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House of facts relating to Vice President Agnew's conduct, was discharged by unanimous consent on Oct. 10, 1973, and laid on the table.[5]

§ 15. Impeachment Proceedings Against President Nixon

Cross Reference

Portions of the final report of the Committee on the Judiciary, pursuant to its investigation into the conduct of the President, relating to grounds for Presidential impeachment and forms of articles of impeachment, see §§ 3.3, 3.7, 3.8, supra.

Collateral References

Debate on Articles of Impeachment, Hearings of the Committee on the Judiciary pursuant to House Resolution 803, 93d Cong. 2d Sess., July 24, 25, 26, 27, 29, and 30, 1974.

Impeachment of Richard M. Nixon, President of the United States, Report of the Committee on the Judiciary, H. REPT. No. 93-1305, 93d Cong. 2d Sess., Aug. 20, 1974, printed in full in the *Congressional Record*, 120 CONG. REC. 29219-361, 93d Cong. 2d Sess., Aug. 20, 1974.

Impeachment, Selected Materials, Committee on the Judiciary, H. Doc. No. 93-7, 93d Cong. 1st Sess., Oct. 1973.

Impeachment, Selected Materials on Procedure, Committee on the Judiciary, Committee Print, 93d Cong. 2d Sess., Jan. 1974.

Introduction of Impeachment Charges Against the President

§ 15.1 Various resolutions were introduced in the 93d Congress, first session, relating to the impeachment of President Richard M. Nixon, some directly calling for his censure or impeachment and some calling for an investigation by the Committee on the Judiciary or by a select committee; the former were referred to the Committee on the Judiciary and the latter were referred to the Committee on Rules.

On Oct. 23, 1973, resolutions calling for the impeachment of President Nixon or for investigations towards that end were introduced in the House by their being placed in the hopper pursuant to Rule XXII clause 4. The resolutions were referred as follows:

By Mr. Long of Maryland:

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

By Ms. Abzug:

H. Res. 625. Resolution impeaching Richard M. Nixon, President of the

5. 119 CONG. REC. 33687, 93d Cong. 1st Sess.

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.

By Mr. Bingham:

H. Res. 627. Resolution directing the Committee on the Judiciary to inquire into and investigate whether grounds exist for the impeachment of Richard M. Nixon; to the Committee on Rules.

By Mr. Burton (for himself, Ms. Abzug, Mr. Anderson of California, Mr. Aspin, Mr. Bergland, Mr. Bingham, Mr. Brasco, Mr. Brown of California, Mr. Boland, Mr. Brademas, Mrs. Chisholm, Mr. Culver, Mr. Conyers, Mr. Dellums, Mr. Drinan, Mr. Eckhardt, Mr. Edwards of California, Mr. Evans of Colorado, Mr. Fascell, Mr. Fauntroy, Mr. Foley, Mr. William D. Ford, Mr. Fraser, Mr. Giaimo, and Ms. Grasso):

H. Res. 628. Resolution directing the Committee on the Judiciary to inquire into and investigate whether grounds exist for the impeachment of Richard M. Nixon; to the Committee on Rules. . . .

By Mr. Hechler of West Virginia:

H. Res. 631. Resolution that Richard M. Nixon, President of the United States, is impeached of high crimes and misdemeanors; to the Committee on the Judiciary.

By Mrs. Heckler of Massachusetts:

H. Res. 632. Resolution to appoint a Special Prosecutor; to the Committee on the Judiciary. . . .

By Mr. McCloskey:

H. Res. 634. Resolution of inquiry; to the Committee on the Judiciary.

H. Res. 635. Resolution for the impeachment of Richard M. Nixon; to the Committee on the Judiciary.

By Mr. Mazzoli:

H. Res. 636. Resolution: an inquiry into the existence of grounds for the impeachment of Richard M. Nixon, President of the United States; to the Committee on Rules.

By Mr. Milford:

H. Res. 637. Resolution providing for the establishment of an Investigative Committee to investigate alleged Presidential misconduct; to the Committee on Rules.

By Mr. Mitchell of Maryland (for himself, Mr. Burton, and Mr. Fauntroy):

H. Res. 638. Resolution impeaching Richard M. Nixon, President of the United States, of high crimes and misdemeanors; to the Committee on the Judiciary.[6]

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6. 119 CONG. REC. 34873, 93d Cong. 1st Sess.

The first resolution in the 93d Congress calling for President Nixon's impeachment was introduced by Mr. Robert F. Drinan (Mass.), on July 31, 1973, H. Res. 513, 93d Cong. 1st Sess. (placed in hopper and referred to Committee on the Judiciary).

In the 92d Congress, second session, resolutions were introduced im-

Parliamentarian's Note: The resolutions were introduced following the President's dismissal of Special Prosecutor Cox, of the Watergate Special Prosecution Force investigating Presidential campaign activities, and the resignation of Attorney General Richardson.[7]

Authority for Judiciary Committee Investigation

§ 15.2 Although the House had adopted a resolution authorizing the Committee on the Judiciary, to which had been referred resolutions impeaching President Richard M. Nixon, to conduct investigations (with subpena power) within its jurisdiction as such jurisdiction was defined in Rule XI clause 13, and although the House had adopted a resolution intended to fund expenses of the impeachment inquiry by the committee, the committee 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 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:

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—

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peaching the President for his conduct of the Vietnam conflict. See H. Res. 976 and H. Res. 989, 92d Cong. 2d Sess.

7. Comments were delivered in the House on Oct. 23, 1973, on actions of the President. See, for example, the comments of Majority Leader Thomas P. O'Neill, Jr. (Mass.), at 119 CONG. REC. 34819, 93d Cong. 1st Sess.

(1) by subpena 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. 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 information 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.

