

## CHAPTER 14

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# *Impeachment Powers*

## **A. GENERALLY**

### **§ 1. Constitutional Provisions; House and Senate Functions**

The impeachment power is delineated and circumscribed by several provisions of the U.S. Constitution. They state:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. Article II, Section 4.

. . . and [the House of Representatives] shall have the sole Power of Impeachment. Article I, Section 2, clause 5.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Article I, Section 3, clause 6.

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: but the Party convicted shall

nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. Article I, Section 3, clause 7.

Two other sections of the U.S. Constitution also mention impeachment:

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. Article II, section 2, clause 1.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . . Article III, section 2, clause 3.

Since the First Congress of the United States, the House of Representatives has impeached 13 officers of the United States, of whom 10 were federal judges, one was a cabinet officer, one a U.S. Senator, and one the President of the United States.

Conviction has been voted by the Senate in four cases, all involving federal judges. The judges so convicted were John Pickering in 1804, West H. Humphreys in 1862, Robert W. Archbald in 1912, and Halsted L. Ritter in 1936.

On numerous other occasions, the impeachment process has

been initiated in the House as to civil officers and judges but has not resulted in consideration by the House of a report recommending impeachment. In the two most recent cases where investigations have been conducted by the Committee on the Judiciary and its subcommittees, in relation to Supreme Court Associate Justice William O. Douglas in 1970 and in relation to President Richard M. Nixon in 1974, the proceedings have occasioned intense congressional and national debate as to the scope of the impeachment power, the grounds for impeachment and for conviction, the analogy if any between the impeachment process and the judicial criminal process, and the amenability of the impeachment process to judicial review.

It should be noted at this point that of the four judges convicted and removed from office, none has directly sought to challenge through the judicial process his impeachment by the House and conviction by the Senate. Judge Halsted L. Ritter, convicted by the Senate in 1936, indirectly challenged his conviction by filing suit for back salary in the U.S. Court of Claims, where he alleged that the Senate had tried him on grounds not constituting impeachable offenses under the Constitu-

tion. The Court of Claims dismissed the claim for want of jurisdiction, holding that the Senate's power to try impeachments was exclusive under the Constitution. The court cited the Supreme Court case of *Mississippi v Johnson*, wherein Chief Justice Samuel Chase had stated in dictum that the impeachment process was not subject to judicial review.<sup>(1)</sup> The Court of Claims opinion read in part:

While the Senate in one sense acts as a court on the trial of an impeachment, it is essentially a political body and in its actions is influenced by the views of its members on the public welfare. The courts, on the other hand, are expected to render their decisions according to the law regardless of the consequences. This must have been realized by the members of the Constitutional Convention and in rejecting proposals to have impeachments tried by a court composed of regularly appointed judges we think it avoided the possibility of unseemly conflicts between a political body such as the Senate and the judicial tribunals which might determine the case on different principles.<sup>(2)</sup>

#### Cross References

Discussions of the impeachment process generally, see §§3.6–3.14 and appendix, *infra*.

1. *Ritter v United States*, 84 Ct. Cls. 293 (1936), cert. denied, 300 U.S. 668 (1937), citing *Mississippi v Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867).
2. *Ritter v United States*, 84 Ct. Cls. 293, 300 (1936).



High privilege of impeachment propositions, see §§ 5, 8, *infra*.

Pardon of officer who has resigned before his impeachment by the House, see § 15.15. *infra*.

**Collateral References**

For early precedents on the impeachment power and process, see the following chapters in *Hinds' Precedents*: Ch. 63 (Nature of Impeachment); Ch. 64 (Function of the House in Impeachment); Ch. 65 (Function of the Senate in Impeachment); Ch. 66 (Procedure of the Senate in Impeachment); Ch. 67 (Conduct of Impeachment Trials); Ch. 68 (Presentation of Testimony in an Impeachment Trial); Ch. 69 (Rules of Evidence in an Impeachment Trial); Ch. 70 (Impeachment and Trial of William Blount); Ch. 71 (Impeachment and Trial of John Pickering); Ch. 72 (Impeachment and Trial of Samuel Chase); Ch. 73 (Impeachment and Trial of James H. Peck); Ch. 74 (Impeachment and Trial of West H. Humphreys); Ch. 75 (First Attempts to Impeach the President); Ch. 76 (Impeachment and Trial of President Andrew Johnson); Ch. 77 (Impeachment and Trial of William W. Belknap); Ch. 78 (Impeachment and Trial of Charles Swayne); Ch. 79 (Impeachment Proceedings not Resulting in Trial).

See also the following chapters in *Cannon's Precedents*: Ch. 193 (Nature of Impeachment); Ch. 194 (Function of the House in Impeachment); Ch. 195 (Function of the Senate in Impeachment); Ch. 196 (Procedure of the Senate in Impeachment); Ch. 197 (Conduct of Impeachment Trials); Ch. 198 (Presentation of Testimony in an Impeachment Trial); Ch. 199 (Rules of Evi-

dence in an Impeachment Trial); Ch. 200 (Impeachment and Trial of Robert W. Archbald); Ch. 201 (Impeachment and Trial of Harold Louderback); Ch. 202 (Impeachment Proceedings not Resulting in Trial).

The impeachment power under parliamentary law, see *House Rules and Manual* §§ 601-620 (Jefferson's Manual) (1973).

Impeachment, Selected Materials, Committee on the Judiciary, H. Doc. No. 93-7, 93d Cong. 1st Sess., Oct. 1973 (constitutional provisions and historical precedents and debate).

Impeachment, Selected Materials on Procedure, Committee on the Judiciary, Committee Print, 93d Cong. 2d Sess., Jan. 1974 (relevant extracts from *Hinds'* and *Cannon's Precedents of the House of Representatives*).

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***Impeachment and the Federal Courts***

**§ 1.1 The Speaker laid before the House a communication from the Clerk, informing the House of the receipt of a summons and complaint naming the House as a defendant in a civil action, instituted in a U.S. District Court, seeking to enjoin impeachment proceedings pending in the House.**

On May 28, 1974, Speaker Carl Albert, of Oklahoma, laid before the House a communication from the Clerk, advising of his receipt

of a summons and complaint issued by the U.S. District Court for the Eastern District of Virginia, in connection with Civil Action No. 74-54-NN, *The National Citizens' Committee for Fairness to the President v United States House of Representatives*.<sup>(3)</sup>

*Parliamentarian's Note:* The plaintiff in this action sought to enjoin the impeachment proceedings pending in the House against President Richard M. Nixon. The Clerk did not request representation by the appropriate U.S. Attorney, under 2 USC §118, because the House has the sole power of impeachment under the U.S. Constitution and because of the application of the doctrine under the Constitution of the separation of powers of the executive, legislative, and judicial branches of government.

**§ 1.2 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, except executive session materials, as would not violate the privileges of the House**

3. 120 CONG. REC. 16496, 93d Cong. 2d Sess.

**or its sole power of impeachment under the U.S. Constitution.**

On Aug. 22, 1974,<sup>(4)</sup> Speaker Carl Albert, of Oklahoma, laid before the House certain subpoenas issued by a U.S. 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 House Resolution 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

4. 120 CONG. REC. 30026, 93d Cong. 2d Sess.

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 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.

### ***Censure of Federal Civil Officers***

**§ 1.3 In the 72d Congress, the House amended a resolution abating impeachment proceedings against a federal judge where the committee report censured him for improper conduct, and voted to**

**impeach him by adopting the resolution as amended.**

On Feb. 24, 1933, a resolution (H. Res. 387) was called up by Mr. Thomas D. McKeown, of Oklahoma, at the direction of the Committee on the Judiciary; the resolution stated that the evidence against U.S. District Court Judge Harold Louderback did not warrant impeachment. The committee report (H. Rept. No. 2065), censured the judge as follows:

The committee censures the judge for conduct prejudicial to the dignity of the judiciary in appointing incompetent receivers, for the method of selecting receivers, for allowing fees that seem excessive, and for a high degree of indifference to the interest of litigants in receiverships.<sup>(5)</sup>

The House rejected the recommendation of the committee by adopting an amendment in the nature of a substitute impeaching the judge for misdemeanors in office. During debate on the resolution, Mr. Earl C. Michener, of Michigan, addressed remarks to the power of censure in relation to civil officers under the United States:

MR. MICHENER: Mr. Speaker, in answer to the gentleman from Alabama,

5. 76 CONG. REC. 4913, 4914, 72d Cong. 2d Sess. See, generally, 6 Cannon's Precedents §514, and §§17.1, 17.2, *infra*.

let me make this observation. The purpose of referring a matter of this kind to the Committee on the Judiciary is to determine whether or not in the opinion of the Committee on the Judiciary there is sufficient evidence to warrant impeachment by the House. If the Committee on the Judiciary finds those facts exist, then the Committee on the Judiciary makes a report to the House recommending impeachment, and that undoubtedly is privileged. However, a custom has grown up recently in the Committee on the Judiciary of including in the report a censure. I do not believe that the constitutional power of impeachment includes censure. We have but one duty, and that is to impeach or not to impeach. Today we find a committee report censuring the judge. The resolution before the House presented by a majority of the committee is against impeachment. The minority members have filed a minority report, recommending impeachment. I am making this observation with the hope that we may get back to the constitutional power of impeachment.

*Parliamentarian's Note:* On several past occasions, the resolution reported to the House by the committee investigating impeachment has proposed the censure of the officer involved.<sup>(6)</sup> Such resolu-

6. See, for example, 3 Hinds' Precedents §§2519, 2520.

When a subcommittee report recommended against the impeachment of Associate Judge William O. Douglas in the 91st Congress, the minority views of Mr. Edward Hutchinson (Mich.) indicated the view that Jus-

tions were not submitted as privileged and were not considered by the House. Although censure of a Member by the House is a privileged matter,<sup>(7)</sup> censure of an executive official has not been held privileged for consideration by the House and has on occasion been held improper.<sup>(8)</sup>

Justice Douglas could have been censured or officially rebuked for misconduct by the House (see §14.16, *infra*).

7. See 3 Hinds' Precedents §§2649–2651.

Members of the House are not subject to impeachment under the Constitution (see §2, *infra*) but are subject to punishment for disorderly behavior. See U.S. Const. art. I, §5, clause 2.

8. See 2 Hinds' Precedents §§1569–1572.

The issue whether a proposition to censure a federal civil officer would be germane to a proposition for his impeachment has not arisen, but it is not in order to amend a pending privileged resolution by adding or substituting a matter not privileged and not germane to the original proposition. 5 Hinds' Precedents §5810.

See 6 Cannon's Precedents §236 for the ruling that a proposition to censure a Member of the House is not germane to a proposition for his expulsion. Speaker Frederick H. Gillett (Mass.) ruled in that instance that although censure and expulsion of a Member were both privileged propositions, they were "intrinsically" different.

## § 2. Who May Be Impeached; Effect of Resignation

Article II, section 4 of the U.S. Constitution subjects the President, Vice President, and all civil officers of the United States to impeachment, conviction, and removal from office. It has been settled that a private citizen is not subject to the impeachment process except for offenses committed while a civil officer under the United States.<sup>(9)</sup>

In one case, it was determined by the Senate that a U.S. Senator (William Blount [Tenn.]) was not a civil officer under article II, section 4, and the Senate disclaimed jurisdiction to try him.<sup>(10)</sup>

In view of the fact that the Constitution provides not only for automatic removal of an officer upon impeachment and conviction, but also for the disqualification from holding further office under the United States (art. I, §3, clause 7), the House and Senate have affirmed their respective power to impeach and try an accused who has resigned.<sup>(11)</sup>

9. 3 Hinds' Precedents §§2315, 2007.

A commissioner of the District of Columbia was held not to be a civil officer subject to impeachment under the Constitution. 6 Cannon's Precedents §548.

10. 3 Hinds' Precedents §§2310, 2316.

11. The question whether the House may impeach a civil officer who has

The latter question first arose in the Blount case, where the Senate expelled Senator Blount after his impeachment by the House but before articles had been drafted and before his trial in the Senate had begun. The House proceeded to adopt articles, and it was conceded in the Senate that a person impeached could not escape punishment by resignation; the Senate decided that it had no jurisdiction, however, to try the former Senator since he had not been a civil officer for purposes of impeachment.<sup>(12)</sup>

William W. Belknap, Secretary of War, resigned from office before his impeachment by the House and before his trial in the Senate. The House and Senate debated the power of impeachment at length and determined that the former Secretary was amenable to impeachment and trial; at the conclusion of trial the respondent was acquitted of all charges by the Senate.<sup>(13)</sup>

#### Cross References

Members of Congress not subject to impeachment but to punishment, censure, or expulsion, see Ch. 12, *supra*.

Powers of the House as related to the executive generally, see Ch. 13, *supra*.

resigned is a constitutional issue for the House and not the Chair to decide (see § 2.4, *infra*).

12. 3 Hinds' Precedents §§ 2317, 2318.

13. 3 Hinds' Precedents §§ 2007, 2467.

### *Impeachment Proceedings Following Resignation*

**§ 2.1 President Richard Nixon having resigned following the decision of the Committee on the Judiciary to report to the House recommending his impeachment, the report without an accompanying resolution of impeachment was submitted to the House, and further proceedings were discontinued.**

On Aug. 20, 1974, Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, submitted a privileged report (H. Rept. No. 93-1305) recommending the impeachment of President Nixon, following a full investigation by the committee, and after its consideration and adoption of articles of impeachment.

The committee had previously (in July 1974) decided to recommend articles of impeachment against President Nixon. The President resigned his office shortly thereafter—on Aug. 9, 1974—by submitting his written resignation to the office of the Secretary of State.<sup>(14)</sup>

14. 3 USC § 20 provides that the only evidence of the resignation of the office of the President of the United States shall be an instrument in

Upon submission of the report of the Committee on the Judiciary, Speaker Carl Albert, of Oklahoma, ordered it referred to the House Calendar. No separate accompanying resolution of impeachment was reported to the House.

The House adopted without debate a resolution (H. Res. 1333), offered by Mr. Thomas P. O'Neill, Jr., of Massachusetts, under suspension of the rules on Aug. 20, accepting the report. No further action was taken on the proposed impeachment of the President.<sup>(15)</sup>

**§ 2.2 A federal judge having resigned from the bench pending his impeachment trial in the Senate, the House adopted a resolution instructing the managers to advise the Senate that the House declined to further prosecute**

writing, signed, and delivered into the office of the Secretary of State.

15. 120 CONG. REC. 29361, 29362, 93d Cong. 2d Sess. For the text of H. Res. 1333 and the events surrounding its adoption, see §15.13, *infra*.

For a memorandum prepared for Senate Majority Leader Michael J. Mansfield (Mont.) and inserted in the Record, concluding that Congress could impeach and try the President after he had resigned, see 120 CONG. REC. 31346-48, 93d Cong. 2d Sess., Sept. 17, 1974.

**charges of impeachment, and the Senate dismissed the impeachment proceedings.**

On Dec. 11, 1926, the House adopted the following resolution in relation to the impeachment proceedings against Judge George W. English:

*Resolved*, That the managers on the part of the House of Representatives in the impeachment proceedings now pending in the Senate against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be instructed to appear before the Senate, sitting as a court of impeachment in said cause, and advise the Senate that in consideration of the fact that said George W. English is no longer a civil officer of the United States, having ceased to be a district judge of the United States for the eastern district of Illinois, the House of Representatives does not desire further to urge the articles of impeachment heretofore filed in the Senate against said George W. English.<sup>(16)</sup>

On Dec. 13, 1926, the Senate adjourned *sine die* as a court of impeachment after agreeing to the following order, which was messaged to the House:

*Ordered*, That the impeachment proceedings against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be and the same are, duly dismissed.<sup>(17)</sup>

16. 68 CONG. REC. 297, 69th Cong. 2d Sess.

17. *Id.* at p. 344.

**§ 2.3 The House discontinued further investigation and proceedings of impeachment against a cabinet official who had resigned his post, after his nomination and confirmation to hold another governmental position.**

On Feb. 13, 1932, the House adopted House Resolution 143 offered by Hatton W. Sumners, of Texas, Chairman of the Committee on the Judiciary. The resolution, which discontinued certain impeachment proceedings due to resignation of the officer charged, read as follows:

Whereas Hon. Wright Patman, Member of the House of Representatives, filed certain impeachment charges against Hon. Andrew W. Mellon, Secretary of the Treasury, which were referred to this committee; and

Whereas pending the investigation of said charges by said committee, and before said investigation had been completed, the said Hon. Andrew W. Mellon was nominated by the President of the United States for the post of ambassador to the Court of St. James and the said nomination was duly confirmed by the United States Senate pursuant to law, and the said Andrew W. Mellon has resigned the position of Secretary of the Treasury: Be it

*Resolved by this committee,* That the further consideration of the said charges made against the said Andrew W. Mellon, as Secretary of the Treasury, be, and the same are hereby, discontinued.

MINORITY VIEWS

We cannot join in the majority views and findings. While we concur in the conclusions of the majority that section 243 of the Revised Statutes, upon which the proceedings herein were based, provides for action in the nature of an ouster proceeding, it is our view that the Hon. Andrew W. Mellon, the former Secretary of the Treasury, having removed himself from that office, no useful purpose would be served by continuing the investigation of the charges filed by the Hon. Wright Patman. We desire to stress that the action of the undersigned is based on that reason alone, particularly when the prohibition contained in said section 243 is not applicable to the office now held by Mr. Mellon.<sup>(18)</sup>

FIORIELLO H. LAGUARDIA.  
GORDON BROWNING.  
M. C. TARVER.  
FRANCIS B. CONDON.

**§ 2.4 Where a point of order was raised that a resolution of impeachment was not privileged because it called for the impeachment of persons no longer civil officers under the United States, the Speaker stated that the question was a constitutional issue for the House and not the Chair to decide.**

On May 23, 1933, Mr. Louis T. McFadden, of Pennsylvania, rose to a question of constitutional

<sup>18.</sup> 75 CONG. REC. 3850, 72d Cong. 1st Sess.



privilege and offered a resolution (H. Res. 158) impeaching numerous members and former members of the Federal Reserve Board. During the reading of the resolution, a point of order against it was raised by Mr. Carl E. Mapes, of Michigan:

I wish to submit the question to the Speaker as to whether or not a person who is not now in office is subject to impeachment? This resolution of the gentleman from Pennsylvania refers to several people who are no longer holding any public office. They are not now at least civil officers. The Constitution provides that the "President, Vice President, and all civil officers shall be removed from office on impeachment", and so forth. I have had no opportunity to examine the precedents since this matter came up, but it occurs to me that the resolution takes in too much territory to make it privileged.

Speaker Henry T. Rainey, of Illinois, ruled as follows:

That is a constitutional question which the Chair cannot pass upon, but should be passed upon by the House.

The resolution was referred on motion to the Committee on the Judiciary.<sup>(19)</sup>

### § 3. Grounds for Impeachment; Form of Articles

Article II, section 4 of the U.S. Constitution defines the grounds

19. 77 CONG. REC. 4055, 73d Cong. 1st Sess.

for impeachment and conviction as "treason, bribery, or other high crimes and misdemeanors." A further provision of the Constitution which has been construed to bear upon the impeachment of federal judges is article III, section 1, which provides that judges of the supreme and inferior courts "shall hold their offices during good behaviour."

When the House determines that grounds for impeachment exist, and they are adopted by the House, they are presented to the Senate in "articles" of impeachment.<sup>(20)</sup> Any one of the articles may provide a sufficient basis or ground for impeachment. The impeachment in 1936 of Halsted L. Ritter, a U.S. District Court Judge, was based on seven articles of impeachment as amended by the House. The first six articles charged him with several instances of judicial misconduct, including champerty, corrupt practices, violations of the Judicial Code, and violations of criminal law. Article VII charged actions and conduct, including a restatement of some of the charges con-

20. Jefferson's Manual states that: [B]y the usage of Parliament, in impeachment for writing or speaking, the particular words need not be specified in the accusation. *House Rules and Manual* (Jefferson's Manual) § 609 (1973).

tained in the preceding articles, “the reasonable and probable consequence” of which was “to bring his court into scandal and disrepute,” to the prejudice of his court, of public confidence in his court, and of public respect for and confidence in the federal judiciary.<sup>(1)</sup> However, in the Senate, Judge Ritter was convicted only on the seventh article. The respondent had moved, before commencement of trial, to strike article I, or in the alternative to require election as to articles I and II, on the ground that the articles duplicated the same offenses, but the presiding officer overruled the motion and his decision was not challenged in the Senate. The respondent also moved to strike article VII, the “general” article, on the ground that it improperly cumulated and duplicated offenses already stated in the preceding articles, but this motion was rejected by the Senate.<sup>(2)</sup>

At the conclusion of the Ritter trial, and following conviction only on article VII, a point of order was raised against the vote in that the article combined the grounds that were alleged for impeachment. The President pro tempore overruled the point of order.<sup>(3)</sup>

1. See §3.2, *infra*.

2. See §3.4, *infra*.

3. See §3.5, *infra*.

The various grounds for impeachment and the form of impeachment articles have been documented during recent investigations. Following the inquiry into charges against President Nixon, the Committee on the Judiciary reported to the House a report recommending impeachment, which report included the text of a resolution and articles impeaching the President.<sup>(4)</sup> As indicated by the articles, and by the conclusions of the report as to the specific articles, the Committee on the Judiciary determined that the grounds for Presidential impeachment need not be indictable or criminal; articles II and III impeached the President for a course of conduct constituting an abuse of power and for failure to comply with subpoenas issued by the committee during the impeachment inquiry.<sup>(5)</sup> The committee also concluded that an article of impeachment could cumulate charges and facts constituting a course of conduct, as in article II.<sup>(6)</sup>

4. See §3.1, *infra*.

5. See §3.7, *infra*, for the majority views and §3.8, *infra*, for the minority views on the articles of impeachment.

6. See §3.3, *infra*, for the majority and minority views on article II.

In its final report the Committee on the Judiciary cited a staff report by the impeachment inquiry staff on

The grounds for impeachment of federal judges were scrutinized in 1970, in the inquiry into the conduct of Associate Justice Douglas of the Supreme Court. Concepts of impeachment were debated on the floor of the House, as to the ascertainability of the definition of an impeachable offense, and as to whether a federal judge could be impeached for conduct not related to the performance of his judicial function or for judicial conduct not criminal in nature.<sup>(7)</sup>

A special subcommittee of the Committee on the Judiciary was created to investigate and report on the charges of impeachment against Justice Douglas, and submitted to the committee a final report recommending against impeachment, finding the evidence insufficient. The report concluded

the grounds for presidential impeachment, prepared before the committee had proceeded to compile all the evidence and before the committee had proceeded to consider a resolution and articles of impeachment. While the report and its conclusions were not intended to represent the views of the committee or of its individual members, the report is printed in part in the appendix to this chapter as a synopsis of the history, origins, and concepts of the impeachment process and of the grounds for impeachment. See §3.6, *infra*, and appendix, *infra*.

7. See §§3.9–3.12, *infra*.

that a federal judge could be impeached for judicial conduct which is either criminal or a serious abuse of public duty, or for non-judicial conduct which is criminal.<sup>(8)</sup>

#### Cross References

Amendments to articles adopted by the House, see §10, *infra*.

Charges not resulting in impeachment, see §14, *infra*.

Grounds for conviction in the Ritter impeachment trial, see §18, *infra*.

#### Collateral Reference

Articles of Impeachment Voted by the House of Representatives, see Impeachment, Selected Materials, Committee on the Judiciary, H. Doc. No. 93–7, 93d Cong. 1st Sess., Oct. 1973.

### *Form of Resolution and Articles of Impeachment*

#### **§ 3.1 Articles of impeachment are reported from the Committee on the Judiciary in the form of a resolution.**

On Aug. 20, 1974,<sup>(9)</sup> the Committee on the Judiciary submitted to the House a report on its inves-

8. See §3.13, *infra*.

9. H. REPT. NO. 93–1305, Committee on the Judiciary, printed in 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.

tigation into charges of impeachable offenses against President Richard Nixon. The committee included in the text of the report a resolution and articles of impeachment which had been adopted by the committee:

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 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 Re-election of the President committed un-

lawful 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 personnel of the Committee for the Re-election 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, Rich-

ard 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 Office 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 con-

stitutional 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.

**§ 3.2 Articles impeaching Judge Halsted L. Ritter were reported to the House in two separate resolutions.**

In March 1936, articles of impeachment against Judge Ritter were reported to the House:<sup>10</sup>

[H. RES. 422]

*Resolved*, That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior, and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under H. Res. 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Sen-

ate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Halsted L. Ritter, who was appointed, duly qualified, and commissioned to serve, during good behavior in office, as United States district judge for the southern district of Florida, on February 15, 1929.

ARTICLE I

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of a high crime and misdemeanor in office in manner and form as follows, to wit: On or about October 11, 1929, A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge), as solicitor for the plaintiff, filed in the court of the said Judge Ritter a certain foreclosure suit and receivership proceeding, the same being styled "Bert E. Holland and others against Whitehall Building and Operating Company and others" (Number 678-M-Eq.). On or about May 15, 1930, the said Judge Ritter allowed the said Rankin an advance of \$2,500 on his fee for his services in said case. On or about July 2, 1930, the said Judge Ritter by letter requested another judge of the United States district court for the southern district of Florida, to wit, Honorable Alexander Akerman, to fix and deter-

**10.** H. Res. 422, 80 CONG. REC. 3066-68, 74th Cong. 2d Sess., Mar. 2, 1936 (Articles I-IV); H. Res. 471, 80 CONG. REC. 4597-99, 74th Cong. 2d Sess., Mar. 30, 1936 (amending Article III and adding new Articles IV-VII).

mine the total allowance for the said Rankin for his services in said case for the reason as stated by Judge Ritter in said letter, that the said Rankin had formerly been the law partner of the said Judge Ritter, and he did not feel that he should pass upon the total allowance made said Rankin in that case and that if Judge Akerman would fix the allowance it would relieve the writer, Judge Ritter, from any embarrassment if thereafter any question should arise as to his, Judge Ritter's, favoring said Rankin with an exorbitant fee.

