ON THE IMPEACHABLE OFFENSES OF RICHARD NIXON

Mr. MONDALE. Mr. President, on November 27, Mr. Joseph A. Califano, Jr., addressed the District of Columbia Chapter of the Federal Bar Association. Mr. Califano's address was entitled "The Impeachable Offenses of Richard Nixon: An Impeachment of Conscience." Mr. Califano is a widely respected lawyer, an active member of the Democratic Party, and a distinguished American. He is a graduate of Harvard Law School and is currently practicing law in Washington, D.C. His service to the country in many capacities. From 1965 to 1969, for instance, he served as special assistant to President Lyndon Baines Johnson.

Mr. Califano's broad experience in government, in politics, and in law uniquely qualifies him to speak to the subject of his Federal Bar Association address. Although, as a potential juror in a Senate impeachment trial, I have refrained, and will continue to refrain, from passing judgment on the impeachable offenses of Richard Nixon, I will pause to consider Mr. Califano's presentation.

I ask unanimous consent that Mr. Califano be printed in the Record.

There being no objection, the speech was ordered to be printed in the Record, as follows:

ADDRESS BY JOSEPH A. CALIFANO, JR., ON THE IMPEACHABLE OFFENSES OF RICHARD NIXON

Any discussion of the impeachable offenses of Richard M. Nixon must begin with the Constitution of the United States. Article II, Section 4 provides that "The President, Vice President, and all civil officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Under Article I, Section 2, the House of Representatives has "the sole Power of Impeachment," and must, by majority, vote Articles of Impeachment. Those Articles are then considered in a Senate trial. The Chief Justice of the Supreme Court presiding, sits as a one hundred man jury, with a vote of "two-thirds of the Members present" necessary for conviction. But Impeachment is not necessarily the end of the road for the President: Article I, Section 3 specifically provides that a President "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." The Constitution does not necessarily provide that the President, regardless of the results of the Senate trial, will be removed from office. In the event of a Senate conviction, the President will be removed from office; but if the Senate fails to convict, the President will remain in office.

Insofar, the judgement issued by the Federal Bar Association, and the interpretation of the Basic Law and the Basic Treaty contained therein, might serve as a joint platform for all those political powers in Germany who feel bound to the Basic Law, i.e. the principles of the liberal and constitutional democracy, and who are prepared to approach the political course leading to a future free Germany. With respect to defending the judgement pronounced at Karlsruhe against the attacks by the Communists and their sympathizers, which have already been initiated, the minds will part.


(Translated by Helga Mayorga, B.A.)

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(Translated by Helga Mayorga, B.A.)
Scholars and legislators disagree about what constitutes a crime or offense. Proposed definitions are as limited as violations of federal criminal statutes in the course of official duties or as broad as Gerald Ford's counsel. The latter view is what the Congress says it is. My own reading of history and precedent leads me to conclude that there are probably three areas of impeachable offenses against which any President must be judged:

1. Violations of criminal statutes.
2. Political corruption.

Proposed definitions are needed in a time when the Congress has changed its approach to the impeachment process. Across the broad spectrum of matters there is reason to believe that the potential violations basically fall into three broad categories: personal corruption and fraud, political corruption, and obstruction of justice. To be significant, crimes relating to each of these areas must be considered in the context of four basic criminal statutes:

Section 371 of Title 18—Conspiracy.
Section 2 of Title 18—Assisting the Commission of a Federal Crime.

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Section 2 of Title 18—Assisting the Commission of a Federal Crime.
IT&T, particularly in the Presidential approval of its Hartford Insurance merger, just as IT&T's Sheraton Hotel subsidiary was promising $400,000 to the 1972 Republican Convention; and to the hundreds of thousands of dollars in foreign trade regulations, to push the price of milk and increase the revenues of the industry by hundreds of millions of dollars.

These tradeable activities as well where the public record provides sufficient information to justify a healthy suspicion of illicit Presidential activity even though the details of the situation have not been fully developed as it has with respect to the IT&T and milk transactions. These activities include the Presidential power of former Teamsters Unions, resident Miss Hands and the statements of representatives of Ashland Oil, Braniff Airlines and others that CREEP financed Chairman Maurice Stans with $100,000 quotas in his politically aversive quest for a $50 million campaign kitty.

At least five additional criminal statutes may have been violated in this political corruption area. For example, it is a felony to solicit or accept anything of value as a political contribution in consideration of any promise of any governmental employment; to bribe any governmental employee in his official capacity; and to bribe or extort property of any value by threats or promises.

