



## Cranston Reprimanded by Senate Ethics

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An article from CQ Almanac 1991

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One of the most divisive ethics cases in the history of the Senate came to a novel close Nov. 20 after two years of dispute. The Senate Ethics Committee invented a new punishment to reprove Alan Cranston, D-Calif. for his conduct in the Keating Five case. Almost nine months earlier, the committee issued milder rebukes to the other four senators — Democrats John Glenn of Ohio, Donald W. Riegle Jr. of Michigan and Dennis DeConcini of Arizona, and Republican John McCain of Arizona.

The committee in effect left judgment on the highly publicized Keating affair up to the voters — except in the case of Cranston, who announced shortly before the hearings began in late 1990 that he would retire at the end of his term in 1992 because of health problems. McCain's and Glenn's terms expired in 1992; Riegle and DeConcini were scheduled to face the voters in 1994. (*1990 Almanac*, p. 78)

The Ethics Committee opened hearings into the case in November 1990; the senators and their attorneys presented their rebuttals in January 1992. The committee issued its preliminary conclusions on Feb. 27, when it chastened McCain, Glenn, Riegle and DeConcini for poor judgment in their dealings with thrift operator Charles H. Keating Jr. Riegle and DeConcini were also criticized for creating the appearance of acting improperly, and the panel chided DeConcini for being inappropriately aggressive with banking regulators. But it instituted formal proceedings only against Cranston, finding "substantial credible evidence" that he had broken Senate rules.

After months of acrimonious and often partisan internal debate, the committee concluded that Cranston had gone too far, branding the senator's conduct "improper and repugnant." But although the committee in February had signaled that it would urge the full Senate to sanction Cranston, it backed away from traditional procedures. In order to break an internal stalemate, the panel created a new form of punishment halfway between a committee rebuke and a full-Senate censure. While taking the matter to the floor, there was no vote or formal action by the full body; instead, Ethics leaders told the assembled Senate that the panel itself was reprimanding Cranston for "an impermissible pattern of conduct in which fundraising and official activities were substantially linked." (*Sanction*, p. 29)

The 95 senators who somberly gathered to watch Cranston get scolded ended up getting scolded themselves by the defendant. Cranston apologized for making the Senate look bad and then implied that some of his colleagues looked worse. He expressed sorrow that some people thought he acted improperly but said he had not. He accepted the Ethics Committee's reprimand but rejected its basis.

"My behavior did not violate established norms," he told his colleagues. "Here, but for the grace of God, stand you."

But when Cranston was done, Ethics Committee Vice Chairman Warren B. Rudman, R-N.H. rose to address the chamber in a visible rage. "After accepting this committee's recommendation, what I have heard is a statement I can only describe as arrogant, unrepentant and a smear on this institution. Everybody does not do it."

"I stand by my remarks," Cranston replied. "I have not violated the norms of this body."

Members looking for retribution were left unsatisfied because the Ethics Committee had entered into an unprecedented plea bargain with the ailing 77-year-old liberal stalwart: In return for not facing formal Senate action — and a likely divisive floor vote — Cranston would formally accept the reprimand. But that left Cranston free to defend himself in strong terms.

"The committee whitewashed him, and he tarred us," complained Malcolm Wallop, R-Wyo. after the proceedings.

A handful of similarly minded Republicans considered trying to force a vote by the full Senate to censure Cranston, though they were somewhat appeased by Rudman's blistering rebuttal of Cranston's defense, and nothing came of the talk in the remaining week of the first session.

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Members looking for lessons likely also were unsatisfied because, in the end, the Senate's ethics watchdogs announced that they could not define improper conduct, but, as with pornography, they knew it when they saw it.

"Not all standards offer the opportunity to arrive at easy judgments through the mechanical application of a fixed formula," said Ethics Chairman Howell Heflin, D-Ala. who told members that Supreme Court Justice Potter Stewart's oft-borrowed pornography standard applied to their behavior.

That troubled many senators because the case raised a fundamental question: When does the relationship between members' two most time-consuming tasks — helping constituents and raising money — become improper and unethical?

As for the rest of the Senate, the committee only offered somewhat more expansive guidance than it had in the past. Its advice came down to this: Be careful out there.

"The resolution we bring before the Senate today," said Rudman, "is not a perfect solution; it is, however, for this institution an acceptable result, and it certainly is better than no resolution at all."

**Background**

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The Keating Five case dated back to 1985, when Keating's California-based thrift, Lincoln Savings and Loan Association, began a bitter feud with federal regulators. The officials charged that the thrift's rapid, high-risk growth had violated federal regulations. Keating fought back, charging that he was the victim of a "vendetta." (When the S&L collapsed in 1989, it cost taxpayers an estimated \$2 billion.)

Keating successfully lined up well-placed politicians to help him in his fight as things heated up in late 1986 and early 1987. Among them were the five senators: Cranston, Glenn, Riegle, DeConcini and McCain.

Most of the senators' work in behalf of Keating involved contacting thrift regulators to talk about his case, though some did other favors, large and small, for him. Usually they urged the regulators to quickly make decisions about matters that Keating felt had dragged on for too long. Cranston and DeConcini were the most persistent.

The main events in the affair were two meetings in April 1987 when the senators met with top regulators to ask about their lengthy examination of Keating's thrift. (Riegle did not attend the first meeting.) The regulators later said they felt pressured and in some cases intimidated.

Over the years, Keating raised a total of \$1.5 million for the senators' campaigns or political causes, with his support going back to 1982 in the case of the two Arizona senators. Two-thirds of the money went to Cranston's causes, mostly nonprofit voter groups.

The key issue in the case was whether there was any connection, real or perceived, between Keating's fundraising and their official actions in his behalf. In numerous instances — especially in the cases of Cranston, Riegle and DeConcini — Keating's donations coincided in time with official actions by the senators in his behalf.

**Ethics Committee Investigation**

Calls for an ethics inquiry began in 1989 as news stories raised questions about the senators' ties to Keating.

Numerous complaints, all based on newspaper reports, were filed with the panel. The chairman of the Ohio Republican Party filed the first official complaint that was made public, against Glenn alone, on Sept. 25, 1989. Common Cause, the public interest lobby, followed suit Oct. 13, 1989, with a complaint against the five senators. Several days later, interest in the case soared when the House Banking Committee started six days of hearings on Lincoln's collapse. (*1989 Almanac*, p. [133](#))

The Ethics Committee the following month hired a special counsel, Robert S. Bennett, to investigate, and it opened a formal inquiry that December. Bennett presented a report to the panel in September 1990.

Between Nov. 15, 1990, and Jan. 16, 1991, the committee held 26 days of hearings, filling 5,000 pages of transcripts with testimony from 27 witnesses, not counting 853 exhibits accepted into evidence.

The committee heard the case-in-chief over 18 days of public testimony, plus at least seven private sessions, in 1990. It heard Bennett's detailed overview of the case, presentations from the five senators (including Cranston's only appearance, shortly before he underwent cancer treatment at Stanford University in California), and testimony from congressional aides, banking regulators and Keating's former lobbyist, James J. Grogan.

But the panel could not accomplish its goal of completing the hearings in 1990, so it suspended proceedings from Dec. 15 to Jan. 2, when it began hearing from minor players and the defendants.

**Hearings Continued in January**

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On Jan. 2, 1991, the Ethics Committee heard testimony from one former federal regulator that countered that of other ex-colleagues who testified that the actions of the five senators contributed to a delay in closing Lincoln.

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- 1967 Senate Censures Dodd for Misuse of Political Funds
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- 1966 Senate Committee Studies Charges Against Dodd
- 1965 Second Report on Bobby Baker Issued, Indictment Filed
- 1965 Joint Committee Set Up to Study Congress
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- 1963 Baker Case Spotlights Congressional Ethics
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- 1961 President Kennedy's Message on Conflicts of Interest
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According to Rosemary Stewart, former head of enforcement at the Federal Home Loan Bank Board and its successor agency, the Office of Thrift Supervision, none of the senators brought political pressure that altered her or the bank board's approach to the regulation of Lincoln.

Federal regulators based in San Francisco had recommended in May 1987 that the thrift be seized. Those recommendations were rejected by Washington-based regulators, among them Stewart, who decided a year later to remove the San Francisco regulators from their role in supervising Lincoln. Stewart said she believed that the San Francisco regulators had a vendetta against the thrift, as Lincoln was charging at the time. And, she said, the San Francisco regulators had not made their case.

"It would have been unprecedented" to have taken control of an institution that had not yet failed, as the San Francisco regulators were urging, Stewart testified. She said that she, like the five senators, had been impressed by reports from Lincoln's outside accountant, Jack D. Atchison of the Big Eight firm of Arthur Young, that Lincoln was strong financially. (It was Atchison's representations to the senators in early 1987, they said, that led them to meet twice with federal regulators in behalf of Keating.)

Stewart was called as a witness by Cranston's attorney, William W. Taylor III; her testimony was a strong counterpoint to that of the San Francisco regulators. Rudman, a former New Hampshire attorney general, challenged Stewart vigorously on her argument that federal regulators could not have moved more expeditiously against Lincoln.

