UNITED STATES OF AMERICA

U.S. Congress.

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS
FIRST SESSION

VOLUME 119—PART 30

NOVEMBER 30, 1973 TO DECEMBER 6, 1973

(PAGES 38795 TO 40138)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1973

displayed by the Federal Republic of Germany.

On the basis of this judgement, the constitutional nation and its constitution has won as the foundation and legal criterion of the political actions. The liberal-democratic and European tendency of German constitutional development has won.

Insofar, the judgement issued by the Federal Constitutional Court, 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 advocate a 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 illusory helpers and hidden stooges which have already been initiated, the minds will part.

Bonn, 14 August 1973.

(Translated by Helga Mayorga, B.A.)

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 "On the Impeachable Offenses of Richard Nixon."

Mr. Califano is a highly 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 Democratic Party included serving as general counsel to the Democratic National Committee. He has served his 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 impeachability of the President, it is a subject much on the minds of the Members of this body and of the American people.

Given the timeliness of the topic and the scholarly nature of Mr. Califano's address, I believe many Members of the Senate and many readers of the RECORD will pause to consider Mr. Califano's presentation.

I ask unanimous consent that Mr. Joseph A. Califano, Jr.'s, speech entitled "On the Impeachable Offenses of Richard Nixon" 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 . . . 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 sent to the Senate which, with 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 "the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

In treatises on impeachment, the House is often analogized to a criminal grand jury with a duty to indict on the basis of "probable cause;" the Senate is compared to a petit jury, voting guilty only if convinced "beyond a reasonable doubt." Any intelligent discussion of impeachment must note the parallels between the criminal judicial process and impeachment. But any such analysis must recognize the sharp difference in forums between a court and the Congress. Just as the Founding Fathers carefully tried constitutionally to insulate criminal court proceedings from political pressures, they deliberately placed impeachment proceedings right in the middle of the political process. In a very real sense, impeachment is a political proceeding with sufficient judicial trappings to assure the basic elements of fairness, not a judicial proceeding with some political ramifications.

This is not to say that an impeachment proceeding should be a partisan romp. The constitutionally shaped politics of impeachment are essentially apartisan. They are very much founded in the deep American tradition that an informed electorate will set some minimal standards of political decency and morality as a continuing condition of maintaining the legitimacy of electoral power as Chief Executive of the United States—and prod its elected representatives to action where that condition is not met. Indeed, the Constitutionally mandated impeachment responsibilities of the House and Senate were undoubtedly designed to give the suspect President and the constituent citizens full benefit of a politically informed judgment by Representatives and Senators, who are personally familiar with and subject to the election process.

The political nature of impeachment is recognized by all parties to the present proceeding, from Richard Nixon in the White House to the lowest ranking majority and minority members of the House Judiciary Committee. The initial expression of the politics of impeachment in the House Judiciary Committee was evidenced by the party line to give subpoena power to the Chairman. At a much more profoundly democratic (and non-partisan) level, however, the politics of impeachment began with the thousands of telegrams, letters, and phone calls from housewives and their blue collar husbands, from matrons and their professional spouses, from blacks and whites, from secretaries and socialites, in the wake of the Cox-Richardson-Ruckelshaus purge. These messages charged the latent batteries of Congressional anxiety and reflected a constituent concern more deeply shared by American citizens than most Congressmen realized and certainly more sharply expressed than the President and his White House staff anticipated. Even Richard Nixon is likely to admit today that he blew the fuse of American public opinion with the "Saturday-night massacre;" what neither he nor the Congress may have realized was that the circuit of American political tolerance was already overloaded when he pulled the switch on Cox, Richardson and Ruckelshaus. It may not have been the act of Presidential self-electrocution hoped for by the American left; but it certainly jolted the House into action.

Perhaps, more than any other factor, the bruising impact of the American constituents on their Congressmen and Senators most clearly distinguishes impeachment proceedings by the House and the Senate from criminal juries. As a nation we go to great lengths to insulate our grand and petit juries from outside pressures. By contrast, the Founding Fathers deliberately put the President's fate in impeachment proceedings in the hands of that branch of government most sensitive to constituent concerns, particularly by placing the initial "probable cause" stage in the House of Representatives, each of whose members must go to the people every two years to remain in office. Moreover, unlike judges and juries who often recuse themselves or are excused for prejudice or conflicts of interest, there is no such disqualification in the House or Senate. The most avid Nixon hater and the most uncritical Nixon admirer have a duty to vote on the impeachment issues.

