

President John C. Calhoun in 1826 and discussed at 3 Hinds' Precedents §1736. On that occasion, the alleged charges related to the Vice President's former tenure as Secretary of War. The communication was referred on motion to a select committee which investigated the charges and subsequently reported to the House that no impropriety had been found in the Vice President's former conduct as a civil officer under the United States. The report of the select committee was ordered to lie on the table and the House took no further action thereon.

Vice President Agnew did not cite a precedent occurring in 1873, however, where the Committee on the Judiciary reported that a civil officer—Vice President Schuyler Colfax—could not be impeached for offenses allegedly committed prior to his term of office as a civil officer under the United States. The committee had investigated at his request whether Vice President Colfax had, during his prior term as Speaker of the House, been involved in bribes of Members. As reported in 3 Hinds' Precedents §2510, the committee concluded as follows in its report to the House:

But we are to consider, taking the harshest construction of the evidence,

whether the receipt of a bribe by a person who afterwards becomes a civil officer of the United States, even while holding another official position, is an act upon which an impeachment can be grounded to subject him to removal from an office which he afterwards holds. To elucidate this we first turn to the precedents.

Your committee find that in all cases of impeachment or attempted impeachment under our Constitution there is no instance where the accusation was not in regard to an act done or omitted to be done while the officer was in office. In every case it has been heretofore considered material that the articles of impeachment should allege in substance that, being such officer, and while in the exercise of the duties of his office, the accused committed the acts of alleged inculpation.

The report was never finally acted upon by the House.

§ 6. Committee Investigations

The conduct of impeachment investigations is governed by those portions of Rule XI relating to committee investigatory and hearing procedure, and by any rules and special procedures adopted by the committee for the inquiry.⁽¹²⁾ An investigatory subcommittee charged with an impeachment inquiry is limited to the powers expressly authorized by the committee.⁽¹³⁾

¹². See §§ 6.3 et seq.

¹³. See § 6.11, *infra*, for the creation of a subcommittee to investigate and to

Forms

Form of resolution authorizing an investigation of the sufficiency of grounds for impeachment (of President Richard Nixon) and conferring subpoena power and authority to take testimony:⁽¹⁴⁾

H. RES. 803

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

Sec. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

report to the Committee on the Judiciary on charges against Justice William O. Douglas. No authorizing resolution for a committee investigation had been adopted by the House, but resolutions of impeachment had been referred to the committee.

14. 120 CONG. REC. 2349, 2350, 93d Cong. 2d Sess., Feb. 6, 1974.

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which informa-

tion can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

Sec. 3. For the purpose of making such investigation, the committee, and any subcommittee thereof, are authorized to sit and act, without regard to clause 31 of rule XI of the Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

Sec. 4. Any funds made available to the Committee on the Judiciary under House Resolution 702 of the Ninety-third Congress, adopted November 15, 1973, or made available for the purpose hereafter, may be expended for the purpose of carrying out the investigation authorized and directed by this resolution.

Form of resolution authorizing a committee to investigate whether a judge (Halsted Ritter) has been guilty of high crimes or misdemeanors requiring impeachment:⁽¹⁵⁾

HOUSE RESOLUTION 163

Resolved, That the Committee on the Judiciary is authorized and directed, as a whole or by subcommittee, to inquire into and investigate the official conduct of Halsted L. Ritter, a district judge for the United States District

15. H. Res. 163, 77 CONG. REC. 4784, 4785, 73d Cong. 1st Sess., June 1, 1933.

Court for the Southern District of Florida, to determine whether in the opinion of said committee he has been guilty of any high crime or misdemeanor which in the contemplation of the Constitution requires the interposition of the Constitutional powers of the House. Said committee shall report its findings to the House, together with such resolution of impeachment or other recommendation as it deems proper.

Sec. 2. For the purpose of this resolution, the committee is authorized to sit and act during the present Congress at such times and places in the District of Columbia and elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearing, to employ such clerical, stenographic, and other assistance, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, to have such printing and binding done, and to make such expenditures, not exceeding \$5,000, as it deems necessary.

With the following committee amendments:

Page 2, line 5, strike out the words "to employ such clerical, stenographic, and other assistance"; and in line 9, on page 2, strike out "to have such printing and binding done, and to make such expenditures, not exceeding \$5,000."

Form of subpoena issued by the Committee on the Judiciary (to President Richard Nixon) in the course of its impeachment inquiry:⁽¹⁶⁾

16. Impeachment of Richard Nixon, President of the United States, H.

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Benjamin Marshall, or his duly authorized representative:

You are hereby commanded to summon Richard M. Nixon, President of the United States of America, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule, to be and appear before the Committee on the Judiciary of the House of Representatives of the United States, of which the Hon. Peter W. Rodino, Jr. is chairman, and to bring with him the things specified in the schedule attached hereto and made a part hereof, in their chamber in the city of Washington, on or before April 25, 1974, at the hour of 10:00 a.m. then and there to produce and deliver said things to said Committee, or their duly authorized representative, in connection with the Committee's investigation authorized and directed by H. Res. 803, adopted February 6, 1974.

Herein fail not, and make return of this summons.

Cross References

House inquiries and the executive branch, see Ch. 15, *infra*.

Power of the House to punish for contempt, see Ch. 13, *supra*.

