

## **Ervin, Samuel James, Jr.** <sup>[1]</sup>



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## **Ervin, Samuel James, Jr.**

by Mitchell F. Ducey, 1986

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**27 Sept. 1896–23 Apr. 1985**



Photographic portrait of the Hon. Sam Ervin, circa 1945. By Harris & Ewing. Item LC-H25-320728-G, Harris & Ewing Collection, Library of Congress Prints & Photographs Online Catalog.

<sup>[3]</sup>Samuel James Ervin, Jr., lawyer, jurist, legislator, congressman, and United States senator, was descended from a family of Scotch-Irish Presbyterians who had migrated from Ulster to the coast of South Carolina in 1732. The family originally settled in Williamsburg County.

[John Witherspoon Ervin](#) <sup>[4]</sup> (27 Mar. 1823–15 Apr. 1902), Senator Ervin's grandfather, became a teacher in Clarendon County, S.C., upon his graduation from South Carolina College in the early 1840s. He married Laura Catherine Nelson in 1844, and they eventually had six sons and three daughters. The family lived in Sumter and Manning where John Ervin became the first editor of Clarendon County's earliest newspaper, *The Clarendon Banner*. Ervin stayed in Manning until 1874, when he accepted an opportunity to teach in Morganton, N.C. Financially torn and emotionally embittered by the Confederate defeat in the Civil War, Ervin wrote poetry and fiction for various newspapers and periodicals until his death in 1902.

John Ervin's fifth son, Samuel James Ervin (21 June 1855–13 July 1944), was born in Sumter and reared in Manning. He attended Manning Academy, a school conducted by his father. After the family moved to Morganton, the young man served as deputy postmaster for the community between 1875 and 1880. He studied law in his spare time and passed the North Carolina bar examination in 1879. Ervin was extremely thorough in his study of the law and from modest beginnings became one of the most prominent lawyers of his time in western North Carolina. Though denied the privilege of a college education, Ervin possessed several of the qualities that would characterize his son's career: a devout respect for the [Constitution](#) <sup>[5]</sup> coupled with a detestation of governmental tyranny; a devotion to civil liberties coupled with a sincere belief in the individual's responsibility for his own welfare; and a mastery of the King James version of the Bible coupled with a hatred for religious and other forms of intolerance.

Samuel Ervin married his second cousin, Laura Theresa Powe (25 June 1865–14 June 1956), on 6 October 1886 in Morganton. She was a native of Salisbury and had moved with her parents to Burke County <sup>[6]</sup> in 1869. Educated in private schools in Charlotte and Morganton, she changed her affiliation from the Episcopal church of her parents to the Presbyterian church of her new husband upon their marriage. She became president of the Burke County chapter of the American Red Cross <sup>[7]</sup> during the First World War.

Samuel James Ervin, Jr., the fifth of ten children, was born in Morganton in 1896. He attended public schools in Morganton and developed a love for history and reading. After graduation from high school in 1913 he attended The University of North Carolina <sup>[8]</sup> from 1913 through 1917.

While at the university, Ervin studied under several teachers who had a lasting impact on him. He studied poetry and literature under John Manning Booker, Daniel Huger Bacot, and Edwin A. Greenlaw <sup>[9]</sup>. He developed a capacity for the study of history under J. G. deRoulhac Hamilton <sup>[10]</sup>. He gained insight into the areas of philosophy and ethics under Henry Horace Williams <sup>[11]</sup>; constitutional law under Lucius Polk McGehee <sup>[12]</sup>; and Latin under Wilbur Hugh Royster <sup>[13]</sup>. Ervin was an excellent student who served as class historian during his junior and senior years. He won historical prizes offered by the Colonial Dames <sup>[14]</sup> for the best essays on colonial North Carolina, and two of his articles were published by the History Department in the *James Sprunt Historical Publications*. Ervin also became assistant editor of the *University Magazine*; a member of the Dialectic Literary Society <sup>[15]</sup>; vice-president of his senior class; a commencement marshal; and permanent president of the class of 1917. He was also elected to membership in Sigma Upsilon because of his literary ability, and to Phi Delta Phi because of his knowledge of law.

Ervin volunteered for the armed forces in May 1917 <sup>[16]</sup>, a month prior to graduation. He underwent officer training at Fort Oglethorpe, Ga., and in September sailed for France, where he spent eighteen months serving in Company I, 28th Infantry Regiment, First Division of the American Expeditionary Forces. Ervin received the Silver Star for gallantry in action in May 1918 at Cantigny. He was wounded there but received a more serious wound in July after being hit by a shell fragment while leading an advance party in an attack on a German machine gun post at Soissons, during the Aisle-Marne offensive. For his heroism in this battle, Ervin was awarded the Distinguished Service Cross. In addition, he received the Purple Heart and the French Fourragere for his service during the war.

