baker noted that Ervin had raised questions regarding "a higher duty than that required by the law under the Corrupt Practices Act of 1925." Baker questioned whether it was fair to "inquire into something higher than the language of the law" as it pertains to political fund-raising unless the Senate Select Committee subpoenaed the financial records of the Democratic National Committee also. Gurney followed, complaining that Senator Ervin had harassed the witness.[519] The following exchange took place.

SENATOR ERVIN. Well, I have not questioned the veracity of the witness. I have asked the witness questions to find out what the truth is.

SENATOR GURNEY. I didn't use the word "veracity." I used the word "harassment."

SENATOR ERVIN. Harassment.

SENATOR GURNEY. Harassment--h-a-r-a-s-s-m-e-n-t.

SENATOR ERVIN. Well, I am sorry that my distinguished friend from Florida does not approve of my method of examining the witness. I am an old country lawyer

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[518] Hearings, Vol. 2, pp. 751,752,754,755.

[519] Ibid., pp. 766-67.

and I don't know the finer ways to do it. I just have to do it my way.
SENATOR GURNEY. I didn't say that I do not approve; I just want to disassociate myself from--[520]

Again a sense of the severity with which Ervin, himself, interviewed witnesses at times is very present. The view is complex and does not permit a simple categorization of Ervin's response to his obligations and actions in the Hearings. Surely one can get a view of a man who is bent on proving what he thinks is true by asking the right questions, or, possibly, one who has an idea so ingrained that he is no longer asking questions but arguing a point. However, all of the dimensions of Ervin must be taken into consideration. Many of them are clearly visible in the chapter and will be covered in the discussion and conclusions.

The last major question deals with Ervin's style as a speaker. If the question were put another way, it might be asked, "Does a sudden push before the national spotlight in such a vivid way as happened to Ervin influence his speaking pattern?" If there are differences, can it be determined whether they present positive or negative effects on the task at hand which, in this case, is a search for truth? This question is somewhat beyond the scope of the analysis but offers a good discussion point. First, it is important to look at the question and try to answer it.

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[520] Ibid., p. 767.

4. Is Ervin's style of speaking substantially the same during the Hearings as it was before the Hearings?

There are four aspects of Ervin's style that have been investigated. Each one is represented by a question. The first one is history which was discussed with respect to its use primarily as evidence, but is an important feature of style.

A. Does Ervin make use of history in his speaking during the Hearings? If so, does he use it in any manner different from that discussed in Chapter IV?

Ervin begins with history at the outset. His opening statement compares well to many of his previous speeches. It took him a couple of paragraphs, but he finally alluded to the Founding Fathers "who understood the lessons on the past" and developed a government of separated powers. He alluded, as in his previous speeches, to George Washington's statement regarding those in high government office who have a "love of power and a proneness to abuse it." He calls down Daniel Webster' statement: "Whatever government is not a government of laws is a despotism, let it be called what it may."[521] He spoke of the Founding Fathers' provision of an electoral process which was

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[521] Ibid., Vol. 1, p. 2. See Appendix I, Exhibit 1.

eventually freed from government and placed in the hands of the people.[522] The only judgment that can be made regarding the opening statement is that Ervin is true to form.

Within the Hearings, Ervin used history on occasion to support his arguments. He and Mitchell discussed the issue of the President's coming before the Committee and surrendering some White House documents. Ervin was also questioning Mitchell as to why he did not inform the President of the things he knew about Watergate. In doing so, he made the following statement.

> Well, it was another President named George Washington who had an adviser named Alexander Hamilton, and Alexander Hamilton laid down two precepts. One was:
> But you must by all means avoid the imputation of evading an inquiry and protecting a favorite.
> Is it conceivable that you are trying to protect the President? Or was it conceivable that you were trying to protect the President?
> MR. MITCHELL. Protect the President, not from the fact that he was involved, but the fact that the derivative activities of those in the White House might cast a cloud upon the President.
> SENATOR ERVIN. And Hamilton also stated:
> It was my duty to state facts to the President.[523]

When Ervin interviewed Moore he asked him if he did not think he should have informed President Nixon of his suspicions about the Watergate break-in. Once again he alluded to Alexander Hamilton's statement, "It was my duty to state the facts to the President."[524]

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[522] Ibid., p. 3. See Appendix I, Exhibit 1.

[523] Ibid., Vol. 5, p. 1868.

[524] Ibid., p. 2015.

One of Ervin's most extensive uses of history in the Hearings occurred during Erhlichman's testimony. Senator Weicker had been questioning Erhlichman about the propriety of the Ellsberg break-in. When the Committee returned from voting, Senator Ervin made the following statement:

> The Senate is going to have several more votes, and there will be very little interrogation of the witness until the morning. But I do want to take this occasion to amplify the legal discussion and I want to mention a little of the Bible, a little of history, and a little of law.
>
> The concept embodied in the phrase every man's home is his castle represents the realization of one of the most ancient and universal hungers of the human heart. One of the prophets said--described the mountains of the Lord as being a place where every man might dwell under his own vine and fig tree with none to make him afraid.
>
> And then this morning, Senator Talmadge talked about one of the greatest statements ever made by any statesman, that was William Pitt the Elder, and before this country revolted against the King of England he said this:
>
> The poorest man in his cottage may bid defiance to all the forces of the crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England cannot enter. All his force dares not cross the threshold of the ruined tenements.
>
> And yet we are told here today, and yesterday, that what the King of England can't do, the President of the United States can.
>
> The greatest decision that the Supreme Court of the United States has ever handed down in my opinion is that of Ex parte Millikin which is reported in 4 Wallace 2, and the things I want to mention appear on page 121 of that opinion.
>
> In that case President Lincoln, or rather some of his supporters, raised a claim that since the Civil War was in progress that the military forces in Indiana had a right to try for treason, a man who they called Copperheads in those days, who were sympathetic toward the South--a civilian who had no connection with the military forces. So they set up a military commission and they tried this man, a civilian, in a military court, and sentenced him to death.
>
> One of the greatest lawyers this Nation ever produced, Jeremiah Black, brought the battle to the Supreme Court and he told in his argument, which is one of the greatest arguments of all time, how the Constitution of

the United States came into being. He said that the people who drafted and ratified that Constitution were determined that not one drop of the blood which had been shed throughout the ages to wrest power from arbitrary authority should be lost. So they went through all of the great documents of the English law from Magna Carta on down, and whatever they found there they incorporated in the Constitution, to preserve the liberties of the people.

Now the argument was made by the Government in that case that although the Constitution gave a civilian the right to trial in civilian courts, and the right to be indicted before a grand jury before he could be put on trial and then a right to be tried before a petit jury, the Governmetn argued, that the President had the inherent power to suspend those constitutional principles because of the great emergency which existed at that time, when the country was torn apart in the civil strife.

The Supreme Court of the United States rejected the argument that the President had any inherent power to ignore or suspend any of the guarantees of the Constitution, and Judge David Davis said in effect:

> The good and wise men who drafted and ratified the Constitution forewsaw that troublous times would arise, when rulers and people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of Constitutional liberty would be put in peril unless established by irrepealable law.
>
> The he proceeded to say:
>
> And for these reasons, these good and wise men drafted and ratified the Constitution as a law for rulers and people alike, at all times and under all circumstances.
>
> Then he laid down this great statement:
>
> No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

And notwithstanding that we have it argued here in this year of our Lord 1973 that the President of the United States has a right to suspend the fourth amendment and to have burglary committed just because he claims, or somebody acting for him claims, that the records of a psychiatrist about the emotional or mental state of his patient, Ellsberg, had some relation to national security.[525]

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[525] Ibid., Vol. 6, pp. 2630-31.

Ervin's use of history in the Heraings indicates no significant change from his use prior to the Hearings. History has been an important part of Ervin's life, and the Hearings had little if any influence, according to the writer's observations.

B. Does Ervin make use of literature in the Hearings? If so, does he use it in any manner different from that discussed in Chapter IV?

Ervin is not prolific with his use of literature in the Hearings, but his purposes for using it vary. Most often he used it either to commend or chide someone.

Magruder had testified very candidly about his involvement in the Watergate affair and stated quite frankly that he did not intend to let his consequent misfortune get him down. Earlier, Senator Montoya and Senator Weicker had commended him. When Seantor Ervin's turn arrived he also commended him.

> Like Senator Montoya, I have a compassionate heart and I have a great deal of sympathy for the predicament in which you find yourself. I was very much encouraged by your statement that you are not going to let this keep you from going ahead and living a useful life, and I would recommend to you to get the poem by Walter Malone called "Opportunity" which tells of "Each night I burn the records of the day. At sunrise every soul is born again," and I think it is the most encouraging set of words ever put together by any man. And despite your very unfortunate state at the present time you have got about the greatest asset that any man can have, you have a wife who stands behind you in the shadows where the sun shines, so I wish you success in your future endeavors.[526]

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[526] Ibid., Vol. 2, pp. 874-75.

Ervin's use of literature in this instance appears to be supportive in nature. When he could have remained silent, he was willing to join others in demonstrating compassion.

During the testimony of Barker, Ervin discussed with him the fact that Hunt arranged for break-ins but would stay a good distance away, never endangering himself. Ervin stated, "Discretion is the better part of valor."

Ervin questioned Erhlichman regarding the fact that Stans had not gone before the grand jury in person but rather sent a written deposition. Ervin thought Stans should have gone before the grand jury so that he could be properly cross-examined. He not only took great liberty with a quotation from Shakespeare's Julius Caesar; he also clumsily mixed it with his own stern suggestion that men such as Stans should not be granted privileges which are above those granted to the public.

> This was a process because Secretary Stans, I guess--Shakespeare said about Caesar what meat our Caesar eats had grown so great but he had eaten such meat that made him so great that he did not have to go before the grand jury like ordinary mortals, and that procedure made it certain that no inquisitive grand juror could ask this man who had had charge of the financing of the campaign, any embarrassing questions, did he not?[527]

Another example of Ervin's use of literature is found on page 226. Ervin was reflecting on Porter's loyalty to the Committee to Re-Elect the President and then finding

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[527] Ibid., Vol. 7, p. 2700. See also footnote 242, p. 115.

himself on the outside looking in with respect to work. Ervin called upon Shakespeare, to illustrate that blind allegiance is a dangerous route to travel.[528]

In another incident Senator Montoya asked Erhlichman a hypothetical question regarding the release of the tapes and White House records, considering the chaos of the country with respect to the Presidency. He asked Erhlichman how he would advise President Nixon if he were Chief Counsel or if he held his former position of Assistant to the President for Domestic Affairs. Senator Ervin allowed the question although he agreed with Wilson, counsel for Erhlichman, that "iffy" questions were not the best kind of questions. The interrogation became stalled when it became uncertain whether Erhlichman was stating what he thought President Nixon's position would be or what he, himself, would advise the President to do. In the interest of time, Senator Ervin asked Erhlichman if he were saying that he did not know what he would do if he were again in a position to advise President Nixon. The debate continued and Ervin finally quipped,

> The only thing that I recognize that article [sic] is long and time is fleeting, in our hearts though stout and brave, still like muffled drums are beating funeral marches to the grave. We have taken 10 or 15 minutes on this proposition.[529]

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[528]See footnote 493, page 226.

[529]Hearings, Vol. 7, p. 2690.

Senator Montoya stated it was his opinion that Erhlichman had indicated he did not want to answer the question. Erhlichman replied that without more study it would be presumptuous for him to answer such a profound question.[530]

During Sloan's testimony, a question arose regarding Liddy's handling of $114,000 in campaign funds that ended up in Barker's bank account. According to Sloan, Liddy had recommended converting the checks to cash and offered to handle the transaction. He returned the funds much later, minus $2,500. Upon hearing this testimony Ervin said:

> I hate to make comparisons, but I would have to say on that, Mr. Liddy in one respect was like the Lord, he moves in mysterious ways his wonders to perform. [Laughter.][531]

Ervin went on to ask Sloan if he was aware of the fact that some of the monies drawn out of the bank by Barker were found in the hands of the people caught at the Watergate break-in. Sloan indicated he had since learned that. When Ervin used leading questions to elicit the time Sloan first knew, he assured him that he was not questioning this veracity, saying:

> Now, I do not mean in any of these questions to make any reflection on you, because your testimony and your forthrightness have renewed my faith in the old adage that an honest man is the noblest work of God and I am not in any of these expressions meaning to reflect on you in any respect.[532]

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[530] Ibid.

[531] Ibid., Vol. 2, p. 576.

[532] Ibid., p. 577.

Later during the testimony Ervin reiterated:

> Well, I still repeat what I said earlier in my interrogation of you; I think you have strengthened my faith in the old adage that an honest man is the noblest work of God.[533]

The examples above illustrate a variety of ways in which Ervin made use of literature. The example dealing with Hunt and Liddy are equivocal but have a potentially negative effect, considering the context in which they were given. The Porter example is even more equivocal in that it can be construed as an act of commiseration on Ervin's part or a matter of his giving Porter a mild rebuke. The context in which Ervin applied Shakespeare's Caesar to Stans is one of displeasure. Ervin did not think that Stans should be exempt from appearing in person before the grand jury and his comparison of Stans with Caesar is undoubtedly a negative one. On the other hand, he reaches out with hope for a contrite Magruder who is determined to pick himself up and make his life count, and he is reassuring to Sloan whom he sees as an honest man. His "time is fleeting" statement appears to be one of frustration over the fact that so much time was used in argument that achieved so little. There is no potentially negative effect in this last example in relationship to the rights of Watergate suspects.