Referral of charges and resolutions authorizing investigations, see § 5, *supra*.

REPT. NO. 93-1305, p. 234 (see pp. 234-78), Committee on the Judiciary, printed in the Record at 120 CONG. REC. 29282, 93d Cong. 2d Sess., Aug. 20, 1974. For complete text of H. REPT. No. 93-1305, see *id.* at pp. 29219-361.

Referral of Resolutions Authorizing Impeachment Investigations

§ 6.1 Resolutions introduced which directly called for the impeachment or censure of President Richard Nixon in the 93d Congress were referred by the Speaker to the Committee on the Judiciary, whereas resolutions calling for an investigation by that committee or by a select committee with a view toward impeachment were referred to the Committee on Rules.

On Oct. 23, 1973, several resolutions relating to the impeachment of President Nixon were introduced and referred. Examples of those referrals are as follows:⁽¹⁷⁾

By Mr. Long of Maryland:

H. Con. Res. 365. Concurrent resolution of censure without prejudice to impeachment; to the Committee on the Judiciary.

By Ms. Abzug:

17. 119 CONG. REC. 34873, 93d Cong. 1st Sess. For a comprehensive listing, see §§ 5.10, *supra* (resolutions authorizing investigations referred to Committee on Rules) and 5.13, *supra* (resolutions authorizing investigations referred, on motion, to the Committee on the Judiciary).

H. Res. 625. Resolution impeaching Richard M. Nixon, President of the United States, for high crimes and misdemeanors; to the Committee on the Judiciary.

By Mr. Ashley:

H. Res. 626. Resolution directing the Committee on the Judiciary to investigate whether there are grounds for the impeachment of Richard M. Nixon; to the Committee on Rules.

Report and Consideration of Resolutions Authorizing Impeachment Investigations

§ 6.2 Although the House had adopted a resolution authorizing the Committee on the Judiciary to conduct investigations within its area of jurisdiction as defined in Rule XI clause 13, and although the House had adopted a resolution intended to fund expenses of the Richard Nixon impeachment inquiry by the committee, the Committee on the Judiciary reported and called up as privileged a subsequent resolution specifically mandating an impeachment investigation and continuing the availability of funds, in order to confirm the delegation of authority from the House to that committee to conduct the investigation.

On Feb. 6, 1974, Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, called up for immediate consideration House Resolution 803, authorizing the Committee on the Judiciary to investigate the sufficiency of grounds for the impeachment of President Nixon, which resolution had been reported by the committee on Feb. 1, 1974. The resolution read as follows:⁽¹⁸⁾

H. RES. 803

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

Sec. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

¹⁸ 120 CONG. REC. 2349-51, 93d Cong. 2d Sess.

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which informa-

tion can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

Sec. 3. For the purpose of making such investigation, the committee, and any subcommittee thereof, are authorized to sit and act, without regard to clause 31 of rule XI of the Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

Sec. 4. Any funds made available to the Committee on the Judiciary under House Resolution 702 of the Ninety-third Congress, adopted November 15, 1973, or made available for the purpose hereafter, may be expended for the purpose of carrying out the investigation authorized and directed by this resolution.

Chairman Rodino and Mr. Edward Hutchinson, of Michigan, ranking minority member of the Committee on the Judiciary, explained the purpose of the resolution, which had been adopted unanimously by the committee, as follows:

MR. RODINO: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the English statesman Edmund Burke said, in addressing an important constitutional question, more than 200 years ago:

We stand in a situation very honorable to ourselves and very useful to our country, if we do not abuse or

abandon the trust that is placed in us.

We stand in such a position now, and—whatever the result—we are going to be just, and honorable, and worthy of the public trust.

Our responsibility in this is clear. The Constitution says, in article I, section 2, clause 5:

The House of Representatives, shall have the sole power of impeachment.

A number of impeachment resolutions were introduced by Members of the House in the last session of the Congress. They were referred to the Judiciary Committee by the Speaker.

We have reached the point when it is important that the House explicitly confirm our responsibility under the Constitution.

We are asking the House of Representatives, by this resolution, to authorize and direct the Committee on the Judiciary to investigate the conduct of the President of the United States, to determine whether or not evidence exists that the President is responsible for any acts that in the contemplation of the Constitution are grounds for impeachment, and if such evidence exists, whether or not it is sufficient to require the House to exercise its constitutional powers.

As part of that resolution, we are asking the House to give the Judiciary Committee the power of subpoena in its investigations.

Such a resolution has always been passed by the House. The committee has voted unanimously to recommend that the House of Representatives adopt this resolution. It is a necessary step if we are to meet our obligations.

. . .

MR. HUTCHINSON: Mr. Speaker, the first section of this resolution authorizes and directs your Judiciary Committee to investigate fully whether sufficient grounds exist to impeach the President of the United States. This constitutes the first explicit and formal action in the whole House to authorize such an inquiry.

The last section of the resolution validates the use by the committee of that million dollars allotted to it last November for purposes of the impeachment inquiry. Members will recall that the million dollar resolution made no reference to the impeachment inquiry but merely allotted that sum of money to the committee to be expended on matters within its jurisdiction. All Members of the House understood its intended purpose.