Thereafterward, notwithstanding the said Judge Akerman, in compliance with Judge Ritter's request, allowed the said Rankin a fee of \$15,000 for his services in said case, from which sum the said \$2,500 theretofore allowed the said Rankin by Judge Ritter as an advance on his fee was deducted, the said Judge Ritter, well knowing that at his request compensation had been fixed by Judge Akerman for the said Rankin's services in said case, and notwithstanding the restraint of propriety expressed in his said letter to Judge Akerman, and ignoring the danger of embarrassment mentioned in said letter, did fix an additional and exorbitant fee for the said Rankin in said case. On or about December 24, 1930, when the final decree in said case was signed, the said Judge Ritter allowed the said Rankin, additional to the total allowance of \$15,000 theretofore allowed by Judge Akerman, a fee of \$75,000 for his services in said case, out of which allowance the said Judge Ritter directly profited. On the same day, December 24, 1930, the receiver in said case paid the said Rankin, as part of his said additional fee, the sum of \$25,000, and the said Rankin on the

same day privately paid and delivered to the said Judge Ritter the sum of \$2,500 in cash; \$2,000 of said \$2,500 was deposited in bank by Judge Ritter on, to wit, December 29, 1930, the remaining \$500 being kept by Judge Ritter and not deposited in bank until, to wit, July 10, 1931. Between the time of such initial payment on said additional fee and April 6, 1931, the said receiver paid said Rankin thereon \$5,000. On or about April 6, 1931, the said Rankin received the balance of the said additional fee allowed him by Judge Ritter, said balance amounting to \$45,000. Shortly thereafter, on or about April 14, 1931, the said Rankin paid and delivered to the said Judge Ritter, privately, in cash, an additional sum of \$2,000. The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said A. L. Rankin the aforesaid sums of money, amounting to \$4,500.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor.

#### ARTICLE II

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

On the 15th day of February 1929 the said Halsted L. Ritter, having been



appointed as United States district judge for the southern district of Florida, was duly qualified and commissioned to serve as such during good behavior in office. Immediately prior thereto and for several years the said Halsted L. Ritter had practiced law in said district in partnership with one A. L. Rankin, which partnership was dissolved upon the appointment of said Ritter as said United States district judge.

On the 18th day of July 1928 one Walter S. Richardson was elected trustee in bankruptcy of the Whitehall Building and Operating Company, which company had been adjudicated in said district as a bankrupt, and as such trustee took charge of the assets of said Whitehall Building and Operating Company, which consisted of a hotel property located in Palm Beach in said district. That the said Richardson as such trustee operated said hotel property from the time of his said appointment until its sales on the 3d of January 1929, under the foreclosure of a third mortgage thereon. On the 1st of November and the 13th of December 1929, the said Judge Ritter made orders in said bankruptcy proceedings allowing the said Walter S. Richardson as trustee the sum of \$16,500 as compensation for his services as trustee. That before the discharge of said Walter S. Richardson as such trustee, said Richardson, together with said A. L. Rankin, one Ernest Metcalf, one Martin Sweeney, and the said Halsted L. Ritter, entered into an arrangement to secure permission of the holder or holders of at least \$50,000 of first mortgage bonds on said hotel property for the purpose of filing a bill to foreclose the first mortgage on said prem-

ises in the court of said Halsted L. Ritter, by which means the said Richardson, Rankin, Metcalf, Sweeney, and Ritter were to continue said property in litigation before said Ritter. On the 30th day of August 1929, the said Walter S. Richardson, in furtherance of said arrangement and understanding, wrote a letter to the said Martin Sweeney, in New York, suggesting the desirability of contacting as many first-mortgage bondholders as possible in order that their cooperation might be secured, directing special attention to Mr. Bert E. Holland, an attorney, whose address was in the Tremont Building in Boston, and who, as co-trustee, was the holder of \$50,000 of first-mortgage bonds, the amount of bonds required to institute the contemplated proceedings in Judge Ritter's court.

On October 3, 1929, the said Bert E. Holland, being solicited by the said Sweeney, requested the said Rankin and Metcalf to prepare a complaint to file in said Judge Ritter's court for foreclosure of said first mortgage and the appointment of a receiver. At this time Judge Ritter was holding court in Brooklyn, New York, and the said Rankin and Richardson went from West Palm Beach, Florida, to Brooklyn, New York, and called upon said Judge Ritter a short time previous to filing the bill for foreclosure and appointment of a receiver of said hotel property.

On October 10, 1929, and before the filing of said bill for foreclosure and receiver, the said Holland withdrew his authority to said Rankin and Metcalf to file said bill and notified the said Rankin not to file the said bill. Notwithstanding the said instructions to

said Rankin not to file said bill, said Rankin, on the 11th day of October 1929, filed said bill with the clerk of the United States District Court for the Southern District of Florida but with the specific request to said clerk to lock up the said bill as soon as it was filed and hold until Judge Ritter's return so that there would be no newspaper publicity before the matter was heard by Judge Ritter for the appointment of a receiver, which request on the part of the said Rankin was complied with by the said clerk.

On October 16, 1929, the said Holland telegraphed to the said Rankin, referring to his previous wire requesting him to refrain from filing the bill and insisting that the matter remain in its then status until further instruction was given; and on October 17, 1929, the said Rankin wired to Holland that he would not make an application on his behalf for the appointment of a receiver. On October 28, 1929, a hearing on the complaint and petition for receivership was heard before Judge Halsted L. Ritter at Miami, at which hearing the said Bert E. Holland appeared in person before said Judge Ritter and advised the judge that he wished to withdraw the suit and asked for dismissal of the bill of complaint on the ground that the bill was filed without his authority.

But the said Judge Ritter, fully advised of the facts and circumstances herein before recited, wrongfully and oppressively exercised the powers of his office to carry into execution said plan and agreement theretofore arrived at, and refused to grant the request of the said Holland and made effective the champertous undertaking of the said Richardson and Rankin and

appointed the said Richardson receiver of the said hotel property, notwithstanding that objection was made to Judge Ritter that said Richardson had been active in fomenting this litigation and was not a proper person to act as receiver.

On October 15, 1929, said Rankin made oath to each of the bills for intervenors which were filed the next day.

On October 16, 1929, bills for intervention in said foreclosure suit were filed by said Rankin and Metcalf in the names of holders of approximately \$5,000 of said first-mortgage bonds, which intervenors did not possess the said requisite \$50,000 in bonds required by said first mortgage to bring foreclosure proceedings on the part of the bondholders.

The said Rankin and Metcalf appeared as attorneys for complainants and intervenors, and in response to a suggestion of the said Judge Ritter, the said Metcalf withdrew as attorney for complainants and intervenors and said Judge Ritter thereupon appointed said Metcalf as attorney for the said Richardson, the receiver.

And in the further carrying out of said arrangement and understanding, the said Richardson employed the said Martin Sweeney and one Bemis, together with Ed Sweeney, as managers of said property, for which they were paid the sum of \$60,000 for the management of said hotel for the two seasons the property remained in the custody of said Richardson as receiver.

On or about the 15th day of May 1930 the said Judge Ritter allowed the said Rankin an advance on his fee of \$2,500 for his services in said case.

On or about July 2, 1930, the said Judge Ritter requested Judge Alex-

ander Akerman, also a judge of the United States District Court for the Southern District of Florida, to fix the total allowance for the said Rankin for his services in said case, said request and the reasons therefor being set forth in a letter by the said Judge Ritter, in words and figures as follows, to wit:

JULY 2, 1930.

Hon. ALEXANDER AKERMAN,  
*United States District Judge, Tampa, Fla.*

MY DEAR JUDGE: In the case of Holland et al. v. Whitehall Building & Operating Co. (No. 678-M-Eq.), pending in my division, my former law partner, Judge A. L. Rankin, of West Palm Beach, has filed a petition for an order allowing compensation for his services on behalf of the plaintiff.

I do not feel that I should pass, under the circumstances, upon the total allowance to be made Judge Rankin in this matter. I did issue an order, which Judge Rankin will exhibit to you, approving an advance of \$2,500 on his claim, which was approved by all attorneys.

You will appreciate my position in the matter, and I request you to pass upon the total allowance which should be made Judge Rankin in the premises as an accommodation to me. This will relieve me from any embarrassment hereafter if the question should arise as to my favoring Judge Rankin in this matter by an exorbitant allowance.

Appreciating very much your kindness in this matter, I am,

Yours sincerely,

HALSTED L. RITTER.

In compliance with said request the said Judge Akerman allowed the said

Rankin \$12,500 in addition to the \$2,500 theretofore allowed by Judge Ritter, making a total of \$15,000 as the fee of the said Rankin in the said case.

But notwithstanding the said request on the part of said Ritter and the compliance by the said Judge Akerman and the reasons for the making of said request by said Judge Ritter of Judge Akerman, the said Judge Ritter, on the 24th day of December 1930, allowed the said Rankin an additional fee of \$75,000.

And on the same date when the receiver in said case paid to the said Rankin as a part of said additional fee the sum of \$25,000, said Rankin privately paid and delivered to said Judge Ritter out of the said \$25,000 the sum of \$2,500 in cash, \$2,000 of which the said Judge Ritter deposited in a bank and \$500 of which was put in a tin box and not deposited until the 10th day of July 1931, when it was deposited in a bank with an additional sum of \$600.

On or about the 6th day of April 1931, the said Rankin received as a part of the \$75,000 additional fee the sum of \$45,000, and shortly thereafter, on or before the 14th day of April 1931, the said Rankin paid and delivered to said judge Ritter, privately and in cash, out of said \$45,000 the sum of \$2,000.

The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said Rankin the aforesaid sums of \$2,500 in cash and \$2,000 in cash, amounting in all to \$4,500.

Of the total allowance made to said A.L. Rankin in said foreclosure suit, amounting in all to \$90,000, the fol-

lowing sums were paid out by said Rankin with the knowledge and consent of said Judge Ritter, to wit: to said Walter S. Richardson, the sum of \$5,000; to said Metcalf, the sum of \$10,000; to Shutts and Bowen, also attorneys for the receiver, the sum of \$25,000; and to said Halsted L. Ritter, the sum of \$4,500.

In addition to the said sum of \$5,000 received by the said Richardson as aforesaid, said Ritter by order in said proceedings allowed said Richardson a fee of \$30,000 for services as such receiver.

The said fees allowed by said Judge Ritter to A.L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge) as solicitor for the plaintiff in said case were excessive and unwarranted, and said judge profited personally thereby in that out of the money so allowed said solicitor he received personally, privately, and in cash \$4,500 for his own use and benefit.

While the Whitehall Hotel was being operated in receivership under said proceeding pending in said court (and in which proceeding the receiver in charge of said hotel by appointment of said Judge was allowed large compensation by said judge) the said judge stayed at said hotel from time to time without cost to himself and received free rooms, free meals, and free valet service, and, with the knowledge and consent of said judge, members of his family, including his wife, his son, Thurston Ritter, his daughter, Mrs. M.R. Walker, his secretary, Mrs. Lloyd C. Hooks, and her husband, Lloyd C. Hooks, each likewise on various occasions stayed at said hotel without cost to themselves or to said judge, and re-

ceived free rooms, and some or all of them received from said hotel free meals and free valet service; all of which expenses were borne by the said receivership to the loss and damage of the creditors whose interests were involved therein.

The said judge willfully failed and neglected to perform his duty to conserve the assets of the Whitehall Building and Operating Company in receivership in his court, but to the contrary, permitted waste and dissipation of its assets, to the loss and damage of the creditors of said corporation, and was a party to the waste and dissipation of such assets while under the control of his said court, and personally profited thereby, in the manner and form hereinabove specifically set out.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of a high crime and misdemeanor in office.

Articles III and IV in House Resolution 422 are omitted because House Resolution 471, adopted by the House on Mar. 30, 1936, amended Article III, added new Articles IV through VI after Article III, and amended former Article IV to read as new Article VII. Articles III through VII in their amended form follow:

#### ARTICLE III

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while

acting as a United States District judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373) making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that after the employment of the law firm of Ritter and Rankin (which at the time of the appointment of Halsted L. Ritter to be judge of the United States District Court for the Southern District of Florida, was composed of Halsted L. Ritter and A.L. Rankin) in the case of Trust Company of Georgia and Robert G. Stephens, trustee, against Brazilian Court Building Corporation, and others, numbered 5704, in the Circuit Court of the Fifteenth Judicial Circuit of Florida, and after the fee of \$4,000 which had been agreed upon at the outset of said employment had been fully paid to the firm of Ritter and Rankin, and after Halsted L. Ritter had, on, to wit, February 15, 1929, become judge of the United States District Court for the Southern District of Florida, Judge Ritter on, to wit, March 11, 1929, wrote a letter to Charles A. Brodek, of counsel for Mulford Realty Corporation (the client which his former law firm had been representing in said litigation), stating that there had been much extra and unanticipated work in the case, that he was then a Federal Judge; that his partner, A.L. Rankin,

would carry through further proceedings in the case, but that he, Judge Ritter, would be consulted about the matter until the case was all closed up; and that "this matter is one among very few which I am assuming to continue my interest in until finally closed up"; and stating specifically in said letter:

"I do not know whether any appeal will be taken in the case or not but, if so, we hope to get Mr. Howard Paschal or some other person as receiver who will be amenable to our directions, and the hotel can be operated at a profit, of course, pending the appeal. We shall demand a very heavy supersedeas bond, which I doubt whether D'Esterre can give"; and further that he was "of course primarily interested in getting some money in the case", and that he thought "\$2,000 more by way of attorneys' fees should be allowed", and asked that he be communicated with direct about the matter, giving his post-office-box number. On to wit, March 13, 1929, said Brodek replied favorably, and on March 30, 1929, a check of Brodek, Raphael, and Eisner, a law firm of New York City, representing Mulford Realty Corporation, in which Charles A. Brodek, senior member of the firm of Brodek, Raphael and Eisner, was one of the directors, was drawn, payable to the order of "Honorable Halsted L. Ritter" for \$2,000 and which was duly endorsed "Honorable Halsted L. Ritter. H. L. Ritter" and was paid on, to wit, April 4, 1929, and the proceeds thereof were received and appropriated by Judge Ritter to his own individual use and benefit, without advising his said former partner that said \$2,000 had been received, without consulting with

his former partner thereabout, and without the knowledge or consent of his said former partner, appropriated the entire amount thus solicited and received to the use and benefit of himself, the said Judge Ritter.

At the time said letter was written by Judge Ritter and said \$2,000 received by him, Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court, of which Judge Ritter was a judge from, to wit, February 15, 1929.

After writing said letter of March 11, 1929, Judge Ritter further exercised the profession or employment of counsel or attorney, or engaged in the practice of the law, with relation to said case.

Which acts of said judge were calculated to bring his office into disrepute, constitute a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373), and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE IV

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the

Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows to wit:

That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373), making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that Judge Ritter did exercise the profession or employment of counsel or attorney, or engage in the practice of the law, representing J.R. Francis, with relation to the Boca Raton matter and the segregation and saving of the interest of J.R. Francis herein, or in obtaining a deed or deeds to J.R. Francis from the Spanish River Land Company to certain pieces of realty, and in the Edgewater Ocean Beach Development Company matter for which services the said Judge Ritter received from the said J.R. Francis the sum of \$7,500.

Which acts of said judge were calculated to bring his office into disrepute constitute a violation of the law above recited, and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE V

That the said Halsted L. Ritter, having been nominated by the President of

the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of violation of section 146(h) of the Revenue Act of 1928, making it unlawful for any person willfully to attempt in any manner to evade or defend the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1929 said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of some \$12,000, yet paid no income tax thereon.

Among the fees included in said gross taxable income for 1929 were the extra fee of \$2,000 collected and received by Judge Ritter in the Brazilian Court case as described in article III, and the fee of \$7,500 received by Judge Ritter from J.R. Francis.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE VI

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of viola-

tion of section 146(b) of the Revenue Act of 1928, making it unlawful for any person willfully to attempt in any manner to evade or defeat the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1930 the said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of to wit, \$5,300, yet failed to report any part thereof in his income-tax return for the year 1930 and paid no income tax thereon.

Two thousand five hundred dollars of said gross taxable income for 1930 was that amount of cash paid Judge Ritter by A. L. Rankin on December 24, 1930, as described in article I.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE VII

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public con-

fidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him unfit to continue to serve as such judge:

1. In that in the Florida Power Company case (Florida Power and Light Company against City of Miami and others, numbered 1138-M-Eq.) which was a case wherein said judge had granted the complainant power company a temporary injunction restraining the enforcement of an ordinance of the city of Miami, which ordinance prescribed a reduction in the rates for electric current being charged in said city, said judge improperly appointed one Cary T. Hutchinson, who had long been associated with and employed by power and utility interests, special master in chancery in said suit, and refused to revoke his order so appointing said Hutchinson. Thereafter, when criticism of such action had become current in the city of Miami, and within two weeks after a resolution (H. Res. 163, Seventy-third Congress) had been agreed to in the House of Representatives of the Congress of the United States, authorizing and directing the Judicial Committee thereof to investigate the official conduct of said judge and to make a report concerning said conduct to said House of Representatives an arrangement was entered into with the city commissioners of the city of Miami or with the city attorney of said city by which the said city commissioners were to pass a resolution expressing faith and confidence in the integrity of said judge, and the said judge recuse himself as judge in said Dower suit. The said agreement was carried out by the parties thereto, and said judge, after the passage of

such resolution, recused himself from sitting as judge in said power suit, thereby bartering his judicial authority in said case for a vote of confidence. Nevertheless, the succeeding judge allowed said Hutchinson as special master in chancery in said case a fee of \$5,000, although he performed little, if any, service as such, and in the order making such allowance recited: "And it appearing to the court that a minimum fee of \$5,000 was approved by the court for the said Cary T. Hutchinson, special master in this cause."

2. In that in the Trust Company of Florida cases (Illick against Trust Company of Florida and others numbered 1043-M-Eq., and Edmunds Committee and others against Marion Mortgage Company and others, numbered 1124-M-Eq.) after the State banking department of Florida, through its comptroller, Honorable Ernest Amos, had closed the doors of the Trust Company of Florida and appointed J.H. Therrell liquidator for said trust company, and had intervened in the said Illick case, said Judge Ritter wrongfully and erroneously refused to recognize the right of said State authority to administer the affairs of the said trust company and appointed Julian E. Eaton and Clark D. Stearns as receivers of the property of said trust company. On appeal, the United States Circuit Court of Appeals for the Fifth Circuit reversed the said order or decree of Judge Ritter and ordered the said property surrendered to the State liquidator. Thereafter, on, to wit, September 12, 1932, there was filed in the United States District Court for the Southern District of Florida the Edmunds Committee case, supra. Mar-



ion Mortgage Company was a subsidiary of the Trust Company of Florida. Judge Ritter being absent from his district at the time of the filing of said case, an application for the appointment of receivers therein was presented to another judge of said district, namely, Honorable Alexander Akerman. Judge Ritter, however, prior to the appointment of such receivers, telegraphed Judge Akerman, requesting him to appoint the aforesaid Eaton and Stearns as receivers in said case, which appointments were made by Judge Akerman. Thereafter the United States Circuit Court of Appeals for the Fifth Circuit reversed the order of Judge Akerman, appointing said Eaton and Stearns as receivers in said case. In November 1932, J.H. Therrell, as liquidator, filed a bill of complaint in the Circuit Court of Dade County, Florida—a court of the State of Florida—alleging that the various trust properties of the Trust Company of Florida were burdensome to the liquidator to keep, and asking that the court appoint a succeeding trustee. Upon petition for removal of said cause from said State court into the United States District Court for the Southern District of Florida, Judge Ritter took jurisdiction, notwithstanding the previous rulings of the United States Circuit Court of Appeals above referred to, and again appointed the said Eaton and Stearns as the receivers of the said trust properties. In December 1932 the said Therrell surrendered all of the trust properties to said Eaton and Stearns as receivers, together with all records of the Trust Company of Florida pertaining thereto. During the time said Eaton and Stearns, as such receivers, were in control of said trust

properties, Judge Ritter wrongfully and improperly approved their accounts without notice or opportunity for objection thereto to be heard.

With the knowledge of Judge Ritter, said receivers appointed the sister-in-law of Judge Ritter, namely, Mrs. G.M. Wickard, who had had no previous hotel-management experience, to be manager of the Julia Tuttle Hotel and Apartment Building, one of said trust properties. On, to wit, January 1, 1933, Honorable J.M. Lee succeeded Honorable Ernest Amos as comptroller of the State of Florida and appointed M.A. Smith liquidator in said Trust Company of Florida cases to succeed J.H. Therrell. An appeal was again taken to the United States Circuit Court of Appeals for the Fifth Circuit from the then latest order or decree of Judge Ritter, and again the order or decree of Judge Ritter appealed from was reversed by the said circuit court of appeals which held that the State officer was entitled to the custody of the property involved and that said Eaton and Stearns as receivers were not entitled to such custody. Thereafter, and with the knowledge of the decision of the said circuit court of appeals, Judge Ritter wrongfully and improperly allowed said Eaton and Stearns and their attorneys some \$26,000 as fees out of said trust-estate properties and endeavored to require, as a condition precedent to releasing said trust properties from the control of his court, a promise from counsel for the said State liquidator not to appeal from his order allowing the said fees to said Eaton and Stearns and their attorneys.

3. In that the said Halsted L. Ritter, while such Federal judge, accepted, in addition to \$4,500 from his former law

partner as alleged in article I hereof other large fees or gratuities, to wit, \$7,500 from J.R. Francis, on or about April 19, 1929, J.R. Francis at this time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge; and on, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of \$2,000 from Brodek, Raphael and Eisner, representing Mulford Realty Corporation, as its attorneys, through Charles A. Brodek, senior member of said firm and a director of said corporation, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holding being within the territorial jurisdiction of the United States District Court of which Judge Ritter was a judge from, to wit, February 15, 1929.

4. By his conduct as detailed in articles I, II, III, and IV hereof, and by his income-tax evasions as set forth in articles V and VI hereof.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office.

### ***Cumulative and Duplicatory Articles of Impeachment***

#### **§ 3.3 Majority views and minority views were included in the report of the Committee on the Judiciary recommending the impeach-**

#### **ment of President Richard M. Nixon, such views relating to Article II, containing an accumulation of acts constituting a course of conduct.**

On Aug. 20, 1974, the Committee on the Judiciary recommended in its final report to the House, pursuant to its inquiry into charges of impeachable offenses against President Nixon, three articles of impeachment. Article II charged that the President had "repeatedly engaged in conduct" violative of his Presidential oath and of his constitutional duty to take care that the laws be faithfully executed. The article set forth, in five separate paragraphs, five patterns of conduct constituting the offenses charged.

The conclusion of the committee's report on Article II read in part as follows:

In recommending Article II to the House, the Committee finds clear and convincing evidence that Richard M. Nixon, contrary to his trust as President and unmindful of the solemn duties of his high office, has repeatedly used his power as President to violate the Constitution and the law of the land.

In so doing, he has failed in the obligation that every citizen has to live under the law. But he has done more, for it is the duty of the President not merely to live by the law but to see that law faithfully applied. Richard M. Nixon has repeatedly and willfully

failed to perform that duty. He has failed to perform it by authorizing and directing actions that violated or disregarded the rights of citizens and that corrupted and attempted to corrupt the lawful functioning of executive agencies. He has failed to perform it by condoning and ratifying, rather than acting to stop, actions by his subordinates that interfered with lawful investigations and impeded the enforcement of the laws. . . .

The conduct of Richard M. Nixon has constituted a repeated and continuing abuse of the powers of the Presidency in disregard of the fundamental principle of the rule of law in our system of government. This abuse of the powers of the President was carried out by Richard M. Nixon, acting personally and through his subordinates, for his own political advantage, not for any legitimate governmental purpose and without due consideration for the national good. . . .

The Committee has concluded that, to perform its constitutional duty, it must approve this Article of Impeachment and recommend it to the House. If we had been unwilling to carry out the principle that all those who govern, including ourselves, are accountable to the law and the Constitution, we would have failed in our responsibility as representatives of the people elected under the Constitution. If we had not been prepared to apply the principle of Presidential accountability embodied in the impeachment clause of the Constitution, but had instead condoned the conduct of Richard M. Nixon, then another President, perhaps with a different political philosophy, might have used this illegitimate power for further encroachments on the rights of citizens

and further usurpations of the power of other branches of our government. By adopting this Article, the Committee seeks to prevent the recurrence of any such abuse of Presidential power.