Ervin's purposes for the use of literature in the Hearings are fewer than those found throughout his speaking in the past. But when one compares the variety of events

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[533] Ibid., p. 587.

which evoke a litery allusion in several months of Hearings to the greater variety of events over years of speaking prior to Watergate, it appears reasonable that this would be the case. Although there are not many events with which to determine whether there is a pattern or not, the fact is, no pattern is apparent and it cannot be said that Ervin's use of literature in the Hearings is significantly different from his use of it prior to Watergate.

C. Does Ervin make use of the Bible in the Hearings? If so, does he use it in any manner different from that discussed in Chapter IV?

In answer to the first part of the question, Ervin, true to form, does make use of the Bible in the Hearings. In most instances he uses the Bible in a negative sense, with respect to the rights of witnesses, in that he alludes to it within a context that reflects negatively upon the activities of people associated with the Watergate break-in and related events. There are at least three instances in which Ervin's use of the Bible has positive characteristics in that his motivation appears to be one of amelioration. In two other instances, Ervin quotes the Scriptures to express his own feelings about freedom and what he views as a current trend for men who have been convicted of crimes and imprisoned to write a book.

During Sloan's testimony, Senator Ervin questioned him about the campaign funds paid out under the authority of

Kalmbach, Mitchell, and Magruder. Ervin emphasizes the point that no one except these men or the recipients of the funds knew in what way or for what purpose these funds had been used. He then quipped:

> Well, I can't give any retroactive advice to the men who were responsible for the disbursing funds for political purposes and concealing the objectives of the disbursements, but I can suggest to future people who attempt to do that that when they do, they may be either rightly or wrongly judged by the standards set out in the Scriptures where it says, "Men loved darkness rather than light because their deeds were evil."[534] (John 3:19)

Seven days later, during Magruder's testimony, Ervin alluded once again to John 3:19 after he questioned Magruder about the efforts of Mitchell, Dean, LaRue, Mardian, and Magruder, himself, to keep the full story of Watergate from the American people.

> Well, the scriptures say that men love darkness rather than light because of the deeds of evil. Somebody must have covered up something back in the scripture days to quote that. [Laughter.][535]

Ervin was suggesting his opinion here, that those involved in the cover-up not only committed an evil act but also viewed it as an evil act.

During Dean's testimony, Ervin questioned him about a meeting held in La Costa, California, in February 1973, in which it was concluded, especially by Erhlichman and Haldeman, that an effort should be made for the White House to appear cooperative with the Committee while actually

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[534] Ibid.; Vol: 1, p. 268.

[535] Ibid., Vol. 2, p. 860.

attempting to impede the discovery of the truth. Ervin referred to a subsequent press conference by President Nixon in which he expressed eagerness to have all the facts known but, at the same time, refused to allow current members or former members of the White House staff to appear formally before a committee of Congress.[536] He did offer to provide information through informal contacts between his staff and the Ervin committee which Ervin said provoked his statement that

> I was not going to let anybody come down and see me travel by night like Nicodemus and whisper in my ear something that he was not willing for all of the American people to hear. [Laughter.][537] (John 3:1-9)

While this statement refers to an earlier incident, most likely Ervin's press conference on April 3, 1973,[538] the statement itself, in either setting, has a potentially negative effect when considered within a context already bathed in an aura of suspicion toward the White House.

During Erhlichman's testimony Ervin questioned him closely about the quality of the FBI investigation of the Watergate burglary. Although Erhlichman protested that it was an intensive investigation after assurances that CIA activities and the special White House investigations unit

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[536] Ibid., Vol. 4, pp. 1460-63. See also Vol. 3, p. 984.

[537] Ibid., Vol. 4, p. 1463.

[538] New York Times, 3 April 1973, p. 1.

dealing in national security matters, popularly called the Plumbers, would not be compromised, Ervin was not convinced. He said:

> You know, I am reminded of the parable of the good Samaritan. In that parable there was a man who went out to travel on the road down to Jericho and he fell among thieves and they beat him and robbed him and left him wounded there lying on the road. And then the priests and the Levites came down there and pretended they did not see him and walked by on the other side.
>
> Then the good Samaritan came down and rendered him aid and supplicant and the evidence in this case shows, tends to show, thus far that all the intelligence, not all of them, but the people in charge of the Committee to Re-Elect the President, the people in charge of the committee, the Finance Committee to Re-Elect the President, and the White House aides, like the Priests and the Levites walked by on the other side, and pretended that this thing did not occur.[539]

Erhlichman offered a rebuttal to this statement by further explaining the efforts of the entire Department of Justice, including the FBI and the grand jury. This incident occurred late in the Hearings and much testimony had already been given regarding efforts to limit the investigation. Nevertheless, Ervin's illustrative use of the Bible here probably has to be classified as negative in that it casts guilt upon individuals who have not yet been tried.

Again, during Ervin's interrogation of Erhlichman regarding the use of campaign funds to pay attorney fees and other costs to the Watergate defendants in a round-about-way through Kalmbach and Ulacewicz, with both men attempting to remain annonymous, Ervin alluded to a Bible character. When Erhlichman explained that the undertaking, which he

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[539] Hearings, Vol. 7, pp. 2697-98.

considered to be legitimate, could be misunderstood, Ervin referred to the elaborate multi-party handling of the funds and said:

> Well, I have always thought that if a political institution or committee enacted the role of an eleemosynary institution, it would, like the Pharisee, brag about it on all opporutnities, and so you agreed with me that a Doubting Thomas might think that this money was routed in this clandestine way, not only to keep it secret but also to keep these people that were receiving the money secret.
>
> MR. ERHLICHMAN. No, I don't agree with that because I don't know that. I haven't heard anything--
>
> SENATOR ERVIN. I am not talking about you; a Doubting Thomas might reach a very erroneous conclusion, mightn't he?
>
> MR. ERHLICHMAN. Doubting Thomases are known for conclusions like that.[540]

For some reason Ervin settled for an attempt to get Erhlichman to concede that this particular operation might look bad on the surface. It is not certain whether he was asking "tongue-in-cheek" or not.

When Mitchell was interviewed, Ervin questioned him about his participation in the affairs of the Committee to Re-Elect the President while he was still serving as the United States Attorney General. Ervin reminded Mitchell of a question put to him by Senator Talmadge and his response that it was not illegal to serve in both capacities. Ervin continued:

> Now, I think we might mediate just a minute on what St. Paul said. He said, "All things are lawful for me but some things are not expedient." (I Corinthians 6:12)

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[540] Ibid., Vol. 6, p. 2572.

> Don't you think it is rather inexpedient for the Chief law enforcement officer of the United States to be engaging in, directly or indirectly in, [sic] managing political activities.[541]

Mitchell stated he agreed, and Ervin reminded him of his statement to that effect during his confirmation hearings for Attorney General in 1969. Ervin's use of the Bible in this instance appears to be for the purpose of catching the top side of the argument by emphasizing to Mitchell that, despite the fact that he was within legal bounds to serve in both capacities, he was outside the bounds of propriety.

Ervin's philosophizing during LaRue's testimony also includes a reference to the Bible which has a potentially negative effect. The conclusions of his statment found on page 227 is the following verse from Galatians 6:7. "Be not deceived God is not mocked, for whatsoever a man soweth that shall he also reap."[542] One redeeming factor is that his exercise in philosophy came late in the Hearings and much evidence regarding the questionable disbursement and use of campaign funds had already been given.

One last example that fits Ervin's negative use of the Bible is found in his expressed suspicion that President Nixon, while refusing to release the tapes, was presenting his own interpretation of them through Haldeman's testimony. Ervin viewed the White House objection which was offered indirectly through Haldeman's counsel, Wilson, as a maneuver

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[541] Ibid., Vol. 5, p. 1856.

[542] See footnote 295, page 227.

to get the interpretation before the committee without appearing to want to do so. In response to his view, Ervin said:

> And I would have to say that not only is that what we would call very skillful legal dexterity, connegling [sic] in North Carolina, but if the writer of the Book of Ecclesiastes had been here he wouldn't have been able to say right that "there is nothing new under the sun." And that's the genuine truth.[543]

Ervin reached to one of his often quoted verses which he has used to emphasize both that there is and is not anything new under the sun.

The incidents of Ervin's positive use of the Bible include a light moment, an instance in which Ervin commended Porter for his forthrightness, another instance in which Ervin suggests that laughter is a human right, and one in which he suggested that differences in memory were also human.

Porter, during his testimony, spoke candidly of the motivations behind his involvement in the Watergate cover-up and his subsequent desire to be truthful about it. After his testimony that he had difficulty obtaining another position in government where he had worked prior to joing the Committee to Re-Elect the President, because of his involvement in the cover-up, Ervin alluded to Cardinal Woolsey's lament[544] which has the appearance of a mild

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[543] Hearings, Vol. 8, p. 3114.

[544] See footnote 493, page 226.

rebuke. But, at the end of Porter's testimony Ervin leaves him with a positive note.

> The Bible bestows blessings on him who swears to his own word and changeth it not. (Psalms 15:4) I want to commend you on the forthrightness of your testimony before this committee.[545]

Ervin's quotation of the verse above, as well as other quotations, is not letter perfect. The verse actually reads "sweareth to his own hurt" rather than "sweareth to his own word," but the idea is there, no matter how imperfectly.

In the afternoon session of July 19, Senator Ervin announced that he had received a phone call from Secretary Schultz, informing him that the White House would be releasing tapes which would be relevant to the committee investigation. Later in the session a much chagrined Ervin announced that a hoax had been played on him, and he had placed a call to Secretary Schultz and was informed that he had not talked to him earlier in the day.[546] At the beginning of the morning session, July 20, Senator Baker "inject(ed) a brief note of levity" following the hoax. He said he had "overheard the press corps remark that the real Alex Butterfield is in Tiajuanna--bound in tape."[547] To this, Ervin replied:

> I would just like to say, to quote the scriptures again, it is stated in the Book of Proverbs that a merry

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[545] Hearings, Vol. 2, p. 680.

[546] Ibid., Vol. 6, pp. 2354-55, 2360-61. See Appendix III for a complete reading of Senator Ervin's remarks in a relatively unguarded moment.

[547] Ibid., Vol. 6, p. 2387.

> heart, such as that Senator Baker possesses, doeth good like a medicine.[548] (Proverbs 17:22)

Ervin alluded to this same verse while explaining the reason for some of the laughter during Erhlichman's testimony.

> I am going to say, however, that the questions put to Mr. Erhlichman were rather robust and the answers given by Mr. Erhlichman in response to those questions sometimes were rather robust, too. I quote the King James version of the Bible and I think the proverb says that "Merry hearts doeth good like a medicine," and sometimes, I think a man personally has a constitutional right to laugh even in a solemn hearing room. But I am going to suggest that possibly Mr. Erhlichman invited some of the demonstrations by certain testimony.[549]

Ervin was responding to an earlier criticism by Thompson, minority counsel, that the frequency and nature of audience reaction was unfair to Erhlichman. Ervin indicated again that he deplored the demonstration and acknowledged he was probably at fault for not exercising more control, but he suggested that not all of the audience reaction was inappropriate nor was it harmful to Erhlichman.

During Richard Helm's testimony, Senator Ervin talked to him about a slight discrepancy that occurred between his testimony and the testimony of General Walters when they were both interviewed by the Symington committee. Helms replied that it was a problem of human recollections and had been straightened out in the committee. He admitted that his memory was fallible and he had simply forgotten. Ervin assured him that he did not mean to reflect on Helms'

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[548] Ibid.

[549] Ibid., Vol. 7, p. 2904.

veracity and that he too understood the problem of memory.

> This question is not asked intimating any criticism at all because I just illustrated myself this morning that my memory is quite fallible, and also there are some good men's memories, I will strike myself out of the good men, but the memories of other people are fallible. The Gospel of Matthew, Mark, Luke, and John tell us that when Pontius Pilate, the Roman Governor, ordered the crucifixion of Christ that he wrote out a title and had it placed, put on the cross, and people who have an opportunity to read something, where it is just reduced to writing, it is more apt to be accurate than just what we hear. And it is rather significant that these writers of these four Gospels disagreed exactly what this title that was put on the cross said.
>
> The 37th verse of the 27th chapter of Matthew says that the writing which was put on the cross read as follows: "This is Jesus, the King of the Jews."
>
> The 26th verse of the 15th chapter of St. Mark has a different version. It says "The King of the Jews."
>
> The 38th verse of the 23d chapter, St. Luke, has still a different version of what the title was, and it says, "This is the King of the Jews."
>
> And then the 19th verse of the 19th chapter, St. John, has a fourth version of the same words or the same title, rather, "Jesus of Nazareth, the King of the Jews."
>
> And so I say that if those four good men could have different versions of the same words, it is quite understandable why you and I and other human beings have sort of fallible memories about things sometimes.[550]

Ervin's use of the Bible in this instance pretty much speaks for itself with respect to its positive construction. It cannot be said that every instance in which Ervin alluded to the Bible was a conscious attempt on his part to bring a particular effect to play upon the Hearings, but, in the example above, it appears quite certain that he made reference to the Bible to strengthen his assurance to Helms that differences in memory do not necessarily indicate the presence of falsehood.