A wide range of criminal civil rights violations has been perpetrated by the Nixon Administration. Although this discussion is limited to specifically criminal violations, we should not forget that in many cases violations involve arrogant abridgement of the Fourth Amendment right of reasonable searches and seizures. The break-ins and burglaries of the offices of Daniel Ellsberg's psychiatrist and the Democratic National Committee, and the wiretapping of White House aides and reporters provide the most offensive known incidents of civil rights violations. But there is every indication that they were part of a much larger scheme; we may well not yet have closed the book on the individual liberties that were crushed under the weight of this incoherent web of unconstitutional actions.

The context, of course, is the Recommendation and Decision Memoranda of White House staffer Tom Charles Houston and Richard Kleindienst, now the Attorney General of the Nixon government. The following excerpts from Mr. Houston's Recommendation Memo- randum and Decision Memoranda of White House aides and cabinet officers are essential to an understanding of what happened at the Watergate and in Los Angeles:

**C. Mail Coverage**

Recommendation:

Restrictions on legal coverage are to be removed, reduced or modified. It is to be relaxed to permit use of this technique on selected targets of priority foreign intelligences and domestic security interests.

**D. Surreptitious Entry**

Recommendation:

Also, present restrictions should be modified to the extent of this technique against other urgent and high priority internal security targets.

Rationale:

Use of this technique is clearly illegal; it amounts to burglary. It is also highly risky and could result in great embarrassment if exposed.

Footnotes at end of article.
The specific statutory provisions are:

(1) 26 U.S.C. § 7201: “Any person who willfully makes and subscribes an income tax return which he knows to be false in any material respect shall be punished...”

(2) 26 U.S.C. § 7203: “Any person who willfully causes another to file a false return...”

(3) 26 U.S.C. § 7206(1): “Any person who willfully causes another to file a false claim...”

(4) 26 U.S.C. § 7206(2): “Any person who willfully causes another to make a false claim...”

(5) 26 U.S.C. § 7206(3): “Any person who willfully causes another to commit fraud...”

(6) 18 U.S.C. § 1001: “Any person who submits a false statement in a matter within the jurisdiction of the United States...”

(7) 18 U.S.C. § 1002: “Any person who knowingly and willfully makes a false statement...”

(8) 18 U.S.C. § 1010: “Whoever [in any matter within the jurisdiction of the United States]... willfully falsifies, conceals or destroys any record...”

(9) 18 U.S.C. § 2511, which prohibits the interception and disclosure of wire or oral communications.

The specific statutory provisions are:

(1) 18 U.S.C. § 201: “(b) Whoever... corruptly gives, offers or promises anything of value...”

(2) 18 U.S.C. § 203: “(a) Whoever... receives...”

(3) 18 U.S.C. §§ 207 and 211, which deal with soliciting, offering or accepting anything of value “either as a political contribution, or for personal enrichment.”

The specific statutory provisions are:

(1) 18 U.S.C. § 503: “Whoever corruptly or by threats...”

(2) 18 U.S.C. § 506: “Whoever... in connection with any inquiry...”

(3) 18 U.S.C. § 507: “Whoever... in connection with any inquiry...”

(4) 18 U.S.C. § 510: “Whoever, with the intent...”

(5) 18 U.S.C. § 519: “Whoever... by means of bribery...”

(6) 18 U.S.C. § 520: “Whoever... by means of false statements...”

(7) 18 U.S.C. § 521: “Whoever... by means of false communications...”

(8) 18 U.S.C. § 522: “Whoever... by means of false promises...”

(9) 18 U.S.C. § 523: “Whoever... by means of false statements...”

The specific statutory provisions are:

(1) 18 U.S.C. § 1962: “Whoever... uses or operates...”

(2) 18 U.S.C. § 1965: “Whoever... in connection with any enterprise...”

(3) 18 U.S.C. § 1966: “Whoever... in connection with any enterprise...”


The specific statutory provisions are:

(1) 18 U.S.C. § 200: “Whoever... corruptly offers, promises or gives...”

(2) 18 U.S.C. § 201: “Whoever... accepts or receives...”

(3) 18 U.S.C. § 202: “Whoever... corruptly offers, promises or gives...”

(4) 18 U.S.C. § 203: “Whoever... corruptly receives or solicits...”

(5) 18 U.S.C. § 204: “Whoever... corruptly offers, promises or gives...”

(6) 18 U.S.C. § 205: “Whoever... corruptly offers, promises or gives...”