But the rule of the House defining the jurisdiction of committees does not place jurisdiction over impeachment matters in the Judiciary Committee. In fact, it does not place such jurisdiction anywhere. So this resolution vests jurisdiction in the committee over this particular impeachment matter, and it ratifies the authority of the committee to expend for the purpose those funds allocated to it last November, as well as whatever additional funds may be hereafter authorized.

Parliamentarian's Note: Prior to the passage of House Resolution 803, the Committee on the Judiciary had been conducting an investigation into the charges of impeachment against President Nixon under its general investigatory authority, as extended by resolution (H. Res. 74) of the House

on Feb. 28, 1973. House Resolution 74 authorized the Committee on the Judiciary to conduct investigations, and to issue subpoenas during such investigations, within its jurisdiction "as set forth in clause 13 of Rule XI of the Rules of the House of Representatives" [*House Rules and Manual* §707 (1973)]. That clause did not specifically mention impeachments as within the jurisdiction of the Committee on the Judiciary. The House had provided for payment, from the contingent fund, of further expenses of the Committee on the Judiciary in conducting investigations, following the introduction and referral to the committee of various resolutions proposing the impeachment of President Nixon. Debate on those resolutions and the reports of the Committee on House Administration, which had reported them to the House, indicated that the additional funds for the investigations of the Committee on the Judiciary were intended in part for use in conducting an impeachment inquiry in relation to the President.⁽¹⁹⁾

19. See H. Res. 702, 93d Cong. 1st Sess., Nov. 15, 1973, and H. Res. 1027, 93d Cong. 2d Sess., Apr. 29, 1974, and H. REPT. NO. 93-1009, Committee on House Administration, to accompany the latter resolution. The report included a statement by Chairman Ro-

Interrogations and Depositions of Witnesses

§ 6.3 The House agreed to a resolution authorizing the counsel to the Committee on the Judiciary to take depositions of witnesses in an impeachment investigation when authorized by the chairman and ranking minority member of the committee, notwithstanding a House rule requiring at least two committee members to be present during the taking of testimony at a formal committee hearing.

On Feb. 6, 1974, the House agreed to House Resolution 803, called up as privileged by the Committee on the Judiciary, authorizing it to investigate the sufficiency of grounds for the impeachment of President Richard Nixon. The resolution authorized the taking of depositions as follows:⁽¹⁾

Sec. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

dino, of the Committee on the Judiciary, on the status of the impeachment investigation and on the funds required to defray the expenses and salaries of the impeachment inquiry staff.

1. 120 CONG. REC. 2349, 2350, 93d Cong. 2d Sess.

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

In explanation of the provisions of the resolution, Chairman Peter W. Rodino, Jr., of New Jersey, of the Committee on the Judiciary, stated that the taking of depositions by counsel was intended to expedite the proceedings and investigation.

Parliamentarian's Note: Rule XI clause 27(h) *House Rules and Manual* §735 (1973), provided that each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall not be less than two.

§ 6.4 The House in the 93d Congress failed to suspend

the rules and agree to a resolution authorizing the Committee on the Judiciary, in holding hearings in its impeachment inquiry into the conduct of President Richard Nixon, to proceed without regard to the House rule requiring the application of the five-minute rule in the interrogation of witnesses.

On July 1, 1974, Chairman Peter W. Rodino, Jr., of New Jersey, moved to suspend the rules and sought agreement to a resolution governing the Committee on the Judiciary in hearings conducted in its impeachment inquiry against President Nixon:

H. RES. 1210

Resolved, That in conducting hearings held pursuant to House Resolution 803, 93d Congress, the Committee on the Judiciary is authorized to proceed without regard to the second sentence of clause 27(f) (4) of rule XI of the rules of the House.

Mr. Rodino explained the purpose of the resolution:

MR. RODINO: Mr. Speaker, this is a simple resolution which was voted by the House Committee on the Judiciary by an overwhelming vote of 31 to 6. The committee is attempting to meet its responsibilities and to exercise its responsibilities under House Resolution 803 with an eye toward achieving two objectives: conducting the fairest and most thorough inquiry, and arriv-

ing at the same time at a prompt conclusion to that inquiry as is consistent with our responsibility.

I believe this resolution authorizing the committee to proceed without regard to the 5-minute rule in the interrogation of witnesses would greatly facilitate the achievement of those objectives. It would permit both probing and orderly examination of witnesses and still provide great flexibility to Members seeking answers to specific relevant questions.

Mr. David W. Dennis, of Indiana, also of the Committee on the Judiciary, demanded a second on the motion and opposed it on the ground that abrogating the five-minute rule for witness interrogation derogated the privileges and duties of the individual Members of the House.

On a recorded vote, two-thirds did not vote in favor of the motion to suspend the rules, and it was rejected.⁽²⁾

Evidentiary Hearing Procedures

§ 6.5 The Committee on the Judiciary adopted procedures in the 93d Congress for presenting evidence and holding hearings in its inquiry into the conduct of President Richard Nixon.

On May 2, 1974, the Committee on the Judiciary unanimously

2. 120 CONG. REC. 21849-55, 93d Cong. 2d Sess.

adopted procedures for presenting evidentiary materials to the committee in hearings during its inquiry into charges of impeachable conduct against President Nixon:⁽³⁾

IMPEACHMENT INQUIRY PROCEDURES

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 803, subject to modification by the Committee as it deems proper as the presentation proceeds.