The Committee finds that, in the performance of his duties as President, Richard M. Nixon on many occasions has acted to the detriment of justice, right, and the public good, in violation of his constitutional duty to see to the faithful execution of the laws. This conduct has demonstrated a contempt for the rule of law; it has posed a threat to our democratic republic. The Committee finds that this conduct constitutes “high crimes and misdemeanors” within the meaning of the Constitution, that it warrants his impeachment by the House, and that it requires that he be put to trial in the Senate.<sup>(11)</sup>

Opposing minority views were included in the report on the “duplicity” of offenses charged in Article II. The views (footnotes omitted) below are those of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorhead, Maraziti, and Latta:

Our opposition to the adoption of Article II should not be misunderstood as condonation of the presidential conduct alleged therein. On the contrary, we

11. H. REPT. No. 93-1305, at pp. 180-183, Committee on the Judiciary, printed in the Record at 120 CONG. REC. 29270, 29271, 93d Cong. 2d Sess., Aug. 20, 1974. For complete text of H. REPT. No. 93-1305, see *id.* at pp. 29219-361.

deplore in strongest terms the aspects of presidential wrongdoing to which the Article is addressed. However, we could not in conscience recommend that the House impeach and the Senate try the President on the basis of Article II in its form as proposed, because in our view the Article is duplicitous in both the ordinary and the legal senses of the word. In common usage, duplicity means belying one's true intentions by deceptive words; as a legal term of art, duplicity denotes the technical fault of uniting two or more offenses in the same count of an indictment. We submit that the implications of a vote for or against Article II are ambiguous and that the Committee debate did not resolve the ambiguities so as to enable the Members to vote intelligently. Indeed, this defect is symptomatic of a generic problem inherent in the process of drafting Articles of impeachment, and its significance for posterity may be far greater than the substantive merits of the particular charges embodied in Article II. . . .

We do not take the position that the grouping of charges in a single Article is necessarily always invalid. To the contrary, it would make good sense if the alleged offenses together comprised a common scheme or plan, or even if they were united by a specific legal theory. Indeed, even if there were no logical reason at all for so grouping the charges (as is true of Article II), the Article might still be acceptable if its ambiguous aspects had been satisfactorily resolved. For the chief vice of this Article is that it is unclear from its language whether a Member should vote for its adoption if he believes any one of the five charges to be supported

by the evidence; or whether he must believe in the sufficiency of all five; or whether it is enough if he believes in the sufficiency of more than half of the charges. The only clue is the sentence which states, "This conduct has included one or more of the following [five specifications]". This sentence implies that a Member may—indeed, must—vote to impeach or to convict if he believes in the sufficiency of a single specification, even though he believes that the accusations made under the other four specifications have not been proved, or do not even constitute grounds for impeachment. Thus Article II would have unfairly accumulated all guilty votes against the President, on whatever charge. The President could have been removed from office even though no more than fourteen Senators believed him guilty of the acts charged in any one of the five specifications.

Nor could the President have defended himself against the ambiguous charges embodied in Article II. Inasmuch as five specifications are included in support of three legal theories, and all eight elements are phrased in the alternative, Article II actually contains no fewer than fifteen separate counts, any one of which might be deemed to constitute grounds for impeachment and removal. In addition, if the President were not informed which matters included in Article II were thought to constitute "high Crimes and Misdemeanors," he would have been deprived of his right under the Sixth Amendment to "be informed of the nature and cause of the accusation" against him.

This defect of Article II calls to mind the impeachment trial of Judge Halsted Ritter in 1936. Ritter was nar-

rowly acquitted of specific charges of bribery and related offenses set forth in the first six Articles. He was convicted by an exact two-thirds majority, however, under Article VII. That Article charged that because of the specific offenses embodied in the other six Articles, Ritter had “[brought] his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice. . . .” The propriety of convicting him on the basis of this vague charge, after he had been acquitted on all of the specific charges, will long be debated. Suffice it to say that the putative defect of Article VII is entirely different from that of Article II in the present case, and the two should not be confused.

A more relevant precedent may be found in the House debates during the impeachment of Judge Charles Swayne in 1905. In that case the House had followed the earlier practice of voting first on the general question of whether or not to impeach, and then drafting the Articles. Swayne was impeached in December 1904, by a vote of 198–61, on the basis of five instances of misconduct. During January 1905 these five grounds for impeachment were articulated in twelve Articles. In the course of debate prior to the adoption of the Articles, it was discovered that although the general proposition to impeach had commanded a majority, individual Members had reached that conclusion for different reasons. This gave rise to the embarrassing possibility that none of the Articles would be able to command a majority vote. Representative Parker regretted that the House had not voted on each charge separately before voting on impeachment:

[W]here different crimes and misdemeanors were alleged it was the duty of the House to have voted whether each class of matter reported was impeachable before debating that resolution of impeachment, and that the committee was entitled to the vote of a majority on each branch, and that now for the first time the real question of impeachment has come before this House to be determined—not by five men on one charge, fifteen on another, and twenty on another coming in generally and saying that for one or another of the charges Judge Swayne should be impeached, but on each particular branch of the case.

When we were asked to vote upon ten charges at once, that there was something impeachable contained in one or another of those charges we have already perhaps stultified ourselves in the mode of our procedure. . . .

In order to extricate the House from its quandary, Representative Powers urged that the earlier vote to impeach should be construed to imply that a majority of the House felt that each of the separate charges had been proved;

At that time the committee urged the impeachment upon five grounds, and those are the only grounds which are covered by the articles . . . and we had assumed that when the House voted the impeachment they practically said that a probable cause was made out in these five subject-matters which were discussed before the House.

Powers’ retrospective theory was ultimately vindicated when the House approved all twelve Articles.

If the episode from the Swayne impeachment is accorded any precedential value in the present controversy over Article II, it might be argued by analogy that the Committee’s vote to

adopt that Article must be construed to imply that a majority believed that all five specifications had been proved. Because the Committee did not vote separately on each specification, however, it is impossible to know whether those Members who voted for Article II would be willing to accept that construction. If so, then one of our major objections to the Article would vanish. However, it would still be necessary to amend the Article by removing the sentence "This has included one or more of the following," and substituting language which would make it plain that no Member of the House or Senate could vote for the Article unless he was convinced of the independent sufficiency of each of the five specifications.

However, there remains another and more subtle objection to the lumping together of unrelated charges in Article II:

There is indeed always a danger when several crimes are tied together, that the jury will use the evidence cumulatively; that is, that although so much as would be admissible upon any one of the charges might not have persuaded them of the accused's guilt, the sum of it will convince them as to all.

It is thus not enough protection for an accused that the Senate may choose to vote separately upon each section of an omnibus article of impeachment: the prejudicial effect of grouping a diverse mass of factual material under one heading, some of it adduced to prove one proposition and another to prove a proposition entirely unrelated, would still remain.<sup>(12)</sup>

12. H. REPT. NO. 93-1305, at pp. 427-431, Committee on the Judiciary,

**§ 3.4 The Senate, sitting as a Court of Impeachment, rejected a motion to strike articles of impeachment on the ground that certain articles were duplicatory and accumulative.**

On Apr. 3, 1936,<sup>(13)</sup> Judge Halsted L. Ritter, respondent in an impeachment trial, moved in the Senate to strike certain articles on the grounds of duplication and accumulation of charges.

The motion as duly filed by counsel for the respondent is as follows:

In the Senate of the United States of America sitting as a Court of Impeachment. *The United States of America v. Halsted L. Ritter, respondent*

MOTION TO STRIKE ARTICLE I, OR, IN THE ALTERNATIVE, TO REQUIRE ELECTION AS TO ARTICLES I AND II; AND MOTION TO STRIKE ARTICLE VII

The respondent, Halsted L. Ritter, moves the honorable Senate, sitting as a Court of Impeachment, for an order striking and dismissing article I of the articles of impeachment, or, in the alternative, to require the honorable managers on the part of the House of Representatives to elect as to whether they will proceed upon article I or

printed in the Record at 120 CONG. REC. 29332-34, 93d Cong. 2d Sess., Aug. 20, 1974.

13. 80 CONG. REC. 4898, 74th Cong. 2d Sess. The motion was submitted on Mar. 31, 1936, 80 CONG. REC. 4656, 4657, and reserved for decision.

upon article II, and for grounds of such motion respondent says:

1. Article II reiterates and embraces all the charges and allegations of article I, and the respondent is thus and thereby twice charged in separate articles with the same and identical offense, and twice required to defend against the charge presented in article I.

2. The presentation of the same and identical charge in the two articles in question tends to prejudice the respondent in his defense, and tends to oppress the respondent in that the articles are so framed as to collect, or accumulate upon the second article, the adverse votes, if any, upon the first article.

3. The Constitution of the United States contemplates but one vote of the Senate upon the charge contained in each article of impeachment, whereas articles I and II are constructed and arranged in such form and manner as to require and exact of the Senate a second vote upon the subject matter of article I.

MOTION TO STRIKE ARTICLE VII

And the respondent further moves the honorable Senate, sitting as a Court of Impeachment, for an order striking and dismissing article VII, and for grounds of such motion, respondent says:

1. Article VII includes and embraces all the charges set forth in articles I, II, III, IV, V, and VI.

2. Article VII constitutes an accumulation and massing of all charges in preceding articles upon which the Court is to pass judgment prior to the vote on article VII, and the prosecution

should be required to abide by the judgment of the Senate rendered upon such prior articles and the Senate ought not to countenance the arrangement of pleading designed to procure a second vote and the collection or accumulation of adverse votes, if any, upon such matters.

3. The presentation in article VII of more than one subject and the charges arising out of a single subject is unjust and prejudicial to respondent.

4. In fairness and justice to respondent, the Court ought to require separation and singleness of the subject matter of the charges in separate and distinct articles, upon which a single and final vote of the Senate upon each article and charge can be had.

FRANK P. WALSH,  
CARL T. HOFFMAN,  
*Of Counsel for Respondent.*

Presiding Officer Nathan L. Bachman, of Tennessee, overruled that part of the motion to strike relating to Articles I and II, finding that those articles presented distinct and different bases for impeachment. This ruling was sustained. With respect to the application of the motion to Article VII, the Presiding Officer submitted the question of duplication to the Court of Impeachment for a decision. The motion to strike Article VII was overruled on a voice vote.<sup>(14)</sup>

**§ 3.5 During the Ritter impeachment trial in the Sen-**

14. For a summary of the arguments by counsel on the motions, and citations thereto, see § 18.12, *infra*.

**ate, the President pro tempore overruled a point of order against a vote of conviction on the seventh article, where the point of order was based on an accumulation or combination of facts and circumstances.**

On Apr. 17, 1936, President pro tempore Key Pittman, of Nevada, stated that the Senate had by a two-thirds vote adjudged the respondent Judge Halsted L. Ritter guilty as charged in Article VII of the articles of impeachment. He overruled a point of order against the vote, as follows:

MR. [WARREN R.] AUSTIN [of Vermont]: The first reason for the point of order is that here is a combination of facts in the indictment, the ingredients of which are the several articles which precede article VII, as seen by paragraph marked 4 on page 36. The second reason is contained in the Constitution of the United States, which provides that no person shall be convicted without the concurrence of two-thirds of the members present. The third reason is that this matter has been passed upon judicially, and it has been held that an attempt to convict upon a combination of circumstances—

MR. [GEORGE] MCGILL, [of Kansas]: Mr. President, a parliamentary inquiry.

MR. AUSTIN: Of which the respondent has been found innocent would be monstrous. I refer to the case of *Andrews v. King* (77 Maine, 235). . . .

THE PRESIDENT PRO TEMPORE: A point of order is made as to article VII, in which the respondent is charged with general misbehavior. It is a separate charge from any other charge, and the point of order is overruled.<sup>(15)</sup>

### *Use of Historical Precedents*

**§ 3.6 With respect to the conduct of President Richard Nixon, the impeachment inquiry staff of the Committee on the Judiciary reported to the committee on "Constitutional Grounds for Presidential Impeachment," which included references to the value of historical precedents.**

During an inquiry into impeachable offenses against President Nixon in the 93d Congress by the Committee on the Judiciary, the committee's impeachment inquiry staff reported to the committee on grounds for impeachment of the President. The report discussed in detail the historical bases and origins, in both English parliamentary practice and in the practice of the U.S. Congress, of the impeachment power, and drew conclusions as to the grounds for impeachment of the President and of other federal civil officers from the history of impeachment proceedings

15. 80 CONG. REC. 5606, 74th Cong. 2d Sess.



and from the history of the U.S. Constitution.<sup>(16)</sup>

***Grounds for Presidential Impeachment***

**§ 3.7 The Committee on the Judiciary concluded, in recommending articles impeaching President Richard Nixon to the House, that the President could be impeached not only for violations of federal criminal statutes, but also for (1) serious abuse of the powers of his office, and (2) refusal to comply with proper subpoenas of the committee for evidence relevant to its impeachment inquiry.**

In its final report to the House pursuant to its impeachment inquiry into the conduct of President Nixon in the 93d Congress, the Committee on the Judiciary set forth the following conclusions (footnotes omitted) on the three articles of impeachment adopted by the committee and included in its report:<sup>(17)</sup>

- 16. The report is printed in full in the appendix to this chapter, *infra*. The staff report was printed as a committee print, and the House authorized on June 6, 1974, the printing of 3,000 additional copies thereof. H. Res. 935, 93d Cong. 2d Sess.
- 17. H. REPT. No. 93-1305, at pp. 133 et seq., Committee on the Judiciary.

[ARTICLE I]

CONCLUSION

After the Committee on the Judiciary had debated whether or not it should recommend Article I to the House of Representatives, 27 of the 38 Members of the Committee found that the evidence before it could only lead to one conclusion; that 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 the unlawful entry, on June 17, 1972, into the headquarters of the Democratic National Committee; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

This finding is the only one that can explain the President's involvement in a pattern of undisputed acts that occurred after the break-in and that cannot otherwise be rationally explained.

President Nixon's course of conduct following the Watergate break-in, as described in Article I, caused action not only by his subordinates but by the agencies of the United States, including the Department of Justice, the FBI, and the CIA. It required perjury, destruction of evidence, obstruction of justice, all crimes. But, most important, it required deliberate, contrived, and continuing deception of the American people.

See the articles and conclusions printed in the Record in full at 120 CONG. REC. 29219-79, 93d Cong. 2d Sess., Aug. 20, 1974.

President Nixon's actions resulted in manifest injury to the confidence of the nation and great prejudice to the cause of law and justice, and was subversive of constitutional government. His actions were contrary to his trust as President and unmindful of the solemn duties of his high office. It was this serious violation of Richard M. Nixon's constitutional obligations as President, and not the fact that violations of Federal criminal statutes occurred, that lies at the heart of Article I.

The Committee finds, based upon clear and convincing evidence, that this conduct, detailed in the foregoing pages of this report, constitutes "high crimes and misdemeanors" as that term is used in Article II, Section 4 of the Constitution. Therefore, the Committee recommends that the House of Representatives exercise its constitutional power to impeach Richard M. Nixon.

On August 5, 1974, nine days after the Committee had voted on Article I, President Nixon released to the public and submitted to the Committee on the Judiciary three additional edited White House transcripts of Presidential conversations that took place on June 23, 1972, six days following the DNC break-in. Judge Sirica had that day released to the Special Prosecutor transcripts of those conversations pursuant to the mandate of the United States Supreme Court. The Committee had subpoenaed the tape recordings of those conversations, but the President had refused to honor the subpoena.

These transcripts conclusively confirm the finding that the Committee had already made, on the basis of clear and convincing evidence, that from shortly after the break-in on June 17,

1972, Richard M. Nixon, acting personally and through his subordinates and agents, made it his plan to and did direct his subordinates to engage in a course of conduct designed to delay, impede and obstruct investigation of the unlawful entry of the headquarters of the Democratic National Committee; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities. . . .

[ARTICLE II]

CONCLUSION

In recommending Article II to the House, the Committee finds clear and convincing evidence that Richard M. Nixon, contrary to his trust as President and unmindful of the solemn duties of his high office, has repeatedly used his power as President to violate the Constitution and the law of the land.

In so doing, he has failed in the obligation that every citizen has to live under the law. But he has done more, for it is the duty of the President not merely to live by that law but to see that law faithfully applied. Richard M. Nixon has repeatedly and willfully failed to perform that duty. He has failed to perform it by authorizing and directing actions that violated or disregarded the rights of citizens and that corrupted and attempted to corrupt the lawful functioning of executive agencies. He has failed to perform it by condoning and ratifying, rather than acting to stop, actions by his subordinates that interfered with lawful investigations and impeded the enforcement of the laws.

Article II, section 3 of the Constitution requires that the President "shall

take Care that the Laws be faithfully executed." Justice Felix Frankfurter described this provision as "the embracing function of the President"; President Benjamin Harrison called it "the central idea of the office." "[I]n a republic," Harrison wrote, "the thing to be executed is the law, not the will of the ruler as in despotic governments. The President cannot go beyond the law, and he cannot stop short of it."

The conduct of Richard M. Nixon has constituted a repeated and continuing abuse of the powers of the Presidency in disregard of the fundamental principle of the rule of law in our system of government. This abuse of the powers of the President was carried out by Richard M. Nixon, acting personally and through his subordinates, for his own political advantage, not for any legitimate governmental purpose and without due consideration for the national good.

The rule of law needs no defense by the Committee. Reverence for the laws, said Abraham Lincoln, should "become the political religion of the nation." Said Theodore Roosevelt, "No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it."

It is a basic principle of our government that "we submit ourselves to rulers only if [they are] under rules." "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen," wrote Justice Louis Brandeis. The Supreme Court has said:

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers

of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations upon the exercise of the authority which it gives.

Our nation owes its strength, its stability, and its endurance to this principle.

In asserting the supremacy of the rule of law among the principles of our government, the Committee is enunciating no new standard of Presidential conduct. The possibility that Presidents have violated this standard in the past does not diminish its current—and future—applicability. Repeated abuse of power by one who holds the highest public office requires prompt and decisive remedial action, for it is in the nature of abuses of power that if they go unchecked they will become overbearing, depriving the people and their representatives of the strength of will or the wherewithal to resist.

Our Constitution provides for a responsible Chief Executive, accountable for his acts. The framers hoped, in the words of Elbridge Gerry, that "the maxim would never be adopted here that the chief Magistrate could do no wrong." They provided for a single executive because, as Alexander Hamilton wrote, "the executive power is more easily confined when it is one" and "there should be a single object for the . . . watchfulness of the people."

The President, said James Wilson, one of the principal authors of the Con-

stitution, "is the dignified, but accountable magistrate of a free and great people." Wilson said, "The executive power is better to be trusted when it has no screen. . . . [W]e have a responsibility in the person of our President . . . he cannot roll upon any other person the weight of his criminality. . . ." As both Wilson and Hamilton pointed out, the President should not be able to hide behind his counsellors; he must ultimately be accountable for their acts on his behalf. James Iredell of North Carolina, a leading proponent of the proposed Constitution and later a Supreme Court Justice, said that the President "is of a very different nature from a monarch. He is to be . . . personally responsible for any abuse of the great trust reposed in him."

In considering this Article the Committee has relied on evidence of acts directly attributable to Richard M. Nixon himself. He has repeatedly attempted to conceal his accountability for these acts and attempted to deceive and mislead the American people about his own responsibility. He governed behind closed doors, directing the operation of the executive branch through close subordinates, and sought to conceal his knowledge of what they did illegally on his behalf. Although the Committee finds it unnecessary in this case to take any position on whether the President should be held accountable, through exercise of the power of impeachment, for the actions of his immediate subordinates, undertaken on his behalf, when his personal authorization and knowledge of them cannot be proved, it is appropriate to call attention to the dangers inherent in the performance of the highest pub-

lic office in the land in air of secrecy and concealment.

The abuse of a President's powers poses a serious threat to the lawful and proper functioning of the government and the people's confidence in it. For just such Presidential misconduct the impeachment power was included in the Constitution. The impeachment provision, wrote Justice Joseph Story in 1833, "holds out a deep and immediate responsibility, as a check upon arbitrary power; and compels the chief magistrate, as well as the humblest citizen, to bend to the majesty of the law." And Chancellor James Kent wrote in 1826:

If . . . neither the sense of duty, the force of public opinion, nor the transitory nature of the seat, are sufficient to secure a faithful exercise of the executive trust, but the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives can arrest him in his career, by resorting to the power of impeachment.

The Committee has concluded that, to perform its constitutional duty, it must approve this Article of Impeachment and recommend it to the House. If we had been unwilling to carry out the principle that all those who govern, including ourselves, are accountable to the law and the Constitution, we would have failed in our responsibility as representatives of the people, elected under the Constitution. If we had not been prepared to apply the principle of Presidential accountability embodied in the impeachment clause of the Constitution, but had instead condoned the conduct of Richard M. Nixon, then another President, perhaps with a different political philos-

ophy, might have used this illegitimate power for further encroachments on the rights of citizens and further usurpations of the power of other branches of our government. By adopting this Article, the Committee seeks to prevent the recurrence of any such abuse of Presidential power.

In recommending Article II to the House, the Committee finds clear and convincing evidence that Richard M. Nixon has not faithfully executed the executive trust, but has repeatedly used his authority as President to violate the Constitution and the law of the land. In so doing, he violated the obligation that every citizen has to live under the law. But he did more, for it is the duty of the President not merely to live by the law but to see that law faithfully applied. Richard M. Nixon repeatedly and willfully failed to perform that duty. He failed to perform it by authorizing and directing actions that violated the rights of citizens and that interfered with the functioning of executive agencies. And he failed to perform it by condoning and ratifying, rather than acting to stop, actions by his subordinates interfering with the enforcement of the laws.

The Committee finds that, in the performance of his duties as President, Richard M. Nixon on many occasions has acted to the detriment of justice, right, and the public good, in violation of his constitutional duty to see to the faithful execution of the laws. This conduct has demonstrated a contempt for the rule of law; it has posed a threat to our democratic republic. The Committee finds that this conduct constitutes "high crimes and misdemeanors" within the meaning of the Constitution, that it warrants his im-

peachment by the House, and that it requires that he be put to trial in the Senate. . . .

[ARTICLE III]

CONCLUSION

The undisputed facts, historic precedent, and applicable legal principles support the Committee's recommendation of Article III. There can be no question that in refusing to comply with limited, narrowly drawn subpoenas—issued only after the Committee was satisfied that there was other evidence pointing to the existence of impeachable offenses—the President interfered with the exercise of the House's function as the "Grand Inquest of the Nation." Unless the defiance of the Committee's subpoenas under these circumstances is considered grounds for impeachment, it is difficult to conceive of any President acknowledging that he is obligated to supply the relevant evidence necessary for Congress to exercise its constitutional responsibility in an impeachment proceeding. If this were to occur, the impeachment power would be drained of its vitality. Article III, therefore, seeks to preserve the integrity of the impeachment process itself and the ability of Congress to act as the ultimate safeguard against improper presidential conduct.<sup>(18)</sup>

18. H. REPT. NO. 93-1305, at p. 213, Committee on the Judiciary. See 120 CONG. REC. 29279, 93d Cong. 2d Sess., Aug. 20, 1974.

See also, for the subpoena power of a committee conducting an impeachment investigation, §6, *infra*. The House has declined to prosecute for

**§ 3.8 In the report of the Committee on the Judiciary recommending the impeachment of President Richard Nixon, the minority took the view that grounds for Presidential impeachment must be criminal conduct or acts with criminal intent.**

On Aug. 20, 1974, the Committee on the Judiciary submitted a report recommending the impeachment of President Nixon. In the minority views set out below (footnotes omitted), Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorhead, Maraziti, and Latta discussed the grounds for presidential impeachment:<sup>(19)</sup>

B. MEANING OF "TREASON, BRIBERY OR OTHER HIGH CRIMES AND MISDEMEANORS"

The Constitution of the United States provides that the President "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Upon impeachment and conviction, removal of the President from office is mandatory.

contempt of Congress officers charged with impeachable offenses and refusing to comply with subpoenas (see § 6.12, *infra*).

19. H. REPT. NO. 93-1305, at pp. 362372, Committee on the Judiciary, printed at 120 CONG. REC. 29312-15, 93d Cong. 2d Sess., Aug. 20, 1974.

The offenses for which a President may be impeached are limited to those enumerated in the Constitution, namely "Treason, Bribery, or other high Crimes and Misdemeanors." We do not believe that a President or any other civil officer of the United States government may constitutionally be impeached and convicted for errors in the administration of his office.

1. ADOPTION OF "TREASON, BRIBERY, OR OTHER HIGH CRIMES AND MISDEMEANORS" AT CONSTITUTIONAL CONVENTION

The original version of the impeachment clause at the Constitutional Convention of 1787 had made "malpractice or neglect of duty" the grounds for impeachment. On July 20, 1787, the Framers debated whether to retain this clause, and decided to do so.

Gouverneur Morris, who had moved to strike the impeachment clause altogether, began by arguing that it was unnecessary because the executive "can do no *criminal act* without Coadjutors who may be punished." George Mason disagreed, arguing that "When great *crimes* were committed he [favored] punishing the principal as well as the Coadjutors." Fearing recourse to assassinations, Benjamin Franklin favored impeachment "to provide in the Constitution for the regular *punishment* of the executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused." Gouverneur Morris then admitted that "corruption & some few other offenses" should be impeachable, but thought "the case ought to be enumerated & defined."

Rufus King, a co-sponsor of the motion to strike the impeachment clause,

pointed out that the executive, unlike the judiciary, did not hold his office during good behavior, but during a fixed, elective term; and accordingly ought not to be impeachable, like the judiciary, for “misbehaviour:” this would be “destructive of his independence and of the principles of the Constitution.” Edmund Randolph, however, made a strong statement in favor of retaining the impeachment clause:

Guilt wherever found ought to be *punished*. The Executive will have great opportunitys of abusing his power, particularly in time of war when the military force, and in some respects the public money will be in his hands.