Richard Nixon appreciates the political aspect of impeachment. We do not have to accept Majority Leader Thomas P. O'Neill's pejorative characterization of the President "currying favor" with the jurors to recognize that the Nixon meetings with Congressmen and Senators are quite frankly and legitimately designed to influence the impeachment jury. Moreover, the present round of speeches and press conferences are obviously designed to defuse the constituents who so charged up the Congress three weeks ago; indeed they are shrewdly calculated to persuade southerners, in recognition of the political reality that Southern Democrats may well hold the balance of power in any impeachment vote in either the House or the Senate.

The Founding Fathers placed the impeachment process in the hands not only of a politically sensitized branch of government, but also of a politically expert one. The House and Senate are about as blue ribbon politically as juries could be. In one sense, the Congress is likely to have a better understanding of and high tolerance for political activity which may be unsavory and undesirable, but is not impeachable. This may help Mr. Nixon. In another sense, however, they will understand better than most of us how political leaders operate—and this may hurt him. The political leaders in the Congress are more likely than most citizens to conduct impeachment proceedings in the context of a realistic understanding of what it takes to succeed in politics—particularly the enormous need for attention to detail.

Presidents from Washington through Nixon have had different personalities: some have been outgoing, others introverted; some ideological, others pragmatic; some interested only in broad policy, others concerned with the day-to-day operations of government. But every successful American politician, and Presidents are the most successful, like successful lawyers, businessmen and doctors, makes his own decisions and pays close attention to details. By this I mean more than a statement than "the buck stops here," that full responsibility for Bay of Pigs disasters rest at the top or that Vietnam wars, like any others, are waged by Commanders-in-Chief. Whether a President has the publicly seductive style of John Kennedy, the overbearing intensity of Lyndon Johnson or the introverted insecurity of Richard Nixon, he will personally direct every move on major issues, particularly when those moves could decisively affect the marrow of his contemporary political career and historical judgments on the long term value of that career. Thus John Kennedy was involved minute by minute in the desegregation of the University of Mississippi and was so deeply concerned about his 1964 reelection that he went to Texas to try and heal local political scars. Lyndon Johnson followed major legislative proposals which bore his name, witness by witness through Committee hearings, and

congressman by congressman during debate on the House floor. Kennedy was not misled by bad advice when there was death and violence on the campus at Oxford, Mississippi. Johnson was not misled by bad advice when he lost the D.C. Home Rule discharge petition on the House floor. Each man was deeply involved in the tactical discussions and decisions relating to the dramatic events.

And Richard Nixon is not misled by bad advice, or unaware of what his closest aides do. Reasonable men may doubt his advance involvement in the DNC Watergate bugging and burglary; they must recognize that he would have been unworthy of his political success if he were not deeply involved in everything that followed the capture of the burglars on June 17, 1972.

Every one of those presidents was intimately involved on a daily basis with his closest staff members—and those members do not act on their own authority in matters intimate to the President. The concept of a White House staff is that a President is entitled to a group of people whose loyalty runs only to him, not to the Congress and not to constituent pressure groups which often vie for the attention of cabinet and agency heads. Even granting that Lyndon Johnson was much more involved in the minutia of American government than Richard Nixon, it is inconceivable to me that Richard Nixon has not been involved in every aspect of the Watergate scandals since June 17. I do not believe that Ronald Zeigler or Gerald Warren could brief the press without clearing their statements with Richard Nixon directly. My own hunch would be that an analysis of the Presidential logs of Mr. Nixon would show that Mr. Zeigler or Mr. Warren, or whoever was doing the press briefing on a particular day, checked either that day or the night before with Richard Nixon to find out what to tell the White House press corps. A playing of each day's tapes would show the President much more aware of the details of what his press secretaries say than most citizens realize.

This is particularly true where what is at stake is the very continuation of Mr. Nixon's Presidential career. For what Watergate and its surrounding events involve is Mr. Nixon's place in history, Mr. Nixon's personal reputation, and whether he will be convicted of a crime or impeached, remembered as the man who opened the door to China or as the man who headed the most corrupt administration in the history of the free world. Even White House aides as apparently trusted as Messrs. Haldeman and Erhlichman would not be permitted by the President to deal, on their own, in areas as central to Mr. Nixon's personal and political life and reputation as those involved in the present scandals.