Mr. Rodino and Mr. Edward Hutchinson, of Michigan, the ranking minority member of the Committee on the Jucliciary, 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 subpena 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.[8]

Parliamentarian's Note: Until the adoption of House Resolution 803, the Committee on the Judici-

8. 120 CONG. REC. 2349–51, 93d Cong. 2d Sess.

ary had been conducting an investigation into the charges of impeachment against President Nixon under its general investigatory authority, granted by the House on Feb. 28, 1973 (H. Res. 74). The committee had hired special counsel for the impeachment inquiry on Dec. 20, 1973, and had authorized the chairman to issue subpenas in relation to the inquiry on Oct. 30, 1973. House Resolution 74 authorized the Committee on the Judiciary to conduct investigations, and to issue subpenas during such investigations, within its jurisdiction "as set forth in clause 13 of rule XI of the Rules of the House of Representatives."

That clause did not specifically include impeachments within the jurisdiction of the Committee on the Judiciary.

The House had provided for the 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 one such resolution, House Resolution 702, 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.[9]

It was considered necessary for the House to specifically vest the Committee on the Judiciary with the investigatory and subpena power to conduct the impeachment investigation and to specifically provide for payment of resultant expenses from the contingent fund of the House.[10]

As discussed in section 6, supra, House Resolution 803 was privileged, since reported by the committee to which resolutions of impeachment had been referred and since incidental to consideration of the impeachment question, although resolutions providing for funding from the contingent fund of the House are normally only

9. See H. Res. 702, 93d Cong. 1st Sess., Nov. 15, 1973.

10. On Apr. 29, 1974, subsequent to the adoption of H. Res. 803, the House adopted H. Res. 1027, authorizing further funds from the contingent fund for the expenses of the impeachment inquiry and other investigations within the jurisdiction of the Committee on the Judiciary. The report on the resolution, from the Committee on House Administration (H. REPT. NO. 93–1009) included a statement by Mr. Rodino on the status of the impeachment inquiry and on the funds required for expenses and salaries of the impeachment inquiry staff.

privileged when called up by the Committee on House Administration, and resolutions authorizing investigations are normally only privileged when called up by the Committee on Rules.

Preserving Confidentiality of Inquiry Materials

§ 15.3 The Committee on the Judiciary adopted Procedures preserving the confidentiality of impeachment inquiry materials.

On Feb. 22, 1974, the Committee on the Judiciary unanimously adopted procedures governing the confidentiality of the materials gathered in the impeachment inquiry into the conduct of President Richard Nixon. The first set of procedures, entitled "Procedures for Handling Impeachment Inquiry Material," limited access to such materials to the chairman, ranking minority member, special counsel, and special counsel to the minority of the committee, until the actual presentation of evidence at hearings. Confidentiality was to be strictly preserved.

The second set of procedures, entitled "Rules for the Impeachment Inquiry Staff," provided for security and nondisclosure of impeachment inquiry materials and work product of the inquiry staff.[11]

Determining Grounds for Presidential Impeachment

§ 15.4 During the inquiry into charges against President Richard M. Nixon by the Committee on the Judiciary, the impeachment inquiry staff reported to the committee on the constitutional grounds for Presidential impeachment, as drawn from the historical origins of impeachment and the American impeachment cases.

On Feb. 22, 1974, Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, made available a report by the inquiry staff on the conduct of President Nixon. The report, entitled "Constitutional Grounds for Presidential Impeachment," summarized the historical origins and constitutional bases for impeachment and chronicled the American impeachment cases.

The report, printed as a committee print, did not necessarily reflect the views of the committee or its members, but was entirely a staff report. The staff concluded, in reviewing the issue whether

11. For the text of the rules, see § 6.9, supra.

impeachable offenses were required to be criminal or indictable offenses, that such was not the case under the English and American impeachment precedents.[12]

Status Reports

§ 15.5 During the impeachment inquiry involving President Richard M. Nixon, the inquiry staff of the Committee on the Judiciary reported to the committee on the status of its investigation.

On Mar. 1, 1974, the staff for the impeachment inquiry reported to the Committee on the Judiciary on the status of its investigative work (summarized in the committee's final report) with respect to specified allegations:

A. Allegations concerning domestic surveillance activities conducted by or at the direction of the White House.

B. Allegations concerning intelligence activities conducted by or at the direction of the White House for the purpose of the Presidential election of 1972.

C. Allegations concerning the Watergate break-in and related activities, including alleged efforts by persons in the White House and others to "cover up" such activities and others.

D. Allegations concerning improprieties in connection with the personal finances of the President.

E. Allegations concerning efforts by the White House to use agencies of the executive branch for political purposes, and alleged White House involvement with election campaign contributions.

F. Allegations concerning other misconduct.[13]

Presenting Evidence and Examining Witnesses

§ 15.6 In the Nixon impeachment inquiry, the Committee

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12. For the text of the report, see the appendix to this chapter, infra.

The conclusion of the staff report was included in the final report of the Committee on the Judiciary recommending impeachment of the President. (H. REPT. NO. 93–1305, by the Committee on the Judiciary.) See 120 CONG. REC. 29220, 29221, 93d Cong. 2d Sess., Aug. 20, 1974.

The minority views included in the committee report reached an opposite conclusion from that of the staff report and from that of the majority of the committee, which determined to impeach the President for both criminal and noncriminal conduct (see § 3.8, supra, for the minority views and § 3.7, supra, for the majority views on the issue).

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

On May 23, 1974, the House authorized by resolution the printing of 2,000 additional copies of a committee print containing the staff report. H. Res. 1074, 93d Cong. 2d Sess.

The House also adopted on May 23, H. Res. 1073, authorizing the printing of additional copies of a committee print on the work of the impeachment inquiry staff as of Feb. 5, 1974.

on the Judiciary adopted certain procedures to be followed in presenting evidence and hearing witnesses.

On May 2, 1974, the Committee on the Judiciary unanimously adopted special procedures for presenting the evidence compiled by the committee staff to the full committee in hearings. The procedures provided for a statement of information to be presented, with annotated evidentiary materials, to committee members and to the President's counsel.[14]

The procedures allowed for the compilation and presentation of additional evidence by committee members or on request of the President's counsel.