. . . He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration . . . requiring some preliminary inquest of whether just grounds for impeachment existed.

Benjamin Franklin again suggested the role of impeachments in releasing tensions, using an example from international affairs involving a secret plot to cause the failure of a rendezvous between the French and Dutch fleets—an example suggestive of treason. Gouverneur Morris, his opinion now changed by the discussion, closed the debate on a note echoing the position of Randolph:

Our Executive . . . may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst. it by displacing him. . . . The Executive ought therefore to be impeachable for treachery; Cor-

rupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. . . . When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

On the question, “Shall the Executive be removable on impeachments,” the proposition then carried by a vote of eight states to two.

A review of this debate hardly leaves the impression that the Framers intended the grounds for impeachment to be left to the discretion, even the “sound” discretion, of the legislature. On a fair reading, Madison’s notes reveal the Framers’ fear that the impeachment power would render the executive dependent on the legislature. The concrete examples used in the debate all refer not only to crimes, but to extremely grave crimes. George Mason mentioned the possibility that the President would corrupt his own electors and then “repeat his guilt,” and described grounds for impeachment as “the most extensive injustice.” Franklin alluded to the beheading of Charles I, the possibility of assassination, and the example of the French and Dutch fleets, which connoted betrayal of a national interest. Madison mentioned the “perversion” of an “administration into a scheme of speculation or oppression,” or the “betrayal” of the executive’s “trust to foreign powers.” Edmund Randolph mentioned the great opportunities for abuse of the executive power, “particularly in time of war when the military force, and in some respects the public money will be in his hands.” He cautioned against “tu-

mults & insurrections.” Gouverneur Morris similarly contemplated that the executive might corrupt his own electors, or “be bribed by a greater interest to betray his trust”—just as the King of England had been bribed by Louis XIV—and felt he should therefore be impeachable for “treachery.”

After the July 20 vote to retain the impeachment clause, the resolution containing it was referred to the Committee on Detail, which substituted “treason, bribery or corruption” for “malpractice or neglect of duty.” No surviving records explain the reasons for the change, but they are not difficult to understand, in light of the floor discussion just summarized. The change fairly captured the sense of the July 20 debate, in which the grounds for impeachment seem to have been such acts as would either cause danger to the very existence of the United States, or involve the purchase and sale of the “Chief of Magistracy,” which would tend to the same result. It is *not* a fair summary of this debate—which is the only surviving discussion of any length by the Framers as to the grounds for impeachment—to say that the Framers were principally concerned with reaching a course of conduct whether or not criminal, generally inconsistent with the proper and effective exercise of the office of the presidency. They were concerned with preserving the government from being overthrown by the treachery or corruption of one man. Even in the context of that purpose, they steadfastly reiterated the importance of putting a check on the legislature’s use of power and refused to expand the narrow definition they had given to treason in the Constitution. They saw punishment as

a significant purpose of impeachment. The changes in language made by the Committee on Detail can be taken to reflect a consensus of the debate that (1) impeachment would be the proper remedy where grave crimes had been committed, and (2) adherence to this standard would satisfy the widely recognized need for a check on potential excesses of the impeachment power itself.

The impeachment clause, as amended by the Committee on Detail to refer to “treason, bribery or corruption,” was reported to the full Convention on August 6, 1787, as part of the draft constitution. Together with other sections, it was referred to the Committee of Eleven on August 31. This Committee further narrowed the grounds to “treason or bribery,” while at the same time substituting trial by the Senate for trial by the Supreme Court, and requiring a two-thirds vote to convict. No surviving records explain the purpose of this change. The mention of “corruption” may have been thought redundant, in view of the provision for bribery. Or, corruption might have been regarded by the Committee as too broad, because not a well-defined crime. In any case, the change limited the grounds for impeachment to two clearly understood and enumerated crimes.

The revised clause, containing the grounds “treason and bribery,” came before the full body again on September 8, late in the Convention. George Mason moved to add to the enumerated grounds for impeachment. Madison’s Journal reflects the following exchange:

COL. MASON. Why is the provision restrained to Treason & bribery



only? Treason as defined in the Constitution will not reach many great and dangerous offenses. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined—as bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He movd. to add after “bribery” “or maladministration.” Mr. Gerry seconded him—

MR. MADISON. So vague a term will be equivalent to a tenure during pleasure of the Senate.

MR. GOVR. MORRIS., it will not be put in force & can do no harm—An election of every four years will prevent maladministration.

Col. Mason withdrew “maladministration” & substitutes “other high crimes and misdemeanors” agst. the State.

On the question thus altered, the motion of Colonel Mason passed by a vote of eight states to three.

Madison’s notes reveal no debate as to the meaning of the phrase “other high Crimes and Misdemeanors.” All that appears is that Mason was concerned with the narrowness of the definition of treason; that his purpose in proposing “maladministration” was to reach *great* and *dangerous* offenses; and that Madison felt that “maladministration,” which was included as a ground for impeachment of public officials in the constitutions of six states, including his own, would be too “vague” and would imperil the independence of the President.

It is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government estab-

lished by the Constitution. Absent the element of danger to the State, we believe the Delegates to the Federal Convention of 1787, in providing that the President should serve for a fixed elective term rather than during good behavior or popularity, struck the balance in favor of stability in the executive branch. We have never had a British parliamentary system in this country, and we have never adopted the device of a parliamentary vote of no-confidence in the chief executive. If it is thought desirable to adopt such a system of government, the proper way to do so is by amending our written Constitution—not by removing the President.

## 2. ARE “HIGH CRIMES AND MISDEMEANORS” NON-CRIMINAL?

### a. *Language of the Constitution*

The language of the Constitution indicates that impeachment can lie only for serious criminal offenses.

First, of course, treason and bribery were indictable offenses in 1787, as they are now. The words “crime” and “misdemeanor”, as well, both had an accepted meaning in the English law of the day, and referred to criminal acts. Sir William Blackstone’s *Commentaries on the Laws of England*, (1771), which enjoyed a wide circulation in the American colonies, defined the terms as follows:

I. A crime, or misdemeanor is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms: though, in common usage, the word “crimes” is made to denote

such offenses as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of "misdemeanors" only.

Thus, it appears that the word "misdemeanor" was used at the time Blackstone wrote, as it is today, to refer to less serious crimes.

Second, the use of the word "other" in the phrase "Treason, Bribery or other high Crimes and Misdemeanors" seems to indicate that high Crimes and Misdemeanors had something in common with Treason and Bribery—both of which are, of course, serious *criminal* offenses threatening the integrity of government.

Third, the extradition clause of the Articles of Confederation (1781), the governing instrument of the United States prior to the adoption of the Constitution, had provided for extradition from one state to another of any person charged with "treason, felony or *other* high misdemeanor." If "high misdemeanor" had something in common with treason and felony in this clause, so as to warrant the use of the word "other," it is hard to see what it could have been except that all were regarded as serious crimes. Certainly it would not have been contemplated that a person could be extradited for an offense which was non-criminal.

Finally, the references to impeachment in the Constitution use the language of the criminal law. Removal from office follows "conviction," when the Senate has "tried" the impeachment. The party convicted is "nevertheless . . . liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." The trial of

all Crimes is by Jury, "except in cases of Impeachment." The President is given power to grant "Pardons for Offenses against the United States, except in Cases of Impeachment."

This constitutional usage, in its totality, strengthens the notion that the words "Crime" and "Misdemeanor" in the impeachment clause are to be understood in their ordinary sense, i.e., as importing criminality. At the very least, this terminology strongly suggests the criminal or quasi-criminal nature of the impeachment process.

#### *b. English impeachment practice*

It is sometimes argued that officers may be impeached for non-criminal conduct, because the origins of impeachment in England in the fourteenth and seventeenth centuries show that the procedure was not limited to criminal conduct in that country.

Early English impeachment practice, however, often involved a straight power struggle between the Parliament and the King. After parliamentary supremacy had been established, the practice was not so open-ended as it had been previously. Blackstone wrote (between 1765 and 1769) that

[A]n impeachment before the Lords by the commons of Great Britain, in parliament, is a prosecution of the *already known and established law*. . . .

The development of English impeachment practice in the eighteenth century is illustrated by the result of the first major nineteenth century impeachment in that country—that of Lord Melville, Treasurer of the Navy, in 1805–1806. Melville was charged with wrongful use of public moneys. Before passing judgment, the House of

Lords requested the formal opinion of the judges upon the following question:

Whether it was lawful for the Treasurer of the Navy, before the passing of the Act 25 Geo. 3rd, c. 31, to apply any sum of money [imprest] to him for navy [sumpsimus] services to any other use whatsoever, public or private, without express authority for so doing; and whether such application by such treasurer would have been a misdemeanor, or punishable by information or indictment?

The judges replied:

It was *not unlawful* for the Treasurer of the Navy before the Act 25 Geo. 3rd, c. 31 . . . to apply any sum of money impressed to him for navy services, to other uses . . . without express authority for so doing, *so as to constitute a misdemeanor punishable by information or indictment.*

Upon this ruling by the judges that Melville had committed no crime, he was acquitted. The case thus strongly suggests that the Lords in 1805 believed an impeachment conviction to require a “misdemeanor punishable by information or indictment.” The case may be taken to cast doubt on the vitality of precedents from an earlier, more turbid political era and to point the way to the Framers’ conception of a valid exercise of the impeachment power in the future. As a matter of policy, as well, it is an appropriate precedent to follow in the latter twentieth century.

The argument that the President should be impeachable for general misbehavior, because some English impeachments do not appear to have involved criminal charges, also takes too little account of the historical fact that the Framers, mindful of the turbulence

of parliamentary uses of the impeachment power, cut back on that power in several respects in adapting it to an American context. Congressional bills of attainder and *ex post facto* laws, which had supplemented the impeachment power in England, were expressly forbidden. Treason was defined in the Constitution—and defined narrowly—so that Congress acting alone could not change the definition, as Parliament had been able to do. The consequences of impeachment and conviction, which in England had frequently meant death, were limited to removal from office and disqualification to hold further federal office. Whereas a majority vote of the Lords had sufficed for conviction, in America a two-thirds vote of the Senate would be required. Whereas Parliament had had the power to impeach private citizens, the American procedure could be directed only against civil officers of the national government. The grounds for impeachment—unlike the grounds for impeachment in England—were stated in the Constitution.

In the light of these modifications, it is misreading history to say that the Framers intended, by the mere approval of Mason’s substitute amendment, to adopt *in toto* the British grounds for impeachment. Having carefully narrowed the definition of treason, for example, they could scarcely have intended that British treason precedents would guide ours.

### *c. American impeachment practice*

The impeachment of President Andrew Johnson is the most important precedent for a consideration of what constitutes grounds for impeachment of a President, even if it has been his-

torically regarded (and probably fairly so) as an excessively partisan exercise of the impeachment power.

The Johnson impeachment was the product of a fundamental and bitter split between the President and the Congress as to Reconstruction policy in the Southern states following the Civil War. Johnson's vetoes of legislation, his use of pardons, and his choice of appointees in the South all made it impossible for the Reconstruction Acts to be enforced in the manner which Congress not only desired, but thought urgently necessary.

On March 7, 1867, the House referred to the Judiciary Committee a resolution authorizing it

to inquire into the *official conduct of Andrew Johnson . . . and to report to this House whether, in their opinion, the said Andrew Johnson, while in said office, has been guilty of acts which were designed or calculated to overthrow or corrupt the government of the United States . . . and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes and misdemeanors, requiring the interposition of the constitutional powers of this House.*

On November 25, 1867, the Committee reported to the full House a resolution recommending impeachment, by a vote of 5 to 4. A minority of the Committee, led by Rep. James F. Wilson of Iowa, took the position that there could be no impeachment because the President had committed no crime:

In approaching a conclusion, we do not fail to recognize two standpoints from which this case can be viewed—the legal and the political.

. . . Judge him politically, we must condemn him. But the day of political impeachments would be a sad one for this country. Political unfitness and incapacity must be tried at the ballot-box, not in the high court of impeachment. A contrary rule might leave to Congress but little time for other business than the trial of impeachments.

. . . [C]rimes and misdemeanors are now demanding our attention. Do these, within the meaning of the Constitution, appear? Rest the case upon political offenses, and we are prepared to pronounce against the President, for such offenses are numerous and grave . . . [yet] we still affirm that the conclusion at which we have arrived is correct.

The resolution recommending impeachment was debated in the House on December 5 and 6, 1867, Rep. George S. Boutwell of Massachusetts speaking for the Committee majority in favor of impeachment, and Rep. Wilson speaking in the negative. Aside from characterization of undisputed facts discovered by the Committee, the only point debated was whether the commission of a crime was an essential element of impeachable conduct by the President. Rep. Boutwell began by saying, "If the theory of the law submitted by the minority of the committee be in the judgment of this House a true theory, then the majority have no case whatsoever." "The country was disappointed, no doubt, in the report of the committee," he continued, "and very likely this House participated in the disappointment, that there was no specific, heinous, novel offense charged upon and proved against the President of the United States." And again, "It may not be possible, by specific charge, to arraign him for this great crime, but is he therefore to escape?"

The House of Representatives answered this question the next day, when the majority resolution recommending impeachment was defeated by a vote of 57 to 108. The issue of impeachment was thus laid to rest for the time being.

Earlier in 1867, the Congress had passed the Tenure-of-Office Act, which took away the President's authority to remove members of his own Cabinet, and provided that violation of the Act should be punishable by imprisonment of up to five years and a fine of up to ten thousand dollars and "shall be deemed a high misdemeanor"—fair notice that Congress would consider violation of the statute an impeachable, as well as a criminal, offense. It was generally known that Johnson's policy toward Reconstruction was not shared by his Secretary of War, Edwin M. Stanton. Although Johnson believed the Tenure-of-Office Act to be unconstitutional, he had not infringed its provisions at the time the 1867 impeachment attempt against him failed by such a decisive margin.

Two and a half months later, however, Johnson removed Stanton from office, in apparent disregard of the Tenure-of-Office Act. The response of Congress was immediate: Johnson was impeached three days later, on February 24, 1868, by a vote of 128 to 47—an even greater margin than that by which the first impeachment vote had failed.

The reversal is a dramatic demonstration that the House of Representatives believed it had to find the President guilty of a crime before impeaching him. The nine articles of impeachment which were adopted against Johnson, on March 2, 1868, all related

to his removal of Secretary Stanton, allegedly in deliberate violation of the Tenure-of-Office Act, the Constitution, and certain other related statutes. The vote had failed less than three months before; and except for Stanton's removal and related matters, nothing in the new Articles charged Johnson with any act committed subsequent to the previous vote.

The only other case of impeachment of an officer of the executive branch is that of Secretary of War William W. Belknap in 1876. All five articles alleged that Belknap "corruptly" accepted and received considerable sums of money in exchange for exercising his authority to appoint a certain person as a military post trader. The facts alleged would have sufficed to constitute the crime of bribery. Belknap resigned before the adoption of the Articles and was subsequently indicted for the conduct alleged.

It may be acknowledged that in the impeachment of federal judges, as opposed to executive officers, the actual commission of a crime does not appear always to have been thought essential. However, the debates in the House and opinions filed by Senators have made it clear that in the impeachments of federal judges, Congress has placed great reliance upon the "good behavior" clause. The distinction between officers tenured during good behavior and elected officers, for purposes of grounds for impeachment, was stressed by Rufus King at the Constitutional Convention of 1787. A judge's impeachment or conviction resting upon "general misbehavior," in whatever degree, cannot be an appropriate guide for the impeachment or conviction of an elected officer serving for a fixed term.

The impeachments of federal judges are also different from the case of a President for other reasons: (1) Some of the President's duties *e.g.*, as chief of a political party, are sufficiently dissimilar to those of the judiciary that conduct perfectly appropriate for him, such as making a partisan political speech, would be grossly improper for a judge. An officer charged with the continual adjudication of disputes labors under a more stringent injunction against the appearance of partisanship than an officer directly charged with the formulation and negotiation of public policy in the political arena—a fact reflected in the adoption of Canons of Judicial Ethics. (2) The phrase “and all civil Officers” was not added until after the debates on the impeachment clause had taken place. The words “high crimes and misdemeanors” were added while the Framers were debating a clause concerned exclusively with the impeachment of the President. There was no discussion during the Convention as to what would constitute impeachable conduct for judges. (3) Finally, the removal of a President from office would obviously have a far greater impact upon the equilibrium of our system of government than the removal of a single federal judge.

*d. The need for a standard: criminal intent*

When the Framers included the power to impeach the President in our Constitution, they desired to “provide some mode that will not make him dependent on the Legislature.” To this end, they withheld from the Congress many of the powers enjoyed by Parliament in England; and they defined the grounds for impeachment in their

written Constitution. It is hardly conceivable that the Framers wished the new Congress to adopt as a starting point the record of all the excesses to which desperate struggles for power had driven Parliament, or to use the impeachment power freely whenever Congress might deem it desirable. The whole tenor of the Framers' discussions, the whole purpose of their many careful departures from English impeachment practice, was in the direction of limits and of standards. An impeachment power exercised without extrinsic and objective standards would be tantamount to the use of bills of attainder and *ex post facto* laws, which are expressly forbidden by the Constitution and are contrary to the American spirit of justice.

It is beyond argument that a violation of the President's oath or a violation of his duty to take care that the laws be faithfully executed, must be impeachable conduct or there would be no means of enforcing the Constitution. However, this elementary proposition is inadequate to define the impeachment power. It remains to determine what kind of conduct constitutes a violation of the oath or the duty. Furthermore, reliance on the summary phrase, “violation of the Constitution,” would not always be appropriate as a standard, because actions constituting an apparent violation of one provision of the Constitution may be justified or even required by other provisions of the Constitution.

There are types of misconduct by public officials—for example, ineptitude, or unintentional or “technical” violations of rules or statutes, or “maladministration”—which would not be criminal; nor could they be made crimi-

nal, consonant with the Constitution, because the element of criminal intent or *mens rea* would be lacking. Without a requirement of criminal acts or at least criminal intent, Congress would be free to impeach these officials. The loss of this freedom should not be mourned; such a use of the impeachment power was never intended by the Framers, is not supported by the language of our Constitution, and, if history is to guide us, would be seriously unwise as well.

As Alexander Simpson stated in his *Treatise on Federal Impeachments* (1916):

The Senate must find an intent to do wrong. It is, of course, admitted that a party will be presumed to intend the natural and necessary results of his voluntary acts, but that is a presumption only, and it is not always inferable from the act done. So ancient is this principle, and so universal is its application, that it has long since ripened into the maxim, *Actus non facit reum, [nisi] mens sit rea*, and has come to be regarded as one of the fundamental legal principles of our system of jurisprudence. (p. 29).

The point was thus stated by James Iredell in the North Carolina ratifying convention: "I beg leave to observe that, when any man is impeached, it must be for an error of the heart, and not of the head. God forbid that a man, in any country in the world, should be liable to be punished for want of judgment. This is not the case here.

The minority views did support a portion of Article I on the

ground that criminal conduct was alleged therein and sustained by the evidence; but found no impeachable offenses constituted in Articles II and III:

(1) With respect to proposed Article I, we believe that the charges of conspiracy to obstruct justice, and obstruction of justice, which are contained in the Article in essence, if not in terms, may be taken as substantially confessed by Mr. Nixon on August 5, 1974, and corroborated by ample other evidence in the record. Prior to Mr. Nixon's revelation of the contents of three conversations between him and his former Chief of Staff, H. R. Haldeman, that took place on June 23, 1972, we did not, and still do not, believe that the evidence of presidential involvement in the Watergate cover-up conspiracy, as developed at that time, was sufficient to warrant Members of the House, or dispassionate jurors in the Senate, in finding Mr. Nixon guilty of an impeachable offense beyond a reasonable doubt, which we believe to be the appropriate standard.

(2) With respect to proposed Article II, we find sufficient evidence to warrant a belief that isolated instances of unlawful conduct by presidential aides and subordinates did occur during the five-and-one-half years of the Nixon Administration, with varying degrees of direct personal knowledge or involvement of the President in these respective illegal episodes. We roundly condemn such abuses and unreservedly favor the invocation of existing legal sanctions, or the creation of new ones, where needed, to deter such reprehensible official conduct in the future, no

matter in whose Administration, or by what brand or partisan, it might be perpetrated.

Nevertheless, we cannot join with those who claim to perceive an invidious, pervasive "pattern" of illegality in the conduct of official government business generally by President Nixon. In some instances, as noted below, we disagree with the majority's interpretation of the evidence regarding either the intrinsic illegality of the conduct studied or the linkage of Mr. Nixon personally to it. Moreover, even as to those acts which we would concur in characterizing as abusive and which the President appeared to direct or countenance, neither singly nor in the aggregate do they impress us as being offenses for which Richard Nixon, or any President, should be impeached or removed from office, when considered, *as they must be*, on their own footing, apart from the obstruction of justice charge under proposed Article I which we believe to be sustained by the evidence.

(3) Likewise, with respect to proposed Article III, we believe that this charge, standing alone, affords insufficient grounds for impeachment. Our concern here, as explicated in the discussion below, is that the Congressional subpoena power itself not be too easily abused as a means of achieving the impeachment and removal of a President against whom no other substantive impeachable offense has been proved by sufficient evidence derived from sources other than the President himself. We believe it is particularly important for the House to refrain from impeachment on the sole basis of noncompliance with subpoenas where, as here, colorable claims of privilege

have been asserted in defense of non-production of the subpoenaed materials, and the validity of those claims has not been adjudicated in any established, lawful adversary proceeding before the House is called upon to decide whether to impeach a President on grounds of noncompliance with subpoenas issued by a Committee inquiring into the existence of sufficient grounds for impeachment.<sup>(20)</sup>

### *Grounds for Impeachment of Federal Judges*

**§ 3.9 Following introduction and referral of impeachment resolutions against a Supreme Court Justice in the 91st Congress, when grounds for impeachment of federal judges were discussed at length in the House, the view was taken that federal civil officers may be impeached for less than indictable offenses; that an impeachable offense is what a majority of the House considers it to be; and that a higher standard of conduct is expected of federal judges than of other federal civil officers.**

On Apr. 15, 1970, resolutions relating to the impeachment of

20. H. REPT. NO. 93-1305, at pp. 360, 361, Committee on the Judiciary, printed in the Record at 120 CONG. REC. 29311, 93d Cong. 2d Sess., Aug. 20, 1974.



Associate Justice William O. Douglas of the Supreme Court were introduced and referred, following a special-order speech by the Minority Leader, Gerald R. Ford, of Michigan. Mr. Ford discussed the grounds for impeachment of a federal judge, saying in part:<sup>(1)</sup>

No, the Constitution does not guarantee a lifetime of power and authority to any public official. The terms of Members of the House are fixed at 2 years; of the President and Vice President at 4; of U.S. Senators at 6. Members of the Federal judiciary hold their offices only "during good behaviour."

Let me read the first section of article III of the Constitution in full:

The judicial power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices *during good Behaviour*, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. . . .

. . . Thus, we come quickly to the central question: What constitutes "good behaviour" or, conversely, ungood or disqualifying behaviour?

The words employed by the Framers of the Constitution were, as the pro-

ceedings of the Convention detail, chosen with exceedingly great care and precision. Note, for example, the word "behaviour." It relates to action, not merely to thoughts or opinions; further, it refers not to a single act but to a pattern or continuing sequence of action. We cannot and should not remove a Federal judge for the legal views he holds—this would be as contemptible as to exclude him from serving on the Supreme Court for his ideology or past decisions. Nor should we remove him for a minor or isolated mistake—this does not constitute behaviour in the common meaning.

What we should scrutinize in sitting Judges is their continuing pattern of action, their behaviour. The Constitution does not demand that it be "exemplary" or "perfect." But it does have to be "good."

Naturally, there must be orderly procedure for determining whether or not a Federal judge's behaviour is good. The courts, arbiters in most such questions of judgment, cannot judge themselves. So the Founding Fathers vested this ultimate power where the ultimate sovereignty of our system is most directly reflected—in the Congress, in the elected Representatives of the people and of the States.

In this seldom-used procedure, called impeachment, the legislative branch exercises both executive and judicial functions. The roles of the two bodies differ dramatically. The House serves as prosecutor and grand jury; the Senate serves as judge and trial jury.

Article I of the Constitution has this to say about the impeachment process:

The House of Representatives—shall have the sole power of Impeachment.

1. 116 CONG. REC. 11912–14, 91st Cong. 2d Sess. Charges against Justice Douglas were investigated by a subcommittee of the Committee on the Judiciary, which recommended against impeachment (see §§14.14, 14.15, *infra*).

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Article II, dealing with the executive branch, states in section 4:

The President, Vice President, and all civil Officers of the United States shall be removed from office on impeachment for, and conviction of, Treason, Bribery or other high crimes and misdemeanors.

This has been the most controversial of the constitutional references to the impeachment process. No consensus exists as to whether, in the case of Federal judges, impeachment must depend upon conviction of one of the two specified crimes of treason or bribery or be within the nebulous category of "other high crimes and misdemeanors." There are pages upon pages of learned argument whether the adjective "high" modifies "misdemeanors" as well as "crimes," and over what, indeed, constitutes a "high misdemeanor."

In my view, one of the specific or general offenses cited in article II is required for removal of the indirectly elected President and Vice President and all appointed civil officers of the executive branch of the Federal Government, whatever their terms of office. But in the case of members of the judicial branch, Federal judges and Justices, I believe an additional and much stricter requirement is imposed by article II, namely, "good behaviour."