From my own perspective as a former White House aide, if the press is to be criticized in connection with its reporting of these scandals, it is not, as Messrs. Nixon and Agnew suggest, because it has been careless in printing unverified charges. It is, rather, because of its acceptance, with so little skepticism, of the myth that Mr. Nixon is somehow the uninformed victim of aides and cabinet officers whose political enthusiasm spilled over into criminality. Yet, this myth defies the reality of Presidential power and the personal, political and historical ambition that accompany the exercise of such power. We do not have to plow through the pages of "Six Crises" to know that Mr. Nixon is most attendant to details that intimately affect his political career. One need not work at the White House to reach that conclusion about any President who served there. One need only understand human nature, politics and fathers who are bound to be concerned about what their children think about them. Any analysis of impeachable offenses must be made against this background.

Scholars and legislators disagree about what actions constitute impeachable offenses. Proposed definitions are as limited as violations of federal criminal statutes in the course of official duties or as broad as Gerald Ford's suggestion that an impeachable offense is whatever 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. Failure to fulfill his constitutional obligation faithfully to execute the laws of the United States and "preserve, protect and defend the Constitution of the United States."

3. Egregious breach of the public trust the President owes the American people.

Criminal laws provide the narrowest standard—and the least political one—by which a potentially impeachable President may be judged. Even under this limited definition of "impeachable offenses," it is patent nonsense to claim that there is no basis for conducting any impeachment inquiry with respect to Richard Nixon. Solely on the basis of sworn testimony and essentially uncontested news reports, there is ample justification for a healthy suspicion that Richard Nixon has violated at least thirty-eight federal criminal statutes.

The potential violations basically fall into three broad categories: personal corruption and fraud, political corruption, and obstructions of justice. The specific criminal statutes relating to each of these areas must be considered in the context of four basic criminal sections of Title 18—sections 2, 3, 4 and 371:

Section 2 defines a "principal" to a crime as anyone who "commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission" or who "willfully causes an act to be done which if directly performed by him or another would be an offense . . ."

Section 3 defines an "accessory after the fact" of a crime as one who "knowing that an offense . . . has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment . . ."

Section 4 provides that anyone who, "having knowledge of the actual commission of a felony . . . conceals and does not as soon as possible make known the same to some judge . . ." himself commits the crime of misprison of felony.

Section 371 provides that "[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States . . . and one or more of such persons do any act to effect the object of the conspiracy," then each of the conspirators is guilty of a felony.

These four basic and well-defined statutes provide the framework against which many of the actions of the President must be judged.

PERSONAL CORRUPTION

Mr. Nixon's personal financial activities give rise to strong suspicions of possible violation of at least seven additional criminal statutes. Four of these statutes relate to tax fraud and tax evasion; three relate to the conversion of government property and defrauding the United States.[1]

The acts which give rise to the suspicions are in large measure on the public record: (1) the tax benefits Mr. Nixon derived from the alleged donation of his personal papers raise questions as to the timing of the donation, the valuation of the papers, and, indeed, whether or not a gift was actually made to the government; after all, Mr. Nixon never signed a deed of gift and the General Services Administration never formally accepted any gift; (2) the possible use of campaign contributions for personal purposes (for example, the $100,000 in cash that Howard Hughes gave to Bebe Rebozo, the early cash from the dairy industry, and the millions of dollars in cash that flowed among Mr. Nixon's personal friends, attorneys and Re-election Committee aides); (3) the issues relating to whether certain improvements to his Key Biscayne and San Clemente properties were justified expenditures of public funds, should have been reported as personal income by Mr. Nixon, or constituted conversion of U.S. government property to his own use; (4) the financial transactions by which he acquired Key Biscayne and San Clemente in the first place, and whether the generous loans of Messrs. Rebozo and Abplanalp should have been reported (at least to some degree) as income by Mr. Nixon.