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[550] Ibid., Vol. 8, p. 3272.

The last two examples are difficult to categorize in terms of negative or positive construction. One appears to be a reference in passing, in which Ervin expresses his opinion about the proliferation of books written by men in prison. The other example contains a Bible verse quoted by Ervin from time to time, in relationship to his philosophy of freedom.

When Ervin was interviewing Alch, he asked him a question about a book McCord was contemplaing. Ervin said,

> The Scriptures say, "Much study is a weariness to the flesh and of making books there is no end." (Ecclesiastes 12:12) It seems that everybody who gets in jail today wants to write a book about it.[551]

Later, he said if McCord "wanted to write a book about Watergate, he could make A Conan Doyle turn green with envy."[552]

During Erhlichman's testimony much discussion was centered in the question whether the President of the United States could authorize burglary in the interests of national security. In the beginning of his discussion regarding this question, Ervin alluded to a verse of Scripture he has quoted before:

> The concept embodied in the phrase every man's home is his castle represents the realization of one of the most ancient and universal hungers of the human heart. One of the prophets said--described the mountain of the Lord as being a place where every man might dwell under his own vine and fig tree with none to make him afraid.[553] (Michah 4:4)

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[551] Ibid., Vol. 1, p. 333.

[552] Ibid.

[553] Ibid., Vol. 6, p. 2630.

This instance, along with several others in this discussion, is one in which Ervin makes a general reference to the Bible without citing chapter and verse. There are a few instances in which he does cite the reference and two instances in which he uses Bible characters in a figurative sense. He used the Bible with greater frequency than history, literature, or the anecdote, but there is no indication that his use of the Bible is any different during the Hearings from before. He seldom quoted from the Bible more than once during any session and in thirty-four days of testimony there are fourteen references to the Bible. He used it for a variety of purposes and alluded to it in various ways as indicated above. While the largest number of references have a potentially negative characteristic about them, this in itself does not present a significant difference. Ervin often used a quotation from the Bible in opposition to legislation and the actions of people with whom he did not agree.[554] No differences were observed.

D. Does Ervin make use of anecdotes during the Hearings? If so, does he use them in any manner different from that discussed in Chapter IV?

Ervin told one story during the Hearings. It occurred during Dean's testimony, following an extended discussion regarding the admissibility of hearsay evidence.

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[554]See some of the examples given in Chapter IV, pp. 120-28.

During that discussion Senator Baker commented that it was too late to be raising objections, excepting evidence, or engaging in arguments about rules of evidence.[555] When the discussion was ended Ervin told the following story:

> I am from near Watauga County in North Carolina, the county where Rufus Edmisten comes from. This man had been in court over in Boone, the county seat. He came back that night and was in the country store and he mentioned the fact that he had been over in the court in Boone, and somebody asked him what was going on there.
>
> Well, he said, there was the judge sitting up there; there was the jury sitting over in the jury box, and there were the lawyers. He said, some of the lawyers were objecting and others were excepting and the costs were piling up.[556]

There is a great deal of Ervin humor, some of it apparently intentional and much of it accidental. There are many statements that are humorous only in context, while others possibly are intrinsically funny. Two statements which associate closely to Ervin's anecdotes are reported below.

Before interrogating Dean, using the questions prepared by the White House staff, Senator Inouye asked him if he had seen the questions which were reported to have appeared in the New York Times. Dean said he did not see them and Charles Shaffer, one of his counsels said he did not see them. In response to the news of the questions appearing in the paper, Senator Ervin said:

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[555] See pp. 232-34.

[556] Hearings, Vol. 4, p. 1525.

> You know, my experience around Washington is that if several people get hold of a document, that the thing will more than likely appear in the morning paper--if not be telecast that night. [Laughter.]
>
> I think that the protection of information around Washington is about as much as the protection which a sieve affords to the passage of water. You may proceed.[557]

Another example is found twice in the Hearings, once during Kalmbach's testimony and once during Helms' testimony. With respect to the first incident, Senator Ervin was questioning Kalmbach about the purpose for providing financial support to Watergate defendants and their families. He said to Kalmbach:

> Now, unfortunately, I do not know whether in California you have lightning bugs, but we have them in North Carolina. Lightning bugs carry their illumination behind them. [Laughter.]
>
> I would like to ask you, if in retrospect and with your illumination behind you instead of in front of you--Mr. Kalmbach.
>
> MR. KALMBACH. Yes, sir.
>
> SENATOR ERVIN. (continuing) If you do not think that people could reasonably conclude that this money was paid to these defendants and their families to induce them to remain silent?
>
> MR. KALMBACH. Yes, sir, I do; now, again, in hindsight.[558]

During Helms' testimony, Ervin questioned him about the possibility that Hunt's request for such paraphenalia as a wig and a voice alteration device suggested he was going to do some undercover work.

> Well, we have had some discussion here that most of us human beings are sort of lightning bugs. We carry our illumination behind us, see better in retrospect

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[557] Ibid., p. 1432.

[558] Ibid., Vol. 5, p. 2170.

> than we do in prospect. But in retrospect don't you think it would be reasonable to infer that Mr. Hunt was engaged in something that might be called detective work, undercover work?
>
> MR. HELMS. Yes, sir. In retrospect.[559]

Again, while these last examples do not technically fit the category of anecdote, they are a part of the country style that is present in Ervin's speaking. This particular feature of Ervin's speaking presents the least amount of evidence suggesting a difference between his pre-Watergate speaking and his speaking during the Hearings.

The analysis of all four features do not lend enough evidence to suggest that Senator Ervin was significantly influenced with respect to his speaking style by his sudden push into the national spotlight. Further discussion will be given regarding all of the areas of analysis in the discussion and conclusion.

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[559] Ibid., Vol. 8, p. 3268.

CHAPTER VII

DISCUSSION AND CONCLUSIONS

The major exercise of this study has been centered in a measurement of Senator Ervin's consistency in executing his responsibilities in the Watergate Hearings in three communication roles--as chairman, as interrogator, and as a speaker. The discussion is divided into three parts which correlate with the three roles in which Senator Ervin functioned. His role as chairman is covered in the first two sets of questions which deal with despotism and individual rights. The first question in the third set also relates to his role as chairman. This question deals with hearsay evidence. His role as interrogator is covered by the last two questions of the third set which deal with presumptive statements of guilt and seeking agreement to preconceived notions of what is true. His role as speaker is covered by the fourth set of questions dealing with style

Ervin the Chairman

One of the major criticisms of some chairmen in the past dealt with their failure to treat committee members impartially, giving some more time to question witnesses than others, and their penchant to place controls on the kinds of questions that could be asked at hearings. Both of these deficiencies run counter to Senator Ervin's philosophy

that all views should be aired and that every available fact should be gathered. This latter condition can be assured only if every line of questioning is open to consideration, unless it is prohibited by rules or procedure or discretion resulting from a need to protect the rights of a witness.

Senator Ervin has demonstrated a democratic spirit which fulfills the requirements of truth as it relates to the discussion above. The findings reveal that he has given every committee member all of the time he felt necessary in order to pursue the line of questions he had developed. He went one step further and occasionally offered additional time when time had expired and a particular line of questioning had not been completed. With respect to sequencing, Seantor Ervin attempted to be consistent, although there was at least one instance in which one committee member interviewed a witness both immediately before and after another committee member. At times, members were allowed to interject a question that had been missed. There were also other instances in which preference was given to a particular committee member becasue of some special study he had done or because he could not be present during his regular sequence for questioning.

Senator Ervin also demonstrated a democratic--almost a laissez-faire--approach to the matter of limiting questions. Although the committee members had apparently agreed that they would follow one line of questions at a time, in compartmentalized fashion, Ervin indicated he did

not intend to control any Senator. Again, whether he was referring exclusively to the area of questioning or to the total behavior of the Senators in the Hearings is not clear. At other times, he merely stated the rules of procedure regarding this area and indicated his desire for the committee members to comply. He placed no demands on them. Very seldom did he raise an objection to a particular line of questioning. Usually objections were raised by counsels of the witnesses and Senator Ervin would either sustain the objection, indicate that the question was proper, or ask the committee member to try to bring his question within the scope of the Senate Resolution. Whenever he, himself, suggested that a question was not proper he usually acquiesced if the committee member gave an argument for his particular question. In most cases he left the door open for the committee to overrule him.

The findings reveal no significant element of despotism in Ervin's handling of the Hearings. He appeared to go to extremes in an attempt not to be partisan or partial with respect to the particular responsibilities associated with gathering information. With respect to truth, Ervin passes the test of consistency as far as it relates to the questions considered in this major area.

The second category that relates to his chairmanship deals with individual rights. The criticism that some hearings have taken on the aspects of courtroom trials without offering to individuals the safeguards that a courtroom

trial would afford has been leveled. While the strictures of the courtroom may not necessarily fit the Hearings it behooves the chairman to see that individuals' rights are protected, since witnesses and individuals suspected of criminal acts are at the mercy of the committee. The questions subsumed under the heading of individual rights measure Ervin's success in this area with respect to two basic problems: prejudicial statements by committee members or witnesses, and audience demonstration. Attention was also given to the manner in which some of the committee members interrogated witnesses but it has only an indirect relationships to the criteria question regarding individual rights.

Senator Ervin's success in meeting criticism in this area does not appear to be as complete as in the first one. He did actively protect Haldeman against prejudicial statements by responding to Senator Weicker's accusations with a disclaimer. But in the other examples given, he failed to respond to apparent infringements upon the rights of witnesses. It should be stated, however, that the other examples, with the exception of Senator Inouye's alleged off-microphone statement that Erhlichman was a liar, relate only indirectly to the question. Whether Senator Inouye actually called Erhlichman a liar or not, the fact that it was publicized was prejudicial to Erhlichman unless Senator Ervin or others responded to the incident, even if it were to indicate that the committee's purpose was not to judge witnesses in such a manner but to gather and weigh evidence

against other evidence in order to arrive at the truth. The fact that Senators from the Select Committee and other Senators came to Senator's Inouye's defense after Wilson called him a "little Jap" but remained silent on Inouye's alleged statement, tends to intensify the prejudicial nature of this incident. It should be pointed out that Senator Inouye did not make a statement about Erhlichman's guilt, but about his veracity.

The Gurney-Dean incident and the Weicker-Mitchell incident do not speak directly to the question because in neither case is there an explicit opinion statement of guilt. Senator Gurney did not explicitly charge Dean with embezzling or being untrustworthy, but he did strongly imply both through his line of questioning. Ervin responded to Gurney's charge of untrustworthiness by indicating that the fact a person had taken the fifth amendment on one occasion did not mean that his testimony would not be acceptable on another occasion. Although he did not immediately rescue Dean from the other implied charge, Dean's counsel did protest that Dean's actions did not constitute embezzlement. Much later, Ervin did join Dash in trying to clear Dean of any suspicion of embezzlement or deceitfulness with respect to his use and repayment of funds which belonged to the Committee to Re-Elect the President.

The Weicker-Mitchell incident is even more difficult to evaluate but as the excerpt from the transcript reveals, Weicker's choice of words was disparaging both to Mitchell

and Liddy. While there is no explicit statement of guilt, Senator Weicker's remarks tend to be detrimental to Mitchell's rights as a possible defendant in the future.

Again it should be mentioned that only one of these examples deals directly with the question as it is worded. In that instance, Ervin responds in favor of the witness. His failure to respond to the Inouye incident and the Weicker incident is unfortunate, but neither of these involve an opinion of guilt. He did offer some defense for Dean against the charge of untrustworthiness and did eventually attempt to bring understanding to the circumstances surrounding Dean's use and repayment of funds placed in his keeping. While it is not possible to give Ervin a perfect score here, he has demonstrated some evidence of guarding the rights of witnesses.

Senator Ervin had greater success with respect to the second question in this category. In those cases in which there is clear indication that definite accusations were made by witnesses against other individuals, or implicative statements made on the basis of hearsay evidence, Senator Ervin responded to protect the rights of those who were charged. Every effort that he brings to situations which fall under this category are in favor of the witnesses or others who have been swept into the stream of suspicion. In that sense he guards his own concept of truth along with guarding individual rights.

