

# Chronological: Speeches, 1974-1995: Luncheon - meeting of Young Lawyers Section of American Bar Association

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SPEECH BY DANIEL K. INOUE, Luncheon-meeting of Young Lawyers  
Section of American Bar Association, Hawaiian Regent Hotel, Honolulu, Hawaii

August 14, 1974 12:00 Noon

The hearings conducted by the Senate Select Committee on Presidential Campaign Activities, authorized under S. Res. 60, which was passed unanimously by the Senate on Feb. 7, 1973, are now history.

Ours was one of the most exhaustive and detailed investigations in American history. We had 64 days of public hearings during which we heard 62 witnesses. These hearings cover some 13 volumes and 5,858 pages. Some 162 witnesses testified in executive sessions. Two volumes of such sessions covering the Milk Fund alone have been printed. Over a thousand witnesses were interviewed. Countless leads--many of them fruitless--were checked out. The Committee engaged in lengthy litigation in its effort to seek the truth from a White House which sought to limit our probe and our access to important evidence. The resultant legal documents are contained in two volumes of 2,157 pages which have been published by our Committee.

The greatest achievement of the Watergate Committee rests, however, not in the mountainous evidence uncovered but in the education of our citizenry to the breadth and scope of the perversion of our constitutional republic which was made evident with the help of the media during last summer's public hearings. These and their aftermath will affect the American people's view of our federal government and politics for generations to come.

Another very important aspect of our work is in the 34 legislative recommendations which are contained in 2,217 page report filed

on June 28th of this year. In the onward rush of impeachment action these have received far less attention than they merit, for it is important, not only that we exorcise the "cancer growing on the Presidency," but that we reform our institutions to prevent future such cancers from having an opportunity to gain a foothold in this government of ours.

Watergate was not just an aberration by one President and by his Administration. It was both an aberration and a culmination of an unchecked growth in executive power--one which was of concern to our founding fathers and which goes back at least to the administrations of Franklin Delano Roosevelt.

It is against that trend, therefore, as well as this recent Nixonian aberration, that our recommendations must be measured and the need for legislative action must be gauged.

We almost lost the chance to reassert popular control over our constitutional republic. It was very close. A taped door, an alert building guard, some nearby policemen in plain clothes, a couple of alert and persistent reporters, a Congress that continued in the control of the opposition party, a special prosecutor who could not be contained, a chance question which revealed the existence of the Presidential tapes, a few people, who, when under oath, told the truth--it was that close. It is also against that knowledge that we must measure the need to take remedial action.

Time will not permit me to discuss all 34 of our Committee's recommendations but I would like to share with you my thoughts on some of the most important.

Our first recommendation urges legislation to establish a permanent Office of Public Attorney having jurisdiction to prosecute cases where there is a real or apparent conflict of interest within the Executive Branch. Such public attorney should have jurisdiction, including access to relevant records, to inquire into the progress of complaints or charges involving the conduct of the Federal departments and regulatory agencies. The public attorney would be appointed for a fixed term subject to Senate confirmation and

nominated by members of the Judicial Branch to assure his independence of the Executive.

The need for a special prosecutor on occasion has been amply demonstrated. The public attorney would so serve in time of need. His preventive role, however, in assuring responsible action by the Executive Branch, should be emphasized. His ability to inquire into the administration of justice in the Executive Branch would prove a powerful deterrent to wrong doing within the executive and a source of great assistance to the relevant Congressional oversight committees.

The creation of such an office would be helpful, not only in assuring proper action within the executive departments in matters involving misfeasance or malfeasance by high governmental officials, but it would also create increased confidence in our government in those cases where the executive determines rightly not to prosecute those charged with wrongful and illegal acts.

Additionally, our Committee recommended that the Attorney General and all other officials of the Justice Department be placed under the Hatch Act in an effort to guarantee that the administration of justice would be as free as possible from partisan political considerations.