Returning to the United States in April 1919, he immediately took a refresher course in law at The University of North Carolina that summer, was admitted to the North Carolina bar in August, and subsequently enrolled at Harvard Law School <sup>[17]</sup>. While at Harvard, Ervin developed a deep respect for the law. He especially admired Roscoe Pound's emphasis on individual liberties and the arguments that Zechariah Chafee, Jr., made in defense of such libertarian principles as an individual's freedom of speech. Ervin was graduated from Harvard with the Bachelor of Law degree in 1922 and returned to Morganton to practice with his father.



"Re-elect Same Ervin Senator," political button from circa the 1950s-1960s. Item #H.1974.122.42, from the collections of the North Carolina Museum of History.

<sup>[18]</sup>Prior to his graduation from law school, Ervin received news from home that he had been nominated as Burke County's Democratic Party <sup>[19]</sup> candidate for the state legislature. Although he had not actively sought political office, Ervin accepted the nomination, won the election, and went to Raleigh in January 1923 as a legislator. During his months in the North Carolina General Assembly <sup>[20]</sup>, Ervin spent the time he had back home studying and practicing law in a room adjoining his father's small office building directly across from the courthouse in Morganton. Ervin returned to the state legislature for two other terms, in 1925 and 1931.

On 18 June 1924, Ervin married Margaret Bruce Bell of Concord, whom he had met in Morganton in 1916. Margaret, who received her Bachelor of Arts degree from Converse College <sup>[21]</sup> in 1919, taught at Concord High School before their marriage in 1924. In 1926, the couple had a son, Samuel James Ervin III, who would eventually follow his father in the study and practice of law. The Ervins also had two daughters: Leslie, born in 1930; and Laura Powe, born in 1934.

During the 1925 session of the state legislature, Ervin made his first strong speech in favor of civil liberties. With the General Assembly on the verge of passing a bill to prohibit the teaching of evolution in the North Carolina public school system, Ervin took the floor and dismantled the arguments of those who supported the bill (which eventually was defeated). Remarking that it would "gratify the monkeys to know that they are absolved from all responsibility for the conduct of the human race," Ervin employed the subtle, home-spun humor and legal acuity that would characterize his later career as a United States senator.

While in the state legislature, Ervin served on the Judiciary Committee; he supported changes in judicial procedure, higher spending for education, and legislation to allow juries to recommend mercy in capital cases and to care for the employment needs of the deaf. Ervin preferred, however, to stay out of the political limelight during the early years of his legal career, devoting his energies toward building a successful law practice in Morganton.

Between the mid-1930s and his appointment to the United States Senate <sup>[22]</sup> in 1954, Ervin accepted several judicial appointments. He served as a judge in the Burke County <sup>[6]</sup> Criminal Court between 1935 and 1937 and was appointed to the North Carolina Superior Court by Governor Clyde R. Hoey <sup>[23]</sup> in 1937. After suffering from a bleeding ulcer, Ervin resigned from the Superior Court in 1943 to resume his practice of law in Morganton.

Shortly thereafter, Ervin was again appointed to fill a political office. His brother, Joseph W. Ervin <sup>[24]</sup>, was a member of the United States House of Representatives from the Tenth Congressional District of North Carolina. Joseph, who had from childhood suffered from a painful bone disease, committed suicide in 1945, and his brother was called upon as a compromise candidate who could break a political deadlock in his home district by filling the vacant seat. Ervin served in the House in 1946, for the sole purpose of completing his brother's term. He refused renomination and returned to his law practice later that year. Ervin was then appointed by Governor Gregg Cherry <sup>[25]</sup> as an associate justice of the North Carolina Supreme Court <sup>[26]</sup> in 1948, and served in that capacity for six years. During that time, Ervin wrote several notable decisions and probably would have become chief justice had circumstances not again intervened.

North Carolina Senator Clyde Hoey <sup>[23]</sup> died in office on 12 May 1954, and Governor William B. Umstead <sup>[27]</sup> was left with the task of choosing a successor. One of the leading contenders for the seat, Irving Carlyle <sup>[28]</sup> of Winston-Salem, hurt his own political fortunes by encouraging a stance of compliance with the Brown v. Board of Education <sup>[29]</sup> decision by the United States Supreme Court. Again, Sam Ervin was summoned as a compromise candidate to fill a vacant seat, this time in the United States Senate. Ervin was sworn into office on 11 June 1954 by Vice-President Richard M. Nixon <sup>[30]</sup> and began his twenty-year tenure as a United States senator from North Carolina.