POLITICAL CORRUPTION

Political corruption may involve Mr. Nixon in an additional nineteen criminal statutes. In the area of election corruption alone, we have some of the more publicized Watergate revelations: the forged Muskie "Canuck" letter; the sexual misconduct letters condemning Senators Humphrey and Jackson; the illegal wiretapping of Democratic National Committee headquarters; the political slush funds which may have been created within government departments, such as the 1 million dollar fund allegedly earmarked by Commerce Secretary Maurice Stans; the solicitation of corporate campaign contributions from any number of large companies and government contractors; the participation in campaign and fund raising activities by federal government employees, most notably the dual role of Attorney General and de facto CREEP Chairman John Mitchell; and, in an apparent attempt to cover-up these activities, the possible filing of false reports with the General Accounting Office and the Clerk of the House and Secretary of the Senate.

At least nine criminal statutes are involved in this election area alone. Some, like the prohibition against corporate contributions, have been on the books for most of this century; others went into effect with the new campaign contribution law.[2] Beyond these matters there is reason to believe that the illegal activities of the Nixon Administration went far beyond corrupting the election process itself. Across the broad spectrum of politics his aides and agents, his lawyers and appointees have been accused or have admitted on the public record the commission of acts which seem on their face to constitute criminal offenses. There are, for instance, numerous instances of the apparent sale and attempted sale of ambassadorial positions to the highest bidder. So blatant has the cash market in ambassadorial posts become that the Senate Foreign Relations Committee today routinely demands complete revelation of political contributions by all Nixon nominees. Perhaps the most notable recent example is Mrs. Ruth Farkas, who was named Ambassador to Luxemburg after pledging some $300,000 to President Nixon's campaign, $200,000 of which was not even paid until after the re-election of the President at a time when his campaign coffers groaned under a substantial surplus. More recently, there have been reports that Cornelius Whitney was promised the ambassadorship in Spain in return for a $250,000 contribution; when the ambassadorship did not come through, the contribution was returned. There is enough evidence for an examination of the relationship between campaign contributors and the promise of appointment or nomination for appointment of individuals to a host of other government posts as well.

Washington abounds with sworn testimony and newspaper stories about contributions which constitute bribes or extortion or both, by any number of companies or industries who critically depend on the federal government. The most notable and publicized relate, of course, to the cozy treatment of

Footnotes at end of article.

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 of cash and other contributions provided by the dairy industry just as Mr. Nixon was raising milk price support levels and changing foreign trade regulations to push up the price of milk and increase the revenues of the industry by hundreds of millions of dollars.

There are other questionable activities as well where the public record provides sufficient information to justify a healthy suspicion of illicit Presidential activity even though the record has not been as fully developed as it has with respect to the IT&T and milk transactions. These activities include the Presidential parole of former Teamsters Union president James Hoffa and the statements by representatives of Ashland Oil, Braniff Airlines and others that CREEP financial chairman Maurice Stans imposed $100,000 quotas in his politically avaricious quest for a $60 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 influence in obtaining a federal job; and bribery and extortion statutes may have been violated in connection with many of the corporate contributions.[3]

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 rights of every American citizen to be free from unreasonable searches and seizures. The break-in 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 hobnailed boots of the "plumbers."

The context, of course, is the Recommendation and Decision Memoranda of White House staffer Tom Charles Houston and Richard Nixon—the Mein Kampf of the Nixon government. The following excerpts from Mr. Houston's Recommendation Memorandum to President Nixon are essential to an understanding of what happened at the Watergate and in Los Angeles:

C. Mail Coverage

Recommendation:

Restrictions on legal coverage should be removed. Also, present restrictions on covert coverage should be relaxed on selected targets of . . . internal security interests.

Rationale:

* * * * *

Covert coverage is illegal and there are serious risks involved. However, the advantages to be derived from its use outweigh its risks.

D. Surreptitious Entry

Recommendation:

* * * * *

Also, present restrictions should be modified to permit selective use of this technique against other urgent 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.

On July 15, 1970 Mr. Houston issued the Presidential Decision Memorandum which reflected Richard Nixon's personal response to these recommendations, a response verified by Mr. Nixon's own statement of May 22, 1973. The relevant excerpts are:

The President has carefully studied the special report of the Interagency Committee on Intelligence (ad hoc) and made the following decisions:

* * * * *

3. Mail Coverage.

Restrictions on legal coverage are to be removed, restrictions on covert coverage are to be relaxed to permit use of this technique on selected targets of priority foreign intelligence and internal security interests.