The third question in this category dealt with audience response. The concern here is whether Senator Ervin responded impartially to audience reaction in favor of or against witnesses or others. One difficulty with this question is that it cannot be easily answered with the transcripts alone. Determining whether audience reaction is favorable or unfavorable is difficult. The information that is available suggests that Senator Ervin did respond impartially, although he did not respond to every incident of laughter or applause. He did frequently state his displeasure and requested the audience to refrain from approval or disapproval of any witness or event. He finally requested the audience to refrain from responding to anything including himself. The only adequate evidence of unfavorable audience response comes from a news account which refers especially to Erchlichman's testimony. The news account indicates that jeering, groaning, and other audience demonstration was potentially damaging to Erhlichman's rights. While Seantor Ervin suggests that Erhlichman brought part of it on himself and confessed that he also was responsible for some of the audience demonstration, the extent of his efforts to correct the problem--and these efforts appear genuine--was to request the audience to cease and desist and to threaten the expulsion of any violator who could be identified. While this certainly fits within Seantor Ervin's concept of freedom as it relates to an offender, it did little to guard the rights of Erhlichman.

The last question relaing to Ervin's function as chairman comes from the third category and concerns hearsay evidence. Once again, Ervin's expressed philosophy suggests he sees no place for hearsay in an adversary system of law, but interestingly, it is admissible in the Hearings. Not only Senator Ervin, but Senator Baker, and Mr. Dash as well, explain the place of hearsay evidence in a hearing which is not intended to be adversary in nature. While hearsay evidence was allowed, Senator Ervin did make a point of qualifying it when it directly implicated someone without the benefit of more certain evidence. He was especially careful to qualify McCord's testimony which tended to implicate several people through hearsay evidence.

When all of the findings are put together in the category of individual rights, Seantor Ervin does not have complete success in meeting the criticisms of the past with respect to bearings but his successes outweight his failures. In those instances which clearly involve truth, Senator Ervin responds with adequacy. In some of the other areas that do not relate directly to truth, such as Senator Weicker's treatment of Mitchell, Inouye's statements about Erhlichman, and Senator Ervin's handling of audience reaction leave some questions unanswered. Again, with respect to audience reaction, it should be stated that he manifests a genuine desire to be impartial and to protect the rights of witnesses but fails to implement the means with which to insure them. The question regarding the prohibition of

hearsay evidence did not directly pertain because such evidence is admissible in an investigatory proceeding. The question of qualifying hearsay evidence did apply, and Ervin passed with high marks. Overall, he has presented convincing evidence regarding his interest in the rights of witnesses and others. While not perfectly, he does demonstrate consistency with his expressed philosophy.

Ervin's Role as Interrogator

The last two questions in the third category, which relates directly to Ervin's philosophy of truth, speak to his role as an interrogator. Ervin feels that all views should be given equal treatment; all the relevant facts available within reason ought to be brought to the decision-making process; and a person ought to be open to new views. He feels that a presumption of innocence is in order until there is evidence beyond reasonable doubt to the contrary. The one circumstance in which presumption of guilt is acceptable to him is one in which a person has been accused of wrongdoing and has information pertinent to the case but refuses to release it. In such an instance, Ervin feels it is acceptable to presume guilt.

Both questions relating to Ervin's role as an interrogator deal with presumption. The first question asks merely whether Ervin avoids making presumptive statements of guilt; the second question asks if he avoids seeking information to support preconceived notions of what the truth is.

The findings from the analysis of items under the question dealing with statements of a presumptive nature, reveal that Senator Ervin passes with high marks. Despite his intense quizzing of Moore regarding what the President knew and when he knew it, and his statement to Mitchell that a person who has evidence for his case and refuses to reveal it might be presumed guilty, Ervin manifests a sincere determination to hold his judgments in abeyance. Early in the Hearings he cautioned that McCord's testimony did not provide proof of wrongdoing on the part of Mitchell, Dean, Magruder, or President Nixon. In May, early in the Hearings, Ervin indicated he did not see any competent evidence to implicate the President and he hoped he would not. On July 25, late in the Hearings, he still presumed the President's innocence. While his interrogation of witnesses raises some questions, his own statements regarding the lack of evidence to implicate the President suggests that he was consistent with his own concept of truth in this matter.

The last question is a difficult one with which to deal. Ervin's practice of using leading questions as a means of interrogating witnesses compounds the problem. He perceives such a method to be a valid means of seeking new truth. But in the one example given, Senator Ervin gives the impression that he fashioned a piece of truth out of the evidence he already had, and attempted to get Stans to admit to it. He appeared to be contending that every person who did not want his political contributions made public was

making illegal contributions. It is possible that Ervin's strong advocacy for an open government and his opposition to secrecy is the motivating force behind his questioning. The one concern which does not directly relate to the question is Ervin's treatment of this particular witness. He did not engage in remarks of the same nature as those of Senator Weicker but he apparently engaged in very vigorous interviewing that was interpreted as harrassment by Senator Gurney. He also pressed Stans to admit to an ethical obligation higher than the law according to Senator Baker. One saving feature is that other information in the study regarding presumptive evidence tends to minimize any negative findings here regarding Ervin's search for truth.

Ervin's Role as a Speaker

The last major question dealt mainly with Ervin's speaking style, more specifically with his use of history, literature, the Bible, and anecdotes. The question is, "Did the sudden national exposure affect his speaking?" In every feature of Ervin's style considered in the analysis there is no clear evidence that Seantor Ervin was influenced to any significant degree. Every feature is present in the Hearings but the purpose for the use of each one and the treatment of each one is consistent with what Seantor Ervin has done in the past.

While some of his allusions, especially to literature and the Bible, have a potentially negative effect, Ervin did not use such references for that purpose only. Once again,

he called upon a quotation from literature or the Bible to chide, to commend, to ameliorate, to express frustration just as he might have done prior to the Watergate Hearings. In light of the above, the writer concludes that Ervin was consistent both with respect to his speaking style and his philosophy of truth and individual rights.

Summary and Concluding Note

This has been a study of ethics in communication, focusing on the degree of consistency with which Senator Sam J. Ervin, Jr. engaged the powers of his oral communication to search for the truth as chairman of the Watergate Hearings. The study has been based upon the premise that oral communications is both a primary and powerful tool through which the business of a democratic government is conducted. Also considered, is the fact that hearings, which are important instruments of the democratic process, make extensive use of oral communication. Furthermore, criticisms have been presented which suggest that hearings have not always served the best interests of the public or the individual citizen. The basic reasons which have been given for the failure of some hearings were: despotism on the part of committee chairmen, bias on the part of committee members who particiapte as advocates with preconceived notions of the truth rather than seekers of the truth, and a failure of hearings committees to protect individual rights. Additionally, a study of Seantor Ervin's expressed philosophy

has revealed that he espouses a concpet of truth and freedom which incorporates the ethical position that both societal and individual needs must be met as optimally as possible; consequently, his expressed philosophy runs counter to the recorded performance of some hearings.

It is one matter to express a philosophy; it is yet another matter to act in accordance to it. Therefore, Senator Ervin's performance as a chairman, as an interrogator, and as a speaker has been measured against his philosophy and the criticisms of past hearings committees and chairmen. Some of the stylistic features of his speaking have also been measured against his speaking style prior to the Watergate Hearings to determine if his speaking may have been affected by his sudden push into the national spotlight and, if so, whether he remained consistent with his expressed philosophy, despite such influence.

The results which have been discussed in this chapter reveal that Senator Ervin was consistent with his expressed philosophy of truth and freedom in relationship to seeking the truth for the public while protecting the rights of the individual. Ervin manifested no signs of despotism in his function as chairman. He not only allowed every member of the committee all of the time he needed to ask questions, he did not restrict areas of questioning unless they were outside the scope of Resolution 60. Despite his use of leading questions, the severity of his interrogation, and the appearance of an effort on his part to get

agreement on a preconceived notion of truth, there is greater evidence that he adhered to his concept of truth by holding his judgments regarding the truth in abeyance until such time that sufficient evidence would be gathered. He also qualified hearsay evidence that tended to be incriminating in nature, thereby remaining consistent with both his concept of truth and his concept of freedom as each relates to individual rights.

The Senator's record in the area of guarding the individual rights of witnesses and others against inappropriate questions and comments from committee members is not without question; nor is his record in the area of audience reaction free from question. However, the questions that arise in these areas involve acts of omission and, in both cases, there is some evidence that Ervin had a concern for the rights of witnesses and others suspected of wrongdoing, especially with respect to his response to audience reaction.

One mitigating factor relating to the evidence suggesting inconsistency is that the evidence is either implicit in nature or relates only indirectly to the particular criteria question being considered. The evidence which supports a finding of consistency is explicit in nature and relates directly to the criteria questions, including those dealing with the stylistic features of his speaking.

There is a significant preponderance of explicit evidence supporting a finding of consistency. Senator Ervin

adequately met both the test of internal consistency with respect to his expressed philosophy and his style of speaking, and the test of external consistency with respect to criticisms of past hearings. Therefore, the writer concludes that Senator Sam J. Ervin, Jr. was consistent in his search for truth as chairman, as interrogator, and as speaker, in the Watergate Hearings.

APPENDICES

APPENDIX I

EXHIBIT 1

HEARINGS BEFORE THE SELECT COMMITTEE ON

PRESIDENTIAL CAMPAIGN ACTIVITIES:

WATERGATE AND RELATED ACTIVITIES

Opening Statement by Senator Ervin of North Carolina
Presidential Campaign Activities of 1972
Phase I: Watergate Investigation, May 17, 1973

CBS did not telecast the beginning of Ervin's remarks The opening lines are included for the sake of continuity.

SENATOR ERVIN. Today the Select Committee on Presidential Campaign Activities begins hearings into the extent to which illegal and improper or unethical activities were involved in the 1972 Presidential election campaign.

Senate Revolution 60 which established the Select Committee was adopted unanimously by the Senate on February 7, 1973. Under its provisions every member of the Senate joined in giving the committee a broad mandate to investigate, as fully as possible, all the ramifications of the Watergate break-in which occurred (begin audio) on Saturday, June 17, 1972. Under the terms of the authorizing resolution, the committee must complete its study and render its report on or before February 28, 1974. (paper rustling) Of necessity, that report will reflect the considered judgment of the committee on whatever new legislation is needed to help safeguard the electoral process through which the President of the United States is chosen.

We are beginning these hearings today in an atmosphere of the utmost gravity. The questions that have been raised in the wake of the June 17 break-in strike at the very undergirding of our demo-democracy. If the many allegations made to this date are true, then the burglars who broke into the headquarters of the Democratic National Committee at the Watergate were in effect breakin' into the home of every citizen of the United States. And if these allegations prove to be true, what they were seekin' to steal was not the jewels, money, or other property of American citizens, but somethin' much more valuable--their most precious herertage: the right to vote in a free

election. Since that day a mood of in--cred--ih, uh--in-cru--increda-- (clears throat)--incredu--dulty has prevailed among our populace, and it is the constitutional duty of this committee to act expeditiously to allay the fears being expressed by the citizery--citizery, and to establish the factual bases upon which these fears have been founded.

The first phase of the committee's investigation will probe the planning and execution of the wiretappin' and break-in of the Democratic National Committee's headquarters at the Watergate complex, and the alleged cover-up that followed. Subs'quent phrase--phases will focus on allegations of compaign espionage and subversion and allegations of extensive violations of campaign financin' laws. The clear mandate of the unanimous Senate resolution provides for a bipartisan investigation of every phase of political espionage and illegal fundraisin'. Thus it is clear that we have the full responsibility to recommend any remedial legislation necessary.

In pursuin' its task, it is clear that the committee will be dealing with the workings of the democrat--cratic process under which we operate in the nation whi--that still is the last best hope of mankind in his eternal struggle to govern himself decently and effectively.

We will be concerned with the integrity of a governmental system designed by men who understood the lessons of the past and who, accordingly, established a framework of separated governmental powers in order to prevent any one branch of the Government from becomin' dominant over the others. The Foundin' Fathers, havin' participated in the struggle against arbitrary power, comprehended some eternal truths respectin' men with government. They knew that those who are entrusted with power are susceptible to the disease uh of tyrants, which George Washington rightly described as "love of power and proneness to abuse it." For that reason, they realized that the power of public officers should be defined by laws which they, as well as the people, are obligated to obey, a truth enunciated by Daniel Webster when he said that "Whatever government is not a government of laws is a despotism, let it be called what it may."

To the end of insuring a society governed by laws, these men embodied in our Constitution the enduring principles in which they so firmly believed, establishin' a legislature to make all laws, an executive to carry them out, and a judicial system to interpret them. Recently, we have been faced with massive challenges to the historical framework created in 1787 with the most recent fears having been focused upon assertions--by the administration of both parties of executive power over the Congress--for example, in the impoundment of appropriated funds and the cause of executive privileges. These challenges, however, can and are being dealt with by the working of the system itself--that is, through the enactment of powerful statutes by the Congress, and the rendering of decisions by the courts upholdin' the lawmakin' power of the Congress.

In dealing with the challenges posed by the multitudinous allegations arising out of the Watergate affair, highever, the Select Committee has a task much more difficult and complex than dealing with intrusions of one branch of the Government upon the powers of the others. It must probe assert-into assertions that the very system itself has been subverted and its foundations shaken.