A. The Committee shall receive from Committee counsel at a hearing an initial presentation consisting of (i) a written statement detailing, in paragraph form, information believed by the staff to be pertinent to the inquiry, (ii) a general description of the scope and manner of the presentation of evidence, and (iii) a detailed presentation of the evidentiary material, other than the testimony of witnesses.

1. Each Member of the Committee shall receive a copy of (i) the statement of information, (ii) the related documents and other evidentiary material, and (iii) an index of all testimony, papers, and things that have been obtained by the Committee, whether or not relied upon in the statement of information.

2. Each paragraph of the statement of information shall be annotated to related evidentiary material (e.g., documents, recordings and transcripts

3. See H. REPT. NO. 93-1305, at p. 8, Committee on the Judiciary, 93d Cong. 2d Sess., reported Aug. 20, 1974.

thereof, transcripts of grand jury or congressional testimony, or affidavits). Where applicable, the annotations will identify witnesses believed by the staff to be sources of additional information important to the Committee's understanding of the subject matter of the paragraph in question.

3. On the commencement of the presentation, each Member of the Committee and full Committee staff, majority and minority, as designated by the Chairman and the Ranking Minority Member, shall be given access to and the opportunity to examine all testimony, papers and things that have been obtained by the inquiry staff, whether or not relied upon in the statement of information.

4. The President's counsel shall be furnished a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the Members and the President and his counsel shall be invited to attend and observe the presentation.

B. Following that presentation the Committee shall determine whether it desires additional evidence, after opportunity for the following has been provided:

1. Any Committee Member may bring additional evidence to the Committee's attention.

2. The President's counsel shall be invited to respond to the presentation, orally or in writing as shall be determined by the Committee.

3. Should the President's counsel wish the Committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what

he would propose to show, and in the case of a witness precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the Committee shall determine whether the suggested evidence is necessary or desirable to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

C. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The President and his counsel shall be invited to attend all hearings, including any held in executive session.

2. Objections relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a Member of the Committee, Committee counsel or the President's counsel and shall be ruled upon [by] the Chairman or presiding Member. Such rulings shall be final, unless overruled by a vote of a majority of the Members present. In the case of a tie vote, the ruling of the Chair shall prevail.

3. Committee Counsel shall commence the questioning of each witness and may also be permitted by the Chairman or presiding Member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the Committee, subject to instructions from the

Chairman or presiding Member respecting the time, scope and duration of the examination.

D. The Committee shall determine, pursuant to the Rules of the House, whether and to what extent the evidence to be presented shall be received in executive session.

E. Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage in accord with the Rules of the House and the Rules of Procedure of the Committee as amended on November 13, 1973.

F. The Chairman shall make public announcement of the date, time, place and subject matter of any Committee hearing as soon as practicable and in no event less than twenty-four hours before the commencement of the hearing.

G. The Chairman is authorized to promulgate additional procedures as he deems necessary for the fair and efficient conduct of Committee hearings held pursuant to H. Res. 803, provided that the additional procedures are not inconsistent with these Procedures, the Rules of the Committee, and the Rules of the House. Such procedures shall govern the conduct of the hearings, unless overruled by a vote of a majority of the Members present.

H. For purposes of hearings held pursuant to these rules, a quorum shall consist of ten Members of the Committee.

§ 6.6 In its impeachment inquiry into the conduct of President Richard Nixon, the Committee on the Judiciary

held hearings in executive session for the presentation of statements of information and supporting evidentiary material by the inquiry staff and for the presentation of materials by the President's counsel.

In its final report recommending the impeachment of President Nixon in the 93d Congress, the Committee on the Judiciary summarized the proceedings of the committee which had been conducted in executive session:⁽⁴⁾

From May 9, 1974 through June 21, 1974, the Committee considered in executive session approximately six hundred fifty "statements of information" and more than 7,200 pages of supporting evidentiary material presented by the inquiry staff. The statements of information and supporting evidentiary material, furnished to each Member of the Committee in 36 notebooks, presented material on several subjects of the inquiry: the Watergate break-in and its aftermath, ITT, dairy price supports, domestic surveillance, abuse of the IRS, and the activities of the Special Prosecutor. The staff also presented to the Committee written reports on President Nixon's income taxes, presidential impoundment of funds appropriated by Congress, and the bombing of Cambodia.

4. H. REPT. NO. 93-1305, at p. 9, Committee on the Judiciary, 93d Cong. 2d Sess., reported Aug. 20, 1974, printed at 120 CONG. REC. 29221, 93d Cong. 2d Sess., Aug. 20, 1974.

In each notebook, a statement of information relating to a particular phase of the investigation was immediately followed by supporting evidentiary material, which included copies of documents and testimony (much of it already on public record), transcripts of presidential conversations, and affidavits. A deliberate and scrupulous abstention from conclusions, even by implication, was observed.

The Committee heard recordings of nineteen presidential conversations and dictabelt recollections. The presidential conversations were neither paraphrased nor summarized by the inquiry staff. Thus, no inferences or conclusions were drawn for the Committee. During the course of the hearings, Members of the Committee listened to each recording and simultaneously followed transcripts prepared by the inquiry staff.

