

Little Support for Immunity

Democrats Fear Nixon Forgiveness Might Look Too Political

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Scarcely any support developed on Capitol Hill yesterday for Sen. Edward Brooke's resolution expressing the sense of Congress that President Nixon should be spared prosecution if he resigns with a full public confession of his guilt in the Watergate scandal.

Prosecution could result in more than 30 years imprisonment and more than \$50,000 in fines, according to a reading of the specific charges in the House Judiciary Committee's three articles of impeachment.

A number of senators said they feared that an expression of immunity by the Democratic-controlled Congress might create the impression that Mr. Nixon was forced from office for political reasons rather than constitutional ones.

Even Brooke, who nine months ago became the first Republican senator to call for Mr. Nixon's resignation, appeared to be only lukewarmly pushing his own proposal for immunity.

The Massachusetts lawmaker said he did not circulate it beforehand among key leaders of either party, obtained no co-sponsors, does not want quick action on it, and would not even vote for it himself unless Mr. Nixon has made a full public confession.

House Democratic Leader Thomas P. O'Neill (Mass.) said, "Democratic leaders on both sides have met and feel that immunity is a matter between the administration and the courts."

He said he expected no action on Brooke's proposal, which would merely express the sense of the Congress and would not prevent special Prosecutor Leon Jaworski or anyone else from going ahead with criminal or civil prosecution.

Sen. Charles Percy (R-Ill.) said consideration of immunity "might be desirable at

some point," but "I think it is premature now."

There was no comment, favorable or otherwise, from Sens. Barry Goldwater (R-Ariz.) and Hugh Scott (R-Penn.) who, along with House Minority Leader John J. Rhodes (R-Ariz.), met with Mr. Nixon Wednesday to tell him he had little support in Congress. A Rhodes aide said he probably would back an immunity resolution.

Lawmakers indicated four problems with any proposal of immunity:

- Would it allow Mr. Nixon to claim that his resignation was forced for political reasons rather than legal reasons?

- Would it leave unclear where presidential authority should stop?

- Would it establish a lower standard of justice for presidents than for everyone else?

- Does the Congress have the authority to get into that area at all?

"Congress only has legislative powers, it does not have pardoning powers," says Sen. Sam Ervin (D-N.C.).

Senate Majority Leader Mike Mansfield (D-Mont), whose suggestion that impeachment should continue

after a resignation also received a cool reception, said, "It raises a grave question regarding the separation of powers . . . I don't want the President to be in a position to claim that he was driven out."

Assistant Democratic Leader Robert Byrd (D-W. Va.) said, "Whatever abuses of power there were . . . ought somehow to be laid out on the record."

"I have as much compassion for the President of the United States or anyone else caught in a tragic situation like this as anyone else," said Byrd, ". . . but I think that would be a bad

precedent . . . if a judge feels for specific reasons that leniency is advisable, that's his business. He has the responsibility and the authority . . . I think this is a matter for the Special Prosecutor to determine."

Sen. John Tower (R-Tex.) said he would support the resolution, and thought it would get "substantial support," because "I don't think the majority in this country wants to see a former president go to jail."

Brooke said that after he submitted the resolution yesterday morning, he did discuss it with a number of colleagues, including Scott, Goldwater, Mansfield, Hubert Humphrey (D-Minn.), George McGovern (D-S.D.) and Alan Cranston (D-Calif.).

Aides said Humphrey and McGovern had taken no position on it.

Cranston said, "The power to show mercy is left to the courts. I question a grant of immunity when you have no idea what crimes we may be talking about."

In effect, Cranston said, the resolution would place the President above the law, even though "this whole thing has been about the rule of law."

An aide said Mansfield's position also "stems from the fact he feels no man is

above the law."

Sen. Philip Hart (D-Mich.) said it was ironic to be considering immunity for Mr. Nixon "for alleged acts of political expediency when we have yet to act in the more obvious case of the boys in Canada who would not fight in Vietnam."

Those who refused to fight "acted out of conscience," said Hart. "Such a claim of conscience has not and can not be made by Mr. Nixon."

Mr. Nixon could face criminal charges punishable by 30 to 60 years in prison and up to \$57,500 in fines if he is prosecuted for alleged offenses arising from the Watergate scandal.

That is the assessment of criminal law experts on Capitol Hill and in federal agencies, based on the specific charges expressed in the House Judiciary Committee's impeachment articles.

The experts say the most likely charges could be brought under three sections of the criminal code forbidding attempts to:

- Influence or impede witnesses, obstruct proceedings before a congressional committee (the Ervin Committee), and cause misrepresentation on facts in criminal cases.

Such articles are used to prosecute obstruction of justice.

They would cover offenses alleged in Article I of the House impeachment articles, relating to the Watergate coverup. Each of the three sections carries a punishment of up to five years imprisonment and \$5,000 fine. In addition, a separate accusation of conspiracy to commit each of the three offenses could be filed, punishable by up to five years and \$5,000 fine on each conspiracy charge.

If convicted of all six counts — the three basic charges plus the three conspiracy charges — a defendant would theoretically be subject to 30 years and \$30,000 fine.

Prosecutors familiar with federal law say this would probably constitute the maximum of penalties, since most of the allegations seem to fit in best with these sections of the criminal code.

Nevertheless, added prosecutions might be possible for making false statements (\$5,000 and five years) and for concealing knowledge of a felony (\$500 and three years).

They say conspiracy charges might also be possible in connection with attempts alleged in impeachment article II to misuse and frustrate the FBI, Secret Service, CIA and Special Prosecutor from carrying out their lawful functions. This could bring five years and \$5,000 on each of these charges, or \$20,000 and 20 years total.

Finally, prosecution would also be conceivable for attempts to disclose tax information unlawfully (\$1,000 and 1 year) and for contempt of Congress in not turning subpoenaed tapes over to congress (\$1,000 and one year).