To safeguard the structural scheme of our governmental system, the Foundin' Fathers provided for an electoral process by which the elected officials of this Nation should be chosen. The Constitution, later-adopted amendments, and more 'peciffic'lly, statutory law, provide that the electoral processes shall be conducted by the people, outside the confines of the formal branches of the Government, and through laws and ethical guidelines, but independent of the overwhelming power of the Government itself. Only then can we be sure that each election truly reflects the will of the people and that the electoral process cannot be made to serve as the mere handmading--maiden of a particular administration in power.

If the allegations that have been made in the wake of the Watergate affair are substantuated (pause) there has been a very serious subversion of the integrity of the electoral process, and the committee will be obligated to consider the manner in which such a subversion affects the continued existence of this Nation as a representative d--democracy, and how, if we are to survive, such subversions may be prevented in the fut--future.

It has been asserted that the 1972 campaign was influenced by a wide variety of illegal or uneth--ethical activities, including the wi-widespread wiretappin' of the telephone, political headquarters, and even the residences of candidates and their campaign staffs and of members of the press; by the publication of forged documents designed to d--defame certain candidates or enhance others through fraudulent means; the infiltration and disruption of opponents' political organizations and gatherin's; the raising and handling of campaign contributions through means designed to circumvent, either in letter of in spirit, the provisions of campaign disclosure acts; and even the acceptance of campaign contributions based upon promises of illegal interference in government processes on behalf of the contributors.

Finally, and perhaps most disturbingly, it has been alleged that, followin' the Watergate break-in, there has been a massive attempt to cover up all the improper activities, extendin' even so far as to pay off potential witnesses and, in particular, the seven defendants in the Watergate trial in exchange for their promise to remain silent--activities which, if true, represent inter--interference in the integrity of the prosecutoral and judicial processes of this Nation. Moreover, there has been evidence of the use of governmental ins-instrumentalities in efforts to exercise

political surveillance over candidates in the 1972 campaign.

Let me emphasize at the outset that our judicial process thus far has convicted only the seven persons accused of burglarizing and wiretappin' the Democratic National Committee headquarters at the Watergate complex on June 17. The hearings which we initiate today are not designed to d--indtensify or reiterate unfounded accoosations or to poison further the political climate of our Nation. On the contrary, it is my conviction and that of the other committee members that the accoosations that have been leveled and the evidence of wrongdoin' that has surfaced has cast a black--cloud of distrust over our entire society. Our citizens do not know whom to believe, and many of them have concluded that all the processes of government have become so compromised that honest governance has been rendered impossible.

We believe that the health, if not the survival, of our social structure and of our form of government requires the most candid and public investigation of all the evidence and of all the accoosations that have been leveled at--at any persons, at whatever level, who were engaged in the 1972 campaign. My colleagues on the committee and I are determined to uncover all the relevant facts surroundin' these matters, and to spare no one, whatever his station in life may be, in our efforts to accomplish that goal. At the same time, I want to emphasize that the purpose of these hearings is not prosecutoral or judicial, but rather investigative and i--informative.

No one is more cognizant than I of the separation of powers--s issues that ha-hover over these hearings. The committee is fully aware of the ongo--ongoin' grand jury proceedings that are taking place in several areas of the country, and of the fact that criminal indictments have been returned already by one of these grand juries. Like all Americans, the members of this committee are vitally interested in seeing that the judicial processes operate effectively and fairly, and without interference from the--any other branch of the government. The investigation of this select committee was born of crisis, unabated as of this very time, the crisis of a mounting loss of confidence by American citizens in the integrity of our electoral process which is the bedrock of our democracy. The American people are lookin' to this committee, as the representative of all the Congress, for enlightenment and guidance regarding the details af the allegation regar--regardin' the subversion of our electoral and political processes. As the elected representatives of the people, we would be derelict in our duty to them if we failed to pursue our (pause) mission expeditiously, fully, and with the utmost fa--fairness. The aim of the committee is to provide full and open public testimony in order that the nation can proceed toward the healing of the wounds that now afflict the body politic. It is that aim that we are here to pursue today, within the

terms of the mandate imposed upon us by our colleagues and in full compliance with all applicable rules of law. The Nation and history itself are watching us. We cannot fail our mission. (End of transcribed speech.)

I would like to put in the record at this time the Rules of Procedure and a copy of the resolutions and guidelines of the committee.

I would like to recognize at this time other Senators so they may present their statements and first I recognize the vice chairman of the committee, Senator Howard Baker, who has been most alert and most cooperative in the work of the committee.

APPENDIX I

EXHIBIT 2

HEARINGS BEFORE THE SELECT COMMITTEE ON

PRESIDENTIAL CAMPAIGN ACTIVITIES:

WATERGATE AND RELATED ACTIVITIES

JAMES MC CORD, MAY 18, 1973

SENATOR ERVIN. Mr. McCord, uh there is evidence here that the peop--the five men arrested in the Watergate on and after midnight on the uh 17th and 18th of uh June had ah hundred some hundred dollar bills, some new $100 bills in their possession, or in their rooms. Uh who pay, uh where did that money come from, if you know?

MR. MC CORD. I do not know, sir.

SENATOR ERVIN. Ih, where, Did you have any of it?

MR. MC CORD. No, sir.

SENATOR ERVIN. Ih . . . Then uh you say from the--after the return of the bills of indictment in September d--down to the day uh the last day of the trial that you were urged to plead guilty and remain silent by a number of people. Did ah Mr. Hunt ever urge you to uh plead guilty and remain silent? (Pause) That is, E. Howard Hunt?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. And uh Mr. Howard Hunt--

MR. MC CORD. I am trying to recall sir, the exact words.

SENATOR ERVIN. Yes.

MR. MC CORD. The words most frequently used by Mr. Hunt with me was that Executive clemency would be available to me.

SENATOR ERVIN. Yes. How many times did he urge you to plead guilty? That is, Hunt.

MR. MC CORD. I--I mean to correct that statement. I do not recall Mr. Hunt using those words with me to plead guilty.

SENATOR ERIVN. Did he--did he--did he urge you to or not to remain silent? (Pause) did--did,--

MR. MC CORD. Not in those exact words; no, sir.

SENATOR ERVIN. Well, what words did he use as far as you remember?

MR. MC CORD. He used words to the effect that, he used words stating that "Executive clemency is going to be

made available to us" and he spoke in terms as though it alr --already had been committed, I say already, already as of the time that he first mentioned it to me.

SENATOR ERVIN. Now, you stated that you were paid some money through the instrumentality of Mrs. Hunt, and also that your lawyer fees were taken care of, as I understood you?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. Do you know who paid your lawyer fees?

MR. MC CORD. I was told that both moneys came from the Committee To Re-Elect the President.

SENATOR ERVIN. Do you know the amount of your lawyer fees?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. What was it?

MR. MC CORD. The amount I--I received from the Committee was $25,000, yes, sir.

SENATOR ERVIN. Now did your lawyer ur--urge you to enter a plea of guilty? (Pause) I'm talkin' about Mr. Gerald Al--Alch.

MR. MC CORD. I don't recall that, no, sir.

SENATOR ERVIN. But uh, ih, he did go with you uh to uh Mr. Bittman's office.

MR. MC CORD. Yes, sir.

SENATOR ERVIN. And Mr. Bittman was the lawyer for Mr. Hunt, was he not?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. And then after that, uh you didn't talk to Mr. Bittman yourself?

MR. MC CORD. No, sir.

SENATOR ERVIN. But your, but Mr. Alch did?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. And after his conversation with Mr. Bittman he told you that Mr. Bittman uh urged uh, uh y--you to uh plead guilty and 'main silent and sa said you would get Executive clemency.

MR. MC CORD. I will correct that, sir, if I left that impression. (Pause) I believe the words were this in the afternoon of January 8, Mr. Alch said that Mr. Bittman wanted to talk with me about "those words I would ex I would trust regarding a White House offer of Executive clemency," and then at the meeting at his office (pause) Mr. Alch came back to me after a meeting with Mr. Bittman and told me that I would be contacted by "a friend I had formerly known at the White House," and contacted that evening. I believe that was the substance of that conversation.

SENATOR ERVIN. Now how--how long had you known uh when did you first know ah John ah or Jack uh Caulfield?

MR. MC CORD. I first met him in early 19 uh early September 1971. I had heard of him before.

SENATOR ERVIN. Where--where was he working at the time you first met him?

MR. MC CORD. At the White House.

SENATOR ERVIN. Did he uh have any connection with uh rather I believe you stated that uh you were em--employed by the Committee To Re-Elect the--the--the President on the recommendation of Mr. Caulfield.

MR. MC CORD. Yes, sir.

SENATOR ERVIN. Did Mr. Caulfield later--have any association with the Committee?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. And after that association he uh did he go to one of the Executive departments?

MR. MC CORD. I understood from him that he did, yes, sir.

SENATOR ERVIN. (Do) you know which Department?

MR. MC CORD. I believe it was the Treasury Department.

SENATOR ERVIN. And do you know what his what position he held there?

MR. MC CORD. It was a senior position with the, I believe it is called Alcohol Tax and Fire Arms Division of it.

SENATOR ERVIN. Now was he working in the Treasury Department at the time he had the--the two meetings with you?

MR. MC CORD. He told me that, yes, sir.

SENATOR ERVIN. Yes. As I recall you met with him first on Friday, January the twelfth on somewhere on the George Washington Parkway.

MR. MC CORD. It was that Friday, yes, sir.

SENATOR ERVIN. Did he give you any reason why he wanted to meet you in the on the George Washington Parkway instead of seeing at--you--uh--you at his uh home or your uh home?

MR. MC CORD. No, sir.

SENATOR ERVIN. Uh, who was present at that meeting?

MR. MC CORD. Just the two of us.

SENATOR ERVIN. And uh a--at that time he urged you to ah plead guilty, the ih the case was still pending, was it not?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. It was just about the time the trial started wasn't it?

MR. MC CORD. This was the first week of the trial.

SENATOR ERVIN. And he urged you to plead guilty and assured you that if you uh pleaded guilty you would receive Executive clemency and also he ah given a chance after you served any sentence to--to help to be rehabilitated in a job, didn't he?

MR. MC CORD. I believe all is correct except the words "plead guilty" and I will try to restate that for accuracy. The words "plead guilty" have been used over the telephone to me by this unknown unidentified individual whose voice I described and subsequently--

SENATOR ERVIN. That was prior to the meetings?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. Now then uh, what--'scuze me do you have something further?

MR. MC CORD. Well, in the conversation of uh January and in the two subsequent meetings the words "plead guilty" would come up in this general language. "Are you going to plea guilty?" Or, "How about pleading guilty?" Or "What's your feeings about pleading now?"

SENATOR ERVIN. Now, this meeting was arranged at his instance, wasn't it?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. Then you met him again on Sunday, January the 14th uh on the George Washington Parkway.

MR. MC CORD. Yes, sir.

SENATOR ERVIN. What was the conversation with him at that time or rather was that meeting held at his instance?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. Uh What occurred at that time?

MR. MC CORD. Let me refer to my notes to be sure. (Pause) The discussion was (pause) that there was no objection to renewing the motion on discovery of government wiretapping and that if--if that failed I would receive Executive clemency after 10 or 11 months, and then the conversation went on to say that the President's ability to govern is at stake. Another Teapot Dome scandal is possible and the government may fall. Everybody else is on track but you, you are not following the game plan, get closer to your attorney.

SENATOR ERVIN. Did that conversation occur in the automobile or did you get out of the automobile?

MR. MC CORD. No, sir; it was out of the automobile and it was about uh 50 feet uh, I would guess, from his car where we walked down toward the Potomac River from the overlook, just the two of us were present.

SENATOR ERVIN. Did you sa--all the first conversation, that is on Sunday, January the 14th ih, uh I mean Friday, January the 12th, that all occurred in an automobile?

MR. MC CORD. The other two meetings were in his automobile.

SENATOR ERVIN. Yes. And then on your second meeting on Sunday, Ja--January the 14th, you got out of the car and walked in the woods uh toward the Potomac River?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. Now, uh after that time you got several phone calls from him urging that you meet him again, did you not?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. And you told him that you didn't know anything further, that you had already ih, uh made up your mind that you wouldn't accept Executive priv ah pri ah clemency that you thought th--tr--that--ah you thought it would be impossible for you to get a fair trial, and that you had hopes that on account of uh ih the--your belief that

uh you had been wiretapped, that the trial might be set ide, as to you, did you not?

MR. MC CORD. Words to that effect, yes, sir.

SENATOR ERVIN. And so uh, that, he kept insisting on you by phone to meet him and you met him on uh Thursday, January the 25th, 1973.

MR. MC CORD. Yes, sir.

SENATOR ERVIN. t--uh 72

MR. MC CORD. 3

SENATOR ERVIN. t--3. Now that--that's when you say you went into uh hi-uh-his automobile.

MR. MC CORD. Yes, sir.

SENATOR ERVIN. In the direction uh down uh towards Warrenton, Va.?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. What--what did he say on that occasion?