Procedures were also adopted for holding hearings to examine witnesses. Under the procedures, hearings were to be attended by the President's counsel, and he was permitted to examine witnesses.

The procedures followed in the presentation of evidence are reflected in the summary from the committee's final report:

> 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.
>
> 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

14. See § 6.5, supra.

staff, including substantially all of the supporting materials presented at the hearings, as well as the President's response.

Between July 2, 1974, and July 17, 1974, after the initial presentation, the Committee heard testimony from nine witnesses, including all the witnesses proposed by the President's counsel. The witnesses were interrogated by counsel for the Committee, by Special counsel to the President pursuant to the rules of the Committee, and by Members of the Committee. The Committee then heard an oral summation by Mr. St. Clair and received a written brief in support of the President's position.

The Committee concluded its hearings on July 17, a week in advance of its public debate on whether or not to recommend to the House that it exercise its constitutional power of impeachment. In preparation for that debate the majority and minority members of the impeachment inquiry staff presented to the Committee "summaries of information." (15)

The Committee on the Judiciary had previously adopted a resolution which was called up in the House under a motion to suspend the rules, on July 1, 1974, to authorize the committee to proceed without regard to Rule XI clause 27(f)(4), *House Rules and Manual* § 735 (1973), requiring the application of the five-minute rule for interrogation of witnesses by committees. The House had rejected the motion to suspend the rules and thereby denied to the committee the authorization to dispense with the five-minute rule in the interrogation of witnesses.(16)

Committee Consideration of Resolution and Articles Impeaching the President

§ 15.7 Consideration by the Committee on the Judiciary of the resolution and articles of impeachment against President Richard M. Nixon was made in order by committee resolution.

On July 23, 1974, the Committee on the Judiciary adopted a resolution making in order its consideration of a motion to report a resolution and articles of impeachment to the House. The resolution provided:

Resolved, That at a business meeting on July 24, 1974, the Committee shall commence general debate on a motion to report to the House a Resolution, together with articles of impeachment, impeaching Richard M. Nixon, President of the United States. Such general debate shall consume no more than ten hours, during which time no

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

16. 120 CONG. REC. 21849–55, 93d Cong. 2d Sess.

Member shall be recognized for a period to exceed 15 minutes. At the conclusion of general debate, the proposed articles shall be read for amendment and Members shall be recognized for a period of five minutes to speak on each proposed article and on any and all amendments thereto, unless by motion debate is terminated thereon. Each proposed article, and any additional article, shall be separately considered for amendment and immediately thereafter voted upon as amended for recommendation to the House. At the conclusion of consideration of the articles for amendment and recommendation to the House, if any article has been agreed to, the original motion shall be considered as adopted and the Chairman shall report to the House said Resolution of impeachment, together with such articles as have been agreed to, or if no article is agreed to, the Committee shall consider such resolutions or other recommendations as it deems proper.[17]

As stated in the committee's final report, consideration of the motion to report and of the articles of impeachment proceeded as follows on July 24 through July 30:

On July 24, at the commencement of general debate, a resolution was offered including two articles of impeachment. On July 26, an amendment in the nature of a substitute was offered to Article I. In the course of the debate on the substitute, it was contended that the proposed article of impeachment was not sufficiently specific. Proponents of the substitute argued that it met the requirements of specificity under modern pleading practice in both criminal and civil litigation, which provide for notice pleading. They further argued that the President had notice of the charge, that his counsel had participated in the Committee's deliberations, and that the factual details would be provided in the Committee's report.

On July 27, the Committee agreed to the amendment in the nature of a substitute for Article I by a vote of 27 to 11. The Committee then adopted Article I, as amended, by a vote of 27 to 11. Article I, as adopted by the Committee charged that President Nixon, using the power of his high office, engaged, personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of the unlawful entry into the headquarters of the Democratic National Committee in Washington, D.C., for the purpose of securing political intelligence; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

On July 29, an amendment in the nature of a substitute was offered for Article II of the proposed resolution. After debate, the substitute was agreed to by a vote of 28 to 10. The Committee then adopted Article II, as amended, by a vote of 28 to 10. Article II, as amended, charged that President Nixon, using the power of the office of President of the United States, repeatedly engaged in conduct which violated the constitutional rights of citizens;

17. H. REPT. No. 93–1305, at p. 10, Committee on the Judiciary, 93d Cong. 2d Sess., reported Aug. 20, 1974.

which impaired the due and proper administration of justice and the conduct of lawful inquiries, or which contravened the laws governing agencies of the executive branch and the purposes of these agencies.

On July 30, an additional article was offered as an amendment to the resolution. After debate, this amendment was adopted by a vote of 21 to 17 and became Article III. Article III charged that President Nixon, by failing, without lawful cause or excuse and in willful disobedience of the subpoenas of the House, to produce papers and things that the Committee had subpoenaed in the course of its impeachment inquiry, assumed to himself functions and judgments necessary to the exercise of the constitutional power of impeachment vested in the House. The subpoenaed papers and things had been deemed necessary by the Committee in order to resolve, by direct evidence, fundamental, factual questions related to presidential direction, knowledge, or approval of actions demonstrated by other evidence to be substantial grounds for impeachment.

On July 30, the Committee considered an amendment to add a proposed Article, which charged that President Nixon authorized, ordered and ratified the concealment of information from the Congress and supplied to Congress false and misleading statements concerning the existence, scope and nature of American bombing operations in Cambodia. The proposed Article stated that these acts were in derogation of the powers of Congress to declare war, make appropriations, and raise and support armies. By a vote of 26 to 12, the amendment to add this Article was not agreed to.

Also on July 30, the Committee considered an amendment to add a proposed Article, charging that President Nixon knowingly and fraudulently failed to report income and claimed deductions that were not authorized by law on his Federal income tax returns for the years 1969 through 1972. In addition, the proposed Article charged that, in violation of Article II, Section 1 of the Constitution, President Nixon had unlawfully received emoluments, in excess of the compensation provided by law, in the form of government expenditures at his privately owned properties at San Clemente, California, and Key Biscayne, Florida. By a vote of 26 to 12, the amendment to add the article was not agreed to.

