

Was It Bribery?

President Nixon's dealings with the milk lobby are now acquiring an extraordinary importance, for bribery is explicitly grounds for impeachment. Along with treason and the loose and controversial phrase "high crimes and misdemeanors," the Constitution cites bribery as an offense for which a President can be removed.

The White House acknowledged last January that Mr. Nixon knew the dairy lobby was offering \$2 million in campaign contributions at the time he raised the support price for milk in early 1971. The President's position is that the money was conventional campaign contributions and the milk support increase was a conventional political decision. But now the House Judiciary Committee has made public a memorandum suggesting much stronger evidence of cause and effect between the money and the decision.

What, exactly, constitutes the crime of bribery? It is useful to do as lawyers do and recall what happened in past cases. One of the most recent and dramatic was the prosecution in 1972 of former Sen. Daniel B. Brewster (D-Md.).

The Brewster case illustrates a central point: The difference between a legal political contribution and a bribe comes down to the intentions of the giver and the taker. A gift becomes a bribe if the giver thinks that he is buying something—and if the taker lets him think so. Since you can't unscrew the top of a man's head to see what's going on inside, you have to infer his intentions from the circumstances of the gift. The order in which things happened, what the participants said, how they handled the money: these are all crucial elements in a bribery case.

Brewster was indicted in 1969, after his defeat for re-election. The government charged that in 1967 he had taken a series of payments from a Chicago mail order firm, Spiegel, Inc., to fight a pending raise in the third-class mail rates. The money was delivered by Spiegel's lobbyist, Cyrus T. Anderson, who stood trial with him. Brewster acknowledged that he had received the money, but swore that it was nothing more than a customary series of campaign contributions from Anderson, who represented not only Spiegel but other clients with interests in low postal rates. Brewster declared that he had always considered what rates were good for the country and would have opposed the increase in any event.

The case went to the Supreme Court on a preliminary point of law that has no relevance to President Nixon's present situation except for one comment on the nature of bribery. Chief Justice Warren Burger, writing for the majority, said that it is irrelevant what a bribed senator actually does, or why. If the donor had "illicit reasons" for giving the money, and if there is evidence that the senator knew it, that alone justifies presenting the case to a jury, the Chief Justice wrote.

Unfortunately for Brewster, his former administrative assistant, John F. Sullivan, testified against him. Sullivan had been present in some of the conversations between Brewster and Anderson, and had been a go-between. He swore that Brewster had promised to do everything "he possibly could" to help the mail order company. Sullivan's reputation was severely attacked during the trial, but the jury decided

to believe him. Perhaps one reason was the lengths to which Brewster had gone to conceal the source of these funds. He was convicted of taking three bribes totaling \$14,500, and was sentenced to six years in prison. He is currently free on appeal.

Brewster has consistently and bitterly protested that he is being persecuted for fund raising practices that are endemic in Congress. After his trial he produced a list of 20 former and present members of Congress who had similarly received payments from Spiegel. Why was the contribution to him the only one to be prosecuted as a crime? One reason was, obviously, that

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in his case the government had a witness who swore that a deal was on.

President Nixon's version of the milk case is contained in the White House paper of last Jan. 8. It concedes that former presidential assistant Charles Colson told Mr. Nixon in September 1970 that Associated Milk Producers Inc. (AMPI) had pledged \$2 million to the re-election campaign. On May 23, 1972, the President met with a delegation of milk producers and thanked them for their support. Later that day

he overruled his Secretary of Agriculture, Clifford Hardin, to raise the federal support price. The dairy industry actually contributed \$427,000 to Mr. Nixon's 1972 campaign, the White House said, but it also gave substantial amounts to congressional candidates of both parties. In any event, the White House paper concluded, these contributions had no effect on Mr. Nixon's decision about milk price supports.

The House Judiciary Committee has now published a far more detailed chronology of the decision, in support of its request to the White House for tapes and documents bearing on the case. It bases this chronology, it says, on material already in its possession.

According to the Judiciary Committee's memorandum:

- On March 12, Secretary Hardin decided to leave milk supports at 79 per cent of parity.

- On the morning of March 23, President Nixon met with the representatives of the dairy industry.

- That afternoon he met with several advisers, including John Ehrlichman, and decided to raise the price supports. But there was no public announcement. Ehrlichman contacted

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Colson, who contacted Murray Chotiner. Chotiner had resigned from the White House staff on March 5 and was representing the dairy interests as a private lawyer.

- "Later in the night of March 23, 1971, AMPI officials and other dairy representatives engaged in all-night meetings (one of which took place after an early dawn flight to Louisville, Kentucky) at which they agreed to make political contributions to the President's re-election campaign and to contribute \$25,000 by the evening of March 24, 1971."

- During the evening of March 24, Chotiner told the dairy interests that Ehrlichman wanted the industry to reaffirm its promise of \$2 million. They did so.

- On March 25—two full days after the President's decision—the administration publicly announced an increase in the price support level of slightly more than 85 per cent of parity.

Although the Judiciary Committee's chronology does not say so, the \$25,000 contribution was indeed paid by the dairy lobby. It was paid by the deadline of the evening of March 24, 1971, one day after the price support decision was made in private, one day before it was made public.

Was that bribery? It depends on whether the jury concludes that a presidential decision was sold—whether, to use the Chief Justice's formula in the Brewster case, the President took the money knowing that the dairymen had an illicit reason for paying it. In this case the jury is, at the moment, the House Judiciary Committee. Shortly it will be, more broadly, the American people who elected Mr. Nixon.