### **McCain, Glenn Testified**

During a day of mostly low-key testimony Jan. 4, the committee heard Glenn and McCain argue that they did nothing inappropriate by attending the two April 1987 meetings with federal regulators. Those two senators faced the easiest task in distancing themselves from the others. There had been almost no testimony to challenge their assertion, and Bennett had asserted previously that they did nothing wrong.

McCain's biggest potential problem in the case was his personal relationship with Keating, especially his repeated vacations at Keating's home in the Bahamas and trips to and from those vacations for McCain and family members paid for by American Continental.

Heflin took McCain through exhaustive questions about the long period of time in which he failed to either pay for the trips or to claim them as gifts. Heflin also questioned whether the amount McCain ultimately reimbursed American Continental for some of the trips was sufficient.

McCain, who became somewhat defensive during the questioning, insisted that he would have paid for them if American Continental had told him sooner that the payments had not been made. "If you have information that I didn't pay enough... I'll give you the check," he told Heflin. "Obviously, I didn't have a proper procedure. Otherwise, we would not be discussing this."

The trips occurred between 1983 and 1986, while McCain was still a member of the House, and he reimbursed American Continental for some of the flights at the time they were taken. In 1989, however, American Continental accountants informed McCain that about \$13,400 in flight costs had not been reimbursed. In May and June of that year, McCain paid the company. At the time, both the House and Senate ethics committees said that McCain — having reimbursed the company — needed to take no further action.

McCain had filed financial disclosure forms with the House that did not claim that the trips were gifts. In letters to the Ethics Committee in late 1990, former American Continental accountant David Stevens said he believed that McCain never intended to pay the company back for trips taken by his family members.

The letter appeared to be an embarrassment to McCain. But in testimony before the committee in December, Stevens backed off that assertion.

In a Dec. 31 letter to the committee, Stevens said he wished he had not asserted that McCain had no intention of paying for family members but said there was nothing in his files to suggest that McCain did intend to do so.

McCain testified that he broke off his friendship with Keating just before the April meetings, when Keating asked him to negotiate. "I told him that he was trying to do something that was inappropriate," he said. "I would not do it."

At the conclusion of McCain's testimony, committee member Trent Lott, R-Miss. said, "I am compelled to say that you have shown repeatedly that you did nothing improper."

Glenn and McCain ended virtually all contacts with Keating after the second April 1987 meeting, at which regulators informed the senators that criminal charges might be filed against Lincoln and that the thrift was refusing to cooperate with regulators.

"I came to the conclusion that Lincoln was in deep trouble," Glenn said.

Glenn's only action after that time was to set up a lunch meeting in January 1988 between Keating and then-House Speaker Jim Wright, D-Texas. In the summer of 1987, Glenn testified, he turned down Keating's offer to raise campaign contributions because of Keating's battles with the regulators.

### **Skepticism Toward Riegle**

Riegle testified on Jan. 7–8. He spent much of his time fielding tough questions from Bennett, attorneys for the other senators and members of the committee.

Much of the attention focused on a trip to Phoenix in March 1987, during which Riegle met with Keating, toured American Continental Corp., and — according to other testimony — discussed Keating's problems with federal regulators and proposed a meeting with the senators and then-Federal Home Loan Bank Board Chairman Edwin J. Gray.

Riegle took pains to say that more than \$10,000 collected for his campaign from American Continental employees days before the trip was unrelated to his discussions with Keating. In fact, Riegle testified, the money was intended to be given as part of a Keating-sponsored fundraiser scheduled for Riegle in Detroit a few weeks later. And Riegle insisted that he had not discussed fundraising during the trip.

Rudman zeroed in on Riegle, who was repeatedly unable to recall events and conversations during testimony. Rudman said he found Riegle's testimony "remarkably inconsistent."

In particular, he seemed incredulous at Riegle's description of his trip. Rudman said he was confused about why Riegle had visited American Continental, yet told his aides not to deal with issues involving Lincoln. Riegle said he kept his aides out of the issue because the California-based thrift was not a direct constituent. But he said he visited American Continental because the firm was investing in Detroit.

Committee member Jesse Helms, R-N.C. all but demanded that Riegle admit that at least in hindsight he would have acted differently.

"If I'm disturbed about one thing — and I'm disturbed about many things — it's that not once have I heard anything remotely resembling a mea culpa about this," Helms said.

Helms referred to the senators as "Keystone Cops" and to Keating as "Daddy Warbucks." He told Riegle: "I don't believe you would have gone out to Phoenix — I don't believe anybody would have been involved with Mr. Keating, if he didn't have the ability to give away other people's money," Helms said.

### Tough Questioning for DeConcini

DeConcini appeared before the committee on Jan. 9–10. Bennett questioned him closely on why he had resumed his actions in behalf of Keating after the April 9, 1987, meeting at which the senators learned of serious problems with the thrift. DeConcini ceased intervening until early 1989, when Keating was attempting to win regulator support for selling the thrift before it was seized. Such a sale would have preserved all or part of Keating's investment — and, as DeConcini pointed out, could have saved jobs at American Continental, which eventually went bankrupt.

Bennett honed in on DeConcini's calls to the superior of a California thrift regulator who had no say in a decision about the sale but was objecting to it. DeConcini denied that he had tried to keep the California regulator quiet.

DeConcini and his attorney, James Hamilton, became upset with Bennett several times over his line of questioning and his repeated raising of certain points, such as the timing of campaign contributions or whether DeConcini was aware of fundraising being done by Keating.

DeConcini protested since the hearings opened that Bennett was acting like a prosecutor rather than impartially questioning him.

Lott said he was unclear about why DeConcini again acted in Lincoln's behalf when he knew that Keating had misled him about his role with regulators. DeConcini should have seen "red flags saying this guy could be trouble," Lott said.

### No More Cranston Testimony

The committee on Jan. 8 excused Cranston from further testimony, acting at the behest of Cranston's lawyer, who said the senator's treatment for prostate cancer would prevent him from returning to work until late February.

Cranston underwent five weeks of radiation therapy in late 1990 and was still recovering from side effects that included reduced stamina, Taylor told the committee. Another surgical procedure was scheduled for late January that would require several weeks of additional rest.

Cranston had delivered a lengthy opening statement Nov. 16, 1990, and testified in private on three separate occasions.

"I believe in Sen. Cranston's case the record is sufficiently complete that this committee can make a correct, informed judgment in this matter," Bennett said.

### Concluding Arguments

The last two days of the hearings were given over to final arguments. Over 21/2 hours on Jan. 15–16, Bennett presented his view of the facts and the standards senators should use to judge their colleagues. And the senators and their attorneys also made closing presentations.

Bennett distinguished carefully among the five senators, and without actually making recommendations, in essence urged the committee to find that Cranston, DeConcini and Riegle had acted improperly. Bennett again called upon the committee to find that Glenn and McCain had acted properly at all times. He distinguished them from the others by arguing that their acceptance of contributions was far removed in time from their actions, eliminating any taint from their fundraising.

"The ultimate disservice to some of your colleagues who sit in this room would be to allow them to be condemned by the failure of this committee to make tough judgments and tough calls and make decisions and separations," he argued.

#### A New Sanction

By reprimanding Alan Cranston on the Senate floor on Nov. 20, the Ethics Committee established a new form of in-house punishment — one that the Senate on earlier occasions had refused to create because it smacked of leniency.

Since the first disciplinary matter arose in 1796, both chambers had relied on an accumulation of precedents to develop standards for members and sanctions for those who violate them. The Constitution allows expulsion, but other punishments evolved on a case-by-case basis.

The House recognized two lesser sanctions: censure and reprimand, which was first used in its modern sense in 1976 to reprove Robert L. F. Sikes, D-Fla. for failing to disclose financial holdings.

The Senate had only censure. Although sometimes it would substitute other words ("condemn" or "denounce"), any disciplinary resolution that went to the floor and was voted upon was considered by historians to be a censure. In either chamber, anything else — such as a chiding letter or public report — was an action taken by its Ethics Committee.

Bennett was tough on the others. He argued that DeConcini had gone beyond the bounds of proper behavior to negotiate for Keating with the regulators in 1987, and he noted that DeConcini weighed in with them again in 1989 on the pending sale of Lincoln, despite knowledge that the regulators had referred evidence of possible criminal conduct at Lincoln to the Justice Department.

Bennett argued that the senators' meetings with and repeated phone calls to federal regulators were not just "status inquiries," as they contended: "If I'm sitting on a park bench, and an 800-pound gorilla comes along and says, 'Excuse me, I'm just making a status inquiry if there are any seats available,' you say, 'You're damn right, there's a seat available.' And there's a lot of 800-pound gorillas around this place."

DeConcini argued in his own defense that a senator could not be punished for the appearance of improper conduct, unless there was improper conduct. And his attorney James Hamilton argued that DeConcini had not tried to negotiate for Keating, and even if he had, there would be nothing wrong with it.

Bennett argued that Cranston's case provided the closest connections between money and action. He cited four separate occasions in which Cranston took actions for Keating after soliciting or receiving large amounts of cash for his own campaign or for voter registration groups with which he was affiliated.