MR. MC CORD. (Pause) We had about a two-hour conversation. There were repeated offers of at various times of Executive clemency and financial support following prison and rehabilitation. (Pause) There were discussions about the game plan that we referred to. There were discussions about the two telephone calls (pause) and his comment that that could--could possibly wait to appeals and that they had found my record for them.

SENATOR ERVIN. Now the two telepho uh you had thought your telephone had been wiretapped and he uh told you he had investigated that and found out it had not been?

MR. MC CORD. Yes, sir.

SENATOR ERVIN. (Interrogation was interrupted by the network at this point for commercials.)

SENATOR ERVIN. Mr. McGovern uh took over these headquaters after Mr. Mu--Senator Muskie.

MR. MC CORD. I think after--r--r June 17th, yes, sir.

SENATOR ERVIN. Was there ever any discussion between you and Mr. Liddy about uh exercising any kind of surveillance over Senator Mc--McGovern's headquarters?

MR. MC CORD. There were, sir. They were in th--the context of the location on First Street primarily.

SENATOR ERVIN. And this room was rented for possible use in that connection wasn't it.

MR. MC CORD. Nineteen O K-08 K Street was, yes, sir.

SENATOR ERVIN. And who, this uh, do y--do you remember the uh how long the lease of the room continued?

MR. MC CORD. Yes, sir, it continued until July 1972, when I cancelled it.

SENATOR ERVIN. And what was the amount of rent that was paid monthly for the room?

MR. MC CORD. $275 a month.

SENATOR ERVIN. The re the total rent, then, was about $2,200, was paid for, wasn't it?

MR. MC CORD. There was a settlement fee that I negotiated with the people who owned the lease, which I

think included another month's or two payment after July.

SENATOR ERVIN. Did you ever make any effort to bug uh Senator Muskie's or Senator McGovern's headquarters?

MR. MC CORD. Never Senator Muskie's. Senator McGovern's, there was a visit to the office uh by me, uh I believe on two--on three occasions, in toto, on one of which I had some electronic equipment with me but it was never installed because there were other people working there at the time.

SENATOR ERVIN. In other words you could--never found out any time that the office was empty?

MR. MC CORD. That is correct.

SENATOR ERVIN. Do you know uh who paid the rent on this uh office that eh?

MR. MC CORD. Uh--wh--which one, sir?

SENATOR ERVIN. The uh up there by the Muskie and McGovern headquarters?

MR. MC CORD. Uh, The one at the Muskie office, Mr. Liddy furnished the funds for that and furnished a cashier's check to begin with.

SENATOR ERVIN. Thank you very much. I believe I've uh--u--used my ten minutes.

APPENDIX I

EXHIBIT 3

HEARINGS BEFORE THE SELECT COMMITTEE ON

PRESIDENTIAL CAMPAIGN ACTIVITIES:

WATERGATE AND RELATED ACTIVITIES

JOHN DEAN, JUNE 25, 1973

SENATOR ERVIN. I--I would like for members of the committee, the witness, and counsels for the witness to pay--uh--to--pay strict attention to what I shall say.

Mr. Dean appears before the committee and has appeared previously before the staff of the committee on obedience to subpoena from the committee.

Mr. Dean at all times has--uh--claimed--that--uh he is privileged against testifying by the self-incrimination clause of the fifth amendment on the ground that any testimony he might--uh--uh--might--uh--might give to the committee concerning the matters the committee is authorized to investigate might--uh--might--uh incriminate him and, therefore, he appears--uh--involuntarily. The committee has--uh--has unanimously requested i--in times past requested Ju--uh--His Honor Judge uh John Sirica, United States, Chief Judge for the United States District Court of the District of Columbia to enter an order of immunity for the witness under the provisions of sections 6003 and 6005 of the title 18 of the United States Code. The committee pursuant to tha--those statutes, gave 10 days notice to--uh--the Attorney General of its application to Judge Sirica and at the instance of the Attorney General, Judge Sirica delayed entering an order until 20--more--than 20 days had thereafter expired. He then entered an order of immunity under the--the--statutes, and uh Mr. Dean is ih--uh is now uh--uh informed of that fact and he is now testifying under this order of immunity granted at the instance of the committee. He appears here involuntarily as a witness pursuant to this order, and he has heretofore been ordered by the committee to answer the questions and uh--he--has--uh all the testimony he has previously given to the committee staff and all the testimony which he may give to this committee is given by him on the basis of the order of immunity. Is that correct?

MR. SHAFFER. That is correct, Mr. Chairman.

SENATOR ERVIN. Now, if there is no objection on the part of any member of the [court], the--the--chairman--the chairman will d'fine those uh his statement.

SENATOR BAKER. Mr. Chairman, I might say just for the completion of the record to that effect, that it is also my understanding that in addition to appearing in response to subpoena and after having claimed his constitutional privileges, after the attachments of use immunity, as the chairman has just indicated, that counsel for Mr. Dean at a previous executive session of this committee made certain other requests, particularly that the witness waived no rights, that he was appearing involuntarily and pursuant to subpoena, and he filed an application to be excused from testifying because of the fear of prejudice effect on the possibility of his subsequent trial and that he requested that coverage of the hearings be either in executive session or limited in accordance with the rules of this committee.

I hope it is appropriate to say, Mr. Chairman, that those matters were taken into account by this committee as a whole in executive session and the requests were denied. I think that the record ought to indicate that further for Mr. Dean's, for the completion of Mr. Dean's situation.

SENATOR ERVIN. I want to thank you and say I join in your view.

MR. SHAFFER. We appreciate that, Mr. Vice Chairman, and I would like out of an abundance of caution, so that there would be no waiver for me, to again call to the attention of the committee here and now before the public session, the content of my letter to the chairman dated June 18, 1973, which I ask you to rule again on the insertions contained therein and that it be made a part of this public record.

SENATOR ERVIN. That letter will be printed in the record. [The letter referred to was marked exhibit No. 32.]

SENATOR ERVIN. I've been requested by one of by the members of the committee sitting on the left here that uh you and Mr. Dean swap places because--

MR. SHAFFER. I am going to leave the chair, Mr. Chairman, and--

SENATOR ERVIN. [continuing]. Because the reporter sort of obstructs their view.

SENATOR MONTOYA. I would like for the reporter to move back a little so that I can see the witness.

MR. MC CANDLESS. We have one additional matter we would like to call to the attention of the chair. First of all, the subpoena issued under your rules does subpoena all documents, so we conclude that all material supplied other than his oral testimony, all exhibits and other documents are under the same subpoena and must be and are being brought forward in that manner.

Also, we bring to your attention again title 18 of the United States Code, section 798, disclosure of classified information, and section C saying, "Nothing in this section

shall prohibit the furnishing upon lawful demand of information of any regularly constituted committee of the Senate, the House of Representatives of the United States of America."

We raise that, Mr. Chairman, because as you are very well aware, and all the members of the committee, under a ruling by the Honorable John J. Sirica, this committee came into possession of certain documents which Mr. Shaffer and I, as counsel to Mr. Dean, have not even seen ourselves; they are in your possession. If Mr. Dean is to be asked questions of these documents, he does not have a copy in his possession, the committee would have to furnish such a copy to him for him to be able to refresh his recollection, and we just wanted to make sure that this section of the criminal code, and your rules, pointed out how they dovetail as to disclosure of secret and classified information.

SENATOR ERVIN. Well, we will uh rule on that at the proper time. I'm uh hopin' that uh, I'm expectin' rather that perhaps questions on these doc-the-those documents which were furnished to the Committee by Judge Sirica at the request of the committee, questions on that will probably not come up today and we--we will handle that in due season.

MR. MC CANDLESS. Thank you very much, Mr. Chairman.

SENATOR ERVIN. I will state for myself that in my study of the subject, I think that uh information and--or material cannot be classified alleged by its uh should not be uh disclosed to an unauthorized person because it relates to either to national defense or to uh-uh our foreign relations with other nations. I--I'm of the opinion from my study that uh there is no authority under any--a--the, under that statute to classify any matter merely because it relates to domestic intelligence or internal security. That is a matter, though, that the committee will re--ra--rule on later when uh--it--ah becomes necessary.

APPENDIX II

SPEECH ON THE SENATE FLOOR BY SENATOR ERVIN

IN OPPOSITION TO THE DIRKSEN SCHOOL PRAYER AMENDMENT

MR. ERVIN. Mr. President, I rise to oppose both the Dirksen amendment and the Bayh resolution.

I confess that it saddens me not to be in agreement with my good friend the Senator from Illinois [Mr. Dirksen] on the matter now pending before the Senate. The Senator from Illinois stood as firm as the rock of Gibraltar against the two most controversial measures to be considered by this Congress; namely, the proposal to repeal section 14(b) of the Taft-Hartley Act, and the proposal to enact a Federal forced housing law.

I stood shoulder to shoulder with him in both of these fights. I believe that he and I battled together on these two measures because we share a common devotion to local self-government and individual freedom.

Strange as it may seem, I believe that the motive which prompts him to offer his amendment and the motive which impels me to oppose it are identical. Each of us, I think, takes his respective position because of the realization of the importance of faith in God to our Nation.

It is impossible to overmagnify the importance of faith in God. It is, in my judgment, the most potent force in the universe. Faith in God gives men and women the strength to face the storms of life and their consequences with the peace which passes understanding. In times of greatest stress, faith in God has the miraculous power to lift ordinary men and women to greatness.

I oppose the Bayh resolution for a very simple reason. While each Senator or Representative may interpret Supreme Court opinions, Congress does not have authority as a collective body to do so.

The issues now before the Senate are concerned with the first amendment.

If we are to understand the first amendment, we must recur to history. This is so because we cannot understand the institutions and laws of today unless we understand the historical events out of which they arise.

As we recur to history, we will do well to remember that a nation which ignores the lessons history teaches is doomed to repeat the tragic mistakes of the past. Let us pray that America may not do this in respect to church and state relationships.

The most heartrending story of history is that of man's struggle against civil and ecclesiastical tyranny for the simple right to bow his own knees before his own God in his own way.

As one of America's wisest jurists of all time, the late Chief Justice Walter P. Stacy, of the Supreme Court of North Carolina, declared in the opinion he wrote in State v. Beal (199 N.C. 278):

> For some reason, too deep to fathom, men contend more furiously over the road to heaven, which they cannot see, than over their visible walks on earth [and] It would be almost unbelievable, if history did not record the tragic fact, that men have gone to war and cut each other's throats because they could not agree as to what was to become of them after their throats were cut.

The Founding Fathers who wrote the Constitution of the United States were acutely aware of these truths.

They saw with the eyes of history the cruelties of the Spanish Inquisition, the massacre of the Huguenots of France, the slaughter of the Waldenses in the Alpine Valleys of Italy, the hanging and jailing of English and Irish Catholics by Protestant England, the hunting down of the Covenanters upon the crags and moors of Scotland, the branding, hanging, and whipping of Quakers, and the banishing of Baptists by Puritan Massachusetts, and the hundreds of other atrocities committed in the name of religion.

The Founding Fathers knew, moreover, that even during their own lifetimes those who did not conform to the doctrines and practices of the churches established by law in the places where they lived, such as Scotch-Irish Presbyterians in Ulster, Catholics in England and Ireland, and dissenters in various American Colonies, had been barred from civil and military offices because of their faiths, had been compelled to pay tithes for the propagation of religious opinions they disbelieved, and had had their marriages annulled and their children adjudged illegitimate for daring to speak their marriage vows before ministers of their own faiths, rather than before clergymen of the established churches.

The Founding Fathers were determined that none of these tragic historical events should be repeated in the nation they were creating.

To this end they inserted two provisions in the Constitution of the United States.

The first of these provisions appears in article VI and declares that "no religious test shall ever be required as a qualification to any office or public trust in the United States."

The second appears in the first amendment, and states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

What did the Founding Fathers intend to do when they embodied these words in the first amendment? The answer to this question becomes clear when we consider the events which preceded the writing of the first amendment.

At the time of the settlement of the Thirteen Original Colonies, virtually every nation in Western Europe and the British Isles had what were known as established churches. Those churches were established by law, and the law compelled all persons, including those who dissented from their religious beliefs, to attend their services. The laws furthermore required all persons to pay taxes for the construction of church buildings and the support of the clergy of the established churches.

An overwhelming number of the colonists who came from Europe to America came primarily to secure religious liberty and freedom from taxation for the support of established churches. Unfortunately, when those people came to America they found that in many of the Colonies predominant groups had set up established churches here, and that in consequence they were compelled, in such Colonies, to pay taxes for the support of churches whose religious doctrines they disbelieved.

There is more than a modicum of historical truth in the statement of Artemus Ward to the effect that

> the Puritans nobly fled from a land of despotism to a land of freedom, where they could not only enjoy their own religion, but could prevent everybody else from enjoying his.

The Colonies of Virginia, North Carolina, South Carolina, Georgia, and Maryland had established churches, and the Anglican Church was the favorite under their laws.

In the Colonies of Massachusetts, Connecticut, and New Hampshire, the Congregational Church was established by law.

In the Colony of New York, the Dutch Reformed and Anglican Churches, in turn, were established by law.

