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CAP WATGEO Document is already reviewed

By William T. Coleman Jr.

PHILADELPHIA—The House of Representatives will be considering articles of impeachment shortly. Democratic government, indeed most government, is based upon the confidence of the people. Without a large measure of it, no leader in a democratic society can govern effectively.

Symptoms of low confidence in the Nixon Administration are everywhere. The motives, however valid, behind the military alert during the recent Middle East war have been questioned. The normal business of government—medical and housing programs, stock market and financial reform, rationalization of the defense system, agricultural reform, continuing the drive for equality—has all faltered or stopped.

It is now being argued that the country would be better off if Mr. Nixon were no longer President. If this is the best course for the country, the question is how to achieve the result.

The two courses are obviously resignation or conviction upon impeachment. When the practicalities are weighed, it is clear that resignation is the only conceivable course.

The principal consideration weighing against impeachment and a Senate trial is the time it would take and its disruptive effect on governmental business. A close vote could only deepen the crisis of public confidence. Conviction by the Senate might only be the beginning of a lengthy battle through Federal courts. Some legal scholars have expressed considerable doubts about the power of the Congress to impeach and convict without a subsequent review by the courts.

Resignation is the only solution and we must, therefore, offer the President inducements to take that step.

The Republican and Democratic leadership in Congress should propose and enact into law the following measures:

First, the President should be guaranteed whatever retirement benefits he would otherwise have received at the end of his term.

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Second, he should be granted absolute immunity from all prosecution, Federal or state, for all acts before resignation, and also absolute immunity from subpoenas to testify or produce documents at the trials of others or before Congressional committees.

Third, he should be permitted, if he desires, before resignation to destroy tapes, memoranda and other material connected in any way with Watergate and related matters.

The last two suggestions could be the most controversial, since destruction of the tapes, memoranda, and other material and immunity from subpoenas could make further prosecution of Cabinet officers and members of the White House staff impossible. But there is no other way to preclude the possible necessity for the President, after resignation, to testify under subpoena in their trials.

The proposed bill could be enacted without Presidential concurrence as happened with the statute conferring subpoena power on the Senate Watergate Committee. Congress would simply provide that the immunities conferred by the suggested statute would be applicable if within a specific time after its enactment (thirty days for example) a letter of resignation would be filed by President Nixon with the Secretary of State.

There are strong reasons why President Nixon should personally welcome resignation with these guarantees. First, it must be assumed that any American political leader who reaches high office has the best interests of the country at heart.

Also, any ill-advised clinging to the immunities of office would only postpone Mr. Nixon's personal problems until 1977. Whether the President elected in 1976 is Republican or Democrat, it is highly likely he will be elected in reaction to Watergate. Investigations and criminal and civil charges could well follow.

Mr. Nixon would be obliged to defend these actions with private, not Government funds. He could be dragged from court to court and before various committees of Congress. The issues of Presidential and executive privilege and immunity take on a different coloration when the subject of the investigation is an ex-President.

Nor would the statute of limitations appear to raise a bar to criminal or

civil proceedings, even if the actual period had elapsed, for the prevailing view is that a President cannot be prosecuted for a crime while he remains in office. It follows that the statute would be suspended during this period. The situation would be analogous to those cases where there is a six-year statute of limitations with respect to criminal prosecution, but the defendant either remains outside the country until after the six years has elapsed or is under some other type of disability that prevents indictment and prosecution. Courts have held that the statute of limitations did not run during the years there was a disability that prevented prosecution. Thus, during the period of President Nixon's incumbency, the statute of limitations is suspended.

Patriotic and personal considerations make resignation with guarantees the logical choice for President Nixon and for the country. Until the leaders of both parties in Congress begin to consider these matters seriously, discussion of both resignation and impeachment will have an air of insubstantiality and wishful thinking.