

# Case of Grant's Vice President

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Schuyler Colfax has never loomed very large in the life of Vice President Spiro T. Agnew, but he could become a problem.

Colfax was once vice president, too. Like Agnew, he also came under investigation on charges of taking bribes earlier in his political career.

But when the question of impeachment came up, back in 1873, the House Judiciary Committee of the day flatly ruled it out, holding that jurisdiction over earlier crimes—before Colfax's election as vice president—should be left to the courts.

The century-old precedent is not necessarily conclusive. Colfax was never indicted, perhaps because President Ulysses S. Grant had already been reelected with another running mate who had also been implicated in the same scandal.

But the Colfax case could make it difficult for Agnew's lawyers to sustain their claim that Agnew cannot be prosecuted in the federal courts without first having been impeached.

Elected on the Republican ticket with Grant in 1868, Vice President Colfax came under fire in the fall of 1872, near the end of his term, in connection with the Credit Mobilier scandal, which was just then coming to the surface.

Credit Mobilier had been organized as a construction company to build the Government-subsidized Union Pacific Railroad at prices that would gobble up all the government funds committed to the railroad with enormous profits to the stockholders.

Colfax, it was discovered, had surreptitiously bought some of the company's stock still Speaker of the House of Representatives early in 1868 when he was a Representative.

A select House investigating committee which investigated the scandal in 1872-73 evidently thought the Vice President ought to have been impeached.

At free swinging hearings before the committee, Colfax was accused of buying up \$2,000 worth of Credit Mobilier stock for little more than \$500 and taking a \$1,200 dividend on the securities just three months later from Rep. Oakes Ames (R Mass.), an insider who doled out shares to his colleagues to make sure that Union Pacific encountered no adverse legislation.

One key witness also charged the speaker with using a parliamentary maneuver that same spring to block a proposed congressional investigation into Union Pacific's freight rates.

The Vice President, who testified before the committee in January of 1873, hotly denied any improprieties.

The hearings were enlivened even more when Colfax kept coming back to question hostile witnesses who were also permitted to cross-examine him.

Colfax admitted paying Rep. Ames \$534 for 20 shares of Credit Mobilier in March of 1868, but insisted that he later called the deal off and "never received any dividends in cash, stock or bonds."

Ames, however, testified that he was still holding the stock for the vice president and that he had no recollection of Colfax having canceled the five-year-old transaction. Ames said he paid the speaker the \$1,200 dividend himself by check on June 20, 1868.

Colfax denied cashing it, but was somewhat hard put to explain a \$1,200 cash deposit in his account at the First National Bank of Washington two days later, on June 22, 1868.

The vice president insisted that \$1,000 of this had been sent him in the mail ("I remember it had none of the crispness of a new bill") by a New York printer as a contribution for his 1868 vice presidential campaign. He said the other \$200 was a partial repayment for a Steinway piano that he bought from his stepfather, who happened to be a clerk of the House.

Under cross-examination by Ames, the vice president admitted that the printer,



SCHUYLER COLFAX  
... problem precedent

who died in 1869 held a government contract for supplying envelopes to the Post Office while Colfax was chairman of the House Post Office Committee. But Colfax insisted that there was no impropriety there either.

"The only favor he (the printer) ever asked me was to get tickets for his family to see the inauguration," the vice president testified.

"He must have been a very singular man," Ames replied caustically.

"He was a very large-hearted man," Colfax said.

"No doubt of it," said Ames.



# Presents Puzzle for Agnew

The select committee, headed by Rep. Luke P. Poland (R-Vt.), was also skeptical. Although it recommended the expulsion of Ames and another congressman and made no finding on Colfax since he was no longer a member of the House, the committee strongly hinted in its report that it considered the vice president ripe for impeachment proceedings.

"It has never been contended," the select committee declared in its report, "that the power to impeach for any of the causes enumerated was intended to be restricted to those which might occur after appointment to a civil office, so that a civil officer who had secretly committed such an offense before his appointment should not be subjected upon detection and exposure to be convicted and removed from office.

"Every consideration of justice and sound policy," the select committee concluded, "would seem to require that the public interests be secured, and those chosen to be their guardians be free from the pollution of high crimes, no matter at what time that pollution had attached."

The issue was promptly referred to the House Judiciary Committee to determine whether impeachment was warranted. The committee held that it was not, on the grounds that Colfax's alleged misdeeds occurred

while he was still a member of the House, before his election as vice president. (Members of the House and Senate can be expelled from their respective houses, but they are not "civil officers" subject to impeachment.)

Any impeachment proceeding, the Judiciary Committee declared in its report on Feb. 24, 1873, "should allege in substance that, being such an officer, and while in the exercise of the duties of his office the accused committed the acts of alleged inculcation."

Otherwise, the Judiciary Committee said, an officeholder might be convicted of a crime in his youth, elected by the voters with full knowledge of the offense, and still "years afterward . . . be impeached for that crime."

By the same token, the committee took the position that indictment could come ahead of impeachment and that prosecution in the courts was the only proper remedy for offenses committed before a suspect became "a civil officer of the United States."

Holding that impeachment was only "remedial" and not punitive, the committee said the constitutional debates on the issue, "meager as they are," made clear that "the punishment of crime should be left to the ordinary tribunals of justice." Impeachment, the report said, "if

punitive at all," still imposes "an entirely inadequate punishment" for crimes such as treason and bribery.

The Judiciary Committee skirted the question of allegations that come to light after a vice president's election, and presumably there were members of the select investigating committee that disagreed with the findings.

But the Judiciary Committee seems to have had the last word. Political retribution in the form of impeachment for older offenses, it maintained, could only lead to abuse.

"It is for us now," the committee report declared, "to make the precedent that shall restrain bad men in bad times from an exercise of an assumed wrongful power."

Colfax bowed out as vice president when his term ended a week later. The Congress that handled his case does not seem to have bothered with the question of whether a vice president could be indicted—before impeachment—for crimes committed in office. But there is precedent for that, too.

When Aaron Burr fatally shot Alexander Hamilton in a pistol duel at Weehawken, N.J., in 1804, a coroner's inquest returned a verdict of "willful murder by Aaron Burr, vice president of the United States."

A New Jersey grand jury

subsequently handed up a murder indictment against Burr, although he was never arrested or tried on the state charge. Burr fled south, but returned to Washington that fall and presided over the Senate until his term ended a few months later.

Raoul Berger, the Harvard law school historian and leading academic authority on impeachment, considers the argument that impeachment must come first "highly artificial." The Constitution, he says, makes clear that impeachment is no bar to subsequent indictment, but in Berger's view, that is a far cry from prohibiting indictments before impeachment.

Beyond that, Berger says, "if there's one thing you can cling to, it's that impeachment is meant to cover political crimes. Conventional learning is that impeachment goes to crimes committed while in office."

Most of the allegations against Vice President Agnew, however, hinge on his activities as governor of Maryland and Baltimore County executive.

To the extent that they are confined to what he did before he became vice president, Berger said, "I think the allegations are perhaps not impeachable offenses." But by the same token, he said, they would be that much more open to ordinary criminal prosecution.