On June 27 and 28, 1974, Mr. James St. Clair, Special Counsel to the President made a further presentation in a similar manner and form as the inquiry staff's initial presentation. The Committee voted to make public the initial presentation by the inquiry staff, including substantially all of the supporting materials presented at the hearings, as well as the President's response.

Evidence in Impeachment Inquiries

§ 6.7 During an investigation into charges of impeachable offenses against a Supreme Court Justice, the Committee on the Judiciary authorized its subcommittee to request

and inspect federal tax data, and the President promulgated an executive order permitting such inspection.

On May 26, 1970, the Committee on the Judiciary authorized by resolution a subcommittee investigation of federal tax records of Justice William O. Douglas and others:

RESOLUTION FOR SPECIAL SUBCOMMITTEE TO CONSIDER HOUSE RESOLUTION 920

Resolved, That the Special Subcommittee to consider H. Res. 920, a resolution impeaching William O. Douglas, Associate Justice of the Supreme Court of the United States, of high crimes and misdemeanors in office, hereby is authorized and directed to obtain and inspect from the Internal Revenue Service any and all materials and information relevant to its investigation in the files of the Internal Revenue Service, including tax returns, investigative reports, or other documents, that the Special Subcommittee to consider H. Res. 920 determines to be within the scope of H. Res. 920 and the various related resolutions that have been introduced into the House of Representatives.

The Special Subcommittee on H. Res. 920 is authorized to make such requests to the Internal Revenue Service as the Subcommittee determines to be appropriate, and the Subcommittee is authorized to amend its requests to designate such additional persons, taxpayers, tax returns, investigative reports, and other documents as the Subcommittee determines to be appro-

priate during the course of this investigation.

The Special Subcommittee on H. Res. 920 may designate agents to examine and receive information from the Internal Revenue Service.

This resolution specifically authorizes and directs the Special Subcommittee to obtain and inspect from the Internal Revenue Service the documents and other file materials described in the letter dated May 12, 1970, from Chairman Emanuel Celler to the Honorable Randolph Thower. The tax returns for the following taxpayers, and the returns for such additional taxpayers as the Subcommittee subsequently may request, are included in this resolution:

Associate Justice William O. Douglas, Supreme Court of the United States, Washington, D.C. 20036.

Albert Parvin, 1900 Avenue of the Stars, Suite 1790, Century City, Calif. 90067.

Albert Parvin Foundation, c/o Arnold & Porter, 1229 19th Street, N.W., Washington, D.C. 20036.

The Center for the Study of Democratic Institutions, Box 4068, Santa Barbara, Calif. 93103.

Fund for the Republic, 136 East 57th Street, New York, N.Y. 10022.

Parvin-Dohrmann Corp. (Now Recrion Corp.), 120 N. Robertson Blvd., Los Angeles, Calif. 90048.

On June 12, 1970, President Richard Nixon promulgated Executive Order No. 11535 to allow such inspection:

INSPECTION OF TAX RETURNS BY THE
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES

By virtue of the authority vested in me by sections 55(a) and 1604(c) of the

Internal Revenue Code of 1939, as amended (26 U.S.C. (1952 Ed.) 55(a), 1604(c)), and by sections 6103(a) and 6106 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6103(a), 6106), it is hereby ordered that any income, excess-profits, estate, gift, unemployment, or excise tax return, including all reports, documents, or other factual data relating thereto, shall, during the Ninety-first Congress, be open to inspection by the Committee on the Judiciary, House of Representatives, or any duly authorized subcommittee thereof, in connection with its consideration of House Resolution 920, a resolution impeaching William O. Douglas, Associate Justice of the Supreme Court of the United States. Whenever a return is open to inspection by such Committee or subcommittee, a copy thereof shall, upon request, be furnished to such Committee or subcommittee. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 and 6133, relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.⁽⁵⁾

§ 6.8 During an impeachment investigation in the House into the conduct of the President, the Senate adopted a resolution releasing records

5. See first report by the special subcommittee on H. Res. 920 of the Committee on the Judiciary, committee print, 91st Cong. 2d Sess., June 20, 1970, at pp. 14-20.

of a Senate select committee on Presidential campaign activities to congressional committees and other persons and agencies with a legitimate need therefore.

On July 29, 1974,⁽⁶⁾ Senator Samuel J. Ervin, Jr., of North Carolina, offered in the Senate a resolution (S. Res. 369), relative to the records of a Senate select committee. The Senate adopted the resolution following Senator Ervin's explanation as to the needs and requests of the Committee on the Judiciary of the House:

MR. ERVIN: Mr. President, under its present charter, the Senate Select Committee on Presidential Campaign Activities has 90 days after the 28th day of June of this year in which to wind up its affairs. This resolution is proposed with the consent of the committee, and its immediate consideration has been cleared by the leadership on both sides of the aisle.

The purpose of this resolution is to facilitate the winding up of the affairs of the Senate Select Committee. The resolution provides that all of the records of the committee shall be transferred to the Library of Congress which shall hold them subject to the control of the Senate Committee on Rules and Administration.

It provides that after these records are transferred to the Library of Con-

gress the Senate Committee on Rules and Administration shall control the access to the records and either by special orders or by general regulations shall make the records available to courts, congressional committees, congressional subcommittees, Federal departments and agencies, and any other persons who may satisfy the Senate Committee on Rules and Administration that they have a legitimate need for the records.