One of Ervin's first committee assignments as a senator was one several of his peers were hesitant to accept. The Select Committee to Study Censure Charges against Senator Joseph McCarthy <sup>[31]</sup> was convened in 1954, at a time when McCarthy was browbeating witnesses and finding alleged Communists in all areas of American life. In response to the censure investigation, McCarthy charged that the Communist party had "extended its tentacles" to certain members of the Senate itself, including Arthur Watkins, chairman of the Select Committee; Lyndon Johnson <sup>[32]</sup>, Senate minority leader; and Sam Ervin. It was at this point that Ervin rose in a special session of the Senate and made a pivotal speech against McCarthy that helped bring about the overwhelming vote to censure the Senator from Wisconsin.

Another challenging committee assignment for Ervin was his 1957 appointment to the Select Committee on Improper Activities in Labor or Management, more widely known as the Rackets Committee. Between 1957 and 1959, Ervin worked closely with Massachusetts Senator John F. Kennedy and his brother Robert, the Committee's chief counsel. After the labor hearings, during which Ervin questioned and dented the credibility of union leaders like Teamster President Jimmy Hoffa, Ervin and Kennedy jointly sponsored major labor reform legislation designed to combat corruption in unions and to protect the rights of rank-and-file members.

During the first decade of Ervin's career in the Senate, he steadfastly opposed civil rights <sup>[33]</sup> legislation for black Americans. He disagreed with the 1954 school desegregation decision by the Supreme Court and fought against the 1957 and 1960 civil rights bills. Ervin's hardest fight, however, was against the civil rights bill sent to Congress by President Kennedy in 1963, which granted sweeping powers to the federal government in an effort to eliminate obstruction of black voting, to desegregate all public facilities and public schools, to end employment discrimination, and to strengthen the United States Civil Rights Commission <sup>[34]</sup>.

As a member of the Senate Judiciary Committee, Ervin was in a unique position to oppose the efforts of the Kennedy administration. Along with other southern senators like John Stennis of Mississippi and Strom Thurmond of South Carolina, Ervin repeatedly came into conflict with the administration, and especially with Attorney General Robert Kennedy. The basis of Ervin's opposition to civil rights legislation was his understanding of the limits the Constitution was designed to place on the power of the federal government. A champion of civil liberties for whites and blacks throughout his career, Ervin believed that the Civil Rights Act <sup>[35]</sup> (finally passed in June 1964) both posed a severe threat to individual liberties and increased the likelihood of government tyranny. The tide of events made Ervin's fight against civil rights one of few that he lost in the Senate.

During virtually his entire senate career, Ervin served on the Judiciary Committee, and this was perhaps his most important committee assignment. Ervin became chairman of three subcommittees of the Judiciary Committee—Constitutional Rights, Separation of Powers, and Revision and Codification of the Laws. It was in the capacity of a powerful member of the Judiciary Committee that Ervin not only obstructed civil rights legislation but also sponsored and advocated several pieces of legislation in support of civil liberties.

Ervin's major legislative accomplishments in the area of civil liberties came after his appointment in 1961 as chairman of the Constitutional Rights Subcommittee. Ervin sponsored the Criminal Justice Act of 1964, which provided legal counsel for indigent defendants in criminal cases. The Bail Reform Act of 1966 offered the chance for defendants who could not afford bail to be released from custody pending trial. In addition to these measures, Ervin opposed the Nixon administration's efforts to pass the District of Columbia Crime Bill of 1969. While liberal congressmen hedged because of the Administration's appeal for "law and order," Ervin sharply attacked provisions such as the preventive detention of suspects and a "no-knock" clause that would allow police to enter suspects' homes without knocking. Ironically, liberals who had attacked Ervin for his stand against civil rights now praised him for his defense of the rights of suspected criminals.

