

Hill Clash Looms On Bill Providing New Prosecutor

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By Spencer Rich

Washington Post Staff Writer

This week, nearly two months after President Nixon's ouster of former Watergate special prosecutor Archibald Cox, the House and Senate are heading for major floor battles over legislation to have the courts name a new special prosecutor immune from presidential dismissal.

In the famed "Saturday night massacre" Oct. 20, President Nixon forced Cox out and thereby precipitated one of the worst crises of his presidency. Deputy Attorney General William D. Ruckelshaus resigned after refusing to dismiss Cox, and Attorney General Elliot L. Richardson resigned in protest of Cox's ouster.

Within a few days of the Cox dismissal, a bloc of 55 Senators led by Philip A. Hart (D-Mich.), Edward M. Kennedy (D-Mass.), Birch Bayh (D-Ind.) and John V. Tunney (D-Calif.) introduced legislation to empower a three-judge panel from the U.S. District Court here to appoint a new special prosecutor, completely independent of the President, to conduct a new Watergate investigation. The prosecutor could be dismissed only by the court. More than 100 House members introduced similar legislation and now, under the sponsorship of Hart and Rep. William Hungate (D-Mo.), both bills are coming to the floor this week.

Hart and other sponsors argued that the only way to convince the public that a complete and impartial investigation is being undertaken of all matters related to the Watergate scandal is to make the prosecutor absolutely independent of all presidential control.

Question Constitutionality

Acting Attorney General

Robert H. Bork and a large number of Capitol Hill Republicans, however, contended that the Hart bill might be unconstitutional because it shifted an executive function, which the Constitution reserves for the President, namely, the prosecution of offenses, to another branch of government.

If the courts eventually found the statute invalid, they argued, it could nullify any prosecutions undertaken by the man named to the special office.

Hart and his allies as well as Hungate and his don't concede the constitutional argument and they have included in their bill a provision allowing a rapid court test of the constitutionality issue. Moreover, many see the Bork objections as simply an attempt to retain some Justice Department control over the new prosecutor.

As a result of the quarrel, amendments will be offered in both chambers to kill the court-appointment provisions and to substitute legislation which would leave the choice of a new prosecutor up to the attorney general, who would also have the power to fire him but only for gross impropriety, dereliction of duty or misconduct, and only—in the House substitute version—with the consent of Congress. Bork, for his part, has promised he won't appoint anyone of whom the Senate disapproves by resolution.

Passage Uncertain

When the court-appointee bills were first introduced two months ago, it appeared they could pass both chambers easily, but that's no longer certain. Since then, Bork has named Texas lawyer Leon Jaworski to the post under an

existing law that makes the prosecutor subject to the Justice Department, but has promised a hands-off attitude. Jaworski, in turn, has kept Cox's old staff and has pursued the investigation with what even skeptics concede is some vigor, show of independence and determination to oppose any White House cover-up attempt.

All the bills and substitute amendments create machinery which would allow the courts or attorney general to retain Jaworski; and the key House substitute, sponsored by Rep. David W. Dennis (R-Ind.), in effect, requires appointment of Jaworski.

The good impression made by Jaworski has left many people wondering whether a court appointment bill is necessary or desirable, as have statements by Watergate Judge John Sirica and D.C. District Court Judge Gerhard Gesell that they oppose the court-appointment technique.

Some Steam Gone

"Some of the steam has gone out of it," said one senator who signed on among the 55 sponsors. He cited Jaworski's record, the judges' opinions, although finally concluding he would vote for it anyhow.

Hart and his cosponsors believe they haven't lost any of their 55-member bloc and that they will pass the bill, and Hart told the Senate last week that public confidence in Jaworski's freedom of action would be enormously heightened if he were appointed by the court.

May Be Bigger Threat

The substitute calling for the attorney general to appoint the special prosecutor is being sponsored in the Senate by Roman L. Hruska (R-Neb.) and Robert Taft Jr. (R-Ohio), but a bigger threat to the Hart bill may come from another substitute being offered by Sen. Charles H. Percy (R-Ill.) and Howard H. Baker (R-Tenn.), senior Republican on the Senate Watergate Committee.

It calls for presidential appointment of a prosecutor, subject to Senate confirmation, who can be removed only for neglect of duty, malfeasance in office or violation of the provisions of the bill.

Hart said this bill, restricting the President's power to remove an officer appointed by himself, is subject to stronger constitutional challenge than the court-appointee bill. Percy's aides respond that the Hart bill almost surely would be vetoed, while the Percy measure has at least some chance of being signed.

In the House, the Dennis substitute is given a strong chance of winning, though the outcome is still uncertain.

Hungate said, "We beat it (Dennis' proposal) in committee, I'm hopeful we can beat it on the floor. I would put it that I'm mildly optimistic."

Dennis said, "I don't have a scientific nosecount, but I think we have a good fighting chance. I expect solid Republican support and a sizable number of Democrats."

Bork, in a letter to Hruska, made clear that he much prefers the Dennis and Hruska versions to the Hart-Hungate approach.