It provides that the records shall be maintained intact and that none of the original records shall be released to any agency or any person.

It provides further that pending the transfer of the records to the Library of Congress and the assumption of such control by the Senate Committee on Rules and Administration, that the Select Committee, acting through its chairman or through its vice chairman, can make these records available to courts or to congressional committees or subcommittees or to other persons showing a legitimate need for them.

I might state this is placed in here because of the fact that we have had many requests from congressional committees for the records. We have had requests from the Special Prosecutor and from the courts. . . .

I might state in the past the committee has made available some of the records to the House Judiciary Committee, at its request, and to the Special Prosecutor at his request. The resolution also provides that the action of the committee in doing so is ratified by the Senate.

6. 120 CONG. REC. 25392, 25393, 93d Cong. 2d Sess.

§ 6.9 In its inquiry into charges of impeachable of-

fenses against President Richard Nixon, the Committee on the Judiciary adopted procedures which ensured the confidentiality of impeachment inquiry materials and which limited access to such materials.

On Feb. 22, 1974, the Committee on the Judiciary unanimously adopted a set of procedures to preserve the confidentiality of evidentiary and other materials compiled in its impeachment inquiry relating to the conduct of President Nixon:⁽⁷⁾

PROCEDURES FOR HANDLING
IMPEACHMENT INQUIRY MATERIAL

1. The chairman, the ranking minority member, the special counsel, and the counsel to the minority shall at all times have access to and be responsible for all papers and things received from any source by subpoena or otherwise. Other members of the committee shall have access in accordance with the procedures hereafter set forth.

2. At the commencement of any presentation at which testimony will be

7. See H. REPT. NO. 93-1305, at p. 8, Committee on the Judiciary, printed in the Record at 120 CONG. REC. 29219, 29221, 93d Cong. 2d Sess., Aug. 20, 1974, for brief discussion of the adoption of the procedures.

The House had authorized the printing of additional copies of the procedures for handling impeachment inquiry materials. See H. Res. 1072, 93d Cong. 2d Sess., May 23, 1974.

heard or papers and things considered, each committee member will be furnished with a list of all papers and things that have been obtained by the committee by subpoena or otherwise. No member shall make the list or any part thereof public unless authorized by a majority vote of the committee, a quorum being present.

3. The special counsel and the counsel to the minority, after discussion with the chairman and the ranking minority member, shall initially recommend to the committee the testimony, papers, and things to be presented to the committee. The determination as to whether such testimony, papers, and things shall be presented in open or executive session shall be made pursuant to the rules of the House.

4. Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the inquiry staff. No member shall make any of that testimony or those papers or things public unless authorized by a majority vote of the committee, a quorum being present.

5. All examination of papers and things other than in a presentation shall be made in a secure area designated for that purpose. Copying, duplicating, or removal is prohibited.

6. Any committee member may bring additional testimony, papers, or things to the committee's attention.

7. Only testimony, papers, or things that are included in the record will be reported to the House; all other testi-

mony, papers, or things will be considered as executive session material.

RULES FOR THE IMPEACHMENT INQUIRY
STAFF

1. The staff of the impeachment inquiry shall not discuss with anyone outside the staff either the substance or procedure of their work or that of the committee.

2. Staff offices on the second floor of the Congressional Annex shall operate under strict security precautions. One guard shall be on duty at all times by the elevator to control entry. All persons entering the floor shall identify themselves. An additional guard shall be posted at night for surveillance of the secure area where sensitive documents are kept.

3. Sensitive documents and other things shall be segregated in a secure storage area. They may be examined only at supervised reading facilities within the secure area. Copying or duplicating of such documents and other things is prohibited.

4. Access to classified information supplied to the committee shall be limited by the special counsel and the counsel to the minority to those staff members with appropriate security clearances and a need to know.

5. Testimony taken or papers and things received by the staff shall not be disclosed or made public by the staff unless authorized by a majority of the committee.

6. Executive session transcripts and records shall be available to designated committee staff for inspection in person but may not be released or disclosed to any other person without the consent of a majority of the committee.

Parliamentarian's Note: On June 21, 1974, a Member, John N. Erlenborn, of Illinois, took the floor to allege that he was being denied permission to study files and records gathered by the Committee on the Judiciary in its impeachment inquiry into the conduct of the President, in violation of Rule XI clause 27(c) of the House rules.⁽⁸⁾ Rule XI clause 27(c) provided that committee hearings and records are to be kept separate from the records of the committee chairman and that all Members of the House have access to such records. Other provisions of the rule require that a committee may receive testimony or evidence in executive session, and that the proceedings of such sessions may not be released unless the committee so determines. And non-committee Members of the House are not permitted to attend executive committee sessions.⁽⁹⁾

8. 120 CONG. REC. 20624, 93d Cong. 2d Sess.

9. Although Jefferson's Manual states that any Member may be present at "any select committee" (*House Rules and Manual* §410 [1973]), a select committee appointed in 1834 held that its proceedings should be confidential, not to be attended by any person not invited or required. 3 Hinds' Precedents §1732. See also 4 Hinds' Precedents §4540 for the

§ 6.10 The Speaker laid before the House a communication from the Chairman of the Committee on the Judiciary, submitting to the House a "statement of information" concerning the income tax returns of President Richard Nixon examined by that committee in executive session during its impeachment inquiry, in order to comply with a Treasury Department regulation requiring submission of Internal Revenue Service files to the House prior to public release.