In 1964, Ervin sponsored the District of Columbia Hospitalization of the Mentally Ill Act, which served as a model law that other states quickly copied. This legislation encouraged voluntary hospitalization, tried to remove the stigma attached to mental illness, and asserted a "bill of rights" for the mentally ill, including the right to treatment and to periodic review. Ervin's advocacy of such legislation stemmed in great measure from painful visits he had made to observe the operations of the North Carolina state psychiatric facility at Morganton. Ervin also sponsored the Military Justice Act of 1968 <sup>[36]</sup>, which protected the rights of servicemen in military courts of justice, and became an advocate of the constitutional rights of American Indians <sup>[37]</sup>. He had introduced legislation in 1966 that would guarantee the same rights to reservation Indians which white Americans enjoyed and for which black Americans had been struggling. When it was apparent that his "Indian Bill of Rights" was being allowed to die in committee, Ervin attached his bill as an amendment to the Fair Housing Bill. Taunting Senate liberals by noting the inconsistency that "anybody supporting a bill to secure constitutional rights to black people would be opposed to giving constitutional rights to red people," Ervin won Senate approval for his amendment and saw it become law.

Ervin fought against a number of threats he perceived to civil liberties during the latter part of his Senate career. He opposed the Voluntary School Prayer Amendment introduced by Senator Everett Dirksen in 1966, on the grounds that the civil liberties of students and teachers in the public schools would be violated if prayer were allowed in the classroom. Every year from 1966 into the early 1970s, Ervin introduced legislation to protect the privacy of federal employees, who were required to supply personal information and take lie detector tests in order to secure work with the federal government.

Several of Ervin's civil liberties battles were waged against the Nixon administration. For example, when President Nixon issued an executive order to grant the long-dormant Subversive Activities Control Board vast new powers and funding, Ervin helped defeat the effort by attacking it as a violation of an individual's free expression of ideas under the First Amendment. In the early 1970s, Ervin not only was instrumental in defending the press's freedom to conceal its sources; he also worked to expose the military's practice of surveillance of civilians considered dangerous by the government, especially those people who exercised their right to demonstrate peacefully against the War in Vietnam <sup>[38]</sup>.

Although Ervin was willing to protect the civil liberties of those opposing American involvement in Vietnam, he supported the war effort. Ervin's primary regret regarding Vietnam, in fact, was that America did not demonstrate a stronger commitment to win the war. Ervin was a member of the Senate Armed Services Committee, as well as chairman of that committee's Subcommittee on the Status of Forces Treaty. Throughout his senate career, Ervin supported heavy military spending, the development of a strong nuclear deterrent, and the draft.

Ervin was also a member of the Government Operations Committee and was chairman of the committee during his last two years in the senate. He supported most traditional senate procedures such as unlimited debate, seniority, and denial of public financial disclosure. At the same time, Senator Ervin opposed a variety of executive practices such as the impoundment of appropriated funds and the plea of executive privilege before investigative committees.

The latter weapon was used against the Senate to an unprecedented extent during the Nixon administration. Sam Ervin will perhaps be best remembered for chairing, from 1973 until 1974, the Senate's Select Committee on Presidential Campaign Activities, which became known popularly as the Watergate Committee <sup>[39]</sup>. After five burglars broke into the Democratic National Committee headquarters in June 1972, the White House began a campaign to cover up both the break-in itself and the ensuing destruction of evidence and intimidation of witnesses, most of which was financed with campaign funds from the Committee to Re-Elect the President.

Ervin worked to sort out the legal and constitutional complexities surrounding the activities of the Nixon administration, and did so with a degree of the humor and home-spun story-telling that had characterized his speeches during his previous senate career. Ervin had been assigned to chair the committee because he was a senator without presidential aspirations who was most respected by both his Democratic and Republican colleagues. Ervin accepted the chairmanship out of both a sense of duty and the belief that Watergate posed the most serious challenge ever to the United States Constitution.

The Watergate affair ended when President Nixon resigned and with the preservation of the Constitution that Sam Ervin so cherished. Ervin made the decision not to run for reelection in late 1973, and he left the Senate at the close of the 93rd Congress in 1974. Ervin retired to his home in Morganton, where he became actively engaged in writing, practicing law, doing historical research, traveling, and giving lectures. He died in a hospital in Winston-Salem <sup>[40]</sup> after a brief illness and was buried in Morganton.

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"Political Button [Re-elect Sam Ervin Senator]; Accession #: [H.1974.122.42](#) <sup>[18]</sup>." North Carolina Museum of History. (accessed January 30, 2014).

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[Public service](#) <sup>[52]</sup>

[World War I \(1914-1918\)](#) <sup>[53]</sup>

[World War II \(1941-1945\)](#) <sup>[54]</sup>

#### **Authors:**

[Ducey, Mitchell F.](#) <sup>[55]</sup>

#### **Origin - location:**

[Burke County](#) <sup>[56]</sup>

[Morganton](#) <sup>[57]</sup>

[Raleigh](#) <sup>[58]</sup>

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