The Committee on the Judiciary based its decision to recommend that the House of Representatives exercise its constitutional power to impeach Richard M. Nixon, President of the United States, on evidence which is summarized in the following report. . . .[18]

The debate on the resolution and articles of impeachment were televised pursuant to House Resolution 1107, adopted by the House on July 22, 1974, amending Rule XI clause 34 of the rules of the House to permit committee meetings, as well as hearings, to be broadcast by live coverage.[19]

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18. H. REPT. NO. 93–1305, at pp. 10, 11, Committee on the Judiciary, 93d Cong. 2d Sess., reported Aug. 20, 1974, printed in the Record at 120 CONG. REC. 29221, 29222, 93d Cong. 2d Sess., Aug. 20, 1974.

19. 120 CONG. REC. 24436–48, 93d Cong. 2d Sess.

The transcript of the debate by the Committee on the Judiciary was printed in full as a public document.[20]

Senate Review of Impeachment Trial Rules

§ 15.8 After impeachment proceedings had been instituted in the House against President Richard M. Nixon, the Senate adopted a resolution for the study and review of Senate rules and precedents applicable to impeachment trials.

On July 29, l974,[1] during the pendency of an investigation in the House of alleged impeachable offenses committed by President Nixon, the Senate adopted a resolution related to its rules on impeachment:

> MR. [MICHAEL J.] MANSFIELD [of Montana]: Mr. President, I have at the desk a resolution, submitted on behalf of the distinguished Republican leader, the Senator from Pennsylvania (Mr. Hugh Scott), the assistant majority leader, the distinguished Senator from West Virginia (Mr. Robert C. Byrd), the assistant Republican leader, the distinguished Senator from Michigan (Mr. Griffin), and myself, and I ask that it be called up and given immediate consideration.
>
> THE PRESIDING OFFICER: The clerk will state the resolution.
>
> The legislative clerk read as follows:
>
> S. RES. 370
>
> *Resolved*, That the Committee on Rules and Administration is directed to review any and all existing rules and precedents that apply to impeachment trials with a view to recommending any revisions, if necessary, which may be required if the Senate is called upon to conduct such a trial.
>
> *Resolved further*, That the Committee on Rules and Administration is instructed to report back no later than 1 September 1974, or on such earlier date as the Majority and Minority Leaders may designate, and
>
> *Resolved further*, That such review by that Committee shall be held entirely in executive sessions.
>
> THE PRESIDING OFFICER: Without objection, the Senate will proceed to its immediate consideration.
>
> The question is on agreeing to the resolution.
>
> The resolution (S. Res. 370) was agreed to.[2]

The Committee on Rules and Administration reported out Senate Resolution 390, amending the

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20. See Debate on Articles of Impeachment, Hearings of the Committee on the Judiciary pursuant to H. Res. 803, 93d Cong. 2d Sess., July 24, 25, 26, 29, and 30, 1974.

1. 120 CONG. REC. 25468, 93d Cong. 2d Sess.

2. The Senate Parliamentarian prepared and published, at the request of Senator Robert C. Byrd (W. Va.) a study entitled "Procedure and Guidelines for Impeachment Trials in the United States Senate," S. Doc. No. 102, 93d Cong. 2d Sess., Aug. 8, 1974.

Rules and Procedure and Practice in the Senate when Sitting on Impeachment Trials, which was not acted on by the Senate. The amendments reported were clarifying and modernizing changes.[3]

Disclosure of Evidence of Presidential Activities

§ 15.9 Pending the investigation by the House Committee on the Judiciary into conduct of the President, the Senate adopted a resolution releasing records of a Senate select committee on Presidential activities to congressional committees and other agencies and persons with a legitimate need therefor.

On July 29, 1974,[4] Senator Samuel J. Ervin, Jr., of North Carolina, offered in the Senate Senate Resolution 369, relating to the records of a Senate select committee. The Senate adopted the resolution, following Senator Ervin's remarks thereon, in which he mentioned 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 Congress 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

3. See § 11.2, supra, for the committee amendments to the rules for impeachment trials.

4. 120 CONG. REC. 25392, 25393, 93d Cong. 2d Sess.

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.

Broadcasting Impeachment Proceedings

§ 15.10 The House adopted a resolution providing for the broadcast of the proceedings in the House in which it was to consider the resolution and articles of impeachment against President Richard M. Nixon.

On Aug. 7, 1974, the Committee on the Judiciary, having previously determined to report affirmatively to the House on the impeachment of the President, the House adopted House Resolution 802, called up by direction of the Committee on Rules, authorizing the broadcast of the anticipated impeachment proceedings in the House. Ray J. Madden, of Indiana, Chairman of the Committee on Rules, who called up the resolution (with committee amendments), cited the prior action of the House in changing the rules of the House to permit the deliberations of the Committee on the Judiciary to be televised.[5]

§ 15.11 After impeachment proceedings had been instituted in the House against President Richard M. Nixon, the Senate Committee on Rules and Administration reported a resolution for televising any resultant trial.

On Aug. 8, 1974,[6] Senator Howard W. Cannon, of Nevada, reported in the Senate, from the Committee on Rules and Administration, Senate Resolution 371, to permit television and radio coverage of any impeachment trial that might occur with respect to President Nixon. The resolution was subsequently laid on the table.

Procedures for Consideration by the House

§ 15.12 The House leadership considered a number of special procedures to be followed in the consideration of a resolution and articles im-

5. 120 Cong. Rec. 27266–69, 93d Cong. 2d Sess.

6. 120 Cong. Rec. 27325, 93d Cong. 2d Sess.

peaching President Richard M. Nixon.