Finally, and this is a most significant provision, article I of the Constitution specifies:

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: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. . . .

With this brief review of the law, of the constitutional background for impeachment, I have endeavored to correct two common misconceptions: first, that Federal judges are appointed for life and, second, that they can be removed only by being convicted, with all ordinary protections and presumptions of innocence to which an accused is entitled, of violating the law.

This is not the case. Federal judges can be and have been impeached for improper personal habits such as chronic intoxication on the bench, and one of the charges brought against President Andrew Johnson was that he delivered "intemperate, inflammatory, and scandalous harangues."

I have studied the principal impeachment actions that have been initiated over the years and frankly, there are too few cases to make very good law. About the only thing the authorities can agree upon in recent history, though it was hotly argued up to President Johnson's impeachment and the trial of Judge Swayne, is that an offense need not be indictable to be impeachable. In other words, something less than a criminal act or criminal dereliction of duty may nevertheless be sufficient grounds for impeachment and removal from public office.

What, then, is an impeachable offense?

The only honest answer is that an impeachable offense is whatever a ma-

majority of the House of Representatives considers to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. Again, the historical context and political climate are important; there are few fixed principles among the handful of precedents.

I think it is fair to come to one conclusion, however, from our history of impeachments: a higher standard is expected of Federal judges than of any other “civil officers” of the United States.

The President and Vice President, and all persons holding office at the pleasure of the President, can be thrown out of office by the voters at least every 4 years. To remove them in midterm—it has been tried only twice and never done—would indeed require crimes of the magnitude of treason and bribery. Other elective officials, such as Members of the Congress, are so vulnerable to public displeasure that their removal by the complicated impeachment route has not even been tried since 1798. But nine Federal judges, including one Associate Justice of the Supreme Court, have been impeached by this House and tried by the Senate; four were acquitted; four convicted and removed from office; and one resigned during trial and the impeachment was dismissed.

In the most recent impeachment trial conducted by the other body, that of U.S. Judge Halsted L. Ritter of the southern district of Florida who was removed in 1936, the point of judicial behavior was paramount, since the criminal charges were admittedly thin.

This case was in the context of F.D.R.’s effort to pack the Supreme Court with Justices more to his liking; Judge Ritter was a transplanted conservative Colorado Republican appointed to the Federal bench in solidly Democratic Florida by President Coolidge. He was convicted by a coalition of liberal Republicans, New Deal Democrats, and Farmer-Labor and Progressive Party Senators in what might be called the northwestern strategy of that era. Nevertheless, the arguments were persuasive:

In a joint statement, Senators Borah, La Follette, Frazier, and Shipstead said:

We therefore did not, in passing upon the facts presented to us in the matter of the impeachment proceedings against Judge Halsted L. Ritter, seek to satisfy ourselves as to whether technically a crime or crimes had been committed, or as to whether the acts charged and proved disclosed criminal intent or corrupt motive; we sought only to ascertain from these facts whether his conduct had been such as to amount to misbehavior, misconduct—as to whether he had conducted himself in a way that was calculated to undermine public confidence in the courts and to create a sense of scandal.

There are a great many things which one must readily admit would be wholly unbecoming, wholly intolerable, in the conduct of a judge, and yet these things might not amount to a crime.

Senator Elbert Thomas of Utah, citing the Jeffersonian and colonial antecedents of the impeachment process, bluntly declared:

Tenure during good behavior . . . is in no sense a guaranty of a life job, and misbehavior in the ordinary,

dictionary sense of the term will cause it to be cut short on the vote, under special oath, of two-thirds of the Senate, if charges are first brought by the House of Representatives. . . . To assume that good behavior means anything but good behavior would be to cast a reflection upon the ability of the fathers to express themselves in understandable language.

But the best summary, in my opinion, was that of Senator William G. McAdoo of California, son-in-law of Woodrow Wilson and his Secretary of the Treasury:

I approach this subject from the standpoint of the general conduct of this judge while on the bench, as portrayed by the various counts in the impeachment and the evidence submitted in the trial. The picture thus presented is, to my mind, that of a man who is so lacking in any proper conception of professional ethics and those high standards of judicial character and conduct as to constitute misbehavior in its most serious aspects, and to render him unfit to hold a judicial office . . .

Good behavior, as it is used in the Constitution, exacts of a judge the highest standards of public and private rectitude. No judge can besmirch the robes he wears by relaxing these standards, by compromising them through conduct which brings reproach upon himself personally, or upon the great office he holds. No more sacred trust is committed to the bench of the United States than to keep shining with undimmed effulgence the brightest jewel in the crown of democracy—justice.

However disagreeable the duty may be to those of us who constitute this great body in determining the guilt of those who are entrusted under the Constitution with the high responsibilities of judicial office, we

must be as exacting in our conception of the obligations of a judicial officer as Mr. Justice Cardozo defined them when he said, in connection with fiduciaries, that they should be held “to something stricter than the morals of the market-place. *Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.*” (Meinhard v. Solmon, 249 N.Y. 458.)

**§ 3.10 The view has been taken that the term “good behavior,” as a requirement for federal judges remaining in office, must be read in conjunction with the standard of “high crimes and misdemeanors,” and that the conduct of federal judges to constitute an impeachable offense must be either criminal conduct or serious judicial misconduct.**

On Apr. 21, 1970, Mr. Paul N. McCloskey, Jr., of California, took the floor for a special-order speech in which he challenged the hypothesis of Mr. Gerald R. Ford, of Michigan (see §3.9, *supra*), as to the grounds for impeachment of federal judges:<sup>(2)</sup>

I respectfully disagree with the basic premise “that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history.”

To accept this view, in my judgment, would do grave damage to one of the

2. 116 CONG. REC. 12569-71, 91st Cong. 2d Sess.

most treasured cornerstones of our liberties, the constitutional principle of an independent judiciary, free not only from public passions and emotions, but also free from fear of executive or legislative disfavor except under already-defined rules and precedents. . . .

First, I should like to discuss the concept of an impeachable offense as “whatever the majority of the House of Representatives considers it to be at any given time in history.” If this concept is accurate, then of course there are no limitations on what a political majority might determine to be less than good behavior. It follows that judges of the Court could conceivably be removed whenever the majority of the House and two-thirds of the Senate agreed that a better judge might fill the position. But this concept has no basis, either in our constitutional history or in actual case precedent.

The intent of the framers of the Constitution was clearly to protect judges from political disagreement, rather than to simplify their ease of removal.

The Original Colonies had had a long history of difficulties with the administration of justice under the British Crown. The Declaration of Independence listed as one of its grievances against the King:

He has made Judges dependent on his Will alone, for the tenure of their offices and the amount and payment of their salaries.

The signers of the Declaration of Independence were primarily concerned about preserving the independence of the judiciary from direct or indirect pressures, and particularly from the pressure of discretionary termination of their jobs or diminution of their salaries.

In the debates which took place in the Constitutional Convention 11 years later, this concern was expressed in both of the major proposals presented to the delegates. The Virginia and New Jersey plans both contained language substantively similar to that finally adopted, as follows:

Article III, Section 1 states “The Judges, both of the Supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

The “good behavior” standard thus does not stand alone. It must be read with reference to the clear intention of the framers to protect the independence of the judiciary against executive or legislative action on their compensation, presumably because of the danger of political disagreement.

If, in order to protect judicial independence, Congress is specifically precluded from terminating or reducing the salaries of Judges, it seems clear that Congress was not intended to have the power to designate “as an impeachable offense whatever a majority of the House of Representatives considers it to be at a given moment.”

If an independent judiciary is to be preserved, the House must exercise decent restraint and caution in its definition of what is less than good behavior. As we honor the Court’s self-imposed doctrine of judicial restraint, so we might likewise honor the principle of legislative restraint in considering serious charges against members of a co-equal branch of Government which we have wished to keep free from political tensions and emotions. . . .

The term "good behavior," as the Founding Fathers considered it, must be taken together with the specific provisions limiting cause for impeachment of executive branch personnel to treason, bribery or other high crimes and misdemeanors. The higher standard of good behavior required of Judges might well be considered as applicable solely to their judicial performance and capacity and not to their private and nonjudicial conduct unless the same is violative of the law. Alcoholism, arrogance, nonjudicial temperament, and senility of course interfere with judicial performance and properly justify impeachment. I can find no precedent, however, for impeachment of a Judge for nonjudicial conduct which falls short of violation of law.

In looking to the nine cases of impeachment of Judges spanning 181 years of our national history, in every case involved, the impeachment was based on either improper judicial conduct or nonjudicial conduct which was considered as criminal in nature. . . .

From the brief research I have been able to do on these nine cases, and as reflected in the Congressional Quarterly of April 17, 1970, the charges were as follows:

District Judge John Pickering, 1804: Loose morals, intemperance, and irregular judicial procedure.

Associate Supreme Court Justice Samuel Chase, 1805: Partisan, harsh, and unfair conduct during trials.

District Judge James H. Peck, 1831: Imposing an unreasonably harsh penalty for contempt of court.

District Judge West H. Humphreys, 1862: Supported secession and served as a Confederate judge.

District Judge Charles Swayne, 1905: Padding expense accounts, living outside his district, misuse of property and of the contempt power.

Associate Court of Commerce Judge Robert Archbald, 1913: Improper use of influence, and accepting favors from litigants.

District Judge George W. English, 1926: Tyranny, oppression, and partiality.

District Judge Harold Louderback, 1933: Favoritism, and conspiracy.

District Judge Halsted L. Ritter, 1936: Judicial improprieties, accepting legal fees while on the bench, bringing his court into scandal and disrepute, and failure to pay his income tax.

The bulk of these challenges to the court were thus on judicial misconduct, with scattered instances of nonjudicial behavior. In all cases, however, insofar as I have been able to thus far determine, the nonjudicial behavior involved clear violation of criminal or civil law, and not just a "pattern of behavior" that others might find less than "good."

If the House accepts precedent as a guide, then, an impeachment of a Justice of the Supreme Court based on charges which are neither unlawful in nature nor connected with the performance of his judicial duties would represent a highly dubious break with custom and tradition at a time when, as the gentleman from New York (Mr. Horton), stated last Wednesday:

We are living in an era when the institutions of government and the people who man them are undergoing the severest tests in history.

There is merit, I think, in a strict construction of the words "good behav-

ior” as including conduct which complies with judicial ethics while on the bench and with the criminal and civil laws while off the bench. Any other construction of the term would make judges vulnerable to any majority group in the Congress which held a common view of impropriety of conduct which was admittedly lawful. If lawful conduct can nevertheless be deemed an impeachable offense by a majority of the House, how can any Judge feel free to express opinions on controversial subjects off the bench? Is there anything in our history to indicate that the framers of our Constitution intended to preclude a judge from stating political views publicly, either orally or in writing? I have been unable to find any constitutional history to so indicate.

The gentleman from New Hampshire (Mr. Wyman) suggests that a judge should not publicly declare his personal views on controversies likely to come before the Court. This is certainly true. But it certainly does not preclude a judge from voicing personal political views, since political issues are not within the jurisdiction of the court and thus a judge’s opinions on political matters would generally not be prejudicial to interpretations of the law which his jurisdiction is properly limited.

**§ 3.11 The view has been taken that a federal judge may be impeached for misbehavior of such nature as to cast substantial doubt upon his integrity.**

On Aug. 10, 1970, Minority Leader Gerald R. Ford, of Michi-

gan, inserted in the *Congressional Record* a legal memorandum on impeachment of a federal judge for “misbehavior,” the memorandum was prepared by a private attorney and reviewed constitutional provisions, views of commentators, and the precedents of the House and Senate in impeachment proceedings. The memorandum concluded with the following analysis:<sup>(3)</sup>

A review of the past impeachment proceedings has clearly established little constitutional basis to the argument that an impeachable offense must be indictable as well. If this were to be the case, the Constitution would then merely provide an additional or alternate method of punishment, in specific instances, to the traditional criminal law violator. If the framers had meant to remove from office only those officials who violated the criminal law, a much simpler method than impeachment could have been devised. Since impeachment is such a complex and cumbersome procedure, it must have been directed at conduct which would be outside the purview of the criminal law. Moreover, the traditionally accepted purpose of impeachment would seem to work against such a construction. By restricting the punishment for impeachment to removal and disqualification from office, impeachment seems to be a protective, rather than a punitive, device. It is meant to protect the public from conduct by high

3. 116 CONG. REC. 28091-96, 91st Cong. 2d Sess.

public officials that undermines public confidence. Since that is the case, the nature of impeachment must be broader than this argument would make it. [Such] conduct on the part of a judge, while not criminal, would be detrimental to the public welfare. Therefore it seems clear that impeachment will lie for conduct not indictable nor even criminal in nature. It will be remembered that Judge Archbald was removed from office for conduct which, in at least one commentator's view, would have been blameless if done by a private citizen. See Brown, *The Impeachment of the Federal Judiciary*, 26 Har. L. Rev. 684, 704-05 (1913).

A sound approach to the Constitutional provisions relating to the impeachment power appears to be that which was made during the impeachment of Judge Archbald. Article I, Sections 2 and 3 give Congress jurisdiction to try impeachments. Article II, Section 4, is a mandatory provision which requires removal of officials convicted of "treason, bribery or other high crimes and misdemeanors". The latter phrase is meant to include conduct, which, while not indictable by the criminal law, has at least the characteristics of a crime. However, this provision is not conclusively restrictive. Congress may look elsewhere in the Constitution to determine if an impeachable offense has occurred. In the case of judges, such additional grounds of impeachment may be found in Article III, Section 1 where the judicial tenure is fixed at "good behavior". Since good behavior is the limit of the judicial tenure, some method of removal must be available where a judge breaches that condition of his office. That method is impeachment. Even

though this construction has been criticized by one writer as being logically fallacious, See Simpson, *Federal Impeachments*, 64 U. of Penn. L. Rev. 651, 806-08 (1916), it seems to be the construction adopted by the Senate in the Archbald and Ritter cases. Even Simpson, who criticized the approach, reaches the same result because he argues that "misdemeanor" must, by definition, include misbehavior in office. *Supra* at 812-13.

In determining what constitutes impeachable judicial misbehavior, recourse must be had to the previous impeachment proceedings. Those proceedings fall mainly into two categories, misconduct in the actual administration of justice and financial improprieties off the bench. Pickering was charged with holding court while intoxicated and with mishandling cases. Chase and Peck were charged with misconduct which was prejudicial to the impartial administration of justice and with oppressive and corrupt use of their office to punish individuals critical of their actions. Swayne, Archbald, Louderback and Ritter were all accused of using their office for personal profit and with various types of financial indiscretions. English was impeached both for oppressive misconduct while on the bench and for financial misdealings. The impeachment of Humphries is the only one which does not fall within this pattern and the charges brought against him probably amounted to treason. See Brown, *The Impeachment of the Federal Judiciary*, 26 Har. L. Rev. 684, 704 (1913).

While various definitions of impeachable misbehavior have been advanced, the unifying factor in these definitions is the notion that there must be such



misconduct as to cast doubt on the integrity and impartiality of the Federal judiciary. Brown has defined that misbehavior as follows:

It must act directly or by reflected influence react upon the welfare of the State. It may constitute an intentional violation of positive law, or it may be an official dereliction of commission or omission, a serious breach of moral obligation, or other gross impropriety of personal conduct which, in its natural consequences, tends to bring an office into contempt and disrepute . . . An act or course of misbehavior which renders scandalous the personal life of a public officer, shakes the confidence of the people in his administration of the public affairs, and thus impairs his official usefulness. Brown, *supra* at 692-93.

As Simpson stated with respect to the outcome of the Archbald impeachment:

It determined that a judge ought not only be impartial, but he ought so demean himself, both in and out of court, that litigants will have no reason to suspect his impartiality and that repeatedly failing in that respect constitutes a "high misdemeanor" in regard to his office. If such be considered the result of that case, everyone must agree that it established a much needed precedent. Simpson, *Federal Impeachments*, 64 U. of Penn. L. Rev. 651, 813 (1916).

John W. Davis, House Manager in the Impeachment of Judge Archbald, defined judicial misbehavior as follows:

Usurpation of power, the entering and enforcement of orders beyond his jurisdiction, disregard or disobedience of the rulings of superior tribunals, unblushing and notorious partiality and favoritism, indolence and neglect, are all violations of his official oath . . . And it is easily pos-

sible to go further and imagine . . . such willingness to use his office to serve his personal ends as to be within reach of no branch of the criminal law, yet calculated with absolute certainty to bring the court into public obloquy and contempt and to seriously affect the administration of justice. 6 Cannon 647.

Representative Summers, one of the managers in the Louderback impeachment gave this definition:

When the facts proven with reference to a respondent are such as are reasonably calculated to arouse a substantial doubt in the minds of the people over whom that respondent exercises authority that he is not brave, candid, honest, and true, there is no other alternative than to remove such a judge from the bench, because wherever doubt resides, confidence cannot be present. Louderback Proceedings 815.

#### IV. CONCLUSION

In conclusion, the history of the constitutional provisions relating to the impeachment of Federal judges demonstrates that only the Congress has the power and duty to remove from office any judge whose proven conduct, either in the administration of justice or in his personal behavior, casts doubt on his personal integrity and thereby on the integrity of the entire judiciary. Federal judges must maintain the highest standards of conduct to preserve the independence of and respect for the judicial system and the rule of law. As Representative Summers stated during the Ritter impeachment:

Where a judge on the bench, by his own conduct, arouses a substantial doubt as to his judicial integrity he commits the highest crime that a judge can commit under the Con-

stitution. Ritter Proceedings 611 (1936).

Finally, the application of the principles of the impeachment process is left solely to the Congress. There is no appeal from Congress' ultimate judgment. Thus, it can fairly be said that it is the conscience of Congress—acting in accordance with the constitutional limitations—which determines whether conduct of a judge constitutes misbehavior requiring impeachment and removal from office. If a judge's misbehavior is so grave as to cast substantial doubt upon his integrity, he must be removed from office regardless of all other considerations. If a judge has not abused his trust, Congress has the duty to reaffirm public trust and confidence in his actions.

Respectfully submitted,  
BETHEL B. KELLEY,  
DANIEL G. WYLLIE.

**§ 3.12 The view has been taken that the House impeaches federal judges only for misconduct that is both criminal in nature and related to the performance of the judicial function.**

On Nov. 16, 1970, Mr. Frank Thompson, Jr., of New Jersey, inserted into the *Congressional Record* a study by a professor of constitutional law of impeachment proceedings against federal judges and the grounds for such proceedings. The memorandum discussed in detail the substance of such charges in all prior impeach-

ment proceedings and concluded as follows:<sup>(4)</sup>

In summary, the charges against Justice William O. Douglas are unique in our history of impeachment. The House has stood ready to impeach judges for Treason, Bribery, and related financial crimes and misdemeanors. It has refused to impeach judges charged with on-the-job misconduct when that behavior is not also an indictable criminal offense. Only once before has a judge even been charged with impeachment for non-job-related activities—in 1921, when Judge Kenesaw Mountain Landis was charged with accepting the job as Commissioner of big-league baseball—and the House Judiciary Committee refused to dignify the charge with a report pro or con. Never in our impeachment history, until Congressman Ford leveled his charges against Mr. Justice Douglas, has it ever been suggested that a judge could be impeached because, while off the bench, he exercised his First Amendment rights to speak and write on issues of the day, to associate with others in educational enterprises. . . .

This brief history of Congressional impeachment shows several things. First, it shows that it works. It is not a rusty, unused power. Since 1796, fifty-five judges have been charged on the Floor of the House of Representatives, approximately one in every three to four years. Presumably, most of the federal judges who should be impeached, are impeached. Thirty-three judges have been charged with "Trea-

4. 116 CONG. REC. 37464-70, 91st Cong. 2d Sess.

son, Bribery, or other High Crimes and Misdemeanors.” Three of them have been found guilty by the Senate and removed from office; twenty-two additional judges have resigned rather than face Senate trial and public exposure. This is one “corrupt” judge for approximately every seven years—hopefully, all there are.

Second, by its deeds and actions, Congress has recognized what Chief Justice Burger recently described as “the imperative need for total and absolute independence of judges in deciding cases or in any phase of the decisional function.” With a few aberrations in the early 1800’s, a period of unprecedented political upheaval, Congress has refused to impeach a judge for lack of “good behaviour” unless the behavior is both job-related and criminal. This is true whether the judge gets drunk on the bench, whether the judge exploits and abuses the authority of his robes, or whether the judge hands down unpopular or wrong decisions.

How could it be otherwise? The purpose of an “independent judiciary” in our system of government by separation of powers, is to check the excesses of the legislative and executive branches of the government, to cry a halt when popular passions grip the Congress and laws are adopted which abridge and infringe upon the rights guaranteed to all citizens by the Constitution. The judges must be strong and secure if they are to do this job well.

John Dickinson proposed at the Constitutional Convention that federal judges should be removed upon a petition by the majority of each House of Congress. This was rejected, because it

was contradictory to judicial tenure during good behavior, because it would make the judiciary “dangerously dependent” on the legislature.

During the Jeffersonian purge of the federal bench, Senate leader William Giles proclaimed that “removal by impeachment” is nothing more than a declaration by both Houses of Congress to the judge that “you hold dangerous opinions.” This theory of the impeachment power was rejected in 1804 because it would put in peril “the integrity of the whole national judicial establishment.”

Now Congressman Ford suggests that “an impeachable offense” is nothing more than “whatever a majority of the House of Representatives considers it to be at a given moment in history.”

Does he really mean that Chief Justice Warren might have been impeached because “at a given moment in history” a majority of the House and two-thirds of the Senate objected strongly to his opinion ordering an end to school-segregation, or to his equally controversial decision against school prayer? Does he really mean that Judge Julius Hoffman is impeachable if a majority of this or the next Congress decides that he was wrong in his handling of the Chicago Seven? Does he really want a situation where federal judges must keep one eye on the mood of Congress and the other on the proceedings before them in court, in order to maintain their tenure in office?

If Congressman Ford is right, it bodes ill for the concept of an independent judiciary and the corollary doctrine of a Constitutional government of laws.

In 1835, the French observer de Tocqueville wrote that:

A decline of public morals in the United States will probably be marked by the abuse of the power of impeachment as a means of crushing political adversaries or ejecting them from office.

Let us hope that that day has not yet arrived.

Mr. Thompson summarized the study as follows:

. . . [I] requested Daniel H. Pollitt, a professor of constitutional law at the University of North Carolina to survey the 51 impeachment proceedings in this House during the intervening years.

I want to make several comments on this survey.

First, it shows that impeachment works. Thirty-three judges have been charged in this body with "treason, bribery, or other high crimes and misdemeanors." Twenty-two of them resigned rather than face Senate trial; three chose to fight it out in the Senate; and seven were acquitted by the vote of this Chamber against further impeachment proceedings.

Second, it shows that never since the earliest days of this Republic has the House impeached a judge for conduct which was not both job-related and criminal. This body has consistently refused to impeach a judge unless he was guilty of an indictable offense.

Third, it shows that never before Mr. Ford leveled his charges against Justice Douglas has it ever been suggested that a judge could be impeached because, while off the bench, he exercised his first amendment rights to speak and write on issues of the day.

**§ 3.13 A special subcommittee of the Committee on the Judiciary found in its final report on charges of impeachment against Associate Justice William O. Douglas of the Supreme Court, that (1) a judge could be impeached for judicial conduct which was criminal or which was a serious dereliction of public duty; (2) that a judge could be impeached for nonjudicial conduct which was criminal; and (3) that the evidence gathered did not warrant the impeachment of Justice Douglas.**

On Sept. 17, 1970, the special subcommittee of the Committee on the Judiciary, which had been created to investigate and report on charges of impeachment against Associate Justice Douglas of the Supreme Court, submitted its final report to the full committee. The report reviewed the grounds for impeachment and found the evidence insufficient. The report provided in part:<sup>(5)</sup>

#### II. CONCEPTS OF IMPEACHMENT

The Constitution grants and defines the authority for the use of impeach-

5. Final report by the special subcommittee on H. Res. 920 (Impeachment of Associate Justice Douglas) of the Committee on the Judiciary, Committee Print, 91st Cong. 2d Sess., Sept. 17, 1970.

ment procedures to remove officials of the Federal Government. Offenses subject to impeachment are set forth in Article II, Section 4:

The President, Vice President and all civil Officers of the United States, shall be removed from office on impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

An Associate Justice of the Supreme Court is a civil officer of the United States and is a person subject to impeachment. Article II, Section 2, authorizes the President to appoint “. . . Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States . . .”

Procedures established in the Constitution vest responsibility for impeachment in the Legislative Branch of the government and require both the House of Representatives and the Senate to participate in the trial and determination of removal from office. Article I, Section 1, provides: “The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.”

After the House of Representatives votes to approve Articles of Impeachment, the Senate must hear and decide the issue. Article I, Section 3 provides:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Decision for removal in an impeachment proceeding does not preclude

trial and punishment for the same offense in a court of law. Article III, Section 3 in this regard provides:

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: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Other provisions of the Constitution underscore the exceptional nature of the unique legislative trial. The President’s power to grant reprieves and pardons for offenses against the United States does not extend to impeachments. Article 2, Section 2, provides: “The President . . . shall have the power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.” Inasmuch as the Senate itself hears the evidence and tries the case, the Constitutional right to a trial by jury when a crime has been charged is not available. Article III, Section 2 provides: “The Trial of all Crimes, except in Cases of Impeachment, shall be by jury. . . .”