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is not elsewhere expressly provided by law, shall be fined . . . or imprisoned. . . .

(15) 18 U.S.C. § 1621: "Whoever, having taken an oath . . . that he will testify . . . truly and verily contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall . . . be fined . . . or imprisoned . . ."

(16) 18 U.S.C. § 1622: "Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined . . . or imprisoned . . ."

(17) 18 U.S.C. § 1623: "Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false and not specious which declaration is false if—

(1) each declaration was material to the point in question.

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In deciding under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before any court or grand jury.

It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true."

(18) 18 U.S.C. § 2071: "(a) Whoever willfully and unlawfully conceals, removes or destroys any . . . thing, filed or deposited . . . in any public office, shall be fined . . . or imprisoned . . .

(b) Whoever, while under the custody of any such . . . thing, willfully and unlawfully conceals, removes, or destroys the same, shall be fined . . . or imprisoned . . .

(c) 18 U.S.C. § 3322: "Whoever, before, during or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing such property . . . shall . . . remove the same, shall be fined . . . or imprisoned . . ."

LATVIAN INDEPENDENCE

Mr. BEALL. Mr. President, last month free men around the world marked the 50th anniversary of the struggle for Latvian independence. I join with many of my colleagues in the Congress, and many Americans in all walks of life, in extending my congratulations to all my fellow countrymen of Latvian heritage on this milestone, and renew my hope that someday the priceless gift of self-determination can be restored to the people of Latvia.

As we move toward more peaceful relationships with the Soviet Union, let us not forget the plight of all the citizens of the Baltic states who have suffered the heavy burdens of oppression. Thirty-three years ago, the light of liberty was extinguished in Latvia; but the hopes of its people for freedom were not dashed in the slightest. As the symbol of human freedom and dignity to all the world, this Nation cannot fail to remember the needs and the fervent wishes of the peoples of the Baltic States. We must mark this anniversary of Latvian independence with a pledge of continuing support for the goals of equal rights and self-determination for Latvia.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

THE PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, respecting the following House bills in which it requests the concurrence of the Senate:

H.R. 1466. An act for the relief of Luigi Santaniello; and

H.R. 4445. An act for the relief of Diana L. Ortis; to the Committee on the Judiciary.

H.R. 9764. An act to amend the International Travel Act of 1961 with amendments in which it requests the concurrence of the Senate.

HOUSE BILLS REFERRED

The following House bills were severally read twice by their titles and referred to the respective Houses this report, Signed by Mr. BEALL, Mr. President, last month free men around the world marked the 50th anniversary of the struggle for Latvian independence. I join with many of my colleagues in the Congress, and many Americans in all walks of life, in extending my congratulations to all my fellow countrymen of Latvian heritage on this milestone, and renew my hope that someday the priceless gift of self-determination can be restored to the people of Latvia.

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FOREIGN AID ASSISTANCE ACT OF 1973—CONFERENCE REPORT

THE PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report on S. 1443, the Foreign Aid Assistance Act of 1973, which the clerk will state by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments to the House bill (S. 1443) to authorize the furnishing of defense articles and services to foreign countries and international organizations, after a full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conference.

The Senate proceeded to consider the report.

(Entry in the House proceedings of the Congressional Record of November 27, 1973, page 38010.)

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Are we operating under controlled time?

THE PRESIDING OFFICER. Yes. Time for debate on this report is limited to 90 minutes, to be equally divided between and controlled by the manager of the conference report, the Senator from Minnesota, and the Senator from Vermont (Mr. Allen), with any time on any motion or appeal relating to the conference report to be limited to 10 minutes.

Mr. MANSFIELD. Mr. President, I suspect the absence of a quorum, with the time not to be taken out of either side.

THE PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

THE PRESIDING OFFICER. (Mr. MANSFIELD). Without objection, it is so ordered.

How much time does the Senator from Minnesota yield himself?

Mr. HUMPHREY. Mr. President, I yield myself 25 minutes.

THE PRESIDING OFFICER. The Senator from Minnesota is recognized for 25 minutes.

Mr. HUMPHREY. Mr. President, we are now considering the conference report on the foreign assistance authorization bill. This conference report, in my judgment, represents a fair and reasonable compromise between the Senate's two foreign aid bills—one of military assistance and one of foreign economic assistance, and the combination package passed by the House of Representatives. It does not contain all the provisions which we wanted, but does include a foreign aid bill. But it does not contain all that the House wanted either. It is a product of a genuine compromise, where both sides met in the middle on many issues that each felt strongly about.

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