On Aug. 2, 1974, Ray J. Madden, of Indiana, Chairman of the Committee on Rules, addressed the House on a recent meeting of the leadership as to the proposed hearings of the committee relative to the consideration by the House of the impeachment of President Nixon:

CONFERENCE OF HOUSE RULES COMMITTEE ON IMPEACHMENT DEBATE

(Mr. Madden asked and was given permission to address the House for 1 minute and to revise and extend his remarks, and include extraneous matter.)

MR. MADDEN: Mr. Speaker, the coming Presidential impeachment debate calls for the House to adopt certain special procedures which are not otherwise necessary when considering regular congressional business.

The members of the Rules Committee, Speaker Carl Albert, House Majority Leader Tip O'Neill, House Majority Whip John McFall, House Minority Leader John Rhodes, House Minority Whip Les Arends, Judiciary Committee Chairman Peter Rodino, and Representative Edward Hutchinson, the ranking minority member of the Judiciary Committee, met in an unofficial capacity Thursday afternoon, August 1. In the 2½ hour meeting thoughts were exchanged and recommendations made regarding the rules and procedures which would be most practical in allowing the entire House membership participation in this historical legislative event.

Although the bipartisan gathering reached no official decision, there was agreement that after the Judiciary Committee files its report on the impeachment proceedings next week, August 8, the Committee on Rules will then convene—on August 13 for the purpose of defining the rules and procedures for House debate. It was also agreed by the members of the Democratic and Republican leadership present that the impeachment debate will begin on the floor of the House on Monday, August 19.

Among the impeachment procedures to be given consideration by the Committee on Rules will be: The overall time of debate; division of debate time during the floor discussion; the control of the time; the question of whether the three articles of impeachment recommended by the Judiciary Committee should be amended; and whether or not the electronic media should be allowed to broadcast the proceedings of the House floor.[7]

Later on that day, Thomas P. O'Neill, Jr., of Massachusetts, the Majority Leader, and Peter W. Rodino, Jr., of New Jersey, the Chairman of the Committee on the Judiciary, discussed tentative scheduling of the resolution of impeachment and arrangements for Members of the House to listen to tape recordings containing evidence relating to the impeachment inquiry:

(Mr. [Leslie C.] Arends [of Illinois] asked and was given permission to address the House for 1 minute.)

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7. 120 CONG. REC. 26489, 93d Cong. 2d Sess.

MR. ARENDS: Mr. Speaker, I take this time to ask the majority leader if he will kindly advise us of the program for next week.

MR. O'NEILL: Mr. Speaker, will the gentleman yield to the gentleman from New Jersey (Mr. Rodino), chairman of the Committee on the Judiciary, so we may have some indication of his plans?

MR. ARENDS: I yield to the gentleman from New Jersey.

MR. RODINO: I thank the gentleman for yielding.

I would really like to announce that today I have circulated a letter that should be in the offices of each of the Members which sets up a schedule so that Members who are interested may listen to the tapes that are going to be available in the Congressional Building where the impeachment inquiry staff is located. There will be assistance provided to all of the Members, and this is spelled out in this letter—the schedule as to the time when the tapes will be available, together with the transcripts, and assistance will be provided by members of the impeachment inquiry staff.

In addition to that, there is also in the letter pertinent information which relates to the particular pieces of information or documents that are available. All of the documents that have been printed and the President's counsel's brief will be included. Members will have available to them all that the Committee on the Judiciary has presented and printed and published up to this particular time, which I am sure all Members will be interested in.

I thought that I would make this announcement so that this letter will come to the Members' attention and will not be somehow or other just laid aside. I think the Members are going to be interested in seeing it and knowing that there is a schedule for them, and we will allow them sufficient time within which to be briefed regarding these various materials that are available and the facilities that are available to them.

MR. O'NEILL: Mr. Speaker, will the gentleman yield?

MR. ARENDS: I yield to the distinguished majority leader.

MR. O'NEILL: I thank the gentleman for yielding.

I should like to address some remarks to the gentleman from New Jersey (Mr. Rodino), the chairman of the Committee on the Judiciary, in view of the fact that the leadership on both sides of the aisle met yesterday with members of the Committee on Rules trying to put together a schedule, which, of course, we understand is tentative.

It was my understanding from that meeting that the Judiciary Committee would be planning to report next Wednesday, and would be going to the Rules Committee on Tuesday, August 13, with the anticipation that the matter of impeachment would be on the floor on Monday, the 19th.

Would the gentleman want to comment on that?

MR. RODINO: If the gentleman will yield, that is correct. That is the schedule that we hope to follow. I have discussed this with the gentleman from Michigan, the ranking minority member, and we have agreed that the scheduling is the kind of scheduling dates that we can meet. On Tuesday, the 13th, we would go before the Rules Committee. I thank the gentleman.[8]

8. *Id.* at p. 26512.

Committee Report as to Impeachment; Resignation of the President

§ 15.13 After the Committee on the Judiciary had determined to report to the House a resolution and articles impeaching President Richard M. Nixon, the President resigned; the committee submitted its report recommending impeachment to the House, without an accompanying resolution of impeachment. The House then adopted a resolution under suspension of the rules accepting the committee's report, noting the committee's action and commending the chairman and members of the committee for their efforts.

On Aug. 9, 1974, President Nixon's written resignation was received in the office of the Secretary of State, pursuant to the provisions of the United States Code.[9]

On Aug. 20, 1974, Mr. Peter W. Rodino, Jr., of New Jersey, submitted as privileged the report of the Committee on the Judiciary (H. Rept. No. 93–1305) to the House. The report summarized the committee's investigation and included supplemental, additional, separate, dissenting, minority, individual, and concurring views. The committee's recommendation and adopted articles of impeachment read as follows:

> The Committee on the Judiciary, to whom was referred the consideration of recommendations concerning the exercise of the constitutional power to impeach Richard M. Nixon, President of the United States, having considered the same, reports thereon pursuant to H. Res. 803 as follows and recommends that the House exercise its constitutional power to impeach Richard M. Nixon, President of the United States, and that articles of impeachment be exhibited to the Senate as follows:
>
> RESOLUTION
>
> Impeaching Richard M. Nixon, President of the United States, of high crimes and misdemeanors.
>
> *Resolved*, That Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:
>
> Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of all of the people of the United States of America, against Richard M. Nixon, President of the United States of America, in maintenance and support of its impeachment

9. 3 USC § 20 provides that the resignation of the office of the President shall be an instrument in writing, subscribed by the person resigning, and delivered to the office of the Secretary of State.

against him for high crimes and misdemeanors.