The Constitution provides only one instrument to remove judges of both the Supreme and inferior courts, and that instrument is impeachment. The provisions of Article II, Section 4, defines the conduct that render federal officials subject to impeachment procedures. For a judge to be impeachable, his conduct must constitute “. . . Treason, Bribery, or other High Crimes and Misdemeanors.”

Some authorities on constitutional law have contended that the impeach-

ment device is a cumbersome procedure. Characterized by a high degree of formality, when used it preempts valuable time in both the House and Senate and obstructs accomplishment of the law making function of the legislative branch. In addition to distracting the attention of Congress from its other responsibilities, impeachments invariably are divisive in nature and generate intense controversy in Congress and in the country at large.

Since the adoption of the Constitution in 1787, there have been only 12 impeachment proceedings, nine of which have involved Federal judges. There have been only four convictions, all Federal judges.

The time devoted by the House and Senate to the impeachments that resulted in the trials of the nine Federal judges varied substantially. The impeachment of Robert Archbald in 1912 consumed the shortest time. The Archbald case required three months to be processed in the House, and six months in the Senate. The impeachment of James H. Peck required the most time for trial of a Federal judge. The House took three years and five months to complete its action, and the Senate was occupied for nine months with the trial. The most recent case, Halsted Ritter, in 1933, received the attention of the House for two years and eight months, and required one month and seven days for trial in the Senate.

Although the provisions of Article II, Section 4 define conduct that is subject to impeachment, and Article I establishes the impeachment procedure, impeachments of Federal judges have been complicated by the tenure provision in Article III, Section 1. Article III, Section 1, provides:

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office

The content of the phrase “during good Behaviour” and its relationship to Article II, Section 4’s requirement for conduct that amounts to “treason, bribery, or other high crimes and misdemeanors” have been matters of dispute in each of the impeachment proceedings that have involved Federal judges. The four decided cases do not resolve the problems and disputes that this relationship has generated. Differences in impeachment concepts as to the meaning of the phrase “good behavior” in Article III and its relationship to the meaning of the word “misdemeanors” in Article II are apparent in the discussions of the charges that have been made against Associate Justice Douglas.

A primary concern of the Founding Fathers was to assure the creation of an independent judiciary. Alexander Hamilton in *The Federalist Papers* (No. 78) stated this objective:

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the

medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

*The Federalist Papers* (No. 79) discusses the relationship of the impeachment procedures to judicial independence:

The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives and tried by the Senate; and, if convicted, may be dismissed from office and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges.

The want of a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalog of known arts. An attempt to fix the boundary between the regions of ability and inability would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.

The desire of the American people to assure independence of the judiciary

and to emphasize the exalted station assigned to the judge by our society, have erected pervasive constitutional and statutory safeguards. The judge of a United States court holds office "during good behavior." Further his salary may not be reduced while he is in office by any branch of Government. A judge may be removed from office only by the cumbersome procedure of impeachment.

Accordingly, when the public is confronted with allegations of dishonesty or venality, and is forced to recognize that judges are human, and hence fallible, the impact is severe. Exposure of infirmities in the judicial system is undertaken only with reluctance. It is an area in which the bar, the judiciary, and the executive and legislative branches alike have seen fit to move cautiously and painstakingly. There must be full recognition of the necessity to proceed in such a manner that will result in the least damage possible to judicial independence, but which, at the same time, will result in correction or elimination of any condition that brings discredit to the judicial system.

Removal of a Federal judge, for whatever reason, historically has been difficult. Constitutional safeguards to assure a free and independent judiciary make it difficult to remove a Federal judge who may be unfit, whether through incompetence, insanity, senility, alcoholism, or corruption.

For a judge to be impeached, it must be shown that he has committed treason, accepted a bribe, or has committed a high crime or misdemeanor. All conduct that can be impeached must at least be a "misdemeanor." A judge is entitled to remain a judge as long as he holds his office "during good behav-

ior.” The content of the word “misdemeanor” must encompass some activities which fall below the standard of “good behavior.” Conduct which fails to meet the standard of “good behavior” but which does not come within the definition of “misdemeanor” is not subject to impeachment.

In each of the nine impeachments involving judges, there has been controversy as to the meaning of the word “misdemeanor.” Primarily the controversy concerned whether the activities being attacked must be criminal or whether the word “misdemeanor” encompasses less serious departures from society norms.

In his memorandum “Opinion on the Impeachment of Halsted L. Ritter,” Senator H. W. Johnson described the confusion of thought prevailing in the Senate on these concepts. He stated:

The confusion of thought prevailing among Senators is evidenced by their varying expressions. One group eloquently argued any gift to a judge, under any circumstances, constituted misbehavior, for which he should be removed from office—and moreover that neither corrupt motive or evil intent need be shown in the acceptance of a gift or in any so-called misbehavior. Another prefaced his opinion with the statement: “I do not take the view that an impeachment proceeding of a judge of the inferior Federal courts under the Constitution of the United States is a criminal proceeding. The Constitution itself has expressly denuded impeachment proceedings of every aspect or characteristic of a criminal proceeding.”

And yet another flatly takes a contrary view, and states although finding the defendant guilty on the seventh count: “The procedure is criminal in its nature, for upon conviction,

requires the removal of a judge, which is the highest punishment that could be administered such an officer. The Senate, sitting as a court, is required to conduct its proceedings and reach its decisions in accordance with the customs of our law. In all criminal cases the defendant comes into court enjoying the presumption of innocence, which presumption continues until he is proven guilty beyond a reasonable doubt.”

And again we find this: “Impeachment, though, must be considered as a criminal proceeding.”

In his April 15, 1970, speech, Representative Ford articulated the concept that an impeachable offense need not be indictable and may be something less than a criminal act or criminal dereliction of duty. He said:

What, then, is an impeachable offense?

The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. Again, the historical context and political climate are important; there are few fixed principles among the handful of precedents.

I think it is fair to come to one conclusion, however, from our history of impeachments: a higher standard is expected of Federal judges than of any other “civil officers” of the United States. (First Report, p. 31).

The “Kelley Memorandum” submitted by Mr. Ford enforces this position. The Kelley Memorandum asserts that misbehavior by a Federal judge may constitute an impeachable offense



though the conduct may not be an indictable crime or misdemeanor. The Kelley Memorandum concludes:

In conclusion, the history of the constitutional provisions relating to the impeachment of Federal judges demonstrates that only the Congress has the power and duty to remove from office any judge whose proven conduct, either in the administration of justice or in his personal behavior, casts doubt on his personal integrity and thereby on the integrity of the entire judiciary. Federal judges must maintain the highest standards of conduct to preserve the independence of and respect for the judicial system and the rule of law.

On the other hand, Counsel for Associate Justice Douglas, Simon H. Rifkind, has submitted a memorandum that contends that a Federal judge may not be impeached for anything short of criminal conduct. Mr. Rifkind also contends that the other provisions of the Constitution, i.e., the prohibition of *ex post facto* laws, due process notice requirement and the protection of the First Amendment prevent the employment of any other standard in impeachment proceedings. In conclusion Mr. Rifkind stated:

The constitutional language, in plain terms, confines impeachment to "Treason, Bribery, or other high Crimes and Misdemeanors." The history of those provisions reinforces their plain meaning. Even when the Jeffersonians sought to purge the federal bench of all Federalist judges, they felt compelled to at least assert that their political victims were guilty of "high Crimes and Misdemeanors." The unsuccessful attempt to remove Justice Chase firmly established the proposition that impeachment is for *criminal* offenses only, and is not a "general inquest"

into the behavior of judges. There has developed the consistent practice, rigorously followed in every case in this century, of impeaching federal judges only when criminal offenses have been charged. Indeed, the House has never impeached a judge except with respect to a "high Crime" or "Misdemeanor." Characteristically, the basis for impeachment has been the soliciting of bribes, selling of votes, manipulation of receivers' fees, misappropriation of properties in receivership, and willful income tax evasion.

A vast body of literature has been developed concerning the scope of the impeachment power as it pertains to federal judges. The precedents show that the House of Representatives, particularly in the arguments made by its Managers in the Senate trials, favors the conclusion that the phrase "high crimes and misdemeanors" encompasses activity which is not necessarily criminal in nature.

Although there may be divergence of opinion as to whether impeachment of a judge requires conduct that is criminal in nature in that it is proscribed by specific statutory or common law prohibition, all authorities hold that for a judge to be impeached, the term "misdemeanors" requires a showing of misconduct which is inherently serious in relation to social standards. No respectable argument can be made to support the concept that a judge could be impeached if his conduct did not amount at least to a serious dereliction of his duty as a member of society.

The punishment imposed by the Constitution measures how serious misconduct need be to be impeachable. Only serious derelictions of duty owed to society would warrant the punish-

ment provided. An impeachment proceeding is a trial which results in punishment after an appropriate finding by the trier of facts, the Senate. Deprivation of office is a punishment. Disqualification to hold any future office of honor, trust and profit is a greater punishment. The judgment of the Senate confers upon that body discretion, in the words of the *Federalist Papers* “. . . to doom to honor or to infamy the most influential and the most distinguished characters of the community. . . .

Reconciliation of the differences between the concept that a judge has a right to his office during “good behavior” and the concept that the legislature has a duty to remove him if his conduct constitutes a “misdemeanor” is facilitated by distinguishing conduct that occurs in connection with the exercise of his judicial office from conduct that is non-judicially connected. Such a distinction permits recognition that the content of the word “misdemeanor” for conduct that occurs in the course of exercise of the power of the judicial office includes a broader spectrum of action than is the case when non-judicial activities are involved.

When such a distinction is made, the two concepts on the necessity for judicial conduct to be criminal in nature to be subject to impeachment becomes defined and may be reconciled under the overriding requirement that to be a “misdemeanor”, and hence impeachable, conduct must amount to a serious dereliction of an obligation owed to society.

To facilitate exposition, the two concepts may be summarized as follows:

Both concepts must satisfy the requirements of Article II, Section 4, that

the challenged activity must constitute “. . . Treason, Bribery or High Crimes and Misdemeanors.”

Both concepts would allow a judge to be impeached for acts which occur in the exercise of judicial office that (1) involve criminal conduct in violation of law, or (2) that involve serious dereliction from public duty, but not necessarily in violation of positive statutory law or forbidden by the common law. Sloth, drunkenness on the bench or unwarranted and unreasonable impartiality manifest for a prolonged period are examples of misconduct, not necessarily criminal in nature that would support impeachment. When such misbehavior occurs in connection with the federal office, actual criminal conduct should not be a requisite to impeachment of a judge or any other federal official. While such conduct need not be criminal, it nonetheless must be sufficiently serious to be offenses against good morals and injurious to the social body.

Both concepts would allow a judge to be impeached for conduct not connected with the duties and responsibilities of the judicial office which involve criminal acts in violation of law.

The two concepts differ only with respect to impeachability of judicial behavior not connected with the duties and responsibilities of the judicial office. Concept 2 would define “misdemeanor” to permit impeachment for serious derelictions of public duty but not necessarily violations of statutory or common law.

In summary, an outline of the two concepts would look this way:

A judge may be impeached for “. . . Treason, Bribery, or High Crimes or Misdemeanors.”

A. Behavior, connected with judicial office or exercise of judicial power.

*Concept I*

1. Criminal conduct.
2. Serious dereliction from public duty.

*Concept II*

1. Criminal conduct.
2. Serious dereliction from public duty.

B. Behavior not connected with the duties and responsibilities of the judicial office.

*Concept I*

1. Criminal conduct.

*Concept II*

1. Criminal conduct.
2. Serious dereliction from public duty.

Chapter III, Disposition of Charges sets forth the Special Subcommittee's analysis of the charges that involve activities of Associate Justice William O. Douglas. Under this analysis it is not necessary for the members of the Judiciary Committee to choose between Concept I and II.

The theories embodied in Concept I have been articulated by Representative Paul N. McCloskey, Jr. In his speech to the House on April 21, 1970, Mr. McCloskey stated:

The term "good behavior," as the Founding Fathers considered it, must be taken together with the specific provisions limiting cause for impeachment of executive branch personnel to treason, bribery or other high crimes and misdemeanors. The higher standard of good behavior required of judges might well be considered as applicable solely to their judicial performance and capacity and not to their private and non-judicial conduct unless the same is

violative of the law. Alcoholism, arrogance, nonjudicial temperament, and senility of course interfere with judicial performance and properly justify impeachment. I can find no precedent, however, for impeachment of a Judge for nonjudicial conduct which falls short of violation of law.

In looking to the nine cases of impeachment of Judges spanning 181 years of our national history, in every case involved, the impeachment was based on either improper judicial conduct or non-judicial conduct which was considered as criminal in nature. CONG. REC. 91st Cong., 2nd Sess., H 3327.

In his August 18, 1970, letter to the Special Subcommittee embodying his comments on the "Kelley Memorandum", Mr. McCloskey reaffirmed this concept. He stated:

Conduct of a Judge, while it may be less than criminal in nature to constitute "less than good behavior", has never resulted in a successful impeachment unless the judge was acting in his *judicial* capacity or misusing his *judicial* power. In other words the precedents suggest that misconduct must either be "*judicial* misconduct" or conduct which constitutes a crime. There is no basis for impeachment on charges of *non-judicial* misconduct which occurs off the bench and does *not* constitute a crime. . . .

IV. RECOMMENDATIONS OF SPECIAL SUBCOMMITTEE TO JUDICIARY COMMITTEE

1. It is not necessary for the members of the Judiciary Committee to take a position on either of the concepts of impeachment that are discussed in Chapter II.

2. Intensive investigation of the Special Subcommittee has not disclosed creditable evidence that would warrant

preparation of charges on any acceptable concept of an impeachable offense.

EMANUEL CELLER,  
BYRON G. ROGERS,  
JACK BROOKS.

The minority views of Mr. Edward Hutchinson, of Michigan, a member of the special subcommittee, concluded as follows on the “concepts of impeachment”:

The report contains a chapter on the Concepts of Impeachment. At the same time, it takes the position that it is unnecessary to choose among the concepts mentioned because it finds no impeachable offense under any. It is evident, therefore, that while a discussion of the theory of impeachment is interesting, it is unnecessary to a resolution of the case as the Subcommittee views it. This chapter on Concepts is nothing more than dicta under the circumstances. Certainly the Subcommittee should not even indirectly narrow the power of the House to impeach through a recitation of two or three theories and a very apparent choice of one over the others, while at the same time asserting that no choice is necessary. The Subcommittee's report adopts the view that a Federal judge cannot be impeached unless he is found to have committed a crime, or a serious indiscretion in his judicially connected activities. Although it is purely dicta, inclusion of this chapter in the report may be mischievous since it might unjustifiably restrict the scope of further investigation.

Following the submission of the report, further proceedings against Justice Douglas were discontinued.<sup>(8)</sup>

6. See §14.16 infra.

### ***Offenses Committed Prior to Term of Office***

**§ 3.14 The Speaker and the House declined to take any action on a request by the Vice President for an investigation into possible impeachable offenses against him, where the offenses were not related to his term of office as Vice President and where the charges were pending before the courts.**

On Sept. 25, 1973,<sup>(7)</sup> Speaker Carl Albert, of Oklahoma, laid before the House a communication from Vice President Spiro T. Agnew requesting that the House investigate offenses charged to the Vice President in an investigation being conducted by a U.S. Attorney. The alleged offenses related to the Vice President's conduct before he became a civil officer under the United States. No action was taken on the request.

*Parliamentarian's Note:* The Vice President cited in his letter a request made by Vice President John C. Calhoun in 1826 (discussed at 3 Hinds' Precedents §1736). On that occasion, the alleged charges related to the Vice President's prior service as Secretary of War. The communication

7. 119 CONG. REC. 31368, 93d Cong. 1st Sess.

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. The Vice President's letter did not cite the Committee on the Judiciary's recommendation to the House (discussed in 3 Hinds' Precedents §2510) that conduct of Vice President Colfax allegedly occurring prior to his term as Vice President was not grounds for impeachment, since not "an act done or omitted while the officer was in office." (See §5.14, *infra*).

#### § 4. Effect of Adjournment

Under parliamentary law, as stated in Jefferson's Manual, "an impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament."<sup>(8)</sup> Both Judge John Pickering and Judge Harold Louderback were impeached by the House in one Congress and tried by the Senate in the next.<sup>(9)</sup>

8. *House Rules and Manual* §620 (Jefferson's Manual) (1973).

9. See 3 Hinds' Precedents §§2319, 2320, for the presentation of the res-

The practice at the time of the Pickering impeachment was to present a resolution of impeachment to the Senate and then to prepare and adopt articles of impeachment for presentation to the Senate. In that case, impeachment proceedings begun in the 7th Congress were resumed by the House in the 8th Congress.<sup>(10)</sup>

The question arose in the 73d Congress whether the appointment in the 72d Congress of House managers to conduct impeachment proceedings against Judge Louderback was such as to permit them to act in that function in the 73d Congress without a further grant of authority. The House adopted in the 73d Congress a resolution filling vacancies, making reappointments, and vesting the managers with powers and granting them funds.<sup>(11)</sup>

In the case of Judge Halsted L. Ritter, the House authorized and the Committee on the Judiciary conducted an impeachment investigation in the 73d Congress, with

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olution impeaching Judge Pickering, and §4.1, *infra*, for the presentation to the Senate of the resolution impeaching Judge Louderback.

10. See 3 Hinds' Precedents §2321. For the later practice of presenting to the Senate a resolution together with articles of impeachment, see §8.1, *infra*.

11. See §4.2, *infra*.

the resolution and articles of impeachment being reported and adopted in the 74th Congress. Charges of impeachment were offered and referred anew to the Committee on the Judiciary in the 74th Congress, but the resolution reported and adopted by the House specifically referred to the evidence gathered during the 73d Congress as the basis for impeachment.<sup>(12)</sup>

#### Cross References

- Adjournments generally and their effect on business, see Ch. 40, *infra*.  
 Resumption of business in a new Congress, see Ch. 1, *supra*.  
 Resumption of committee investigation into conduct of Judge Ritter, see §18, *infra*.  
 Resumption of proceedings against Judge Louderback in succeeding Congress, see §17, *infra*.

### ***Impeachment in One Congress and Trial in the Next***

#### **§ 4.1 The managers on the part of the House presented articles of impeachment against Judge Harold Louderback on the final day of the 72d Congress, and the Senate organized for and conducted the trial in the 73d Congress.**

On Mar. 3, 1933, the last day of the 72d Congress, the managers

<sup>12.</sup> See §§ 4.3, 4.4, *infra*.

on the part of the House in the Louderback impeachment proceeding appeared before the Senate and read the resolution and articles of impeachment. The Senate adopted a motion that the proceedings be made a special order of business on the first day of the first session of the 73d Congress.<sup>(13)</sup>

The only other occasion where impeachment proceedings continued into a new Congress occurred in 1803–04, the resolution of impeachment of Judge John Pickering being carried to the Senate by a House committee of two members on Mar. 3, 1803, the final day of the 7th Congress. The Senate organized for and conducted the trial in the 8th Congress.<sup>(14)</sup>

It should be noted that in neither the Louderback nor Pickering impeachments did the trial in the Senate begin before the adjournment *sine die* of the Congress. The issue whether the Senate could conduct a bifurcated trial, part in one Congress and part in the next, has not been presented.<sup>(15)</sup>

<sup>13.</sup> 6 Cannon's Precedents § 515.

<sup>14.</sup> 3 Hinds' Precedents §§ 2319, 2320. Managers had not been appointed nor articles considered in the House by the end of the 7th Congress.

<sup>15.</sup> For a memorandum as to whether an impeachment trial begun in one Con-

***Authority of Managers Following Expiration of Congress***

**§ 4.2 Where the House had impeached Judge Louderback in the 72d Congress but the Senate did not organize for or conduct the trial until the 73d Congress, the House in the 73d Congress adopted resolutions (1) appointing Members to fill vacancies for managers not re-elected and reappointing managers elected in the 72d Congress and (2) granting the managers powers and funds.**

On Mar. 9, 1933, the first day of the 73d Congress, the Senate sitting as a Court of Impeachment for the trial of Judge Harold Louderback met at 2 p.m., articles of impeachment having been presented in the Senate on the last day of the 72d Congress. On Mar. 13, the managers on the part of

gress could be continued into the next, see 120 CONG. REC. 31346-48, 93d Cong. 2d Sess., Sept. 17, 1974 (insertion by Michael J. Mansfield [Mont.], Majority Leader of the Senate).

Under parliamentary law, an impeachment is not discontinued by the dissolution of Parliament but may be resumed by the new Parliament. See *House Rules and Manual* § 620 (Jefferson's Manual) (1973).

the House, being those Members appointed in the 72d Congress to conduct the inquiry and re-elected to the 73d Congress, appeared for the proceedings of the Senate sitting as a Court of Impeachment.<sup>(16)</sup>

On Mar. 22, the House adopted a resolution electing successors for those managers elected in the 72d Congress who were no longer Members of the House, and reappointing the former managers. The House discussed the power of the House to appoint managers to continue in office in that capacity after the expiration of the term to which elected to the House.<sup>(17)</sup>

***Investigation in One Congress and Impeachment in the Next***

**§ 4.3 The Committee on the Judiciary determined in the 74th Congress that its authority to report out a resolution impeaching a federal judge expired with the termination of the Congress in which the resolution containing charges was introduced and referred to the committee.**

On Mar. 2, 1936, in the 74th Congress, the House was considering a resolution and articles of

<sup>16.</sup> 6 Cannon's Precedents § 516.

<sup>17.</sup> 6 Cannon's Precedents § 517.

impeachment, reported by the Committee on the Judiciary, against Judge Halsted L. Ritter, an investigation of his conduct having been made in the 73d Congress. Mr. William V. Gregory, of Kentucky, a member of the committee, remarked on the effect, in the 74th Congress, of an authorizing resolution passed in the 73d Congress:<sup>(18)</sup>

MR. GREGORY: Mr. Speaker, in view of the statement made by the gentleman from Florida [Mr. Wilcox], and more recently by the gentleman from New York [Mr. Hancock], with reference to what happened in committee, I think it proper I should make a statement at this time.

The first proceedings in this matter were instituted in the Seventy-third Congress. A simple resolution of investigation was introduced by the gentleman from Florida [Mr. Wilcox]. No one during that session of Congress attempted by resolution or upon his own authority on the floor of the House to prefer impeachment charges against the judge. The Seventy-third Congress died, and the gentleman from Florida [Mr. Green] came before the Seventy-fourth Congress and wanted some action taken upon the resolution which had been introduced in the Seventy-third Congress. I took the position before the Committee—and I think others agreed with me—that with the passing of the Seventy-third Congress it had no power over the resolution of investigation which had been intro-

duced any more than it did in connection with any other bill or resolution that might have been introduced in a previous Congress. Therefore, when the question came up as to voting impeachment charges upon a resolution which was introduced in the Seventy-third Congress, I voted against such action, and I think other Members voted the same way. But when the matter was properly presented at this session of Congress and impeachment charges were made on this floor on the responsibility of the gentleman from Florida [Mr. Green], the matter came before the committee again in regular and proper form, and I then voted to report out this resolution of impeachment.

I want the Members of the House to understand that the Committee on the Judiciary has not changed its position on this proposition at any time. These are the facts.

**§ 4.4 Where the Committee on the Judiciary investigated charges of impeachable offenses against a federal judge in one Congress and reported to the House a resolution of impeachment in the next, the resolution indicated that impeachment was warranted by the evidence gathered in the investigation conducted in the preceding Congress.**

On Feb. 20, 1936, the Committee on the Judiciary submitted a privileged report (H. Rept. No. 74-2025) on the impeachment of

18. 80 CONG. REC. 3089, 74th Cong. 2d Sess.



District Judge Halsted L. Ritter to the House. The report and the accompanying resolution recited that the evidence taken by the Committee on the Judiciary in the prior Congress, the 73d Congress, pursuant to authorizing resolution, sustained articles of impeachment (the charges of impeachable offenses had been presented anew in the 74th Congress and referred to the committee):

The Committee on the Judiciary, having had under consideration charges of official misconduct against Halsted L. Ritter, a district judge of the United States for the Southern District of Florida, and having taken testimony with regard to the official conduct of said judge under the authority of House Resolution 163 of the Seventy-third Congress, report the accompanying resolution of impeachment and articles of impeachment against Halsted L. Ritter to the House of Representatives with the recommendation that the same be adopted by the House and presented to the Senate.

[H. Res. 422, 74th Cong., 2d sess.  
(Rept. No. 2025)]

RESOLUTION

*Resolved*, That Halsted L. Ritter, who is a United States district judge

for the southern district of Florida, be impeached for misbehavior, and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under House Resolution 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit: . . .<sup>(19)</sup>

*Parliamentarian's Note:* No resolution was adopted in the 74th Congress to specifically authorize an investigation in that Congress by the Committee on the Judiciary of charges of impeachment against Judge Ritter, the investigation apparently having been completed in the 73d Congress but not reported on to the House. Charges were introduced in the 74th Congress against Judge Ritter and referred to the committee, since the committee could not report resolutions and charges referred in the 73d Congress, all business expiring in the House with a Congress.<sup>(20)</sup>

19. 80 CONG. REC. 2528, 74th Cong. 2d Sess. (report submitted); 80 CONG. REC. 3066, 74th Cong. 2d Sess., Mar. 2, 1936 (report considered in the House).

For detailed discussion of committee consideration and report in

the Ritter impeachment proceedings, see §§ 18.1–18.4, *infra*.