4. Surreptitious Entry

Restraints on the use of surreptitious entry are to be removed. The technique is to be used . . . against other urgent and high priority internal security targets.

Aside from the ominous nature of these papers in terms of our democratic system of government, and aside from the obvious violations of state criminal felony statutes the President's approval countenanced and potentially set in motion, there are profoundly serious violations of federal criminal laws. These include 18 U.S.C. Section 241, the criminal civil rights statute, and 18 U.S.C. Section 2511, the anti-wiretapping statute, to say nothing of the network of criminal provisions designed to prevent interference with and protect the privacy of the mails, among them: 18 U.S.C. Section 1701, which makes one a criminal who "knowingly and willfully obstructs or retards the passage of mail"; Section 1702, which makes it a felony to take any letter out of the post office "before it has been delivered to the person to whom it was directed with design to . . . pry into the . . . secrets of another."; and Section 1703, which makes it a crime for a Postal Service Officer improperly to detain, delay or open any letter.

Obstruction of Justice

The third area of specific criminal activity by the President relates to obstructions of justice. Each day brings us new facts about the actions of the President in this area. But there is already reason to suspect a variety of Presidential actions in connection with the investigations relating to the Watergate break-in: Presidential actions to limit the criminal investigations; hush money paid to defendants to plead guilty; the suborning of perjury by Mr. Magruder and the attempt with respect to Mr. Sloan; the pressure on any number of witnesses and potential prosecutors to inhibit any number of investigations relating to illegal activities; and, of course, the attempt to seduce Judge Matthew Byrne with the F.B.I. Directorship.

At least nine additional Federal criminal statutes are involved here relating to obstruction of justice, the making of false statements, the suborning of perjury and the removal and destruction of records and documents.[4]

It is with respect to the suborning of perjury that the most careful investigation should be made. For the record abounds with examples of Nixon aides and cabinet officials who may have committed perjury and who have certainly made statements inconsistent with either the statements or records of others. Jeb Stuart Magruder has admitted perjury. Hugh Sloan has testified that he was pressured to commit perjury. Richard Kleindienst faces possible perjury charges stemming from his testimony that there was no White House pressure on him with regard to the IT&T case. John Mitchell faces possible perjury charges stemming from his sworn testimony that he never discussed the IT&T case with the President and that he was not involved with CREEP until he left his office as Attorney General. Messrs. Mitchell and Maurice Stans have been indicted for perjury in the Vesco case in New York. John Ehrlichman has been charged with perjury for his testimony before the grand jury in California. The testimony of Mr. Ehrlichman and his colleague Mr. Haldeman before the Senate Watergate Committee presents sufficient conflict with the sworn testimony of others to subject them to possible perjury indictments. Secretary of Agriculture Butz has been accused of perjury in connection with his wheat deal testimony before a Senate Subcommittee. Even without unraveling the truth about the White House tapes this brief recital already includes Mr. Nixon's two closest assistants, two other high White House aides, and at least three of his cabinet officers. As for Mr. Nixon, 18 U.S.C. § 1622 provides that "whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned for not more than five years, or both."

Thus, there is sufficient evidence to justify suspicion of the violation of at least thirty-eight criminal statutes by the President of the United States. Many of those statutes may have been violated more than once. This alone is sufficient to provide the basis for articles of impeachment under the most narrow definition of the term "impeachable offenses", but there are other activities of the President which bear scrutiny by the House of Representatives in a broader and politically realistic definition of what constitutes an impeachable offense.

Failure to Execute Laws

Richard Nixon, by his oath and by the duties imposed under the Constitution of the United States, is required faithfully to execute the laws passed by the Congress. There are repeated judicial decisions holding that Mr. Nixon has violated that duty. The most notable and publicized involve the impoundment of funds which, in practical terms, constitutes an arrogant refusal to execute the laws passed by the Congress and signed by the Chief Executive. The most recent decision came only last week when Federal District Judge Waddy held that it was illegal and unconstitutional to withhold $380,000,000 of appropriated funds from our educational institutions. Mr. Nixon was also held to have maintained Howard Phillips, the former OEO Director, in office illegally and was accused last week by Senator Proxmire of holding Acting Attorney General Bork in office illegally beyond the thirty-day statutory period. There is no question of Mr. Nixon's involvement here. Indeed, he publicly, proudly and frequently proclaims his defiance of the Constitution and the laws with each new impoundment. Moreover, any arguments that in the early days of his impoundment orgy Mr. Nixon thought he had the legal authority to take these actions can be given little credence in the wake of (at last count) twenty-five court decisions holding his actions to be illegal and unconstitutional.