ARTICLE I

In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

On June 17, 1972, and prior thereto, agents of the Committee for the Reelection of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

The means used to implement this course of conduct or plan included one or more of the following:

(1) making or causing to be made false or misleading statements to lawfully authorized investigative officers and employees of the United States;

(2) withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States;

(3) approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings;

(4) interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the Office of Watergate Special Prosecution Force, and Congressional Committees;

(5) approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such unlawful entry and other illegal activities;

(6) endeavoring to misuse the Central Intelligence Agency, an agency of the United States;

(7) disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employees of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability;

(8) making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and per-

sonnel of the Committee for the Reelection of the President, and that there was no involvement of such personnel in such misconduct; or

(9) endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

ARTICLE II

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

This conduct has included one or more of the following:

(1) He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

(2) He misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

(3) He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions, which unlawfully utilized the resources of the Central Intelligence Agency, engaged in covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

(4) He has failed to take care that the laws were faithfully executed by

failing to act when he knew or had reason to know that his close subordinates endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial, and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee, and the cover-up thereof, and concerning other unlawful activities, including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, the electronic surveillance of private citizens, the break-in into the offices of Dr. Lewis Fielding, and the campaign financing practices of the Committee to Reelect the President.

(5) In disregard of the rule of law, he knowingly misused the executive power by interfering with agencies of the executive branch, including the Federal Bureau of Investigation, the Criminal Division, and the Offlce of Watergate Special Prosecution Force, of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

ARTICLE III

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas. The subpoenaed papers and things were deemed necessary by the Committee in order to resolve by direct evidence fundamental, factual questions relating to Presidential direction, knowledge, or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.[10]

10. H. REPT. NO. 93–1305, pp. 1–4, Committee on the Judiciary, printed in

The report was referred by the Speaker to the House Calendar and ordered printed.

The Committee did not report a separate resolution and articles of impeachment for action by the House, the President having resigned.

Thomas P. O'Neill, Jr., of Massachusetts, the Majority Leader, moved to suspend the rules and adopt House Resolution 1333, accepting the report of the Committee on the Judiciary and providing for its printing, and the House adopted the resolution without debate—yeas 412, nays 3, not voting 19:

H. RES. 1333

Resolved, That the House of Representatives:

(1) takes notice that

(a) the House of Representatives, by House Resolution 803, approved February 6, 1974, authorized and directed the Committee on the Judiciary to investigate fully and completely whether sufficient grounds existed for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America; and

(b) the Committee on the Judiciary, after conducting a full and complete investigation pursuant to House Resolution 803, voted on July 27, 29, and 30, 1974 to recommend Articles of impeachment against Richard M. Nixon, President of the United States of America; and

(c) Richard M. Nixon on August 9, 1974 resigned the Office of President of the United States of America;

(2) accepts the report submitted by the Committee on the Judiciary pursuant to House Resolution 803 (H. Rept. 93–1305) and authorizes and directs that the said report, together with supplemental, additional, separate, dissenting, minority, individual and concurring views, be printed in full in the Congressional Record and as a House Document; and

(3) commends the chairman and other members of the Committee on the Judiciary for their conscientious and capable efforts in carrying out the Committee's responsibilities under House Resolution 803.

Following the adoption of House Resolution 1333, Mr. O'Neill asked unanimous consent that all Members have five legislative days in which to revise and extend their remarks on House Resolution 1333, but Mr. Robert E. Bauman, of Maryland, objected to the request on the ground that no debate had been had on the report.(11)

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the Record at 120 CONG. REC. 29219, 29220, 93d Cong. 2d Sess., Aug. 20, 1974. For complete text of H. REPT. NO. 93–1305, see *id.* at pp. 29219–361.

Pursuant to H. Con. Res. 566, 93d Cong. 2d Sess., 10,000 additional copies of the report were printed for the use of the Committee on the Judiciary.

11. 120 CONG. REC. 29361, 29362, 93d Cong. 2d Sess. The Majority Leader

Neither the House nor the Committee on the Judiciary took any further action on the matter of the impeachment of former President Nixon in the 93d Congress.

Impeachment Inquiry Evidence Subpoenaed by Courts

§ 15.14 The Speaker laid before the House subpoenas duces tecum from a federal district court in a criminal case, addressed to the Chairman of the Committee on the Judiciary and to the chief counsel of its subcommittee on impeachment. The subpoenas sought evidence gathered by the committee in its impeachment inquiry into the conduct of President Richard M. Nixon. The House adopted a resolution granting such limited access as would not violate the privileges of the House or its sole power of impeachment under the U.S. Constitution.

On Aug. 22, 1974,[12] Speaker Carl Albert, of Oklahoma, laid before the House a communication and subpoena from the Chairman of the Committee on the Judiciary as follows:

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE JUDICIARY

The Speaker laid before the House the following communication and subpoena from the chairman of the Committee on the Judiciary, which was read and ordered to be printed:

WASHINGTON, D.C.,
August 21, 1974.

Hon. CARL ALBERT,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On July 29, 1974 two subpoenas duces tecum issued by the United States District Court for the District of Columbia, one naming myself and one naming Mr. John Doar, an employee of the Committee, were served commanding appearance in the United States District Court on September 9, 1974 and the production of all tapes and other electronic and/or mechanical recordings or reproductions, and any memoranda, papers, transcripts, and other writings, relating to all nonpublic statements, testimony and interviews of witnesses relating to the matters being investigated pursuant to House Resolution No. 803.