But Taylor, Cranston's attorney, said senators had a duty to act in behalf of constituents — whether or not they are big contributors. "This duty may create an appearance of mutual dependence," Taylor said. However, "there is nothing improper, nor is there an appearance that there is anything improper, about that mutuality."

### Rejecting 'Reprimand'

The Senate first considered using the word "reprimand" in 1902. In the midst of a hot debate over the Philippines, Benjamin R. Tillman got into a fistfight on the floor with his fellow South Carolina Democrat, John L. McLaurin. The Senate voted 61–0 to declare them "in contempt" and to refer the matter to a committee for further action. The panel considered a reprimand but concluded that "a reprimand would be too slight a punishment.... It is not sufficiently severe." The panel recommended censure, which the Senate approved 54–12.

In 1967, when the Senate was debating a resolution to censure Thomas J. Dodd, D-Conn. for financial misconduct, Texas Republican John Tower introduced an amendment to substitute the word reprimand. The chairman of the Ethics Committee, John C. Stennis, D-Miss. told the Senate that his panel had done extensive research on the term and rejected it.

"I will put it in this way, as to what we found as to the meaning of 'reprimand' in legislative parlance," said Stennis. "It just does not mean anything. It means what you might call a slap on the wrist. It does not carry any weight."

Jack Maskell, a lawyer with the Congressional Research Service who found those examples for a 1990 review of Senate discipline, said the Cranston action was unprecedented. "A committee reprimand seems to be something new," he said. "It's certainly not a censure. Historians will treat it as discipline by the committee, and it will be a new form of sanction."

Maskell noted that a House reprimand was not parallel to the Senate action. In the House, a reprimand required a floor vote, although the offender need not be present; for a censure, the member had to stand in the well of the House to listen to a formal rebuke by the Speaker.

The reprimand of Cranston was imposed by the Ethics Committee "on behalf of and in the name of the U.S. Senate." It was presented on the floor by committee leaders and rebutted by Cranston, but there was no formal action by the Senate.

Regarding Riegle, Bennett also drew a connection between fundraising and action, all of which occurred in a three-month period in 1987. And he made a damning accusation that Riegle had misled the committee, perhaps intentionally, about his role in the Keating affair.

Riegle attorney Thomas C. Green blamed "whimsical circumstances" for the close scheduling between a March 23, 1987, Keating-sponsored fundraiser that netted \$78,250 and the controversial April 9 meeting that Riegle attended. And he denied that Riegle had had any intention of misleading the committee. Information not provided was not considered relevant, he said.

Attorneys for McCain and Glenn were brief in their closing arguments.

"You owe John McCain something," argued his attorney, John M. Dowd. "You owe him a straight, crisp, clear finding, based on the overwhelming, undisputed evidence in the record that his actions, at all times, were honest and ethical."

Glenn attorney Charles F. C. Ruff weighed into the standards debate, urging the committee to "judge him by the sternest ethical standard that you can apply to the conduct of all of your colleagues in the Senate."

### Bennett's Conduct an Issue

At the hearings' conclusion, committee members David Pryor, D-Ark. and Terry Sanford, D-N.C. complained that much of what Bennett presented was irrelevant. And Bennett was lambasted by some of those under inquiry — chiefly DeConcini — for unfairness and a one-sided presentation of the facts.

On the next to last day of the hearings, James Hamilton, DeConcini's attorney, stung Bennett with affidavits from two former U.S. attorneys accusing him of unfairness.

"Mr. Bennett's conduct is going to be an issue," Hamilton said, if the DeConcini case were to go to the Senate floor for action.

Bennett fired back: "Sen. DeConcini and his counsel would like me to be a flower girl distributing the flowers at a wedding in equal shares to each senator without regard to the evidence. I will not do that.... I think the not-so-subtle threat to this committee is an outrage and you should be offended by it."

The committee voted not to admit the affidavits as evidence; only Heflin voted to consider them.

Bennett had previously handled investigations for the committee of Harrison A. Williams Jr., D-N.J. in 1981 and Dave Durenberger, R-Minn. in 1989–90.

In his closing comments, Pryor acknowledged that there were major differences among the three Democrats and three Republicans on the panel. "I would dare say... that there are six visions — six visions — of this case and what it means or what it doesn't mean, what is relevant, what is not relevant, sitting here today," Pryor said.

The cable television public affairs network C-SPAN televised every day of the hearings, and it reported that as many as 25 million viewers

had tuned in.

### Inside the Jury Room

The committee struggled over the five men's fates for a month during 33 hours of secret deliberations.

The panel went behind closed doors in a small room in the Ethics Committee's suite in the Hart Senate Office Building on Jan. 30, two weeks after its public hearings into the matter ended. Members sat on well-padded upholstered chairs around two rectangular tables pushed together to make a square. Evidence and hearing transcripts were available nearby. Aides were only occasionally invited in to answer specific questions or bring in fresh pencils.

Even Bennett was consulted only occasionally. At times he could be seen pacing nervously outside this inner sanctum.

According to accounts of the deliberations that emerged afterward, opinions among committee members initially seemed to form a continuum, with Helms favoring the harshest treatment, advocating that as many as three members (Cranston, DeConcini and Riegle) faced full-Senate censure. At the other end was Sanford, who favored little or no official action by the Senate.

Lott seemed to be most closely allied with Helms. Based on his questions and comments during the public hearings, Pryor seemed closer to the Sanford camp. Heflin said little, according to one official, while Rudman was all too willing to discuss matters at length.

Even after members had worked out a basic framework — considering censure for Cranston and merely chiding the other four — the precise wording was of critical concern. "We're into minutiae here," said Lott on Feb. 20. Lott described the debate this way: "If the language has the words 'poor judgment' and 'insensitivity' and 'appearance of impropriety' — if all those words are in there, maybe that's good enough. But if one of those words is missing — is it good enough? Or if it's 'overly aggressive' — is that good enough? But if it's just 'aggressive,' is that not enough?" He added, "The words have been pounded until they're pulverized."

Cranston sent a letter to the Ethics Committee Feb. 18, expressing "roaring outrage" at news reports based on sources inside the committee room because their "main purpose seems to be to attempt to blacken my reputation no matter what the committee decides."

Referring to reports that he alone would face further action, Cranston wrote: "Is this latest leak somebody's trial balloon, to see if the public will be appeased sufficiently if only one of us is thrown into the lion's den? Am I the logical scapegoat because I am ill and because I am the only one who will not seek re-election?"

In the letter, Cranston argued that his behavior, if judged improper, was no worse than the others'. "I do not see how I can be singled out for harsher treatment," he said.

Common Cause also attempted to influence the proceedings. In a Feb. 19 letter, Fred Wertheimer, president of Common Cause, said: "The Senate Ethics Committee would do a grave disservice to both the Senate and the country by attempting to downplay the seriousness of the case involving Sen. DeConcini and Sen. Riegle. This is far too important a matter to be handled by a Senate Ethics Committee letter."

## Preliminary Decision

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On Feb. 27, the panel found a continuum of fault in the case: It rebuked McCain, Glenn, DeConcini and Riegle for poor judgment. DeConcini and Riegle were also criticized for creating improper appearances, and DeConcini's conduct with the regulators was found to be inappropriately aggressive. But it decided that existing Senate rules did not warrant punishment for any of the four. As far as the panel was concerned, that closed the case against them.

The panel announced its findings at a news conference attended by all six members; it issued a 12-page summary that had few details to back the distinctions it drew between the senators. Its decisions were unanimous — achieving a goal that had made the deliberations protracted. (*Text*, p. [31](#))

In effect, the committee indicted Cranston, finding "substantial credible evidence... that Sen. Cranston engaged in an impermissible pattern of conduct in which fundraising and official activities were substantially linked." It did not accuse him of breaking a specific rule, charging instead that he violated the Senate's catchall admonition that members shall not engage in "improper conduct which may reflect upon the Senate."

Committee members said they had not yet decided to recommend that the full Senate punish Cranston. But they left little doubt that they would probably do so. Cranston complained bitterly that he was made a scapegoat and had previously vowed to fight a negative judgment.

The committee also recommended that two bipartisan task forces be created. One would write rules clarifying how far senators can go in helping constituents; the other would recommend campaign finance reforms.

"Good government" advocacy groups generally decried the committee's decision. Wertheimer called it a "sophisticated whitewash."

House Republican Whip Newt Gingrich of Georgia denounced the committee for a "purely partisan decision to have DeConcini and Riegle not be sanctioned more intensely."

Public reaction was muted by war news: Bush announced an end to hostilities in the Persian Gulf just hours after the Ethics Committee released its decision. (*Gulf war*, p. [437](#))

But despite the story being pushed off the front pages, the committee was rewarded with scathing editorials almost immediately. The Washington Post headlined its March 1 critique of the decision: "The Keating Dive." The San Francisco Examiner said: "As to Cranston, the committee did not do enough." His actions, it said, "stink to high heaven." The Arizona Republic, while defending its two home-state senators, criticized the committee's written statement as "mostly mush."

Committee members and other senators rejected the notion that they had been lenient, particularly with the four senators who would not face further proceedings.