The people who lived in those Colonies were compelled to pay taxes for the support of religious institutions whose doctrines they disbelieved. Moreover, they were compelled to frequent the services of such religious institutions. They said, in the first place, that it was tyrannical for a government to attempt to regulate the relationship of worship between the individual man and his God. Then, as they pondered the words found in the 22d chapter of Matthew, verses 15 to 22, which declare that we are enjoined to "Render, therefore, unto Caesar the things which are Caesar's; and unto God the things that are God's," they also came to the conclusion that in addition to being tyrannical, the regulation of worship by government was also sinful. So they began to fight to separate church from state and to disestablish all churches. Their demand for the disestablishment of churches comprised two things: First, an end to the financial-legal connection between state and church;

and second, a recognition of the rights of all persons to exercise freely their own modes of worship.

The process by which church and state became separated in the original States is an interesting story, and I wish time sufficed for me to detail it. However, the story has been told in a most accurate and most illuminating manner by R. Freeman Butts, in chapter 3, at pages 39-45, of his work entitled "The American Tradition in Religion and Education."

I ask unanimous consent that an excerpt from his book, in which he pictures how the people of the various original States secured the separation of church and state prior to the writing of the first amendment, be printed at this point in the body of the RECORD.

. . .

MR. ERVIN. Mr. President, I shall not undertake to add to this story further details of the movements in the various original States to obtain religious freedom and freedom from taxation to support religious institutions. Suffice it to say that by the time the first amendment was written, the original States of Virginia, North Carolina, Georgia, New York, Rhode Island, Pennsylvania, Delaware, and New Jersey disestablished religion, and did so under constitutions and laws which forbade the establishment of any religion and the levying of taxation for the support of any religion.

So, Mr. President, at the time when the first amendment was drafted, the only States in which any establishment of religion was still in existence were Massachusetts--which continued such establishment until 1833; Connecticut--which continued such establishment until 1818; Maryland--which continued such establishment until 1810; New Hampshire--which continued such establishment until 1819; and South Carolina--which abolished such establishment in 1790. But in those five States there was no single established church at that time. There was an establishment of all of the churches which the people who dominated those States deemed to be respectable churches. They provided for an impartial use of taxes for the support of all of the churches which, in their view, were respectable.

However, it is interesting to consider the specific events in the State of Virginia which preceded the writing and the ratification of the first amendment. This is true because those most responsible for the writing into our Constitution of the first amendment were two Virginians--Thomas Jefferson and James Madison. By referring to the events in the State of Virginia which preceded the writing of the first amendment, we can find exactly what was meant by the Founding Fathers when, in the first amendment, they provided that "Congress shall make no law respecting an establishment of religion."

This is true because the events in Virginia show exactly what James Madison meant when he insisted on writing into the first amendment the words "an establishment of religion."

In 1776, Virginia, as an independent Commonwealth, adopted a new constitution; James Madison was a member of the constitutional convention which drafted it. He succeeded in writing into the constitution of tha great Commonwealth the proposition that all men are equally entitled to the free exercise of religion according to the dictates of conscience. After the adoption of that constitution, the Virginia Legislature met, and there ensued a great conflict between those who wanted religious freedom and freedom from taxation and those who wanted to retain an establishment of religion in that great Commonwealth- In the legislature of 1776, where the contest between those two groups began, Madison was able to persuade the legislature to provide that no dissenters should be compelled to pay any taxes to the established church of Virginia--the Church of England, which had been established there in 1629.

He also secured at that session the passage of a law which suspended for the time being the requirement that even members of the Church of England should pay taxes for its support. But the legislature of 1776 expressly reserved the most crucial question; namely, whether general taxes should be levied for the support of all of the denominations which the controlling element in the Virginia Legislature deemed to be respectable denominations. This question was reserved for subsequent legislatures.

In the Virginia Legislature of 1779 there occurred another great fight which centered around two bills. One was introduced by James Henry. It undertook to establish, by law, virtually all of the Christian churches as the established churches of Virginia, and to lay taxes for the support of all of them on an impartial basis. It is significant that in this bill references to an establishment of religion appear at a number of points, in contexts which clearly show that James Henry and the others of his day understood the term "an establishment of religion" to mean an official connection between the State and one or more churches, whereby the State recognized such church or churches and provided for taxation for its or their support.

In the same legislature, James Madison introduced Thomas Jefferson's bill for religious freedom in Virginia. It is one of the great documents which preceded the writing of the Constitution. It laid down two propositions: First, the proposition that there should be no religious qualification as a test for holding office; and second, the proposition that it is sinful and tyrannical to tax a man for the propagation of religious doctrine which he disbelieves. This document is of so much importance that it should be made available to all Members of the senate before they vote on the amendment and the resolution. For this reason, I ask

unanimous consent to have printed at this point in the body of the RECORD, as part of my remarks, Thomas Jefferson's bill for religious freedom in Virginia.

. . .

MR. ERVIN. Mr. President, the opposing forces in the Virginia Legislature of 1779 were so nearly equal in power that it was impossible to secure the enactment of either of those bills. So the contest, which had been renewed there, was renewed a third time in the legislature of 1784.

In that legislative body was introduced not only Jefferson's bill for religious freedom in Virginia, but also a new bill which was sponsored by Patrick Henry. That bill was entitled "A Bill Establishing a Provision for Teachers of the Christian Religion." It undertook to give official recognition to virtually all Christian churches and to provide taxes for their support. In order that we might understand what Madison meant when he used the term "an establishment of religion," it is necessary that the bill to which I have referred should be called to the attention of Senators. I ask unanimous consent that the bill may be printed at this point in the RECORD as a part of my remarks.

. . .

MR. ERVIN. The importance of the bill sponsored in 1784 by Patrick Henry becomes apparent when we recall that it provoked one of the greatest documents vindicating the cause of religious freedom ever penned on the face of the earth. There was a bitter contest between Madison and his opponents in the Virginia Legislature of 1784. The legislature was on the verge of passing the bill sponsored by Patrick Henry, which would have recognized the legal interest of the State in virtually all the Christian churches then functioning in Virginia, and which would have imposed taxes on all Virginians for the support of such churches. But Madison, at the last moment, was able to persuade the Legislature of Virginia to put off the final vote on the bill sponsored by Patrick Henry until the next session of the legislature, which was scheduled for November 1785. Between that time and the time when the legislature next met James Madison made one of the greatest of all appeals for religious freedom. It was called "The Memorial and Remonstrance Against Religious Assessments." The memorial of James Madison is crucial in determining what the Founding Fathers meant when they yielded to the insistence of James Madison and wrote into the first amendment the provision that Congress shall make no law respecting an establishment of religion.

On a number of occasions in his remonstrance, which was a protest against the bill sponsored by Patrick Henry during the preceding legislature to levy taxes for the support of virtually all Christian churches in Virginia,

James Madison used the word "establishment" at least five times in contexts which showed that in the mind of James Madison "an establishment of religion" meant an official relationship between the State and one church or many or all churches and the imposition of taxation for the support of one church or many churches or all churches.

Mr. President, I ask unanimous consent that the memorial and remonstrance of James Madison against religious assessments be printed at this point in the RECORD as a part of my remarks.

. . .

MR. ERVIN. I make the assertion without fear of successful contradiction that no man can read James Madison's Remonstrance without coming to the conclusion that what James Madison and the other men of his generation had in mind when they wrote the first amendment was that there should be no official relationship of any character between government and any church, or many churches, or all churches, and no levying of taxes for the support of any church, or many churches, or all churches or any institutions conducted by any of them.

Madison caused his remonstrance to be widely distributed throughout the State of Virginia. As a result of his remonstrance, when the members of the legislature which was scheduled to convene in November 1785 were elected, those who supported Madison in his fight for religious freedom were in an overwhelming majority. They enacted into law by a large majority Jefferson's bill for religious freedom. We cannot overmagnify the importance which Thomas Jefferson and James Madison attributed to Jefferson's Statute for Religious Freedom or their demand that people should not be compelled by law to support in any official manner or by taxes any religious institutions.

I believe the clearest proof of the transcendent importance which Thomas Jefferson attributed to that statute is shown by the epitaph on the gravestone which he is said to have written himself.

As one ascends the hill which leads to Jefferson's home in Monticello, he passes the burial ground of members of the Jefferson family. He passes the spot where the mortal remains of Thomas Jefferson rest in the tongueless silence of the dreamless dust. On the gravestone of Thomas Jefferson is the epitaph which speaks with as much eloquence as Jefferson used in writing the Declaration of Independence or the Statute of Virginia for Religious Freedom. The statement is as follows:

> Here was buried Thomas Jefferson, author of the Declaration of American Independence; of the Statute of Virginia for Religious Liberty; and the father of the University of Virginia.

At the time that Jefferson decided that those were the words which he wished to have engraved on the stone which marks his last resting palce, he had been a member of the Legislature of Virginia; he had been Governor of the State of Virginia; he had represented Virginia in the Continental Congress; he had served as American Minister to France; he had officiated as Secretary of State in George Washington's Cabinet; he had been Vice President of the United States under John Adams; and he had been twice elected to the highest office within the gift of the American people--the Presidency itself.

Yet Thomas Jefferson was not concerned that he should be remembered for the high offices which he had filled, but he was concerned that he should be remembered as the author of the Virginia Statute for Religious Freedom, one of the greatest documents ever penned by man. It lays down the proposition that it is sinful and tyrannical to compel a man to make contributions of money for the propagation of opinions that he disbelieves.

After the drafting of the Constitution of the United States, many Americans were dissatisfied with it because it did not contain any bill of rights, and particularly because it did not contain any provision which would guarantee religious freedom beyond the provision which merely specified that no religious qualifications should ever be required as a test for holding public office in our Nation. When New York, New Hampshire, and Virginia ratified the Constitution, they adopted resolutions which insisted that the Constitution should be amended by incorporating into it a guarantee of religious freedom and a guarantee of freedom from taxation for the support of religious institutions.

My own State of North Carolina and the State of Rhode Island both postponed ratifying the Constitution, and their conventions stated in substance that they would not ratify the Constitution unless it were amended so as to provide for a total disestablishemnt of religion.

As a result of the demands of these five States, and the demands of thousands of other Americans throughout the other original States, the Constitution was amended in this respect. It was amended at the instigation of James Madison, who was elected to serve in Congress from the State of Virginia in the First Congress which met under the Constitution. As soon as this Congress convened, he began his great fight to have the first amendment written into the Constitution.

I wish I had sufficient time to detail the fight which occurred in Congress on this point. There were some who wished to maintain some vestige of religious support by Government, and some who merely wished to put in the restriction that there should be no single established church. But Madison insisted at all times that the first amendment should embody in it the provision that Congress should pass no law respecting an establishment of religion or prohibiting the free exercise of religion.

James Madison triumphed after much fighting. On September 23, 1789, Madison made a report to the House of Repesentatives concerning the action of the conference committee of the Senate and House, which had been appointed to reconcile varying views as to the language of the first amendment. This conference committee agreed with Madison and recommended the words which now are incorporated in the first amendment.

So we can say that James Madison, whom historians call the father of the Constitution, was responsible for the phrasing of the first amendment. The meaning of the words of the first amendment that "Congress shall make no law respecting an establishment of religion" is crystal clear. By those words, James Madison and his contemporaries intended to prohibit the Government from establishing any official relation between Government and religion and to prevent the Government from using tax moneys to support or assist in the support of any religious institutions of any character whatsoever.

As Justice Black said in Everson v. Board of Education, 330 U.S. 1:

> The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise, to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

I have attempted to set out as clearly as possible the conviction of James Madison and his contemporaries that there should be no establishment of religion, and the meaning which they attributed to the words, "establishment of religion." Those words clearly implied to them that there should be no official relationship between Government and any religious organization and no support of any religious organization by tax moneys.

It is interesting to note that the Supreme Court of the United States has consistently adhered to this meaning of this term, "an establishment of religion," when it has dealt with cases involving the first amendment.

I wish to read some excerpts from opinions of the Supreme Court dealing with this question. Justice Jackson declared in the Everson case:

> This freedom (i.e., religious freedom) was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the States' hands out of religion, but to keep religion's hands off the state, and above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse.

Justice Rutledge, declared in the Everson case:

> Not simply an established church, but any law respecting an establishemnt of religion is forbidden * * *. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.

Justice Black writing the majority opinion in McCollum v. Board of Education, 333 U.S. 203, said:

> For the first amendment rests upon the premise that both religion and Government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson case, the first amendment has erected a wall between church and state which must be kept high and impregnable.

Justice Frankfurter asserted this, in the McCollum case:

> The great American principle of eternal separation--Elihu Root's phrase bears repetition--is one of the vital reliances of our constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.
>
> We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the State and best for religion.

Justice Douglas said in Zorach v. Clauson, 343 U.S. 306:

> There cannot be the slightest doubt that the first amendment reflects the philosophy that church and state should be separated. And so far as interference with the free exercise of religion and an establishment of religion are concerned, the separation must be complete and unequivocal. The first amendment within the scope of its coverage permits no exception; the prohibition is absolute.