Our Watergate Committee also recommended that the Congress revise the Federal criminal statutes to treat as a separate federal offense any felony defined in the federal criminal code that is committed with the purpose of interfering with, or affecting the outcome of, a federal election or the nomination process. Note that it is the intent to interfere in a federal election which makes a commission of a crime in such cases a federal offense.

The Senate Select Committee also made a number of recommendations relative to the abuse of the intelligence agencies of our government and the wiretap authority of the government. These include: making it unlawful for the employees of the White House or of the Executive Office of the President to engage in investigations or intelligence gathering activities without Congressional

authorization; urging the appropriate Congressional oversight committees to more closely monitor and supervise the activities of the intelligence and law enforcement agencies of the government; and suggesting that the appropriate Congressional committees study and reconsider Title III of the Omnibus Crime and Safe Streets Act with particular reference to whether national security electronic surveillance should require prior court approval.

In the area of campaign practices or so-called dirty tricks, our Committee made a number of recommendations. These include enactment of legislation: making it a crime for anyone to obtain employment in a campaign for federal office by false pretenses, misrepresentations or other fraudulent means for the purposes of interfering with, spying on, or obstructing any campaign activities or to request or knowingly disburse or make available funds for promoting any violation of the federal election laws. Our recommendations would also prohibit the theft or unauthorized copying of campaign materials, documents or papers not available for public distribution; and make it a crime to fraudulently misrepresent by telephone or in person the representation of a candidate for federal office for the purpose of interfering with the election.

The area of campaign practices is not one which lends itself easily to change through legislation. Fair campaign practices, and our concept of what that term means, varies greatly from one part of our nation to another. Our best safeguard is undoubtedly an alert press and a strong two-party system which stands prepared to bring examples of "dirty tricks" to the attention of the electorate that they may fairly judge the appropriateness of the behavior. Our new campaign finance disclosure laws and the Campaign Finance Reform Act, as passed by the Senate, should do much to prevent a recurrence of such improper behavior.

An important part of our Committee's inquiry related to the Administration efforts to use the powers of incumbency to re-elect the President. The chief vehicle in this effort was a White House

plan known as the Responsiveness Program designed to politicize various executive branch programs so as to redirect the flow of federal monies, to shape regulatory and legal actions and to utilize the government employment procedures to achieve campaign benefits.

In our Committee's effort to deal with this problem we recommended that the section of the United States Code which makes it illegal for a government official connected with the award of government grants and loans to use his official authority to effect a federal election be upgraded to a felony and that the law be expanded to include misuse of official authority in the dispensing of other federal funds such as government contracts and federal subsidies. The power to investigate such acts should rest with the Federal Elections Commission and prosecution with the public attorney.

For many years the manner in which we have financed our election campaigns has been a national disgrace. The old Corrupt Practices Act was so full of loopholes and so rarely enforced that it was either easily circumvented or ignored in large part. Illegal contributions were rampant. The recipient of such contributions, while normally not aware of the illegal source, was discouraged from looking too closely, in his ever increasing need for large campaign chests.

The Federal Elections Campaign Act of 1971 which went into effect on April 7, 1972--well after the campaign had started--has not been fully tested. The frantic efforts to secure financial contributions prior to that date demonstrated vividly, however, anticipations that the new law would result in substantial tightening of the campaign finance laws. It became apparent, nevertheless, in the course of our investigations that certain changes must still be made if the people are to have faith in our campaign finance practices.

In our endeavor to achieve that goal our Committee supported the establishment of a truly independent non-partisan Federal Elections Commission to replace the present tripartite system which rests the authority for supervising our campaign financing and reporting requirements between the Clerk of the House, the Secretary of the

Senate and the General Accounting Office. Such an independent elections commission is an integral provision of S. 3044, the Federal Election Campaign Act Amendments of 1974, which passed the Senate earlier this year. Unfortunately, the House version, which has just been reported from committee for floor action, seriously erodes the independence of the Commission. These principles of independence now await restoration, either on the House floor or in conference.