BREACH OF PUBLIC TRUST

The third area of inquiry into impeachable offenses relates to the breach of public trust by the President. There are well defined analogies in the law of trusts concerning the duties of trustees and the grounds for their removal. Thus, for example, a trustee who converts the funds of a trust to his own use may be removed. Similarly, a trustee who lies to or defrauds the beneficiaries of the trust may be removed.

It is an essential element of the public trust a President holds that he tell the truth to the American people. A citizen who lies to the state commits a felony, the felony of perjury. It is, of course, not a specifically defined crime for the state to lie to its citizens. Indeed, there are generally acceptable areas of exaggeration and political comment within which public officials are usually given wide latitude in communicating

with the citizens they serve. Thus, politicians in election campaigns and Presidents in messages to the Congress to secure legislation often exaggerate the performance that can reasonably be expected in their promises of new worlds and new cures. To the extent that Mr. Nixon has engaged in this kind of political dialogue, he is, of course, not guilty of any impeachable offense.

But to the extent that he has gone far beyond the bounds of political exaggeration, the President should be subject to impeachment. Thus, the various statements about Cambodian bombing filed by Mr. Nixon's subordinates at his direction with authorized oversight committees of the Congress cleared for Top Secret Information should be examined carefully. The false statements of his Press Secretary Mr. Zeigler may also constitute grounds for impeachment; and the President's own statements to the American people should be subject to careful scrutiny by the House Judiciary Committee as well. For the standard of truth required by the Head of State in dealing with the citizens he serves should be at least as high as the standards applied to the citizens in dealing with the state that serves them.

Unlike the Senate Watergate Committee and the courts, the inquiry of the House is not directed largely or primarily at individual White House aides, corporate officials or cabinet officers. The House inquiry has one investigatory subject: the President of the United States. In this connection, the performance of the constitutional duty of the House to draft articles of impeachment carries with it clear and unequivocal authority to obtain documents and materials that under other circumstances might be subject to claims of executive privilege. Thus, for example, tax returns of the President which would otherwise be confidential must be scrutinized by the House Committee to determine whether the President has committed tax fraud, certainly an impeachable offense under any definition of that term.

The very issue involved in the impeachment proceedings is the extent of the President's personal knowledge and willful activity in connection with an array of crimes that may have been committed by his aides (some of whom have already confessed to criminal activity) and his cabinet officers. The duty of the House to investigate its Presidential subject carries as a necessary corollary the authority to examine the communications between the President and his staff. No squirreling of Presidential papers for personal protection or selected release by a library curator is justified on the grounds of executive privilege during this inquiry.

Impeachment procedings are not likely to be short and they will test the singularly impatient attention span of the American people. Andrew Johnson's impeachment proceedings took over one year and involved two Congresses. But to say that the country cannot stand impeachment proceedings over an extended period is to say that we cannot seek the truth, much less face it; that we cannot pointedly ask and candidly answer the question whether the President has committed any impeachable offenses. It is, sadly, to say that we are no longer strong enough to live under the most remarkable Constitution ever devised by man. It is the stuff of a weak and tired people who are so exhausted by democracy that they prefer to end their days in politically hedonistic amorality. It is the stuff of a tired generation that seeks to avoid one more trauma of their own even if that involves betrayal of their trust to succeeding generations. And this is the most important point.

For whether Lord Acton overstated his point, history clearly teaches us that, without exception, power creates its own need and desire for more power. Every White House aide can testify that each President takes the precedents of his predecessors in the exercise of power and moves to the next step. Some of us might have trouble even conjuring what the next step after Nixon might be, but there is one person who will figure it out if Mr. Nixon leaves office without reproach—a future President of the United States.

FOOTNOTES

[1] The specific statutory provisions are:

(1) 26 U.S.C. § 7201: "Any person who willfully attempts . . . to evade . . . any tax . . . shall . . . be guilty of a felony. . . ."

(2) 26 U.S.C. § 7203: "Any person required . . . to pay any . . . tax . . . who willfully fails to pay such . . . tax . . . shall . . . be guilty of a misdemeanor. . . ."