On July 25, 1974, Speaker Carl Albert, of Oklahoma, laid before the House a communication from Chairman Peter W. Rodino, Jr., of New Jersey, of the Committee on the Judiciary:⁽¹⁰⁾

COMMUNICATTON FROM THE CHAIRMAN
OF THE COMMITTEE ON THE JUDICIARY

The Speaker laid before the House the following communication from the chairman of the Committee on the Judiciary:

WASHINGTON, D.C., *July 26, 1974.*
Hon. CARL ALBERT,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On February 6, 1974, the House of Representa-

principle that committees may make their sessions executive and exclude persons not members thereof.

10. 120 CONG. REC. 25306, 25307, 93d Cong. 2d Sess.

tives adopted H. Res. 803, which authorized and directed the Committee on the Judiciary to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise under Article I, Section 2 of the Constitution, its power to impeach President Richard M. Nixon.

In carrying out its responsibility under H. Res. 803, the Judiciary Committee investigated allegations regarding President Nixon's income tax returns. The Committee requested access to the President's returns and reports on those returns in the files of the Internal Revenue Service. This access was granted by the President in Executive Order 11786, dated June 7, 1974, and information from the returns and IRS documents was subsequently presented to the Committee in executive session.

The Committee is now publicly debating whether to report various articles of impeachment to the House. In the course of this debate reference will surely be made to income tax information regarding the President. Under the Constitution and H. Res. 803, it is appropriate, indeed necessary, to refer to this information in a debate which is of the highest Constitutional significance.

Commissioner Donald Alexander of the Internal Revenue Service has requested that before information from IRS files is released publicly it be submitted to the House, thus complying with Treasury Department regulations. While this procedure is undoubtedly unnecessary in view of this Committee's Constitutional responsibility and the authority granted it by H. Res. 803, in consideration of the Commissioner's position, I am herewith submitting the enclosed Statement of Information, Book X. This Book will be part of the Committee's record when it makes its recommendation to the House.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

Subcommittee Procedures

§ 6.11 The Committee on the Judiciary authorized a special subcommittee to investigate and report on charges of impeachable offenses against a federal judge.

On June 20, 1970, a special subcommittee of the Committee on the Judiciary, investigating charges of impeachment against Associate Justice William O. Douglas, made an interim report to the committee as to its authority and procedures:⁽¹⁾

I. AUTHORITY

On April 21, 1970, the Committee on the Judiciary adopted a resolution to authorize the appointment of a Special Subcommittee on H. Res. 920, a resolution impeaching William O. Douglas, Associate Justice of the Supreme Court of the United States, of high crimes and misdemeanors in office. Pursuant to this resolution, the following members were appointed: Emanuel Celler (New York), Chairman; Byron G. Rogers (Colorado); Jack Brooks (Texas); William M. McCulloch (Ohio); and Edward Hutchinson (Michigan).

The Special Subcommittee on H. Res. 920 is appointed and operates

under the Rules of the House of Representatives. Rule XI 13(f) empowers the Committee on the Judiciary to act on all proposed legislation, messages, petitions, memorials, or other matters relating to “. . . Federal courts and judges.” In the 91st Congress, Rule XI has been implemented by H. Res. 93, February 5, 1969. H. Res. 93 authorizes the Committee on the Judiciary, acting as a whole or by subcommittee, to conduct full and complete investigations and studies on the matters coming within its jurisdiction, specifically “. . . (4) relating to judicial proceedings and the administration of Federal courts and personnel thereof, including local courts in territories and possessions”.

H. Res. 93 empowers the Committee to issue subpoenas, over the signature of the Chairman of the Committee or any Member of the Committee designated by him. Subpoenas issued by the Committee may be served by any person designated by the Chairman or such designated Member.

On April 28, 1970, the Special Subcommittee on H. Res. 920 held its organization meeting, appointed staff, and adopted procedures to be applied during the investigation. Although the power to issue subpoenas is available, and the Subcommittee is prepared to use subpoenas if necessary to carry out this investigation, thus far all potential witnesses have been cooperative and it has not been necessary to employ this investigatory tool. The Special Subcommittee operates under procedures established in paragraph 27, Rules of Committee Procedure, of Rule XI of the House of Representatives. These procedures will be followed until additional rules are adopted, which, on the basis

11. First report of the special subcommittee on H. Res. 920 of the Committee on the Judiciary, committee print, 91st Cong. 2d Sess., June 20, 1970.

of precedent in other impeachment proceedings, are determined by the Special Subcommittee to be appropriate.

Issuance of Subpenas; Effect of Noncompliance

§ 6.12 The Committee on the Judiciary determined in the 93d Congress that a federal civil officer could be impeached for failing to comply with duly authorized subpoenas issued by the committee in the course of its investigation into impeachment charges against him.