The subpoenas were issued upon application of defendant H. R. Haldeman in the case of U. S. v John Mitchell, et al.

The subpoenas in question are forwarded herewith and the matter presented for such action as the House deems appropriate.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

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had announced on the previous day, Aug. 19, his intention to offer the resolution, and had read the text of the resolution on the floor of the House. 120 CONG. REC. 29005, 29006, 93d Cong. 2d Sess.

12. 120 CONG. REC. 30025, 30026, 93d Cong. 2d Sess.

[Subpoena]

[U.S. District Court for the District of Columbia, No. 74–110]

UNITED STATES OF AMERICA v. JOHN N. MITCHELL, ET AL., DEFENDANTS

To: Congressman Peter W. Rodino, United States House of Representatives, Washington, D.C.

You are hereby commanded to appear in the United States District Court for the District of Columbia at Constitution Avenue and John Marshall Place, N.W. in the city of Washington on the 9th day of September 1974 at 10 o'clock A.M. to testify in the case of United States v. John N. Mitchell, et al., and bring with you all tapes and other electronic and/or mechanical recordings or reproductions, and any memoranda, papers, transcripts, and other writings, relating to:

All non-public statements and testimony of witnesses relating to the matters being investigated pursuant to House Resolution No. 803.

This subpoena is issued upon application of the Defendant, H. R. Haldeman, 1974.

FRANK H. STRUTH,
Attorney for Defendant, H. R. Haldeman.
JAMES F. DAVEY,
Clerk.
By ROBERT L. LINE,
Deputy Clerk.

The following resolution, in response to such subpoenas, was offered by Mr. Thomas P. O'Neill, Jr., of Massachusetts:

CONCERNING SUBPOENAS ISSUED IN UNITED STATES VERSUS JOHN N. MITCHELL, ET AL.

MR. O'NEILL: Mr. Speaker, I call up House Resolution 1341 and ask for its immediate consideration.

The Clerk read the resolution, 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 possession 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 pro-

motion 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; he 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.

The House adopted the resolution.

Pardon of the Former President

§ 15.15 The House having discontinued impeachment proceedings against former President Richard M. Nixon following his resignation, President Gerald R. Ford granted a full pardon to the former President for all offenses against the United States committed by him during his terms in office.

On Sept. 8, 1974, President Ford issued Proclamation 4311, granting a pardon to Richard Nixon:

GRANTING PARDON TO RICHARD NIXON BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Richard Nixon became the thirty-seventh President of the United States on January 20, 1969 and was reelected in 1972 for a second term by the electors of forty-nine of the fifty states. His term in office continued until his resignation on August 9, 1974.

Pursuant to resolutions of the House of Representatives, its Committee on the Judiciary conducted an inquiry and investigation on the impeachment of the President extending over more than eight months. The hearings of the Committee and its deliberations, which received wide national publicity over television, radio, and in printed media, resulted in votes adverse to Richard

Nixon on recommended Articles of Impeachment.

As a result of certain acts or omissions occurring before his resignation from the Office of President, Richard Nixon has become liable to possible indictment and trial for offenses against the United States. Whether or not he shall be so prosecuted depends on findings of the appropriate grand jury and on the discretion of the authorized prosecutor. Should an indictment ensue, the accused shall then be entitled to a fair trial by an impartial jury, as guaranteed to every individual by the Constitution.

It is believed that a trial of Richard Nixon, if it became necessary, could not fairly begin until a year or more has elapsed. In the meantime, the tranquility to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States. The prospects of such trial will cause prolonged and divisive debate over the propriety of exposing to further punishment and degradation a man who has already paid the unprecedented penalty of relinquishing the highest elective office of the United States.

Now, therefore, I, Gerald R. Ford, President of the United States, pursuant to the pardon power conferred upon me by Article II, Section 2, of the Constitution, have granted and by these presents do grant a full, free, and absolute pardon unto Richard Nixon for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974.

In witness whereof, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety-ninth.[13]

Some Members of the House suggested in debate that impeachment proceedings be resumed, notwithstanding the resignation of the President; for example on Sept. 11, 1974, Mr. Ralph H. Metcalfe, of Illinois, declared:

On August 20, 1974, Mr. Speaker, the House adopted House Resolution 1033. This resolution took notice of the fact that on February 6, 1974, the House, by adoption of House Resolution 803, authorized and directed the Judiciary Committee "to investigate fully and completely whether sufficient grounds existed for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon"; further, House Resolution 1033 noted that the Committee on the Judiciary recommended articles of impeachment; that Richard M. Nixon resigned the office of President of the United States; and further, this resolution accepted the report submitted by the Committee on the Judiciary pursuant to House Resolution 803.

The articles of impeachment voted out by the full committee, Mr. Speaker, were never debated and voted upon by the full House. At that time there was the strong possibility that the former President would be indicted, and that

13. 39 FED. REG. 32601, 32602 (Sept. 10, 1974).

the President would be held accountable for his actions in a court of law. President Ford's action on September 8, 1974, has effectively nullified that course of action. . . .

Is there a precedent for the impeachment of a civil officer after his resignation? I think there is.

In Federalist Paper 65, Hamilton states:

> The Model from which the idea of this institution (Impeachment) has been borrowed pointed out that course to the convention.

The model that Hamilton refers to is clearly that of Great Britain. The course of action that Hamilton refers to is impeachment by the House of Commons and trial before the Lords. And, consequently, it is to the English precedent that we must first turn. Contemporaneous with the drafting and adopting of our own Constitution was the impeachment trial of Warren Hastings in Great Britain. Hastings resigned the governor-generalship of India before he left India in February 1785, 2 years before articles of impeachment were voted by the House of Commons for his conduct in India. The impeachment of Hastings was certainly a fact known to the drafters of the Constitution.

George Mason, in discussing the impeachment provision on September 8, 1787, in the Constitutional Convention, makes a clear reference to the trial of Hastings. Further, Prof. Arthur Bestor states that—

> American constitutional documents adopted prior to the Federal Convention of 1787 . . . refute the notion that officials no longer in office were supposed by the framers to be beyond the reach of impeachment.