(3) 26 U.S.C. § 7206: "Any person who (1) . . . willfully makes and subscribes, any . . . statement . . . under the penalties of perjury, and which he does not believe to be true and correct . . . shall be guilty of a felony. . . ."

(4) 26 U.S.C. § 7207: "Any person who willfully delivers . . . any statement . . . known to him to be fraudulent . . . shall be fined . . . or imprisoned. . . ."

(5) 18 U.S.C. § 286: "Whoever enters into any . . . conspiracy to defraud the United States . . . by obtaining . . . payment . . . of any . . . fraudulent claim. . . ."

(6) 18 U.S.C. § 287: "Whoever . . . presents . . . any claim upon . . . the United States . . . knowing such claim is false. . . ."

(7) 18 U.S.C. § 641: "Whoever embezzles . . . or knowingly converts to his use . . . any . . . thing of value of the United States . . . shall be fined . . . or imprisoned. . . ."

[2] The specific statutory provisions are:

(1) 18 U.S.C. § 595: "Whoever, being a person employed in any administrative position by [any government], in connection with any activity which is financed in whole or in part by loans or grants made by the United States, . . . uses his official authority for the purpose of . . . affecting . . . the nomination or the election of any candidate for [any . . . federal elective office] shall be fined . . . or imprisoned. . . ."

(2) 18 U.S.C. § 600: "Whoever . . . promises any employment, contract . . . or other benefit, provided for . . . in whole or in part by any Act of Congress, or any special consideration in obtaining such benefit . . . as consideration . . . for any political activity . . . shall be fined . . . or imprisoned. . . ."

(3) 18 U.S.C. § 603: "Whoever, in any . . . building occupied in the discharge of official duties by any [government employee] . . . solicits or receives any contribution . . . for any political purpose, shall be fined . . . or imprisoned. . . ."

(4) 18 U.S.C. § 610: "It is unlawful for any . . . corporation whatever . . . to make a contribution . . . in connection with any election at which [a federal elected official is] to be voted for, or in connection with any primary election or political convention . . . or for any candidate, political committee or other person to accept . . . any [such] contribution. . . ."

(5) 18 U.S.C. § 611: "Whoever . . . (a) entering into any contract with the United States . . . makes . . . or promises . . . any . . . contribution, to any political party committee, or candidate . . . or . . . (b) knowingly solicits any such contribution from any such person . . . shall be fined . . . or imprisoned. . . ."

(6) 18 U.S.C. § 612: "Whoever willfully publishes or distributes . . . any . . . statement relating to . . . any person who has publicly declared his intention to seek [federal elective office] . . . which does not contain the names of the persons . . . responsible . . . shall be fined . . . or imprisoned. . . ."

(7) 18 U.S.C. § 653: "Whoever, being a dispensing officer of the United States . . . in any manner converts to his own use . . . any public money entrusted to him . . . is guilty of embezzlement . . . ."

(8) 18 U.S.C. § 1001: "Whoever [in any matter within the jurisdiction of the United States] . . . willfully falsifies, conceals or covers up . . . a material fact, or makes any false . . . statements, . . . or . . . uses any false . . . document knowing the same to [be false] . . . shall be fined . . . or imprisoned . . . ."

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

[3] The specific statutory provisions are:

(1) 18 U.S.C. § 201: "(b) Whoever . . . corruptly gives, offers or promises any thing of value to any public official . . . with intent—

(1) to influence any official act [or]

(c) Whoever, beng a public official . . . corruptly . . . solicits [or] accepts . . . anything of value . . . in return for:

(1) being influenced in his performance of any official act

Shall be fined . . . or imprisoned . . . ."

(2) 18 U.S.C. § 203 "(a) Whoever . . . receives . . . or . . . solicits . . . any compensation for any services . . .

(2) at a time when he is an officer . . . of the United States . . .

in relation to any proceeding . . . for a . . . contract [or]

(b) Whoever, knowingly . . . promises . . . any compensation for any such services . . .

Shall be fined . . . or imprisoned . . . ."

(3) 18 U.S.C. §§ 210 and 211, which deal with soliciting, offering or accepting anything of value "either as a political contribution, or for personal emolument," in consideration of any "promise" of "influence" in obtaining a federal job.