20. For introduction of charges and a resolution impeaching Judge Ritter in the 74th Congress, see §§ 18.2, 18.3, *infra*.

## B. INVESTIGATION AND IMPEACHMENT

### § 5. Introduction and Referral of Charges

In the majority of cases, impeachment proceedings in the House have been initiated either by introducing resolutions of impeachment by placing them in the hopper, or by offering charges on the floor of the House under a question of constitutional privilege. Resolutions dropped in the hopper were used to initiate impeachment proceedings against Associate Justice William O. Douglas and President Richard M. Nixon. Where such resolutions have directly impeached federal civil officers, they have been referred by the Speaker to the Committee on the Judiciary, which has jurisdiction over federal judges and presidential succession; where they have called for an investigation into such charges by the Committee on the Judiciary or by a select committee they have been referred by the Speaker to the Committee on Rules, which has had jurisdiction over resolutions authorizing investigations by committees of the House.<sup>(1)</sup>

1. See §§5.10, 5.11, *infra*. In the case of Justice Douglas, the Committee on the Judiciary authorized a special subcommittee to investigate the

Where a Member raises a question of constitutional privilege to present impeachment proceedings on the floor of the House, he must in the first instance offer a resolution, which resolution must directly call for impeachment, rather than call for an investigation.<sup>(2)</sup>

Impeachment proceedings in the House have been set in motion by memorial or petition,<sup>(3)</sup> and on one occasion by message from the President.<sup>(4)</sup> In the 93d Congress the Vice President sought to initiate an investigation by the House into charges pending

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charges, without the adoption by the House of a resolution specifically authorizing an investigation (see §6.11, *infra*). In the case of President Nixon, the Committee on the Judiciary reported a resolution which was adopted by the House, specifically conferring on the committee the power to investigate the charges (see §6.2, *infra*).

2. See §5.4, *infra*. But see §18.2, *infra*, for one occasion where a Member gained the floor under a question of privilege and offered charges but not a resolution of impeachment.
3. 3 Hinds' Precedents §§2364, 2469 (memorial from state legislature initiating proceedings against Judge Charles Swaine, resulting in his impeachment), 2491, 2494, 2496; 6 Cannon's Precedents §552.
4. 3 Hinds' Precedents §2294 (Senator William Blount).

against him in the courts, but no action was taken on his request (by letter to the Speaker).<sup>(5)</sup>

**Cross References**

- Initiation of specific impeachment proceedings, see §§ 15–18, *infra*.
- Jurisdiction of House committees generally, see Ch. 17, *infra*.
- Privilege for consideration of amendments to articles of impeachment, see § 10, *infra*.
- Privilege of reports on impeachment, see § 8, *infra*.
- Questions of privilege of the House, raising and substance of, see Ch. 11, *supra*.
- Resolutions, petitions and memorials generally, see Ch. 24, *infra*.

***Privilege of Impeachment Charges and Resolutions***

**§ 5.1 A proposition impeaching a federal civil officer is privileged when offered on the floor of the House.**

On Jan. 6, 1932,<sup>(6)</sup> Mr. Wright Patman, of Texas, rose to a question of constitutional privilege, impeached Secretary of the Treasury

- 5. See § 5.14, *infra*, for Vice President Spiro T. Agnew’s request and for a discussion of other cases where federal civil officers have sought to initiate investigations into charges against them.
- 6. 75 CONG. REC. 1400, 72d Cong. 1st Sess.

Andrew W. Mellon, and offered a resolution authorizing an investigation:

IMPEACHMENT OF ANDREW W. MELLON,  
SECRETARY OF THE TREASURY

MR. PATMAN: Mr. Speaker, I rise to a question of constitutional privilege. On my own responsibility as a Member of this House, I impeach Andrew William Mellon, Secretary of the Treasury of the United States, for high crimes and misdemeanors, and offer the following resolution:

Whereas . . .

*Resolved*, That the Committee on the Judiciary is authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Andrew W. Mellon, Secretary of the Treasury, to determine whether, in its opinion, 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. Such 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 purposes 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 or elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to employ such experts, and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony, to have such printing and binding done, and to make such expenditures not exceeding \$5,000, as it deems necessary.

**§ 5.2 Although a resolution of impeachment is privileged, it may not be called up in the House while another Member has the floor and does not yield for that purpose, but it may be introduced for reference through the hopper at the Clerk's desk.**

On Apr. 15, 1970, Mr. Louis C. Wyman, of New Hampshire, had the floor for a special-order speech and yielded to Mr. Andrew Jacobs, Jr., of Indiana:

MR. JACOBS: Mr. Speaker, will the gentleman yield for a three-sentence statement?

MR. WYMAN: I yield to the gentleman from Indiana.

MR. JACOBS: Mr. Speaker, the gentleman from Michigan has stated publicly that he favors impeachment of Justice Douglas.

He, therefore, has a duty to this House and this country to file a resolution of impeachment.

Since he refuses to do so and since he raises grave questions, the answers to which I do not know, but every American is entitled to know, I introduce at this time the resolution of impeachment in order that a proper and dignified inquiry into this matter might be held.

Mr. Jacobs then introduced his resolution (H. Res. 920) through the hopper and it was subsequently referred to the Committee on the Judiciary.<sup>(7)</sup>

7. 116 CONG. REC. 11942, 91st Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The gentleman from New Hampshire has the floor.

MR. WYMAN: I did not yield for that purpose.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana has introduced a resolution.<sup>(9)</sup>

**§ 5.3 The Speaker ruled that whether or not a resolution of impeachment was privileged was a constitutional question for the House and not the Chair to decide, where the resolution included charges against former civil officers.**

On May 23, 1933, Mr. Louis T. McFadden, of Pennsylvania, rose to a question of constitutional privilege and offered House Resolution 158, impeaching numerous members and former members of the Federal Reserve Board. During the reading of the resolution Mr. Carl E. Mapes, of Michigan, made a point of order against the resolution:

I wish to submit the question to the Speaker as to whether or not a person who is not now in office is subject to impeachment? This resolution of the gentleman from Pennsylvania refers to several people who are no longer holding any public office. They are not now at least civil officers. The Constitution

8. Charles M. Price (Ill.).

9. 116 CONG. REC. 11920, 91st Cong. 2d Sess.

provides that the “President, Vice President, and all civil officers shall be removed from office on impeachment”, and so forth. I have had no opportunity to examine the precedents since this matter came up, but it occurs to me that the resolution takes in too much territory to make it privileged.

Speaker Henry T. Rainey, of Illinois, ruled as follows:

That is a constitutional question which the Chair cannot pass upon, but should be passed upon by the House.

The resolution was referred on motion to the Committee on the Judiciary.<sup>(10)</sup>

### ***Initiation of Impeachment Charges by Motion or Resolution***

#### **§ 5.4 In impeaching an officer of the United States as a matter of constitutional privilege, a Member must in the first instance present a motion or resolution.**

On Jan. 18, 1933, Mr. Louis T. McFadden, of Pennsylvania, attempted to impeach President Herbert Hoover by presenting a question of constitutional privilege. Speaker John N. Garner, of Texas, ruled that a resolution or motion must first be presented:<sup>(11)</sup>

10. 77 CONG. REC. 4055, 73d Cong. 1st Sess.

11. 76 CONG. REC. 2041, 2042, 72d Cong. 2d Sess.

#### QUESTION OF PRIVILEGE

MR. MCFADDEN: Mr. Speaker, I rise to a question of constitutional privilege.

THE SPEAKER: The gentleman will state it.

MR. MCFADDEN: Mr. Speaker, on December 13, 1932—

MR. [ROBERT] LUCE [of Massachusetts]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. LUCE: Mr. Speaker, the raising of a question of constitutional privilege must be preceded by a resolution or motion

THE SPEAKER: As the Chair understands it, the gentleman is stating his constitutional question. Has the gentleman a resolution?

MR. MCFADDEN: I am trying to communicate to the House what I propose to do here, Mr. Speaker.

MR. LUCE: I insist on the point of order, Mr. Speaker.

THE SPEAKER: The rules of the House provide that the gentleman must send a resolution to the Clerk's desk in raising a question of constitutional privilege.

MR. MCFADDEN: If the Speaker will permit, I am attempting to make a privileged statement to the House, and I believe I am within my rights in doing this.

THE SPEAKER: In order for the gentleman to have the right to make such a statement to the House, he must send a resolution to the Clerk's desk and have it read, on which the House may then act. The gentleman would then have one hour in which to address the House, if he presented a

question of constitutional privilege. That is the only way the gentleman can obtain the floor.

MR. MCFADDEN: Mr. Speaker, I believe under the rules I am entitled to make a statement.

THE SPEAKER: Not prior to the submission of a resolution.

MR. MCFADDEN: If the Speaker will pardon me, I have not offered a resolution. I rise to a question of constitutional privilege, and I believe I have the right to communicate to the House a constitutional privilege.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I make the point of order that if the integrity of the gentleman has been impugned in any way by anyone, this would give him a constitutional privilege, and he has the right to rise to that privilege and state it without offering a resolution.

THE SPEAKER: That is true of a question of personal privilege, but the gentleman rises to a question of constitutional privilege. This can only be done, as the Chair understands it, by the presentation of a resolution upon which the constitutional question is based. A mere statement by the gentleman does not comply with the rules of the House. If the gentleman has no resolution involving a constitutional question, the Chair thinks he is not entitled to recognition.

MR. MCFADDEN: May I point out, Mr. Speaker, that impeachment proceedings are brought by other ways than formal whereases. It has been done at times by a memorial. I insist, Mr. Speaker, I am within my rights in communicating my statement to the House of Representatives.

THE SPEAKER: The Chair wants to give the gentleman all the privileges

he is entitled to under the rules of the House, but at the same time it is the duty of the Chair to maintain the rules, and it is the impression of the Chair from observation during the last 20 years that whenever a Member states a question of constitutional privilege it must be done in the form of a resolution. If a Member raises a question of personal privilege, the Member may then state the question of personal privilege and is entitled to an hour. Questions of personal privilege are on a different footing from a constitutional question of privilege.

MR. MCFADDEN: Mr. Speaker, I am still of the opinion that I am within my constitutional rights and am entitled to communicate a statement to the House of Representatives.

THE SPEAKER: The Parliamentarian has just called the attention of the Chair to a decision by Speaker Longworth, of February 16, 1929 (70th Cong., 2d sess., Record, p. 3602), in which he says:

In presenting a question of the privilege of the House a Member, in the first instance, must present a motion or resolution. Of course, this rule does not apply to a Member rising to a question of personal privilege.

This is a decision of Speaker Longworth, rendered in 1929, which is on all fours with this situation. The gentleman is not presenting a question of personal privilege but a question of constitutional privilege, and, in the instance referred to, following a number of precedents, it was held that the Member must present a resolution in the first instance on which to base his statement to the House, and then would be entitled to one hour.

MR. MCFADDEN: Mr. Speaker, I again call attention to the fact that impeachments may be brought by memorials and by other methods than that which has been stated in the decision referred to.

THE SPEAKER: When such memorials and petitions are presented to the House they are referred to the committee having jurisdiction of the particular subject. If a Member of the House bases his question of privilege on a memorial or petition, the memorial or petition must first be reported by the Clerk, and then the House may take such action as it sees fit.

MR. MCFADDEN: May not a Member of the House, under the right given him by the Constitution, present a communication to the House of Representatives which might later result in an impeachment?

THE SPEAKER: If the gentleman has a communication of that character, let him send it to the Clerk's desk and the Clerk will report it. Then the House can take such action as it deems proper. The Chair wants to be perfectly frank, and if the gentleman from Pennsylvania is undertaking to address the House for one hour, the Chair has no objection to that; but the Chair must maintain the rules and precedents of the House as the Chair finds them, and the gentleman can not get the floor under the proposition he has presented at the present time unless he sends up a resolution or motion.

### ***Offering Articles of Impeachment***

#### **§ 5.5 In presenting impeachment charges as privileged, a**

#### **Member need not offer articles of impeachment, which are prepared by the appropriate committee.**

On May 7, 1935,<sup>(12)</sup> Mr. Everett M. Dirksen, of Illinois, rose to a question of constitutional privilege and impeached Judge Samuel Alschuler; he offered House Resolution 214, authorizing an investigation by the Committee on the Judiciary. During his remarks, Speaker Joseph W. Byrns, of Tennessee, upheld the privileged nature of the charges:

MR. [DONALD C.] DOBBINS [of Illinois]: Mr. Speaker, a point of order. I have heard no articles of impeachment read. As I have listened to the matter presented by the gentleman from Illinois [Mr. Dirksen], it is nothing more nor less than a resolution asking for an inquiry, and not articles of impeachment. It seems to me that it is not a privileged matter, and the gentleman is not entitled to occupy the time of the House in this manner. The gentleman has not offered any articles of impeachment.

THE SPEAKER: The gentleman has offered no articles of impeachment. He is simply making charges.

MR. DOBBINS: I assumed he had finished. There have been no articles of impeachment presented.

THE SPEAKER: Charges of impeachment; not articles of impeachment.

MR. DOBBINS: I have heard no articles of impeachment read.

12. 79 CONG. REC. 7081-86, 74th Cong. 1st Sess.

MR. DIRKSEN: It seems to me this was in its entirety articles of impeachment.

MR. DOBBINS: It is nothing more than a resolution of inquiry.

MR. DIRKSEN: Perhaps the gentleman did not hear the first part of my remarks. I will read the first paragraph of this report:

Samuel Alschuler, justice of the Circuit Court of Appeals, Seventh Circuit, is impeached for high crimes and misdemeanors in said office upon the following specific charges.

MR. DOBBINS: As I understand articles of impeachment, Mr. Speaker, that does not amount to an impeachment at all.

THE SPEAKER: The gentleman does not prepare articles of impeachment. That is done by the committee.

MR. DOBBINS: It is simply a resolution of inquiry such as we have offered here every day, and is not a privileged matter.

THE SPEAKER: The Chair can only state what the gentleman said when he took the floor; that is, that he was preferring charges of impeachment against a certain United States circuit judge.

MR. DOBBINS: But there have been no such charges; simply a resolution of inquiry.

THE SPEAKER: The gentleman is making his charges now.

### ***Debate on Question of Privilege to Present Impeachment Charges***

#### **§ 5.6 A Member recognized on a question of privilege to**

#### **present impeachment charges against an officer of the government is entitled to an hour for debate.**

On Jan. 14, 1936, Mr. Robert A. Green, of Florida, rose to a question of constitutional privilege and presented charges of impeachment against Judge Halsted L. Ritter. During the course of his remarks, Speaker Joseph W. Byrns, of Tennessee, ruled as follows on recognition and time for debate:

THE SPEAKER: The Chair will state to the gentleman from Michigan [Mr. Carl E. Mapes] that the gentleman from Florida having raised a question of privilege and having made these charges is entitled to 1 hour on the charges. The gentleman has been recognized and may use all or any portion of the hour he sees fit.<sup>(13)</sup>

#### **§ 5.7 In presenting impeachment charges as privileged, a Member is not necessarily confined to a bare statement of the facts but may supplement them with argumentative statements.**

On May 7, 1935, Mr. Everett M. Dirksen, of Illinois, rose to a question of constitutional privilege and impeached Circuit Judge Samuel Alschuler. He was recognized for an hour and during his remarks Speaker Joseph W. Byrns, of Ten-

13. 80 CONG. REC. 404, 406, 74th Cong. 2d Sess.



nessee, overruled a point of order against the content of his remarks:<sup>(14)</sup>

MR. [HATTON W.] SUMNERS of Texas: I am not familiar with the precedents, but I have the impression that in preferring charges of impeachment, argumentative statements should be avoided as much as possible. If I am wrong in that statement with reference to what the precedents and custom have established, I of course withdraw the observation.

MR. DIRKSEN: Mr. Speaker, I have no desire to violate the precedents, and if I have done so it is only because I have not had an opportunity to examine them thoroughly, but if the objection is well taken, I should prefer not to present argumentative matters to the House.

MR. SUMNERS of Texas: I am sure the gentleman does not propose to violate the precedents, and unfortunately I do not know about the matter myself. I am not advised as to what the precedents establish, but without looking them up, merely from the standpoint of what would seem to be proper procedure, it occurs to me that all argumentative statements be omitted in preferring impeachment charges.

MR. DIRKSEN: Mr. Speaker, there are two more pages of explanatory matter which perhaps I should not present to the House at this time if the point is well taken. I would, however, like to put them into the Record as elaborating the statement of specific charges that have been made.

THE SPEAKER: The Chair thinks it is entirely up to the gentleman from Illi-

nois so far as the propriety of his statement is concerned.

MR. DIRKSEN: I do not want to violate any of the proprieties of the House, Mr. Speaker.

MR. SUMNERS of Texas: I do not know what they are myself.

THE SPEAKER: The gentleman from Illinois is making his statement on his own responsibility as a Member of the House.

On Jan. 14, 1936, Mr. Robert A. Green, of Florida, rose to a question of constitutional privilege and presented charges of impeachment against Judge Halsted L. Ritter. During the course of his remarks, Speaker Byrns overruled a point of order against the personal nature of Mr. Green's remarks:<sup>(15)</sup>

MR. [CARL E.] MAPES [of Michigan]: Mr. Speaker, as I understand, the gentleman has made his impeachment charges, and for the last 10 minutes has been proceeding almost entirely with an argument and a personal statement which I do not think are in order under the circumstances. I think I will make the point of order, Mr. Speaker.

THE SPEAKER: The Chair will state to the gentleman from Michigan that the gentleman from Florida having raised a question of privilege and having made these charges is entitled to 1 hour on the charges. The gentleman has been recognized and may use all or any portion of the hour he sees fit.

MR. MAPES: Is the gentleman entitled during that hour to engage in a general discussion of the charges?

14. 79 CONG. REC. 7081-86, 74th Cong. 1st Sess.

15. 80 CONG. REC. 404, 406, 74th Cong. 2d Sess.

THE SPEAKER: He is, under all the precedents with which the Chair is familiar.

***Privilege of Questions Incidental to Impeachment***

**§ 5.8 Where privileged resolutions for the impeachment of a federal civil officer have been referred to a committee, that committee may report and call up as privileged resolutions incidental to consideration of the impeachment question, including those pertaining to subpoena authority and funding of an investigation.**

On Feb. 6, 1974, Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, called up as privileged House Resolution 803, authorizing that committee to investigate the sufficiency of grounds for impeachment of President Richard Nixon. Various resolutions of impeachment of the President had previously been referred to the committee.<sup>(16)</sup>

*Parliamentarian's Note:* Resolutions authorizing a committee to conduct investigations with sub-

**16.** 120 CONG. REC. 2349, 2350, 93d Cong. 2d Sess. For the events leading up to the presentation and adoption of H. Res. 803, and the reasons for its presentation, see § 15, *infra*.

pena power and resolutions funding such investigations from the contingent fund of the House are normally only privileged when respectively reported and called up by the Committee on Rules or the Committee on House Administration.<sup>(17)</sup> But a committee to which resolutions of impeachment have been referred may report and call up as privileged resolutions incidental to the consideration of the impeachment question. For example, charges of impeachable offenses were referred to the Committee on the Judiciary in 1927, in relation to the conduct of District Judge Frank Cooper. The Committee on the Judiciary subsequently called up as privileged a resolution authorizing an investigation by the committee and funding such investigation from the contingent fund of the House. In response to a parliamentary inquiry, Speaker Nicholas Longworth, of Ohio, ruled that the resolution was privileged "because it relates to impeachment proceedings."<sup>(18)</sup> If, however, such a

**17.** See Rule XI clause 22, *House Rules and Manual* §726 (1973), giving privileged status to reports of the Committee on House Administration on matters of expenditure of the contingent fund.

**18.** 6 Cannon's Precedents §549. For other occasions where the Committee on the Judiciary has reported and

resolution is offered on the floor by a Member on his own initiative and not reported from the committee to which the impeachment has been referred, it is not privileged for immediate consideration, since not directly calling for impeachment.<sup>(19)</sup>

**§ 5.9 Resolutions proposing the discontinuation of impeachment proceedings are privileged for immediate consideration when reported from the committee charged with the investigation.**

On Feb. 13, 1932, Mr. Hatton W. Sumners, of Texas, offered House Report No. 444 and House Resolution 143, discontinuing impeachment proceedings against Secretary of the Treasury Andrew W. Mellon. He offered the report as privileged and it was immediately considered and adopted by the House.<sup>(20)</sup>

On Feb. 24, 1933, Speaker John N. Garner, of Texas, held that a resolution reported from the Committee on the Judiciary, proposing the discontinuance of an impeach-

called up as privileged resolutions authorizing the committee to conduct impeachment investigations, see 3 Hinds' Precedents §2029 and 6 Cannon's Precedents §§498, 528.

19. 6 Cannon's Precedents §468.

20. 75 CONG. REC. 3850, 72d Cong. 1st Sess.

ment proceeding, was privileged for immediate consideration:<sup>(1)</sup>

THE SPEAKER: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

HOUSE RESOLUTION 387

*Resolved*, That the evidence submitted on the charges against Hon. Harold Louderback, district judge for the northern district of California, does not warrant the interposition of the constitutional powers of impeachment of the House.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, when they report back a resolution of that kind, is it a privileged matter?

THE SPEAKER: It is not only a privileged matter but a highly privileged matter.

MR. [LEONIDAS C.] DYER [of Missouri]: Mr. Speaker, this is the first instance to my knowledge, in my service here, where the committee has reported adversely on an impeachment charge.

THE SPEAKER: The gentleman's memory should be refreshed. The Mellon case was reported back from the committee, recommending that impeachment proceedings be discontinued.

MR. SNELL: Was that taken up on the floor as a privileged matter?

THE SPEAKER: It was.

On Mar. 24, 1939, Mr. Sam Hobbs, of Alabama, called up a re-

1. 76 CONG. REC. 4913, 72d Cong. 2d Sess. (also cited at 6 Cannon's Precedents §514).

port of the Committee on the Judiciary on House Resolution 67, which report recommended against the impeachment of Secretary of Labor Frances Perkins. The report was called up as privileged and the House immediately agreed to Mr. Hobbs' motion to lay the report on the table.<sup>(2)</sup>

***Referral of Resolutions Introduced Through Hopper***

**§ 5.10 Resolutions introduced through the hopper under Rule XXII 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, while 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, resolutions relating to the impeachment of President Nixon were introduced (placed in the hopper pursuant to Rule XXII clause 4) and severally referred as follows:<sup>(3)</sup>

2. 84 CONG. REC. 3273, 76th Cong. 1st Sess.
3. 119 CONG. REC. 34873, 93d Cong. 1st Sess. See also 116 CONG. REC.

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:

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.

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):

11941, 11942, 91st Cong. 2d Sess., Apr. 15, 1970 (resolution impeaching Associate Justice William O. Douglas of the Supreme Court, referred to the Committee on the Judiciary). See also *House Rules and Manual* §854 (1973).

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.

**§ 5.11 The Committee on Rules has jurisdiction of resolu-**

**tions authorizing the Committee on the Judiciary to investigate the conduct of federal officials and directing said committee to report its findings to the House “together with such resolutions of impeachment as it deems proper.”**

On Feb. 22, 1966,<sup>(4)</sup> a resolution (H. Res. 739) “authorizing the Committee on the Judiciary to conduct certain investigations” was referred to the Committee on Rules. The resolution called for an investigation into the official conduct of Federal District Court Judges Alfred P. Murrah, Stephen S. Chandler, and Luther Bohannon, in Oklahoma, and directed the Committee on the Judiciary to report its findings to the House “together with such resolutions of impeachment as it deems proper.”

***Motions to Lay on the Table or to Refer***

**§ 5.12 The motion to lay on the table applies to resolutions proposing impeachment and may deprive a Member who has offered such a resolution of recognition for debate thereon.**

4. 112 CONG. REC. 3665, 89th Cong. 2d Sess.

On Jan. 17, 1933,<sup>(5)</sup> Speaker John N. Garner, of Texas, held that the motion to table applied to resolutions of impeachment and could deprive the proponent of debate on such a resolution:

MR. [LOUIS T.] MCFADDEN [of Pennsylvania]: On my own responsibility, as a Member of the House of Representatives, I impeach Herbert Hoover, President of the United States, for high crimes and misdemeanors.

THE SPEAKER: The Clerk will report the resolutions.

MR. MCFADDEN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCFADDEN: Am I not entitled to an hour to discuss the resolution?

THE SPEAKER: The gentleman is entitled to an hour, but first the Clerk must report the resolution of impeachment.

MR. MCFADDEN: I offer the following resolution.

THE SPEAKER: The Clerk will report the resolution.

The Clerk read as follows: . . .

MR. [ROBERT] LUCE [of Massachusetts] (interrupting the reading of the resolution): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. LUCE: On a previous occasion charges apparently of the same purport were laid on the table by the House. Is it within the province of any Member to evade the rules and to take

a matter from the table by proceeding with a second movement of the same sort?

THE SPEAKER: The Chair, of course, has not heard the resolution read. Probably if it was identical with the resolution submitted some time ago and laid on the table there would be some question whether or not a second impeachment could be had. But the President can be impeached, or any person provided for by the Constitution, a second time, and the Chair thinks the better policy would be to have the resolution read and determine whether or not it is the same.

MR. [FRED A.] BRITTEN [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BRITTEN: Would a motion be in order at this time?

THE SPEAKER: No. The Chair would not recognize any Member to make a motion until the resolution is read.

MR. BRITTEN: Mr. Speaker, I ask unanimous consent that the resolution be considered as having been read.