"Their careers have been put in jeopardy, their integrity questioned — what is so light about that?" asked Daniel K. Inouye, D-Hawaii who had testified in defense of the Keating Five during the hearings in December.

"What do they want? Do they want to hang [Cranston]? Is that when Common Cause will be satisfied?" he asked.

Rudman called the committee's rebukes "very strong language." But he and others refused to characterize them further. "The words speak for themselves," Rudman said.

And Helms, whom committee sources said was the most adamant in favor of punishing DeConcini and Riegle, denied that the committee ducked its responsibility. "I don't think you would think that you had been dealt with lightly if your peers had judged you as these men have been judged," Helms said.

## Details of Decision

In its statement explaining its findings, the committee found nothing intrinsically wrong with the intervention by the five senators with federal regulators in behalf of Keating. It stated explicitly that the senators' actions had nothing to do with Lincoln's collapse. And, it said, each had ample information to justify contacting regulators about the fairness of the regulatory treatment Lincoln was receiving.

But because of the size and frequency of Keating's contributions to Cranston, and the proximity of the contribution to actions he took in Keating's behalf, the committee found the possibility of wrongdoing on Cranston's part.

With DeConcini and Riegle, the panel found an appearance of improper conduct that it chose to rebuke but not to punish because the rules on such appearances of impropriety are unclear. To take further action against the two would have amounted to "setting standards after the fact," according to Lott. In the cases of Glenn and McCain, even this appearance of impropriety was lacking, the committee said.

The idea that the Senate can punish members for the mere appearance of impropriety was central to Bennett's arguments that DeConcini and Riegle might have gone too far. Heflin and Rudman said they neither accepted nor rejected Bennett's appearance standard.

The committee was, if anything, tougher on McCain and Glenn than Bennett proposed.

In McCain's case, the committee chose to disregard what may have been his biggest liability — his repeated vacations and airplane flights paid for by Keating's companies in the early 1980s. (*McCain*, p. [37-E](#))

The panel's criticism amounted to a simple admonishment that he "exercised poor judgment in intervening with regulators."

In a brief statement to reporters, McCain claimed full exoneration. "To quote the committee, 'no improper conduct,'" he said.

Glenn also proclaimed that he had been vindicated, and he took issue with the fact that the committee questioned his judgment in setting up the lunch meeting between Keating and Speaker Wright. (*Glenn, p. 37-E*)

"I was just the host," he said.

### **Riegle Contrite; DeConcini Defiant**

Riegle and DeConcini both expressed relief when the committee chose not to recommend formal punishment.

The panel called attention to the fact that Keating had raised more than \$78,000 for Riegle at the same time that Riegle was acting to aid Lincoln. In his early representations to the committee, Riegle did not mention all contacts he had with Keating and the regulators. And during the hearings, he repeatedly could not recall actions that others said he had taken. (*Riegle, p. 37-E*)

The committee noted that during the hearings, "conflicts arose" between Riegle's testimony and that of others about his actions. Nevertheless, the panel found that "the evidence indicates no deliberate intent to deceive" on Riegle's part.

Riegle said he was gratified to be cleared of wrongdoing. But unlike the other senators, he chose to accept the committee's criticism, calling it "fair and constructive," adding that he had seen the possible appearance of impropriety in 1988, and at that time returned Keating's contributions.

"I certainly regret and accept responsibility for this appearance problem," Riegle said.

While Riegle was contrite, DeConcini was defiant.

Bennett had made much of DeConcini's role in the two April 1987 meetings with regulators, at which he appeared to be offering a deal that Lincoln would change practices that regulators were criticizing, if they would back off. The committee found that DeConcini's "aggressive conduct with the regulators was inappropriate." (*DeConcini, p. 37-E*)

DeConcini chose to read the committee's judgment as an exoneration, however. "I realize that my aggressiveness has been questioned by the committee," DeConcini said. "Aggressiveness is my hallmark."

As for the panel's criticism, he said, "I accept it; I don't have any recourse."

### **Cranston Faced Discipline**

Although the committee seemed to disregard Bennett's recommendations on both DeConcini and Riegle, that was not the case for Cranston.

The panel adopted a resolution citing chapter and verse of the case developed by Bennett about Cranston's dealings with and in behalf of Keating. The panel cited four instances in which Cranston solicited or accepted money from Keating or acted in his behalf. It said Cranston's office practices "further evidenced an impermissible pattern of conduct in which fundraising and official activities were substantially linked."

Cranston, who remained in California recuperating from medical treatment, responded with a one-sentence statement: "It is clear that I have been unfairly singled out, despite the evidence in all five cases."

Officially, the panel's action on Cranston was a merely a preliminary finding, holding that the committee had found "substantial credible evidence that provides substantial cause" for the committee to take further action against him. In most Senate disciplinary cases, that would have been the start of a lengthy investigation and a possible public hearing. But the committee members made it clear that they thought they had heard all the evidence they needed. "The investigation, as far as we're concerned, is concluded," Rudman said.

Cranston had three options: he could request another hearing, submit a written defense to the committee or wait to fight on the Senate floor. A week after issuing its findings, the committee told Cranston to decide by March 18 how he wanted to proceed. But he got extensions.

### **Cranston Deliberations**

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In the aftermath of the Feb. 27 announcement, it seemed clear that the Ethics Committee would ask the full Senate to censure Cranston. "That's already been decided," said Helms. The major decision seemed to be the wording of the resolution.

Ethics members were clearly worn out by the case. Helms quit Feb. 28 and was replaced by Slade Gorton, R-Wash. although Helms remained on for the duration of the Cranston case. Pryor said March 7 that he would leave once the Cranston matter was settled. Heflin said he, too, wanted to depart, and on May 22 Senate Majority Leader George J. Mitchell, D-Maine announced that he would be allowed to do so — with Sanford taking over as chairman — although Heflin would remain to wrap up the Cranston case.

But any hopes panel members had that they could put the Cranston matter behind them were shattered. Cranston took two months drafting a response and deciding not to demand another hearing on the case. Pryor had a heart attack April 16 and soon after resigned from the committee. His replacement — Jeff Bingaman, D-N.M. — was not named until May 22. He took several weeks learning details of the case and on June 18 joined the panel's deliberations for the first time.

Deliberations intensified in July, but then Bingaman suddenly recused himself after declaring that he had a conflict: His wife's law firm was owed money for representing some of Cranston's principal associates in the case, and Cranston had promised to make sure the bills were paid. He said he had learned of the potential conflict of interest on July 23, and he immediately disqualified himself.

Anne Bingaman was one of scores of partners in the firm of Powell Goldstein Frazer & Murphy.

During the Keating inquiry, another partner, Robert D. Luskin, represented four figures in the case: Cranston fundraiser Joy Jacobson; his banking issues aide, Carolyn Jordan; his administrative assistant, Roy F. Greenaway; and Kim Cranston, his son. Luskin also represented the Center for Participation in Democracy, a voter registration group tied to the Cranstons that got \$400,000 of the \$994,000 Keating raised for the senator's campaigns and causes.

Mrs. Bingaman likely knew that the firm had represented some Keating-case principals, Luskin said, but she did not know that Cranston had decided to help pay their bills. She learned by accident when the matter came up during a firm meeting July 23. She told her husband that night.

Luskin estimated the outstanding fees at between \$50,000 and \$100,000. He said he never thought to warn Mrs. Bingaman of the potential conflict because he was no longer actively involved in the case.

"I think it's a fairly classic definition of a conflict," Bingaman said.

Bingaman was not obligated to disqualify himself; committee rules left such judgments to members' discretion. The panel unanimously concurred in his decision. "He has a financial interest — that's the issue," said Rudman.

The delays dragged on long enough for Pryor to recover from his heart attack and be renamed to the panel on Aug. 21.

## Helms Report

Frustrated at the delays, Ethics Committee member Helms dropped a bomb the weekend of Aug. 3, just after the Senate broke for its summer recess. He released his own scathing report on the case demanding that the full Senate censure Cranston for "reprehensible" conduct that "was clearly and unequivocally unethical."

The 247-page, 936-footnote report was based on a secret document submitted to the committee in late June by its special counsel. Bennett had proposed that his draft be used as a basis for action by the full Senate to sanction Cranston and to justify the panel's Feb. 27 decision to close the cases against the other four Keating senators.

Such a unilateral action was an unprecedented public break with the Ethics Committee's penchant for secrecy.

Ethics Committee leaders fired back at Helms, suggesting in a terse statement Aug. 5 that he violated committee confidentiality rules by releasing what it called Bennett's draft report. "We have asked the committee staff to investigate," said Sanford and Rudman. "It is regrettable that this document has been released or reported," they said. "This is simply a draft working document." The committee had "specifically rejected portions of the draft," they said.

The leaders noted that committee rules barred the unauthorized release of secret material, called "committee sensitive" documents and information.

"I did not release any information that had been designated as 'committee sensitive,'" Helms said in an Aug. 6 statement. "I properly used the special counsel's generally excellent draft report as a basis for preparing my own report bearing my own name and signature."

Murray S. Flander, Cranston's spokesman, said Helms' report confirmed what Cranston knew all along: "Once again, Sen. Helms is acting like a political enemy, not a fair-minded juror."