(4) 18 U.S.C. § 599: "Whoever, being a candidate, . . . promises . . . the appointment, or . . . his influence . . . for the appointment of any person to any public or private position . . . for the purpose of procuring his support . . . shall be fined . . . or imprisoned. . . ."

See also 18 U.S.C. §§ 600 (promises of anything provided by Act of Congress), 610 (corporate campaign contributions), and 611 (government contractor contributions), cited earlier.

[4] The specific statutory provisions are:

(1) 18 U.S.C. § 1503: "Whoever corruptly, or by threats . . . endeavors to influence . . . any witness . . . or any . . . juror, or officer . . . of any court of the United States . . . in the discharge of his duty . . . or corruptly or by threats or force . . . endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined . . . or imprisoned. . . ."

(2) 18 U.S.C. § 1505: "Whoever corruptly, or by threats or force . . . endeavors to influence, intimidate, or impede any witness . . . in connection with any inquiry or investigation being had by either House . . . or Whoever corruptly, or by threats or force, . . . endeavors to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House . . .

Shall be fined . . . or imprisoned. . . ."

(3) 18 U.S.C. § 1510: "(a) Whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator;

* * * * *

Shall be fined . . . or imprisoned. . . ."

(4) 18 U.S.C. § 1018: "Whoever, being a public officer . . . authorized by any law . . . to . . . give a . . . writing, knowingly makes and delivers as true such a . . . writing, containing any statement which he knows to be false, in a case where the punishment thereof

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

(See also 18 U.S.C. § 1001, the basic statute on false statements, above.)

(5) 18 U.S.C. § 1621: "Whoever, having taken an oath . . . that he will testify . . . truly . . . willfully and 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. . . ."

(6) 18 U.S.C. § 1622: "Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined . . . or imprisoned. . . ."

(7) 18 U.S.C. § 1623: "Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration . . . shall be fined . . . or imprisoned. . . ."

(c) An indictment or information for violation of this section alleging that, in any proceedings 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, need not specify which declaration is false if—

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

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

In any prosecution 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 or ancillary to 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."

(8) 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, having the custody of any such . . . thing, willfully and unlawfully conceals, removes . . . or destroys the same, shall be fined . . . or imprisoned. . . ."

(9) 18 U.S.C. § 2232: "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 of any goods . . . by such person, . . . destroys, or removes the same, shall be fined . . . or imprisoned. . . ."

LATVIAN INDEPENDENCE

Mr. BEALL. Mr. President, last month free men around the world marked the 55th anniversary of 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 world who live daily under 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, announced that the House had passed the following House bills in which it requests the concurrence of the Senate:

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

H.R. 4445. An act for the relief of Diana L. Ortiz;

H.R. 6074. An act to amend the act of May 20, 1964, entitled "An act to prohibit fishing in the territorial waters of the United States and in certain other areas by vessels other than vessels of the United States, and by persons in charge of such vessels"; and

H.R. 8529. An act to implement the shrimp fishing agreement with Brazil.

The message also announced that the House had agreed to the concurrent resolution (S. Con. Res. 11) with amendments in which it requests the concurrence of the Senate.

The message further announced that the House had passed the bill (S. 1747) to amend the International Travel Act of 1961 with respect to authorizations of appropriations, 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 as indicated:

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

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

H.R 6074 An act to amend the act of May 20, 1964, entitled "An act to prohibit fishing in the territorial waters of the United States and in certain other areas by vessels other than vessels of the United States, and by persons in charge of such vessels"; and

H.R. 8529. An act to implement the shrimp fishing agreement with Brazil; to the Committee on Commerce.

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, 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 of the House to the bill (S. 1443) to authorize the furnishing of defense articles and services to foreign countries and international organizations having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of all the conferees.

The Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of November 27, 1973, at 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 2 hours, to be equally divided between and controlled by the manager of the conference report, the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Vermont (Mr. AIKEN), with any time on any motion or appeal relating to the conference report to be limited to 20 minutes.

Mr. MANSFIELD. Mr. President, I suggest 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 many of us would like to have in 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.

It was a tough conference, with hard bargaining over 11 meetings needed to settle a total of 175 differences between the Senate and the House positions. Many of these differences, however, were attributable to the fact that the Senate bill completely rewrote the statutory framework for the foreign military grant aid and sales programs, whereas the House bill, following the traditional approach, merely extended existing law.