Bestor specifically cites the constitutions of two States-Virginia and Delaware-which were adopted in 1776.

Bestor also cites a statement of John Quincy Adams, made in 1846 after he left the White House, made on the Floor of the House:

> I hold myself, so long as I have the breath of life in my body, amenable to impeachment by this House for everything I did during the time I held any public office.

Another historical precedent is that of William W. Belknap, Secretary of War in President Grant's cabinet. As Bestor summarizes it:

> Belknap resigned at 10:20 a.m. on the 2nd of March (1876), a few hours before the House of Representatives voted to impeach him, the latter decision being officially notified to the Senate at 12:55 p.m. on the 3rd . . . on May 27, 1876, in a roll-call vote of 37 to 29 (with seven not voting) the Senate ruled that Belknap was amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office before he was impeached.

Mr. Speaker, there is precedent for the impeachment of a civil officer after he has resigned.

Another point to make, Mr. Speaker, is that article I of section 3 of the Constitution states, inter alia:

> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States.

There is a twofold penalty provided for in this article and removal from office is but one part of the penalty.

Mr. Speaker, the former President has not been held accountable for his

actions. He has avoided accountability through the impeachment process by resigning, and he has avoided trial on charges of alleged criminal misconduct as contained in the first article of impeachment through the Presidential pardon of his successor.

Mr. Speaker, history can conclude that the Congress of the United States was confronted with a series of actions by the Chief Executive, actions which constituted a serious danger to our political processes and that we did nothing. The proper forum, and now the only forum, for a debate and a vote on these most serious charges is here in the House. We have no other recourse but to proceed if we are to assure that all future Presidents will be held accountable for their actions whether such future Chief Executives resign or not.

Mr. Speaker, I urge that the impeachment report of the House Judiciary Committee be debated and that we proceed to vote on the articles of impeachment.(14)

On Sept. 12, 1974, Ms. Bella S. Abzug, of New York, introduced a resolution of inquiry related to the pardon: (15)

H. RES. 1363

Resolved, That the President of the United States is hereby requested to furnish the House, within ten days, with the following information:

1. What are the specific offenses against the United States for which a pardon was granted to Richard M. Nixon on September 8, 1974?

2. What are the certain acts or omissions occurring before his resignation from the office of President for which Richard Nixon had become liable to possible indictment and trial for offenses against the United States, as stated in your Proclamation of Pardon?

3. Did you or your representatives have specific knowledge of any formal criminal charges pending against Richard M. Nixon prior to issuance of the pardon? If so, what were these charges?

4. Did Alexander Haig refer to or discuss a pardon with Richard M. Nixon or representatives of Mr. Nixon at any time during the week of August 4, 1974 or at any subsequent time? If so, what promises were made or conditions set for a pardon, if any? If so, were tapes or transcriptions of any kind made of these conversations or were any notes taken? If so, please provide such tapes, transcriptions or notes.

5. When was a pardon for Richard M. Nixon first referred to or discussed with Mr. Nixon, or representatives of Mr. Nixon, by you or your representatives or aides, including the period when you were a member of Congress or Vice President?

6. Who participated in these and subsequent discussions or negotiations with Richard M. Nixon or his representatives regarding a pardon, and at what specific times and locations?

7. Did you consult with Attorney General William Saxbe or Special

14. 120 CONG. REC. 30695, 30696, 93d Cong. 2d Sess. (footnotes omitted). For a memo inserted in the Record by Senate Majority Leader Michael J. Mansfield (Mont.) on the power of Congress to impeach and try a President after he has resigned, see 120 CONG. REC. 31346–48, 93d Cong. 2d Sess., Sept. 17, 1974.

15. 120 CONG. REC. 30964, 30965, 93d Cong. 2d Sess.

Prosecutor Leon Jaworski before making the decision to pardon Richard M. Nixon and, if so, what facts and legal authorities did they give to you?

8. Did you consult with the Vice Presidential nominee, Nelson Rockefeller, before making the decision to pardon Richard M. Nixon and, if so, what facts and legal authorities did he give to you?

9. Did you consult with any other attorneys or professors of law before making the decision to pardon Richard M. Nixon, and, if so, what facts or legal authorities did they give to you?

10. Did you or your representatives ask Richard M. Nixon to make a confession or statement of criminal guilt, and, if so, what language was suggested or requested by you, your representatives, Mr. Nixon, or his representatives? Was any statement of any kind requested from Mr. Nixon in exchange for the pardon, and, if so, please provide the suggested or requested language.

11. Was the statement issued by Richard M. Nixon immediately subsequent to announcement of the pardon made known to you or your representatives prior to its announcement, and was it approved by you or your representatives?

12. Did you receive any report from a psychiatrist or other physician stating that Richard M. Nixon was in other than good health? If so, please provide such reports

The resolution of inquiry was referred to the Committee on the Judiciary. A subcommittee thereof held hearings on the matter of the pardon of former President Nixon, and President Ford appeared in person and testified before such subcommittee on Oct. 17, 1974.

§ 16. Impeachment of Judge English

Committee Report on Resolution and Articles of Impeachment

§ 16.1 In the 69th Congress, the Committee on the Judiciary reported a resolution of impeachment accompanied with five articles of impeachment against Judge George English, which report was referred to the House Calendar, ordered printed, and printed in full in the Congressional Record.

On Mar. 25, 1926, Mr. George S. Graham, of Pennsylvania, offered a privileged report from the Committee on the Judiciary in the impeachment case against George English, U.S. District Judge for the Eastern District of Illinois. Speaker Nicholas Longworth, of Ohio, ordered the report printed and referred to the House Calendar.(16) By unanimous consent, the entire report (H. Rept. No. 653) was printed in the *Congressional Record*.(17)

16. 67 CONG. REC. 6280, 69th Cong. 1st Sess.

17. *Id.* at pp. 6280–87.