## Report Details

Helms had signaled his frustration to the committee leaders in a letter July 15. He told Rudman and Heflin that he saw "no adequate resolution of the case in sight." He also criticized unnamed senators "who at the outset declared that there should be no penalty at all, that 'none of the so-called Keating Five did anything wrong.'"

Especially disturbing to Helms was the prospect that the committee might issue only a brief report or no report at all. "I cannot and will not be a party to that," Helms said in his letter.

Helms said he adopted Bennett's report with only minor changes in part to scuttle a proposal by some panel members to issue what he called "a truncated report — or no report at all."

In the introduction to his report, Helms said that he wanted "to preserve the historical record" and "demonstrate the thoroughness and fairness with which the committee investigated this matter."

Helms said the report "fairly, fully and accurately reflects my conclusions." After the committee got the report in late June or early July, Bennett and his staff helped make some changes for Helms, and Helms' top aide, Darryl Nirenberg, did some final editing, officials said. But the changes were minor, Helms' office said.

The report was similar in tone to Bennett's 1990 report on Sen. Durenberger's ethics woes. In fact, the sanction resolution proposed by Helms for Cranston was virtually identical in many respects to the resolution on Durenberger. The key difference: Helms advocated censuring Cranston; Durenberger was "denounced." There was no legal difference, but censure was generally viewed as more severe. (*1990 Almanac*, p. 98)

The report said: "On each of four separate occasions, Cranston solicited or accepted contributions knowing that Keating had requested or received his assistance in behalf of Lincoln. At least by the fourth occasion, Cranston knew or should have known that Keating was attempting to influence him with the contributions."

Helms said Cranston "engaged in inherently improper conduct" by allowing a political aide, Joy Jacobson, "to function as a fundraiser who viewed contributors as deserving of special consideration and who acted on that belief."

In perhaps his harshest criticism, Helms suggested that Cranston had "violated the spirit and purpose" of a criminal law: "Cranston acted in a manner that implicated the very dangers to our democratic process that the conflict of interest statute was designed to prevent."

The report also dredged up details about the other four senators. It told, for instance, how DeConcini supported Keating and an associate for presidential appointments after doing little to check their credentials, and it recalled that despite Riegle's denials, most testimony pointed to him as the first senator to suggest that several senators meet with a top thrift regulator to discuss Keating's complaints. It recounted how McCain was concerned that such a meeting might smack of "undue pressure" but went anyway.

The report included a strong endorsement of Bennett's guidelines for senators trying to decide whether helping a particular fundraiser is proper:

"... A member who has any doubt about whether to proceed in a particular matter [should] consider the following:

- Does the senator have reason to believe that the constituent's case has merit and did he or she attempt to verify the legitimacy of the constituent's complaint?
- If the constituent's claim initially appeared to have merit, has the senator acted despite facts or circumstances that later undermine the merits of that claim?
- Has the senator acted on behalf of a single constituent or on behalf of broader interests and do these interests conflict with the public good?
- Does the senator hold positions that enable him or her to exercise particular influence over a constituent's needs?

- To what extent does the action or pattern of action deviate from the norm of senatorial conduct?
- Is the agency performing in a quasi-judicial, adjudicative or enforcement function?
- Did the senator know or should he or she have known of the contribution?
- How close in time is the senator's action to his or her knowledge of or receipt of the contribution(s)?
- Could action by the member appear to be influenced by the contribution based on the amount of the contribution and the history of donations? Do these factors suggest that the contributor is attempting to influence the member with the contribution?"

### Continuing Deadlock

The committee met several times after Congress returned in September, but Helms' bombshell had not changed the impasse. Frustrated with the delays, panel member Lott openly floated a proposal in late September to declare a deadlock and abandon the case. But more delays followed.

Its two leaders were sidetracked for weeks: Heflin by the Judiciary Committee's work on Clarence Thomas' nomination to the Supreme Court and Rudman by the Intelligence Committee's work on Robert M. Gates' nomination as director of central intelligence. (*Thomas confirmation*, p. 274; *Gates appointment*, p. 486)

The uproar over the Senate's handling of the Thomas nomination — and the pummeling its reputation took as a result — prompted Lott to drop his proposal. At a meeting Oct. 17, the committee renewed its effort.

A compromise finally began to take shape after Lott suggested a middle ground: a committee rebuke that the Senate would vote to accept — sort of an indirect censure.

The panel's Democrats balked at that, wanting to avoid a painful floor fight. Harry Reid, D-Nev. who had been secretly acting as Cranston's liaison to the committee for months, told the panel that Cranston would not accept a vote.

A final concession by the Republicans sealed the deal: no floor vote, but the committee reprimand would contain harsh language, and would be delivered in person in full view of Cranston's colleagues.

"We elevated everything to a level just below a Senate censure," said Lott.

Helms refused to sign on, but he was persuaded not to fight the deal. He abstained, and the rest of the Ethics Committee approved the compromise by 5-0 on Nov. 19 and presented it to the Senate the next day — two years, one month, three weeks and five days after the first public complaint on the case was received.

### Formal Floor Rebuke

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The Ethics Committee's report said the panel was acting "on behalf of and in the name of the United States Senate" in reprimanding Cranston "strongly and severely."

Senate lawyers had informed the members that the committee could not censure a member, so they settled for what the resolution called "the fullest, strongest and most severe sanction which the committee has the authority to impose."

The committee said Cranston's conduct breached "established norms of behavior in the Senate and was improper conduct which reflects upon the Senate" in violation of the chamber's longstanding catchall admonition that members must do more than just obey laws and specific rules.

The resolution included several clauses to soften the blow, including one that made clear that Cranston had "violated no law or specific Senate rule; acted without corrupt intent; and did not receive nor intend to receive personal financial benefit from any of the funds raised through Mr. Keating."

Aiding Cranston's cause was his illness — he was still suffering side effects from his treatments for prostate cancer — and his decision to retire after 1992. The resolution called those facts "extenuating circumstances." "The thing that finally got the votes was his horrible physical condition," Rudman said in an interview.

### Cranston's Involvement

The Ethics Committee released a 79-page report, along with a copy of Helms' previous 247-page report as a harsh dissent. Cranston issued a 66-page response to the committee's resolution that argued in detail against almost all of the committee's conclusions. (*Text*, p. 38-E)

After reviewing the voluminous evidence presented at the hearings, the committee found no evidence of a corrupt bargain — an illegal exchange of contributions for official action. The committee, however, decided that Cranston's conduct veered too close to a quid pro quo, finding "an impermissible pattern of conduct in which fundraising and official activities were substantially linked."

In summary, the evidence seemed to show that it was not just that Cranston solicited and accepted much more money than the other four senators — \$100,000 and more at a clip — and repeatedly did so at times when Keating was successfully seeking his assistance. No one episode sealed Cranston's fate; rather, Heflin said, it was "the totality of the circumstances."

According to the evidence, donations and official actions shared space in several memos to Cranston from his top fundraiser, Joy Jacobson. One listed contributors, including Keating, seeking Cranston's official help and said they "rightfully expect some kind of resolution" of their requests. Another informed Cranston of a news clipping about a new top banking regulator's views, saying they "obviously are good news to Keating. You should ask Keating for \$250,000." Cranston did. Some meetings between Cranston and Keating included discussions of both Keating's donations and his problems with the regulators.

Keating's fundraising for Cranston went back to 1984 and totaled \$994,000. The early help was of comparatively little significance. In 1984–86, he raised a total of \$134,000 for Cranston's presidential and Senate campaigns and for the California Democratic Party at Cranston's request. In addition, Keating arranged a \$300,000 line of credit from Lincoln for Cranston's campaign committee, although the senator never used it.

It was later donations to voter groups associated with Cranston that were most troubling to the Ethics Committee. Keating gave the groups a total of \$850,000 in 1987–88 and discussed giving another \$100,000 in 1989. The committee found that during that same period Cranston talked to regulators or took other actions in Keating's behalf more than a dozen times.

The panel focused on four episodes. According to its findings:

- In March 1987 — weeks before the meetings between the senators and regulators — Keating had Lincoln contribute \$100,000 to one group at Cranston's request.
- In November 1987, Keating had Lincoln's parent company, American Continental Corp., contribute \$250,000 to two other groups, again at Cranston's request. When a Keating aide delivered the contributions, Cranston called Keating, who asked the senator to call a top banking official for him. Cranston called the official six days later.
- In February 1988, Keating gave \$500,000 from his American Continental Corp. to Cranston-affiliated voter groups. At the time, Keating was lobbying Cranston to set up a meeting for him with a top banking official.
- Another \$100,000 donation was discussed by Keating and Cranston or his staff in early 1989, when Cranston was pressing regulators to make a decision on Keating's attempt to sell Lincoln. That donation was never made. American Continental declared bankruptcy on April 13, 1989; the government seized Lincoln the next day.

The committee's report offered a little new guidance to senators on how to avoid "linkage." The "cardinal principle," the report said, was to make decisions "without regard to whether the individual has contributed or promised to contribute."