So much for the statements of Justices of the Supreme Court of the United States in respect to the objective of the establishment clause of the first amendment. The greatest declaration as to the overall meaning of the provisions of the first amendment denying to Congress the power to make any laws respecting an establishemnt of religion, or prohibiting the free exercise thereof, is that contained in the majority opinion written by Justice Black in the Everson case. This is what he said:

> The establishemnt of religion clause of the first amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from

church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a State nor the Federal Government can, openly, or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state.

It was not until 1940 that the Supreme Court of the United States held, in the case of Cantwell v. Connecticut, 310 U.S. 296, that the 14th amendment made the 1st amendment applicable to the States.

On June 25, 1962, the Supreme Court handed down the first of the so-called school prayer cases, Engel v. Vitale, 370 U.S. 421.

On June 17, 1963, the Supreme Court handed down the second of the so-called school prayer cases, Abington School District v. Schempp, 374 U.S. 203.

When the press reported that the Supreme Court had handed down these decisions, a great deal of consternation was aroused throughout the country with respect to the nature and the scope of the decisions. I believe that this consternation was aroused in large measure by the supposed logic of the concurring opinion of Mr. Justice Douglas, in the Engel case.

I will have to confess that I was one of those persons who was much disturbed by the opinions and particularly by the supposed logic of the concurring opinion of Justice Douglas. I felt that this was an area in our national life in which the Supreme court well might have given some weight to the concept embraced in the very homey adage, "Let sleeping dogs lie."

Since neither the plaintiffs in these cases not their children were required to participate in the exercises which gave rise to the cases, I felt originally that the Supreme Court might well have avoided entertaining jurisdiction of these cases on the theory that the plaintiffs and the persons in whose behalf the cases were instituted did not have standing entitling them to sue.

I also felt that since the Court had seen fit to exercise jurisdiction in these cases, it should have adopted the practical interpretation placed upon the first amendment in the various areas of our country which are dominated by one or another of various religious groups; and that was the mere recitation of prayers or the reading of holy writings by State authority in the public schools was not outlawed by the establishemnt-of-religion clause of the first amendment if participation in such prayers and reading were voluntary,

and if they were nonsectarian, and no effort was made to proselyte any student toward any particular religious belief.

Since that time I have read and reread the decisions in the Engel and Schempp cases on many occasions. I have also found much consolation insofar as the supposed logic in the concurring opinion of Justice Douglas in the Engel case is concerned in the aphorism of the great jurist, Oliver Wendell Holmes, Jr., who told us that the life of the law has been experience and not logic.

As a result of reading and rereading the majority opinions in these cases and pondering Justice Holmes' aphorism I have altered my views in respect to the decisions.

I have scrutinized with great care both of the majority opinions which represent the decisions of the Court, and I am unable to find anything in either one of the majority opinions which holds that the establishment-of-religion clause of the first amendment prohibits voluntary prayers or voluntary study of holy writings.

I realize that these majority opinions are not readily available to all Americans, and for that reason, Mr. President, I ask unanimous consent that the majority opinion in the Engel case, which was written by Justice Black, and the majority opinion in the Schempp case, which was written by Justice Clark, be printed at this point in the RECORD as a part of my remarks.

. . .

MR. ERVIN. Mr. President, I am firmly of the opinion that the diversity of religions in America makes it imperative that we retain religious freedom for all men as a way of life. This can only be done in the manner pointed out by the first amendment, which declares, in effect, that the state must not undertake to control religion and religion must not undertake to control the state.

The history of man's struggle for political and religious freedom makes this clear. Political freedom cannot exist in any land where religion controls the state, and religious freedom cannot exist in any land where the state controls religion.

Justice Clark alluded to the reason why I say that the diversity of religions in America makes it imperative that we retain the separation of church and state decreed by the first amendment.

I refer to his opinion in the Schempp case, and I quote these words from it:

> This freedom of worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinions. Today authorities list eighty-three separate religious bodies, each with memberships exceeding 50,000, existing among our people, as well as innumerable smaller groups.

We have today in America three major religious groups. One may be designated as Protestants, another may be designated as Catholics, and the third may be designated as Jewish.

Our country can derive great strength from our diversity of religious beliefs, if we maintain the principle that all men of all faiths are to enjoy freedom of religion without let or hindrance from government. On the other hand, the diversity of our religious groups may operate as a divisive force if, under our system of government, each of these groups may strive to control a State or a school board for the purpose of imposing its particular religious beliefs upon the schoolchildren attending public schools.

The decisions of the majority in the Engel case and the Schempp case remove this temptation from our three major religious groups and from all other religious groups by saying that the state must keep its hands off religion, and religion must keep its hands off the state.

When James Madison wrote his great "Memorial and Remonstrance Against Religious Assessments," he had something to say on this point. I quote these words of James Madison from his "Memorial and Remonstrance Against Religious Assessments:"

> [I]t is proper to take alarm at the first experiment on our liberties . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

The great English poet, Alfred Tennyson, has his immortal character, Ulysses, say this: "I am a part of all that I have met." This statement, of course, is a recognition of the fact that each man is, in part at least, a product of his environment. I believe that each man is also, in part at least, a product of heredity. Hence we can say, and must say, that in addition to being a part of all that we have met, we are also a part of all that our ancestors have met.

Some of my ancestors were among the Scottish Covenanters who were run down and murdered upon the crags and moors of Scotland because they dissented from the doctrines of the established church in that land. Others of them were Scotch-Irish Presbyterians, who were denied political and religious liberty in Ulster. Some of them were among the Huguenots, who were massacred in France merely because they worshipped Almighty God according to the dictates of their own consciences instead of the dictates of the ecclesiastical and political rulers of France. Some of them were English Pilgrims who were driven from their native England

by way of Leyden, Holland, to Plymouth, because they did not want to use the prayers which the Church of England had inserted in the prayer book established by the act of Parliament. Some of them were Quakers, who were despised because of the simplicity of their religion and way of life.

All of them came to America to obtain the simple right to bend their own knees and raise their own voices to their own God in their own way. I believe their experiences had some relation to the creation of my abiding conviction that religious liberty is the most precious of all freedoms.

I think that the greatest book, for a literary as well as from a religious standpoint, ever made available to mankind, is the King James version of the Bible. As soon as my forebears obtained the King James version of the Bible, they adopted it as a guide for their religious faith, and they recorded within its covers their marriages, their births, and their deaths. They found something within that old Book which revealed to them the promises of God, and something which made them fear God and nothing else. I think that perhaps they found there what Annie Johnson Flint has described for us in her little poem entitled "What God Hath Promised:"

God hath not promised
  Skies always blue,
Flower-strewn pathways
  All our lives through;
God hath not promised
  Sun without rain,
Joy without sorrow,
  Peace without pain.

But God hath promised
  Strength for the day
Rest for the labor,
  Light for the way,
Grace for the trials,
  Help from above,
Unfailing sympathy,
  Undying love.

I covet freedom of religion for all men. Let them study their holy writings and meditate upon their teachings without let or hindrance from government. I cherish this freedom for myself as well as for others.

I find these words of the ancient Hebrew Psalmist in the King James version of the Bible: "The heavens declare the glory of God; and the firmament showeth his handywork."

I look at the universe and behold with wonder the lifegiving sun, which rises in the east, at morn, travels across the sky by day, and sets in the west at eventide; the galaxies of stars, which twinkle in the infinite heavens; the clouds, which bring the soil-refreshing rain; the majestic mountains with hills at their knees; the rivers,

which water pleasant valleys and fertile plains and run endlessly to the sea; the tall trees, which lift leafy arms heavenward to pray; the arbutus and dogwood, which brighten springtime, and the marigolds and roses, which ornament summer; the glory of the leaves and ripened crops of autumn; the crystal snowflakes, which descend so gently in winter; and the other beautiful things past numbering, which adorn the earth.

I note with awe the order and regularity of the processes of life and nature as the tide ebbs and flows, as the harvest succeeds the seedtime, and as the heavenly bodies move in their orbits without mishap in conformity with natural laws. I observe with reverence that, despite the feet of clay on which he makes his earthly rounds, man is endowed with the capacity to obey conscience, exercise reason, study holy writings, and aspire to righteous conduct in obedience to spiritual laws.

On the basis of these things, I affirm with complete conviction that the universe and man are not the haphazard products of blind atoms wandering aimlessly about in chaos, but, on the contrary, are the creations of God, the Maker of the universe and man.

Religion adds hope to man's desire for immortality. This desire is not to be attributed simply to the egotism of men, or their fear of the unknown beyond the grave, or their repugnance to the thought of their nothingness after death.

The pessimistic philosopher Schopenhauer was sadly in error in his caustic comment that "to desire immortality is to desire the eternal perpetuation of a great mistake." The longing for immortality is prompted by most meritorious motives.

Life on earth at least is all too short and unfinished. Man entertains high hopes for an abundant life with his loved ones, and undertakes worthwhile things for them and his generation. His high hopes vanish as he is robbed of those he loves by death, and his hands drop the working tools of life while his undertakings are incomplete.

As a consequence of these things, our hearts cry out that there must be some place after life's fitful fever is over where tears never flow and rainbows never fade, where high hopes are realized and worthy tasks are accomplished, and where those we "have loved long since and lost awhile" stay with us forever.

I revere religion. I revere religion because it gives us these promises and this hope. I would protect and preserve the right of freedom of religion for all men.

In closing, I ask these questions: Why did the Founding Fathers incorporate freedom of religion in the first amendment? What purpose did the Founding Fathers have in view when they did this?

The answer to these questions, it seems to me, appears with great clarity in the opinion of the late Justice Jackson in West Virginia Board of Education v.

Barnette, 319 U.S. 624, 638.

I read what he has to say on this point:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to * * * freedom or worship * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Let us keep it that way. Let us preserve for all Americans of all generations the right to bow their knees and lift their voice to their own God in their own way.

We can do this by standing by the first amendment as it has been written and interpreted.

I close with a prayer that the Senate will do exactly this and more more.

Mr. President, I yield the floor.

Cited in 112 Congressional Record, pp. 23122-41, September 20, 1966.

APPENDIX III

STATEMENTS BY SENATORS ERVIN AND BAKER REGARDING THE HOAX THAT WAS PERPATRATED UPON THE COMMITTEE

SENATOR ERVIN. Excuse me, I have to interrupt this. It appears that a hoax has been perpetrated upon the committee, at least upon the chairman of the committee.

I was called to the telephone just before the lunch period and I was told before I went to the telephone that Secretary of the Treasury Shultz was calling and wanted to speak to me. I went to the telephone and a voice at the other end of the line informed me that it was Secretary of the Treasury Shultz. I am not familiar enough with the voice of the Secretary to be able to identify it and so I just assumed that the person at the other end of the line was Secretary Shultz, and he made the statement which I reported to the committee and the news media on this microphone.

In the meantime, there has been communications between White House Counsel, Mr. Garment, and the staff, and Mr. Garment professed ignorance of any matters of that kind and, as I understand, an investigation was made, and Secretary Shultz was contacted and Secretary Shultz stated that he had no such conversation. So I had his office called and asked that he be placed on the phone, and so I was informed a few minutes ago--the reason I put it this way is because I hate to have my faith shattered in humanity--but I was called to the phone and I was informed that Secretary Shultz was indeed on the phone. I went to the phone and had a conversation with the man who really assured me he was the real Secretary Schultz [laughter] and he informed me that he had had no conversation with me today; that whoever did it was somebody else; that the only conversation he had with me recently by telephone was when he called me yesterday to tell me something about the White House and the witnesses from the Secret Service.

So it is just an awful thing for a very trusting soul like me to find that there are human beings, if you can call them such, who would perpetrate a hoax like this.

Additional information which I received from counsel, and which counsel assures me that they have received by telephone, and not in person, and which they believe was received from White House counsel is to the effect that the

President has the request of the committee under advisement and will reach some decision about it early next week. So notwithstanding the fact that my trust in humanity has been grossly abused by someone I am going to--and notwithstanding the fact that some people think the telephone is an instrument of the devil anyway [laughter] I am going to assume that the information which counsel received at one end of a telephone line from somebody at the other end was indeed information conveyed to them by White House counsel and that the recent information is correct.

SENATOR BAKER. Mr. Chairman, it would be helpful if we could have found a secure telephone [laughter] but in any event, too, I would view with great distaste the apparent hoax that has been perpetrated on the committee. The fact that it was received here on a confidential phone number in the committee room would seem to lend credence at the first blush, and I can fully understand the transaction as it has transpired.

I would say for the record, however, that the thanks I expressed and the admiration I expressed for the accommodation of both parties still stands as an advance payment on what I hope will still happen.

SENATOR ERVIN. I would add that the commendation I visited upon the committee members would still stand and I would like to expand it to include both the majority and the minority staff members. And I trust that nobody in the future will attempt to deceive and misldead a trusting and unsuspicious individual like the chairman of this committee in any such fashion [laughter]. In other words, the counsel suggests that we have had some talk about dirty tricks. I think it is a unanimous opinion of this committee that this was a right dirty trick. [Laughter.]

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