

Senators Back Old Code on Impeachment

By Spencer Rich

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The Senate Rules Committee, beginning its line-by-line study of procedures for an impeachment trial of President Nixon, agreed unanimously yesterday that it would use the existing 106-year-old impeachment code as a basis for work, instead of adopting the totally new set of rules submitted earlier this week by Senate Majority Leader Mike Mansfield (D-Mont.).

Amendments may be adopted, but the total Mansfield rewrite was put aside. It would have shifted many of the powers to conduct the trial from the presiding officer to the leadership, barred the Chief Justice as presiding officer from voting to break procedural ties, established standards of evidence and declared that the President could be found guilty on "clear and convincing proof."

Sens. Robert P. Griffin (R-Mich.), Robert C. Byrd (D-W.Va.) and Marlow Cook (R-Ky.) all predicted, furthermore, that the existing rules and precedents won't be revised too much.

Meanwhile, it was learned that several GOP offices have been researching the legality of passing legislation letting President Nixon escape all criminal prosecution if he agrees to resign before the Senate trial starts.

The mechanism suggested by one Hill attorney is a "plea in bar," the device usually used in plea-bargaining in the courts, in which the accused pleads guilty to a lesser offense in a manner that gives him double jeopardy protection against future prosecution.

According to the scenario laid out by the attorney, the President could resign—without conceding specific guilt—in return for a joint resolution stating that the resignation constitutes a "plea in bar" against prosecution anywhere on any criminal charges arising from the basic set of events which caused the resignation. The new President, Gerald R. Ford, presumably would sign such legislation.

Asked about the legality of such a device, Rules Committee Chairman Howard Cannon (D-Nev.) appeared skeptical.

In the Rules Committee yesterday discussion focused on whether the Senate should set specific rules of evidence for the Nixon trial, on whether it should set "clear and convincing" proof as the standard of

proof of guilt, instead of the tougher criminal requirement of "beyond a reasonable doubt," and what precise role the Chief Justice, who presides over a Senate impeachment trial, should play.

The committee is working in the awareness that the outcome of a Senate impeachment trial, as well as public acceptance of any guilty verdict, would hinge to a great extent on whether the nation is convinced the trial procedures are fair.

At the same time, some senators fear that unless definite guidelines are laid out in advance on standards of proof and admissibility of evidence, there may be charges of "kangaroo court" from the White House. Alternatively, lack of clear evidence and proof rules could give Chief Justice Burger, as presiding officer, the opportunity to try to impose his own rules before a television audience of 200 million. They say that Burger, for example, might well assert that "beyond a reasonable doubt" should be the proper standard of proof.

To avert such possibilities, some senators favor adopting specific rules of evidence in advance and specific guidelines on a standard of proof. Others, like Byrd, believe existing rules and precedents are adequate and the Senate shouldn't bind itself to new ones. Any move by the presiding officer to ram his own rules in could be overridden by a majority vote, he points out, under existing procedures already on the books.

If new rules of evidence are adopted, the question becomes how much hearsay evidence should be allowed. If a standard of proof is written in, what should it be? Cook said yesterday he favors "beyond a reasonable doubt," as did Scott and Griffin. Jacob K. Javits (R-N.Y.), who isn't on the committee, said he doesn't favor writing in any rules on how much is needed for conviction, but personally will follow the "clear and convincing evidence" test.

Reviewing the existing procedures yesterday, the committee was told that the precedents in impeachment trials may allow a single article of impeachment with nine subdivisions, as the House Judiciary Committee has already approved, to be split on the senate floor into nine separate votes.

Two-thirds approval of any one of those nine would convict the President and oust him from office.