It cautioned members to consider the following: the merits of the constituent's request; how much money the constituent had contributed; whether the type of official action to be taken in behalf of the constituent deviated from the senator's usual conduct; and, finally, "the proximity of money and action."

But the report did not say how to evaluate these considerations.

### Floor Scene

Key to the final compromise was the desire by all concerned to avoid a full-scale floor fight. For that, the committee needed Cranston to accept its decision. Cranston made his bottom line clear on the floor: "If the committee had called for any action by the full Senate against me, I would have fought it tooth and nail."

Up until the morning of Nov. 20, when the Senate assembled to consider the Cranston report, the question of whether there would be a floor vote was a tightly held secret. There was speculation that somebody might try to force a vote, but President Pro Tempore Robert C. Byrd, D-W.Va. quashed that notion when he took the presiding officer's chair shortly after 2 p.m. and said: "The order does not provide for the taking of any votes by the Senate."

As members filed in, Senate pages dropped the committee's report on their desks, along with a copy of Helms' dissent.

The only members absent for the occasion were four Democrats — Bill Bradley, N.J.; Kent Conrad, N.D.; Bob Kerrey, Neb.; and Tom Harkin, Iowa.

Cranston briefly chatted with Heflin while members filled the chamber. Twenty-six aides and lawyers were granted floor privileges, but Byrd sternly warned them: "Only senators will be given the privilege to speak." Byrd's warning seemed aimed at Alan M. Dershowitz, the outspoken criminal defense lawyer (his recently published book was called "Chutzpah") whom Cranston persuaded to represent him for free.

Heflin read the panel's resolution and a lengthy statement slowly and deliberately. He took 35 minutes.

"The path to judgment is easy when a specific law or rule has been violated," he said. "But for those of us who believe in the rule of law, violations of unwritten ethical standards are far more difficult to resolve."

Rudman was next, reading his own lengthy statement much faster. While Heflin's statement had focused on standards, Rudman gave a more detailed accounting of Cranston's conduct. Among the most disturbing incidents, he said, was when Cranston greeted Keating once in 1988 by patting him on the back and saying, "Ah, the mutual aid society." (Cranston said he did not recall the comment.)

"If this were an isolated incident, we would not be here today," he said after telling colleagues about a \$100,000 contribution followed by Cranston's participation in two key meetings with regulators about Keating's problems. "But the pattern of linkage continued," Rudman continued. "The pattern is clear, and, unfortunately, repetitive."

Cranston, frail but resolute, began on a contrite note as his colleagues turned their chairs to face him:

"I rise with deep remorse in my heart to accept the reprimand of the committee. I deeply regret the pain all this has caused my family, my friends and my supporters," he said. He choked once as he spoke of how proud he was of his work during the past 23 years in the Senate, 14 as whip.

"I am not proud of this moment," he said. His intentions were proper, "but in retrospect, I grant that I should not have solicited and received — even though it was on behalf of others — charitable donations close in time to official actions. That conduct came, in time, to reflect upon me and hence upon the Senate, this body that I love and revere, and for that I apologize."

Then came the defense: He rejected many of the committee's findings in a 126-page submission for the record. He attempted to reinterpret the panel's reasoning, saying he was being reprimanded only because "there appeared to be a proximity in time" between donations and actions.

"That is what we're talking about — appearances," he said. "I now realize that what I did looked improper. But I differ, and I differ very, very deeply, with the committee's statement in the resolution that my conduct 'violated established norms of behavior in the Senate.'"

He compared the Ethics Committee to a "tyrant king" for deciding ex post facto that any such norms existed. He said he could and had been prepared to produce "example after example of comparable" conduct to show "that my behavior did not violate any established norms." He spoke of contributions as large as \$750,000. "More than a few of these contributors have benefited from actions taken by the senator involved, sometimes close in time to a contribution," he said.

"You are in jeopardy," he told his colleagues.

During his speech, many members (especially on the Republican side) appeared to grow tense. Some grumbled to each other. Steve Symms, R-Idaho said he remarked to Wallop, "I heard the same speech 20 years ago when [Vice President] Spiro [T.] Agnew resigned."

Rudman's angry outburst followed. He called Cranston's statement "poppycock," later telling reporters, "I wanted to call it something else that begins with 'B.'"

Cranston's defense became more defiant at a later news conference dominated by Dershowitz. The lawyer told reporters that a review of public records by him and Cranston turned up many senators who "engaged in comparable linkage but covered their tracks better" and some whose linkage was "far more suspicious, far more direct."

"Neither the senator nor I are claiming that any other senator has engaged in wrongdoing," he said. "Those senators violated no rules, and neither did Sen. Cranston.... We are saying those who are without sin cast the first stone."

After the floor session, a few Republicans quickly began talking about forcing the issue to a vote. Some censure language was circulated, but it was not offered. Said Nancy Landon Kassebaum, R-Kan.: "Rudman took care of it pretty effectively. Maybe it's best to let sleeping dogs lie."

### **Dixon Exonerated; Keating Convicted**

That was not quite the end of the protracted case. The Ethics Committee on Feb. 26, 1992, revealed that it had secretly reopened its inquiry to see if a sixth senator was involved, but concluded after three months of investigation that there was no basis to think so.

The inquiry centered on a 2-year-old memo delivered to the panel on Nov. 20, 1991. The memo, from Keating's secretary to him, suggested that someone named "Dickson" — perhaps Sen. Alan J. Dixon, D-Ill. — had taken steps to help Keating, and that Riegle had been helping Keating long after the time he had said he quit doing so.

The committee said it had tried to get Keating and his secretary to talk about the memo, but they had invoked the Fifth Amendment and refused. The committee took testimony from the senators named in the memo, key Keating underlings and federal regulators. All the senators, including Dixon, denied knowing anything about the circumstances described in the memo.

The committee concluded the memo was "incorrect and inaccurate," and declined to proceed further.

After the Keating Five case wound down in Congress, Keating's legal troubles continued. He was convicted in Los Angeles on Dec. 4 of 17 counts of securities fraud, and acquitted on one count. Later in December, Keating was indicted in Los Angeles on additional federal fraud and racketeering charges, and in January he was indicted on more federal charges in Phoenix.

### **Decision of The Committee Concerning Senator Glenn**

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Based on the evidence to it, the Committee has given consideration to Senator Glenn's actions on behalf of Lincoln Savings & Loan Association. The Committee concludes that Senator Glenn, although believing that the Lincoln matter was in the process of resolution, exercised poor judgment in arranging a luncheon meeting between Mr. Keating and Speaker Wright in January, 1988, some eight months after Senator Glenn learned of the criminal referral. There is disputed evidence as to whether Lincoln's problems with the Federal Home Loan Bank Board (FHLBB) were discussed at that meeting. The evidence indicates that Senator Glenn's participation did not go beyond serving as host. The Committee further concludes that Senator Glenn's actions were not improper or attended with gross negligence and did not reach the level requiring institutional action against him.

Senator Glenn has violated no law of the United States or specific Rule of the United States Senate; therefore, the Committee concludes that no further action is warranted with respect to Senator Glenn on the matters investigated during the preliminary inquiry.

### **Decision of The Committee Concerning Senator Riegle**

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Based on evidence available to it, the Committee has given consideration to Senator Riegle's actions on behalf of Lincoln Savings & Loan Association. The Committee finds that Senator Riegle took steps to assist Lincoln Savings & Loan Association with its regulatory problems at a time that Charles Keating was raising substantial campaign funds for Senator Riegle. During the course of the hearings, possible conflicts arose concerning actions on the part of Senator Riegle that caused the Committee concern, but the Committee finds that the evidence indicates no deliberate intent to deceive. The evidence shows that Senator Riegle took no further action after the April 9, 1987, meeting where he learned of the criminal referral.

While the Committee concludes that Senator Riegle has violated no law of the United States or specific Rule of the United States Senate, it emphasizes that it does not condone his conduct. The Committee has concluded that the totality of the evidence shows that Senator Riegle's conduct gave the appearance of being improper and was certainly attended with insensitivity and poor judgment. However, the Committee finds that his conduct did not reach a level requiring institutional action.

The Committee concludes that no further action is warranted with respect to Senator Riegle on the matters investigated during the preliminary inquiry.

### **Decision of The Committee Concerning Senator DeConcini**

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Based on the evidence available to it, the Committee has given consideration to Senator DeConcini's actions on behalf of Lincoln Savings & Loan Association.

While aggressive conduct by Senators in dealing with regulatory agencies is sometimes appropriate and necessary, the Committee concludes that Senator DeConcini's aggressive conduct with the regulators was inappropriate. The Committee further concludes that the actions of Senator DeConcini after the April 9, 1987, meeting where he learned of the criminal referral, were not improper in and of themselves.

While the Committee concludes that Senator DeConcini has violated no law of the United States or specific Rule of the United States Senate, it emphasizes that it does not condone his conduct. The Committee has concluded that the totality of the evidence shows that Senator DeConcini's conduct gave the appearance of being improper and was certainly attended with insensitivity and poor judgment. However, the Committee finds that his conduct did not reach a level requiring institutional action.

The Committee therefore concludes that no further action is warranted with respect to Senator DeConcini on the matters investigated during the preliminary inquiry.