On Aug. 20, 1974, the Committee on the Judiciary submitted to the House a report (H. Rept. No. 93-1305) recommending the impeachment of President Richard Nixon on three articles of impeachment, without an accompanying resolution of impeachment, the President having resigned. Article III, adopted by the committee on July 30, 1974, impeached the former President for failing without lawful cause or excuse to comply with subpoenas issued by the committee for things and papers relative to the impeachment inquiry.⁽¹²⁾

12. H. REPT. NO. 93-1305, Committee on the Judiciary, 93d Cong. 2d Sess., Aug. 20, 1974, printed in full in the Record at 120 CONG. REC. 29219-

Parliamentarian's Note: The House has in the past considered the question whether a federal civil officer was subject to contempt proceedings for declining to honor a subpoena issued in the course of an impeachment investigation or investigation directed toward impeachment. In 1879, a committee of the House was conducting an investigation, as authorized by the House, into the conduct of the then Minister to China, George Seward. In the course of its impeachment inquiry, the committee issued subpoenas to Mr. Seward commanding him to produce papers in relation to the inquiry. Upon his refusal, he was arraigned at the bar of the House for contempt. The contempt charge was referred to the investigating committee, which concluded in its report (not considered by the House) that an official threatened with impeachment was not in contempt for declining to be sworn as a witness or to produce documentary evidence.⁽¹³⁾ Likewise, in 1837, a committee was investigating expenditures in cer-

361, 93d Cong. 2d Sess., Aug. 20, 1974. For the articles impeaching President Nixon, see §3.1, *supra*. The minority views challenge such a refusal to comply with a subpoena as grounds for impeachment (see §3.8, *supra*).

13. 3 Hinds' Precedents §§ 1699, 1700.

tain executive departments, with a view towards impeachment (of heads of departments or of President Andrew Jackson). The committee adopted a resolution requesting papers from the President, who declined to produce them and submitted a letter criticizing the committee for requesting that he and the department heads "become our own accusers." The committee laid on the table resolutions censuring the President for such action and the committee report concluded that there was no privilege of the House to compel public officers to furnish evidence against themselves.⁽¹⁴⁾

Court Access to Committee Evidence

§ 6.13 Where a federal court subpoenaed in a criminal case certain evidence gathered by the Committee on the Judiciary in an impeachment inquiry, the House adopted a resolution granting such limited access to the evidence as would not violate the privileges of the House or its sole power of impeachment under the United States Constitution.

On Aug. 22, 1974,⁽¹⁵⁾ Speaker Carl Albert, of Oklahoma, laid be-

14. 3 Hinds' Precedents § 1737.

15. 120 CONG REC. 30026, 93d Cong. 2d Sess.

fore the House subpoenas issued by a federal district court in a criminal case, requesting certain evidence gathered by the Committee on the Judiciary and its subcommittee on impeachment, in the inquiry into the conduct of President Richard Nixon. The House adopted a resolution (H. Res. 1341) which granted such limited access to the evidence as would not violate the privileges or constitutional powers of the House. The resolution read as follows:

H. RES. 1341

Whereas in the case of United States of America against John N. Mitchell et al. (Criminal Case No. 74-110), pending in the United States District Court for the District of Columbia, subpoenas duces tecum were issued by the said court and addressed to Representative Peter W. Rodino, United States House of Representatives, and to John Doar, Chief Counsel, House Judicial Subcommittee on Impeachment, House of Representatives, directing them to appear as witnesses before said court at 10:00 antemeridian on the 9th day of September, 1974, and to bring with them certain and sundry papers in the possession and under the control of the House of Representatives: Therefore be it

Resolved, That by the privileges of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice, be taken from such control or pos-

session but by its permission; be it further

Resolved, That the House of Representatives under Article I, Section 2 of the Constitution has the sole power of impeachment and has the sole power to investigate and gather evidence to determine whether the House of Representatives shall exercise its constitutional power of impeachment; be it further

Resolved, That when it appears by the order of the court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the House is needful for use in any court of justice, or before any judge or such legal officer, for the promotion of justice, this House will take such action thereon as will promote the ends of justice consistently with the privileges and rights of this House; be it further

Resolved, That when said court determines upon the materiality and the relevancy of the papers and documents called for in the subpoenas duces tecum, then the said court, through any of its officers or agents, have full permission to attend with all proper parties to the proceeding and then always at any place under the orders and control of this House and take copies of all memoranda and notes, in the files of the Committee on the Judiciary, of interviews with those persons who subsequently appeared as witnesses in the proceedings before the full Committee pursuant to House Resolution 803, such limited access in this instance not being an interference with the Constitutional impeachment power of the House, and the Clerk of the House is

authorized to supply certified copies of such documents and papers in possession or control of the House of Representatives that the court has found to be material and relevant (except that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied) and which the court or other proper officer thereof shall desire, so as, however, the possession of said papers, documents, and records by the House of Representatives shall not be disturbed, or the same shall not be removed from their place of file or custody under any Members, officer, or employee of the House of Representatives; and be it further

Resolved, That a copy of these resolutions be transmitted to the said court as a respectful answer to the subpoenas aforementioned.

§ 7. Committee Consideration; Reports

Under Rule XI, the rules of the House are the rules of its committees and subcommittees where applicable.⁽¹⁾ Consideration by committees of impeachment propositions to be reported to the House is therefore generally governed by the principles of consideration and debate that are normally followed in taking up any proposition. Thus, in the 93d Congress, the

1. Rule XI clause 27(a), *House Rules and Manual* §735 (1973).