Our Committee further recommended that cash contributions and cash expenditures in excess of \$100 be banned in connection with any election or nominating campaign for Federal elective office. The evidence is clear that cash made for easy circumvention of the provisions of the law and the tracing of violations most difficult, if not impossible.

We recommended that each candidate for President or Vice President be limited to a single campaign committee as his principle campaign vehicle. Again the multiplicity of committees made control of receipts and expenditures most difficult to maintain and the determination of violations difficult to ascertain.

The soaring costs of political campaigns undoubtedly encourages abuse and violation of the law. The Committee, therefore, recommended a limit on expenditures of 12¢ times the voting population for Presidential candidates in the general election as provided in S. 3044 as passed by the Senate. We recommended further a \$3,000 limit on individual contributions during the nominating period and an additional \$3,000 during the general election period to any one candidate or campaign.

The Committee also recommended that the tax credit provision for political contributions, presently in the Internal Revenue Code, be increased to further encourage smaller contributions while recommending against outright public financing of election campaigns as passed by the Senate in S. 3044. Senator Montoya and I, in a joint statement of individual views, took exception noting that there is no real difference between matching private funds from numerous small individual contributions with public funds and the policy of

refunds to the contributor through means of a tax credit for smaller campaign contributions. Both are a form of public financing--a move which is essential if we are to reduce the improper influence of big money in election campaigns.

Noting the use of recently resigned cabinet level officials as fund raisers, our Committee recommended that officials requiring presidential appointment with Senate confirmation be prohibited from fund raising for one year after leaving office. It is difficult to believe that the residual power of the office may not otherwise be used to encourage the contribution of funds for political campaigns.

Not only should individuals be limited in their ability to make large campaign contributions but so should organizations. Our Committee recommends that such groups not be permitted to achieve undue influence, or the appearance of influence, over a candidate through campaign contributions. We, therefore, recommended a \$6,000 limitation on organizational contributions.

The article of impeachment which was voted by the House Judiciary Committee with the greatest margin of support was that accusing the President of abuse of the powers of his office. Our legislative recommendations include a response to that demonstrated abuse, particularly as it relates to the Internal Revenue Service.

Specifically, our Committee recommended that requests for information or action made to the IRS by anyone in the White House or the Executive Office of the President should be recorded by both the party making the request and by the IRS and such requests and the responses thereto should be disclosed to the appropriate Congressional oversight committees. We also recommended that on "sensitive case reports" the IRS should be permitted to disclose only the name of the person or group involved and the general nature of the investigation. Persons in the Executive Branch should be prohibited from receiving any income tax returns, and all requests for action and the IRS response thereto should be disclosed periodically to the appropriate Congressional committees.

Additionally, we recommended that Congress enact legislation requiring annual financial disclosure by the President and Vice President to the General Accounting Office, as is now required of Members of Congress. Such statements should include the amount and source of all income and gifts or expenditures made on their behalf by others. The required report covers their spouses as well.

I am well aware that some oppose the second class citizenship which we thereby bestow upon our public officials. However, such filings available to the duly authorized committees of the Congress or law enforcement agencies of our Federal government upon proper request would seem a small price to pay for the restoration of confidence in our top elected officials.

These recommendations may never be fully adopted. Perhaps as they receive further consideration through the legislative process we will find that some do not merit enactment into federal statute. Certainly, we cannot anticipate enactment in this Congress of any but those few which have already passed at least one of our legislative bodies.

I am convinced, however, that action on many of these will receive the serious attention of the 94th Congress as we seek to learn from the lessons of Watergate and to legislate for a far brighter and more promising future in our never ending search to secure a government of the people, by the people and for the people.

Watergate was an aberration but it was also a culmination of trend which has long been apparent to serious students of our governmental process. Real reform requires far more than the disciplining or removal of one man or one administration from office.