### **Features**

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### **Cranston Received Strongest Criticism**

*On Feb. 27, the Senate Ethics Committee released the following text of its conclusions after hearings on the Keating Five senators:*

### **Introduction**

The United States Senate Select Committee on Ethics initiated Preliminary Inquiries into allegations of misconduct by Senator Alan Cranston [D-Calif.], Senator Dennis DeConcini [D-Ariz.], Senator John Glenn [D-Ohio], Senator John McCain [R-Ariz.], and Senator Donald [W.] Riegle [Jr., D-Mich.], in connection with their actions on behalf of Charles H. Keating Jr. and Lincoln Savings and Loan Association. In the course of its Preliminary Inquiries, the Committee held hearings over a two month period which began November 15, 1990. These hearings were conducted for the purpose of determining whether there is sufficient credible evidence of possible violations by any of the five Senators involved in the Preliminary Inquiries. Because this process was investigatory in nature, a wide net was cast and evidence was admitted with few limitations.

The Committee has met on more than a dozen occasions to consider the evidence produced at the hearings and the written arguments of Special Counsel and counsel for each of the Respondent Senators. The task of the Committee has been to sort through this exhaustive record to ascertain the relevant facts, and to identify any evidence of wrongdoing and any exculpatory evidence.

### **Findings And Recommendations**

Having deliberated at length upon the issues presented, the Committee has weighed the relevant evidence and makes the following findings and recommendations:

#### **Intervention in the Administrative Process**

It is a necessary function of a Senator's office to intervene with officials of the executive branch and independent regulatory agencies on behalf of individuals when the facts warrant, and it is a Senator's duty to make decisions on whether to intervene without regard to whether they have contributed to the Senator's campaigns or causes. Ample evidence was received during the hearings showing that Senators should and do provide essential constituent services. In this case, each of the Senators under inquiry had information that reasonably caused concern about the fairness of the Federal Home Loan Bank's examination of Lincoln Savings and Loan Association (Lincoln), and which was sufficient to justify the Senator's contacting Bank Board personnel.

The degree of intervention with the regulators varied as to each Senator. The evidence clearly shows that their contacts with federal regulators regarding Lincoln did not cause the eventual failure of Lincoln or the thrift industry in general.

Prior to April 1987, four of the Senators (Cranston, DeConcini, Glenn, and McCain) had officially expressed opposition to or raised questions about the adoption of a "Direct Investment Rule," promulgated by the Federal Home Loan Bank Board (FHLBB). This Rule was opposed by many Members of Congress and a large number of thrift organizations. The Committee has concluded that, when considered without regard to any contribution or other benefit, the opposition expressed or the questions raised about the Direct Investment Rule did not violate any law or Senate rule.

There were two meetings between Federal Home Loan Bank personnel and groups of Senators. The first, on April 2, 1987, between Federal Home Loan Bank Board Chairman Edwin [J.] Gray and four Senators (Cranston, DeConcini, Glenn, and McCain), ended when Chairman Gray advised the Senators that he had no knowledge about the Lincoln examination being conducted by the San Francisco Federal Home Loan Bank (FHLB), and indicated that he would arrange a meeting with, and suggested that they could obtain the information they sought from, the San Francisco FHLB personnel. When considered without regard to any contribution or other benefit, no Senator violated any law or Senate rule by merely attending the meeting.

One week later, on April 9, 1987, there was a second meeting in Washington between four representatives of the San Francisco Federal Home Loan Bank and five Senators (DeConcini, Glenn, McCain, Riegle; and Cranston making a one-minute appearance). One of the FHLB personnel wrote an account of the meeting in reasonable detail, which was amplified by testimony. The Committee finds that, when considered without regard to any contributions or other benefit, no Senator, merely by virtue of his attendance at this meeting, violated any law or Senate rule. At this second meeting, the FHLB representatives advised the Senators that a "criminal referral" was going to be filed relative to the conduct of certain unnamed officials of Lincoln.

Following the two meetings, neither Senator McCain nor Senator Riegle took any action on behalf of Lincoln.

Ten months after the April meetings, Senator Glenn was host at a luncheon meeting he arranged for Mr. Charles Keating to meet House Speaker Jim Wright. There is disputed evidence as to whether Lincoln's problems with the FHLBB were discussed at this meeting. The weight of the evidence indicates that Senator Glenn's participation did not go beyond serving as host, and there is no evidence that Senator Glenn was asked to or did take any action on behalf of Lincoln.

Between February and mid-April 1989, Senator DeConcini made several telephone calls to FHLBB members and other regulatory officials urging prompt consideration of applications for the sale of Lincoln.

In 1987 following the April meetings, and in 1988, Senator Cranston set up a meeting between FHLBB Chairman M. Danny Wall and Mr. Keating, and made several telephone inquiries to Chairman Wall on behalf of Lincoln. Additionally, in 1989, Senator Cranston made calls to FHLB Board members and other regulatory officials urging consideration of applications for the sale of Lincoln.

The Committee finds that, when considered without regard to any contribution or other benefit, none of the activities of Senator Cranston, Senator DeConcini, or Senator Glenn concerning Mr. Keating or Lincoln, following the April 1987 meetings, violated any law or Senate rule.

#### **Official Actions and Campaign Contributions**

While the Committee has concluded that none of the Senators' actions described above, when considered without regard to any contribution or other benefit, violated any law or Senate rule, each act must also be examined against more general ethical standards to determine if there was any impropriety because of any relation between those actions and campaign contributions or other benefits provided by Mr. Keating and his associates.

It is a fact of life that candidates for the Senate must solicit and receive assistance in their campaigns, including the raising of campaign funds. Such fundraising is authorized and regulated by law, and contributions and expenditures under the Federal Election Campaign Act are required to be publicly disclosed. Additionally, contributions under the Federal Election Campaign Act are not personal gifts to candidates.

Mr. Keating, his associates and his friends contributed \$49,000 for Senator Cranston's 1984 Presidential Campaign and his 1986 Senatorial Campaign. Mr. Keating also gave corporate funds at the behest of Senator Cranston: \$85,000 to the California Democratic Party 1986 get-out-the-vote campaign; \$850,000 in 1987 and 1988 to several voter registration organizations with which Senator Cranston was affiliated; and \$10,000 to a PAC [political action committee] affiliated with

Senator Cranston in January 1989. Mr. Keating's Lincoln Savings and Loan also made a \$300,000 line of credit available to Senator Cranston's campaign in the fall of 1986 on an expedited basis, although the loan was not used.

Mr. Keating, his associates and his friends contributed \$31,000 to Senator DeConcini's 1982 Senatorial Campaign and \$54,000 to his 1988 Senatorial Campaign.

Mr. Keating contributed a total of \$200,000 in corporate funds to the non-federal account of Senator Glenn's multi-candidate PAC in 1985 and 1986. Mr. Keating, his associates, and his friends contributed \$24,000 for Senator Glenn's Senatorial Campaign, and \$18,200 for his Presidential Campaign. Senator Glenn received no contribution from or through Mr. Keating after February 1986.

Mr. Keating, his associates, and his friends contributed \$56,000 for Senator McCain's two House races in 1982 and 1984, and \$54,000 for his 1986 Senate race. Mr. Keating also provided his corporate plan and/or arranged for payment for the use of commercial or private aircraft on several occasions for travel by Senator McCain and his family, for which Senator McCain ultimately provided reimbursement when called upon to do so. Mr. Keating also extended personal hospitality to Senator McCain for vacations at a location in the Bahamas in each of the calendar years 1983 through 1986.

Mr. Keating organized and hosted a Riegle re-election campaign fundraising event in March 1987 in Detroit at his company's Pontchartrain Hotel. As a result of Mr. Keating's efforts, approximately \$78,250 was raised from Keating associates and friends for Senator Riegle's 1988 campaign.

Based on all the available evidence, the Committee has concluded that in the case of each of the five Senators, all campaign contributions from Mr. Keating and his associates under the Federal Election Campaign Act were within the established legal limits, and were properly reported. Similarly, from the available evidence the Committee concludes that the Senators' solicitation or acceptance of all contributions made in these cases to state party organizations, political action committees, and voter registration organizations were, standing alone, not illegal or improper; nor did any such contribution constitute a personal gift to any Senator.

With respect to each Senator, there remains the question of whether any actions taken by the Senator, standing alone or in combination with contributions or other benefits, constitutes improper conduct or an appearance of impropriety. The Committee has examined the specific conduct of each Senator and has determined that under the totality of the circumstances: The conduct of each of the five Senators reflected poor judgment; the conduct of some of the Senators constituted at least an appearance of improper conduct; and the conduct of one Senator may have been improper.

The Committee believes that every Senator must always endeavor to avoid the appearance that he, the Senate, or the governmental process may be influenced by campaign contributions or other benefits provided by those with significant legislative or governmental interests. Nonetheless, if an individual or organization which contributed to a Senator's campaigns or causes has a case which the Senator reasonably believes he is obliged to press because it is in the public interest or the cause of justice or equity to do so, then the Senator's obligation is to pursue that case. In such instances, the Senator must be mindful of the appearance that may be created and take special care to try to prevent harm to the public's trust in him and the Senate.

The Committee believes that appearances of impropriety are particularly likely to arise where a Senator takes action on behalf of a contributor. Such appearances are even more difficult to avoid when large sums are being raised from individuals or corporations for unregulated "soft money" accounts and for independent expenditures by third parties. Over 80 percent of the funds raised by Mr. Keating for or on behalf of the five Senators was "soft money."

A full report respecting the Committee's decisions will be issued at the earliest possible date. The Final Report will also contain at least two recommendations (summarized below) for further Senate action.

### **Specific Findings**

The Committee finds that there is substantial credible evidence that provides substantial cause for the Committee to conclude that Senator Cranston may have engaged in improper conduct reflecting upon the Senate and, therefore, has voted to proceed to an Investigation (see attached). The Investigation will proceed as expeditiously as possible.

The Committee's conclusions in the cases concerning the other four Senators are also set forth in attachments.

### **Recommendations to the Senate**

Section 2(a)(3) of Senate Resolution 338 (88th Congress) places a duty upon the Committee to recommend additional rules or regulations to the Senate, where the Committee has determined that such rules or regulations are necessary or desirable to ensure proper standards of conduct by Members, officers, and employees in the performance of their official duties.

In fulfilling its duty under this section, the Committee will make the following recommendations to the Senate in its Final Report on the Preliminary Inquiries.

#### **Recommendation for a Bipartisan Task Force on Constituent Service**

As noted in the course of the Committee's hearings, the Senate has no specific written standards embodied in the Senate rules respecting contact or intervention with federal executive or independent regulatory agency officials. While unknown to many Senators, there are general guidelines. These are best expressed in House Advisory Opinion No. 1 and the writings of Senator Paul Douglas.

The Committee believes that the Senate should adopt written standards in this area. A specific proposal should be developed either by the Senate Rules Committee or by a bipartisan Senate Task Force created for this purpose. The Rules Committee or Task Force will, of course, need to address the special ethical problems which may arise when such contact or intervention is sought by individuals who have contributed to the Senator's campaigns or causes.

Such standards could be similar to House Advisory Opinion No. 1 or could be more specific. Until such time as such Committee or Task Force has finished its work and the Senate has adopted specific standards respecting contact or intervention with executive or independent regulatory agencies, all Senators are encouraged to use House Advisory Opinion No. 1 as a source of guidance for their actions.

The Committee hopes that the adoption of specific standards governing contact or intervention by Senators with executive or independent regulatory agencies will minimize the potential for appearances of impropriety. Members of the Committee are especially mindful that the success of any democratic government, designed to execute the will of a free people, is ultimately dependent on the public's confidence in the integrity of the governmental process and those who govern.

#### **Recommendation for Bipartisan Campaign Reform**

The inquiries in these five cases have shown the obvious ethical dilemmas inherent in the current system by which political activities are financed. The Committee notes that over 80 percent of the funds at issue were not disclosed funds raised by candidates for Senate or House campaigns under the Federal Election Campaign Act. Rather, such funds were undisclosed, unregulated funds raised for independent expenditures, political party "soft money," and a non-federal political action committee. Any campaign finance reform measure will have to address these mechanisms for political activities, as well as campaign fund raising and expenditures directly by candidates, in order to deal meaningfully and effectively with the issues presented in these cases.

The Committee urges the leadership and Members of both the Senate and the House to work together in a bipartisan manner to address the urgent need for comprehensive campaign finance reform. The reputation and honor of our institutions demand it.

### Resolution for Investigation

Whereas, the Select Committee on Ethics on December 21, 1989, initiated a Preliminary Inquiry into allegations of misconduct by Senator Alan Cranston, and notified senator Cranston of such action; and

Whereas, the Committee retained Special Counsel Robert S. Bennett to assist the Committee in conducting the Preliminary Inquiry into the allegations, and received and considered a report related thereto; and

Whereas, in the course of its Preliminary Inquiry the Committee held hearings from November 15, 1990, through January 16, 1991, and heard evidence relating to the allegations; and Whereas, the Committee received and considered post-hearing memoranda from Special Counsel and counsel for Respondent Senators;

It is therefore RESOLVED:

(a) That the Committee finds that there is substantial credible evidence that provides substantial cause for the Committee to conclude that, in connection with his conduct relating to Charles H. Keating Jr. and Lincoln Savings and Loan Association, Senator Cranston may have engaged in improper conduct that may reflect upon the Senate, as contemplated in Section 2(a)(1) of S. Res. 338, 88th Congress, as amended. To wit, there is substantial credible evidence that provides substantial cause for the Committee to conclude, based upon the totality of the circumstances, including but not limited to the following conduct or activities, that Senator Cranston engaged in an impermissible pattern of conduct in which fundraising and official activities were substantially linked:

(1) From April 1987 through April 1989, Senator Cranston personally, or through Senate staff, contacted the Federal Home Loan Bank Board on behalf of Lincoln, during a period when Senator Cranston was soliciting and accepting substantial contributions from Mr. Keating. On at least four occasions, these contacts were made in close connection with the solicitation or receipt of contributions. These four occasions are as follows:

(i) As a result of a solicitation from Senator Cranston in early 1987, Mr. Keating, on March 3, 1987, contributed \$100,000 to America Votes, a voter registration organization. This contribution was made during the period leading to Senator Cranston's participation in the April 2 and April 9 meetings with Federal Home Loan Bank Board Chairman Edwin J. Gray and the San Francisco regulators.

(ii) In the fall of 1987, Senator Cranston solicited from Mr. Keating a \$250,000 contribution, which was delivered to the Senator personally by Mr. Keating's employee James J. Grogan on November 6, 1987. When the contribution was delivered, Mr. Grogan and Senator Cranston called Mr. Keating, who asked if the Senator would contact new Federal Home Loan Bank Board Chairman M. Danny Wall about Lincoln. Senator Cranston agreed to do so, and made the call six days later.

(iii) In January 1988, Mr. Keating offered to make an additional contribution and also asked Senator Cranston to set up a meeting for him with Chairman Wall. Senator Cranston did so on January 20, 1988, and Chairman Wall and Mr. Keating met eight days later. On February 10, 1988, Senator Cranston personally collected checks totaling \$500,000 for voter registration groups.

(iv) In early 1989, at the time that Senator Cranston was contacting Bank Board officials about the sale of Lincoln, he personally or through Joy Jacobson, his chief fundraiser, solicited another contribution. (This contribution was never made. American Continental Corporation declared bankruptcy on April 13, 1989.)

(2) Senator Cranston's Senate office practices further evidenced an impermissible pattern of conduct in which fundraising and official activities were substantially linked. For example, Joy Jacobson (who was not a member of his Senate staff and who had no official Senate duties or substantive expertise) engaged in the following activities with Senator Cranston's knowledge, permission, at his direction, or under his supervision:

(i) Senator Cranston's fundraiser repeatedly scheduled and attended meetings between Senator Cranston and contributors in which legislative or regulatory issues were discussed.

(ii) Senator Cranston's fundraiser often served as the intermediary for Mr. Keating or Mr. Grogan when they could not reach the Senator or Carolyn Jordan, the Senator's banking aide.

(iii) Senator Cranston received several memoranda from Ms. Jacobson which evidenced her understanding that contributors were entitled to special attention and special access to official services. Senator Cranston never told her that her understanding was incorrect, nor did he inform her that such a connection between contributions and official actions was improper.

(b) That the Committee, pursuant to Committee Supplementary Procedural Rules 3(d)(5) and 4(f)(4), shall proceed to an investigation under Committee Supplementary Procedural Rule 5; and

(c) That Senator Cranston shall be given timely written notice of this resolution and the evidence supporting it, and informed of respondent's rights pursuant to the Rules of the Committee.

### Decision of The Committee Concerning Senator McCain

Based on the evidence available to it, the Committee has given consideration to Senator McCain's actions on behalf of Lincoln Savings & Loan Association. The Committee concludes that Senator McCain exercised poor judgment in intervening with the regulators. The Committee concludes that Senator McCain's actions were not improper nor attended with gross negligence and did not reach the level of requiring institutional action against him. The Committee finds that Senator McCain took no further action after the April 9, 1987, meeting when he learned of the criminal referral.

The Committee reaffirms its prior decision that it does not have jurisdiction to determine the issues of disclosure or reimbursement pertaining to flights provided by American Continental Corporation while Senator McCain was a Member of the House of Representatives. The Committee did consider the effect of such on his state of mind and judgment in taking steps to assist Lincoln Savings & Loan Association.

Senator McCain has violated no law of the United States or specific Rule of the United States Senate; therefore, the Committee concludes that no further action is warranted with respect to Senator McCain on the matters investigated during the preliminary inquiry.

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**Document Citation**

"Cranston Reprimanded by Senate Ethics." In *CQ Almanac 1991*, 47th ed., 26-38. Washington, DC: Congressional Quarterly, 1992. <http://library.cqpress.com/cqalmanac/cqal91-1109322>.

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**Document ID:** cqal91-1109322**Document URL:** <http://library.cqpress.com/cqalmanac/cqal91-1109322>

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