THE SPEAKER: The Chair thinks the resolution should be read.

MR. MCFADDEN (again interrupting the reading of the resolution): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCFADDEN: I understand that at the completion of the reading of this resolution it is planned—

THE SPEAKER: That is not a parliamentary inquiry. That is a statement.

MR. MCFADDEN: I am attempting to state a parliamentary inquiry, Mr. Speaker.

5. 76 CONG. REC. 1965-68, 72d Cong. 2d Sess.

THE SPEAKER: The gentleman will state it. The Chair will hear the gentleman.

MR. MCFADDEN: During the opening I addressed the Speaker to ascertain whether or not I would be protected in one hour time for debate. I am prepared to debate. I understand a certain motion will be made which will deprive me of that right.

THE SPEAKER: The Chair can not control 434 Members of the House in the motions they will make. The Chair must recognize them and interpret the rules as they are written. That is what the Chair intends to do. The gentleman from Pennsylvania would have an opportunity to discuss this matter for an hour under the rules of the House, if some gentleman did not take him off his feet by a proper motion. [Applause.]

MR. MCFADDEN: That is what I was attempting to ascertain.

The Clerk concluded the reading of the resolution.

MR. [HENRY T.] RAINEY [of Illinois]: Mr. Speaker, I move to lay the resolution of impeachment on the table.

THE SPEAKER: The gentleman from Illinois moves to lay the resolution of impeachment on the table.

May the Chair be permitted to make a statement with reference to the rule applying to that motion? The Parliamentarian has examined the precedents with reference to the motion. Speaker Clark and Speaker Gillette, under identical conditions, held that a motion to lay on the table took a Member off the floor of the House, although the general rules granted him one hour in which to discuss the resolution of impeachment or privileges of the

House. Therefore the motion is in order.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I demand the yeas and nays.

*Parliamentarian's Note:* Under Rule XVI clause 4, the motion to lay on the table may be offered while a question is under debate, including a question of privilege, and is not debatable. The motion to refer is also in order under the rule and is debatable within narrow limits. The question of consideration may also be raised under Rule XVI clause 3; it is not debatable, but may be demanded before debate on the pending question, and may be raised against a question of the highest privilege.<sup>(6)</sup>

### § 5.13 Resolutions authorizing investigations into charges of impeachment have been referred, on motion, to the Committee on the Judiciary.

On Jan. 24, 1939,<sup>(7)</sup> a Member declared his impeachment of certain officials of the executive branch, including Secretary of Labor Frances Perkins:

MR. [J. PARNELL] THOMAS of New Jersey: Mr. Speaker, on my own responsibility as a Member of the House

6. See Rule XVI clauses 3, 4 and notes thereto, *House Rules and Manual* §§ 778-787 (1973).

7. 84 CONG. REC. 702-11, 76th Cong. 1st Sess.

of Representatives, I impeach Frances Perkins, Secretary of Labor of the United States; James L. Houghteling, Commissioner of the Immigration and Naturalization Service of the Department of Labor; and Gerard D. Reilly, Solicitor of the Department of Labor, as civil officers of the United States, for high crimes and misdemeanors in violation of the Constitution and laws of the United States, and I charge that the aforesaid Frances Perkins, James L. Houghteling, and Gerard D. Reilly, as civil officers of the United States, were and are guilty of high crimes and misdemeanors in office in manner and form as follows, to wit: . . .

Mr. Thomas offered a resolution authorizing an investigation of charges, which resolution was referred, on motion, to the Committee on the Judiciary:

*Resolved*, That the Committee on the Judiciary be and is hereby authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Frances Perkins, Secretary of Labor; James L. Houghteling, Commissioner of Immigration and Naturalization Service, Department of Labor; and Gerard D. Reilly, Solicitor, Department of Labor, to determine whether, in its opinion, they have been guilty of any high crimes or misdemeanors which, in the contemplation of the Constitution, requires the interposition of the constitutional powers of the House. Such committee shall report its findings to the House together with such articles of impeachment as the facts may warrant.

For the purposes of this resolution the committee is authorized and di-

rected to sit and act, during the present session of Congress, at such times and places in the District of Columbia, or elsewhere, whether or not the House is sitting, has recessed, or has adjourned; to hold hearings; to employ such experts and such clerical, stenographic and other assistance; and to require the attendance of such witnesses and the production of such books, papers, and documents; and to take such testimony and to have such printing and binding done; and to make such expenditures not exceeding \$10,000, as it deems necessary. . . .

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, I move that the resolution be referred to the Committee on the Judiciary of the House and upon that I desire to say just a word. A great many suggestions have been made as to what should be done with this resolution, but I think this would be the orderly procedure so that the facts may be developed. The resolution will come out of that committee or remain in it according to the testimony adduced.

I therefore move the previous question on my motion to refer, Mr. Speaker.

The previous question was ordered.

The motion was agreed to.

On Jan. 6, 1932,<sup>(8)</sup> a privileged resolution proposing an investigation directed towards impeachment, offered as privileged on the floor, was on motion referred to the Committee on the Judiciary:

IMPEACHMENT OF ANDREW W. MELLON,  
SECRETARY OF THE TREASURY

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I rise to a question of

<sup>8</sup> 75 CONG. REC. 1400, 72d Cong. 1st Sess.



constitutional privilege. On my own responsibility as a Member of this House, I impeach Andrew William Mellon, Secretary of the Treasury of the United States for high crimes and misdemeanors, and offer the following resolution: . . .

*Resolved*, That the Committee on the Judiciary is authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Andrew W. Mellon, Secretary of the Treasury, to determine whether, in its opinion, 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. Such 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 purposes 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 or elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to employ such experts and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony, to have such printing and binding done, and to make such expenditures not exceeding \$5,000, as it deems necessary.

MR. [JOSEPH W.] BYRNS [of Tennessee]: Mr. Speaker, I move that the articles just read be referred to the Committee on the Judiciary, and upon that motion I demand the previous question.

The previous question was ordered.

THE SPEAKER:<sup>(9)</sup> The question is on the motion of the gentleman from Ten-

nessee, that the articles be referred to the Committee on the Judiciary. The motion was agreed to.

### ***Initiation of Investigation by Accused***

#### **§ 5.14 The Vice President sought to initiate an investigation by the House of certain charges brought against him, but the House took no action on the request.**

On Sept. 25, 1973,<sup>(10)</sup> Speaker Carl Albert, of Oklahoma, laid before the House a communication from Vice President Spiro T. Agnew requesting that the House investigate charges which might "assume the character of impeachable offenses" made against him by a U.S. Attorney in the course of a criminal investigation. The House took no action on the request by motion or otherwise.

*Parliamentarian's Note:* Several resolutions were introduced on Sept. 26, 1973, to authorize investigations into the charges referred to, both by the Committee on the Judiciary and by a select committee. The resolutions were referred to the Committee on Rules.<sup>(11)</sup>

The Vice President cited in his letter a request made by Vice

10. 119 CONG. REC. 31368, 93d Cong. 1st Sess.

11. See H. Res. 566 and H. Res. 567, 93d Cong. 1st Sess.

9. John N. Garner (Tex.).

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.<sup>(12)</sup> An investigatory subcommittee charged with an impeachment inquiry is limited to the powers expressly authorized by the committee.<sup>(13)</sup>

<sup>12</sup>. See §§ 6.3 et seq.

<sup>13</sup>. 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:<sup>(14)</sup>

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:<sup>(15)</sup>

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:<sup>(16)</sup>

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:<sup>(17)</sup>

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:<sup>(18)</sup>

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.<sup>(19)</sup>

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:<sup>(1)</sup>

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.<sup>(2)</sup>

### *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:<sup>(3)</sup>

#### 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:<sup>(4)</sup>

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 Thrower. 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.<sup>(5)</sup>

**§ 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,<sup>(6)</sup> 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:<sup>(7)</sup>

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

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-

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.

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.<sup>(8)</sup> 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.<sup>(9)</sup>

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:<sup>(10)</sup>

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:<sup>(1)</sup>

##### 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

**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.

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

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.<sup>(12)</sup>

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.<sup>(13)</sup> 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.<sup>(14)</sup>

***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,<sup>(15)</sup> 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.<sup>(1)</sup> 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).

Committee on the Judiciary adopted a resolution for the consideration of articles impeaching President Richard Nixon, providing for general debate, and permitting amendment under the five-minute rule.<sup>(2)</sup>

#### Cross References

Committee consideration and reports generally, see Ch. 17, *infra*.

Committee powers and procedures as to impeachment investigations, see §6, *supra*.

Committee procedure generally, see Ch. 17, *infra*.

Committee reports on grounds for impeachment, see §3, *supra*.

Management by reporting committee of impeachment propositions in the House, see §8, *infra*.

#### Collateral References

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

Impeachment of Richard M. Nixon, President of the United States, H. REPT. NO. 93-1305, Committee on the Judiciary, 93d Cong. 2d Sess., Aug. 20, 1974.

Associate Justice William O. Douglas, final report by the Special Subcommittee on H. Res. 920, Committee on the Judiciary, 91st Cong. 2d Sess., Sept. 17 1970.

<sup>2</sup>. See §7.2. *infra*.

### *Consideration of Resolution and Articles of Impeachment*

**§ 7.1 Under the modern practice, the Committee on the Judiciary may report to the House, when recommending impeachment, both a resolution and articles of impeachment, to be considered together by the House.**

On July 8, 1912, Mr. Henry D. Clayton, of Alabama, of the Committee on the Judiciary reported to the House a resolution (H. Res. 524) impeaching Judge Robert Archbald. The resolution not only impeached but set out articles of impeachment which the resolution stated were sustained by the evidence.<sup>(3)</sup> A similar procedure was followed in the impeachment of certain other judges—George English,<sup>(4)</sup> Harold Louderback,<sup>(5)</sup> and Halsted Ritter. The resolution of impeachment in the Ritter case incorporated the articles (the articles themselves which followed the text below have been omitted):<sup>(6)</sup>

<sup>3</sup>. 48 CONG. REC. 8697, 8698, 62d Cong. 2d Sess. (report and resolution printed in full in the Record).

<sup>4</sup>. 67 CONG. REC. 6280, 69th Cong. 1st Sess., Mar. 25, 1926.

<sup>5</sup>. 76 CONG. REC. 4913, 4914, 72d Cong. 2d Sess., Feb. 24, 1933.

<sup>6</sup>. 80 CONG. REC. 3066, 74th Cong. 2d Sess., Mar. 2, 1936.



[H. RES. 422, 74TH CONG., 2D SESS.  
(Rept. No. 2025)]

RESOLUTION

*Resolved*, That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior, and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under House Resolution 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out, and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Halsted L. Ritter, who was appointed, duly qualified, and commissioned to serve, during good behavior in office, as United States district judge for the southern district of Florida, on February 15, 1929.

***Resolutions for Committee Consideration***

**§ 7.2 The Committee on the Judiciary adopted in the 93d Congress a resolution governing its consideration of a motion to report to the House a resolution and articles impeaching President**

**Richard Nixon; the resolution provided for general debate on the resolution, reading the articles for amendment under the five-minute rule, and considering the original motion as adopted should any article be agreed to.**

On July 23, 1974, the Committee on the Judiciary adopted a resolution providing that on July 24 the committee should commence general debate on reporting to the House a resolution and articles of impeachment against President Nixon; the resolution provided for general debate and reading of the articles for amendment under the five-minute rule:<sup>(7)</sup>

*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 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

7. H. REPT. NO. 93-1305, at p. 10, Committee on the Judiciary, 93d Cong. 2d Sess., reported Aug. 20, 1974.

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.

***Broadcasting Committee Meetings During Consideration of Impeachment***

**§ 7.3 The House in the 93d Congress amended Rule XI of the rules of the House to provide for broadcasting of meetings, as well as hearings, of committees, thereby permitting radio and television coverage of the consideration by the Committee on the Judiciary of a resolution and articles of impeachment against President Richard Nixon.**

On July 22, 1974, Mr. B.F. Sisk, of California, called up by direction of the Committee on Rules a

resolution (H. Res. 1107) amending the rules of the House.<sup>(8)</sup>

Debate on the resolution indicated that it was intended to clarify the rules of the House to permit all committees to allow broadcasting of their meetings as well as hearings by majority vote, but that its immediate purpose was to allow the broadcasting of the proceedings of the Committee on the Judiciary in considering a resolution and articles of impeachment against President Nixon (to commence on July 24, 1974). The House discussed the advisability of, and procedures for, televising the proceedings of the Committee on the Judiciary, and adopted the resolution.<sup>(9)</sup>

***Privilege of Reports on Impeachment Questions***

**§ 7.4 The reports of a committee to which has been referred resolutions for the impeachment of a federal civil officer are privileged for immediate consideration.**

8. 120 CONG. REC. 24436, 93d Cong. 2d Sess.

9. Speaker Carl Albert (Okla.) overruled a point of order against consideration of the resolution and held that the question whether a committee meeting was properly called was a matter for the committee and not the House to consider. 120 CONG. REC. 24437, 93d Con. 2d Sess.

Resolutions impeaching federal civil officers, or resolutions incidental to an impeachment question, are highly privileged under the U.S. Constitution (§5, *supra*); reports thereon are likewise considered as privileged.<sup>(10)</sup>

***Privilege of Reports as to Discontinuance of Impeachment Proceedings***

**§ 7.5 Reports proposing discontinuance of impeachment**

10. Rule XI clause 27 (d) (4), *House Rules and Manual* §735 (1973) requires that, with certain exceptions, a measure not be considered in the House until the third calendar day on which the report thereon has been available to Members. However, on July 13, 1971, Speaker Carl Albert (Okla.) held that a committee report relating to the refusal of a witness to respond to a subpoena was not subject to the three-day rule. See 117 CONG. REC. 24720-23, 92d Cong. 1st Sess. (H. REPT. NO. 92-349). The Speaker held in that case that "the report is of such high privilege under the inherent constitutional powers of the House and under Rule IX that the provisions of clause 27(d) (4) of Rule XI are not applicable."

See also the dicta of Speaker Frederick H. Gillett (Mass.), at 6 Cannon's Precedents §48, that impeachment charges were privileged for immediate consideration due to their particularly privileged status under the U.S. Constitution.

These arguments seem persuasive with respect to impeachment cases when reported.

**proceedings are privileged for immediate consideration when reported from the Committee on the Judiciary.**

On Feb. 13, 1932, Mr. Hatton W. Sumners, of Texas, offered House Report No. 444 and House Resolution 143, discontinuing impeachment proceedings against Secretary of the Treasury Andrew Mellon. He offered the report as privileged and it was immediately considered and adopted by the House.<sup>(11)</sup>

On Mar. 24, 1939, Mr. Sam Hobbs, of Alabama, called up a privileged report of the Committee on the Judiciary on House Resolution 67, which report recommended against the impeachment of Secretary of Labor Frances Perkins. The report was called up as privileged and the House immediately agreed to Mr. Hobbs' motion to lay the report on the table.<sup>(12)</sup>

***Calendaring and Printing of Impeachment Reports***

**§ 7.6 Reports of the Committee on the Judiciary recommending impeachment of civil officers and judges of**

11. 75 CONG. REC. 3850, 72d Cong. 1st Sess.

12. 84 CONG. REC. 3273, 76th Cong. 1st Sess.

**the United States are referred to the House Calendar and ordered printed.**

A committee report on the impeachment of a federal civil officer is referred to the House Calendar, ordered printed, and may be printed in full in the Record either by resolution or pursuant to a unanimous consent request.<sup>(13)</sup>

***Report Submitted Without Resolution of impeachment***

**§ 7.7 President Richard Nixon having resigned following the decision of the Committee on the Judiciary to report to the House recommending his impeachment, the committee's report, without an accompanying resolution, was submitted to and accepted by the House.**

The Committee on the Judiciary considered proposed articles of im-

13. 48 CONG. REC. 8697, 8698, 62d Cong. 2d Sess., July 8, 1912 (Judge Robert Archbald); see also H. REPT. No. 653, 67 CONG. REC. 6280, 69th Cong. 1st Sess., Mar. 25, 1926 (Judge George English), printed in full in the Record by unanimous consent; H. REPT. No. 2025, 80 CONG. REC. 2528, 74th Cong. 2d Sess., Feb. 20, 1936 (Judge Halsted Ritter); H. REPT. No. 1305, 120 CONG. REC. 29219, 93d Cong. 2d Sess., Aug. 20, 1974 (President Richard Nixon), printed in full in the Record pursuant to H. Res. 1333, 120 CONG. REC. 29361, 29362.

peachment against President Nixon and adopted articles, as amended, on July 27, 29, and 30, 1974. Before the committee report with articles of impeachment were reported to the House, the President resigned his office. The committee's report was therefore submitted to the House without an accompanying resolution of impeachment. The report summarized in detail the evidence against the President and the committee's investigation and consideration of impeachment charges, and included supplemental, additional, separate, dissenting, minority, and concurring views as to the separate articles, the evidence before the committee and its sufficiency for impeachment, and the standards and grounds for impeachment of federal and civil officers.

The committee's recommendation 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:  
 . . .<sup>(14)</sup>

14. H. REPT. No. 93-1305, at p. 1, Committee on the Judiciary, printed in

The report was referred by the Speaker to the House Calendar, and accepted and ordered printed in full in the Record pursuant to the following resolution, agreed to under suspension of the rules, which acknowledged the intervening resignation of the President:

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.

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

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.<sup>(15)</sup>

***Reports Discontinuing Impeachment Proceedings***

**§ 7.8 The Committee on the Judiciary unanimously agreed to report adversely a resolution authorizing an impeachment investigation into the conduct of the Secretary of Labor.**

On Mar. 24, 1939,<sup>(16)</sup> a privileged report of the Committee on the Judiciary was presented to the House; the report was adverse to a resolution (H. Res. 67) authorizing an investigation of impeachment charges against Secretary of Labor Frances Perkins and two other officials of the Labor Department:

IMPEACHMENT PROCEEDINGS—FRANCES PERKINS

MR. [SAM] HOBBS [of Alabama]: Mr. Speaker, by direction of the Committee

15. 120 CONG. REC. 29361, 93d Cong. 2d Sess., Aug. 20, 1974.

16. 84 CONG. REC. 3273, 76th Cong. 1st Sess.

on the Judiciary I present a privileged report upon House Resolution 67, which I send to the desk.

THE SPEAKER:<sup>(17)</sup> The Clerk will report the resolution.

The Clerk read House Resolution 67.

MR. HOBBS: Mr. Speaker, this is a unanimous report from the Committee on the Judiciary adverse to this resolution. I move to lay the resolution on the table.

THE SPEAKER: The question is on the motion of the gentleman from Alabama to lay the resolution on the table.

The motion was agreed to.

**§ 7.9 Where an impeachment resolution was pending before the Committee on the Judiciary, and the official charged resigned, the committee reported out a resolution recommending that the further consideration of the charges be discontinued.**

On Feb. 13, 1932,<sup>(18)</sup> the Committee on the Judiciary reported adversely on impeachment charges and its resolution was adopted by the House:

IMPEACHMENT CHARGES—REPORT  
FROM COMMITTEE ON THE JUDICIARY

MR. [HATTON W.] SUMNERS of Texas: Mr. Speaker, I offer a report from the Committee on the Judiciary, and I would like to give notice that immediately upon the reading of the report I shall move the previous question.

17. William B. Bankhead (Ala.).

18. 75 CONG. REC. 3850, 72d Cong. 1st Sess.

THE SPEAKER:<sup>(19)</sup> The gentleman from Texas offers a report, which the Clerk will read.

The Clerk read the report, as follows:

HOUSE OF REPRESENTATIVES—RELATIVE TO THE ACTION OF THE COMMITTEE ON THE JUDICIARY WITH REFERENCE TO HOUSE RESOLUTION 92

Mr. Sumners of Texas, from the Committee on the Judiciary, submitted the following report (to accompany H. Res. 143):

I am directed by the Committee on the Judiciary to submit to the House, as its report to the House, the following resolution adopted by the Committee on the Judiciary indicating its action with reference to House Resolution No. 92 heretofore referred by the House to the Committee on the Judiciary:

Whereas Hon. Wright Patman, Member of the House of Representatives, filed certain impeachment charges against Hon. Andrew W. Mellon, Secretary of the Treasury, which were referred to this committee; and

Whereas pending the investigation of said charges by said committee, and before said investigation had been completed, the said Hon. Andrew W. Mellon was nominated by the President of the United States for the post of ambassador to the Court of St. James and the said nomination was duly confirmed by the United States Senate pursuant to law, and the said Andrew W. Mellon has resigned the position of Secretary of the Treasury: Be it

*Resolved by this committee,* That the further consideration of the said charges made against the said Andrew W. Mellon, as Secretary of the Treasury, be, and the same are hereby discontinued.

19. John N. Garner (Tex.).

## MINORITY VIEWS

We can not join in the majority views and findings. While we concur in the conclusions of the majority that section 243 of the Revised Statutes, upon which the proceedings herein were based, provides for action in the nature of an ouster proceeding, it is our view that the Hon. Andrew W. Mellon, the former Secretary of the Treasury, having removed himself from that office, no useful purpose would be served by continuing the investigation of the charges filed by the Hon. Wright Patman. We desire to stress that the action of the undersigned is based on that reason alone, particularly when the prohibition contained in said section 243 is not applicable to the office now held by Mr. Mellon.

FIORIELLO H. LAGUARDIA.  
GORDON BROWNING.  
M. C. TARVER.  
FRANCIS B. CONDON.

MR. SUMNERS of Texas: Mr. Speaker I think the resolution is fairly explanatory of the views held by the different members of the committee. No useful purpose could be served by the consumption of the usual 40 minutes, so I move the previous question.

The previous question was ordered.

THE SPEAKER: The question is on agreeing to the resolution.

The resolution was agreed to.

**§ 7.10 On one occasion, the Committee on the Judiciary reported adversely on impeachment charges, finding the evidence did not warrant impeachment, but the House rejected the report and voted for impeachment.**

On Feb. 24, 1933, the House considered House Resolution 387

(H. Rept. No. 2065) from the Committee on the Judiciary, which included the finding that charges against Judge Harold Louderback did not warrant impeachment. Under a previous unanimous-consent agreement, an amendment in the nature of a substitute, recommended by the minority of the committee and impeaching the accused, was offered. The previous question was ordered on the amendment and it was adopted by the House.<sup>(20)</sup>

**§ 8. Consideration and Debate in the House**

Reports on impeachment are privileged for immediate consideration in the House.<sup>(1)</sup> Unless the House otherwise provides by special order, propositions of impeachment are considered under

20. 76 CONG. REC. 4913-25, 72d Cong. 2d Sess. For analyses of the Louderback proceedings in the House, see §§ 17.1-17.4, *infra*, and 6 Cannon's Precedents § 514.

1. See § 8.2, *infra*, for the privilege of impeachment reports and § 7.6, *supra*, for their referral to the House Calendar. Impeachment reports have usually been printed in full in the *Congressional Record* and have laid over for a period of days before consideration by the House, so that Members could acquaint themselves with the contents of the reports.

the general rules of the House applicable to other simple House resolutions. Since 1912, the House has considered together the resolution and articles of impeachment, although prior practice was to adopt a resolution of impeachment and later to consider separate articles of impeachment.<sup>(2)</sup>

The House has typically considered the resolution and articles under unanimous-consent agreements, providing for a certain number of hours of debate, equally divided and controlled by the proponents and opposition, at the conclusion of which the previous question was considered as ordered. In one case, an amendment was specifically made in order under the unanimous-consent agreement governing consideration of the resolution.<sup>(3)</sup>

The motion for the previous question and the motion to recommit are applicable to a resolution and articles of impeachment being considered in the House, and a separate vote may be demanded on substantive propositions contained in the resolution.<sup>(4)</sup>

#### Cross References

Amendments generally, see Ch. 27, *infra*.  
Consideration in the House of amendments to articles, see § 10, *infra*.

2. See § 8.1, *infra*.
3. §§ 8.1, 8.4, *infra*.
4. See §§ 8.8–8.10, *infra*.

Consideration of resolutions electing managers, granting them powers and funds, and notifying the Senate, see § 9, *infra*.

Consideration and debate in Committee of the Whole generally, see Ch. 19, *infra*.

Consideration and debate in the House generally, see Ch. 29, *infra*.

Division of the question for voting, see Ch. 30, *infra*.

Privileged questions and reports interrupting regular order of business, see Ch. 21, *infra*.

Summary of House consideration of specific impeachment resolutions, see §§ 14–18, *infra*.

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### *Controlling Time for Debate*

**§ 8.1 Under the later practice, resolutions and articles of impeachment have been considered together in the House pursuant to unanimous-consent agreements fixing the time for and control of debate.**

On Mar. 2, 1936, the House considered House Resolution 422, impeaching Judge Halsted Ritter, pursuant to a unanimous-consent agreement propounded by Chairman Hatton W. Sumners, of Texas, of the Committee on the Judiciary, who had called up the report:<sup>(5)</sup>

5. 80 CONG. REC. 3066, 3069, 74th Cong. 2d Sess.



THE SPEAKER:<sup>(6)</sup> The gentleman from Texas asks unanimous consent that debate on this resolution be continued for 4½ hours, 2½ hours to be controlled by himself and 2 hours by the gentleman from New York [Mr. Hancock]; and at the expiration of the time the previous question shall be considered as ordered. Is there objection?

There was no objection.

On Feb. 24, 1933, House Resolution 387, recommending against the impeachment of Judge Harold Louderback, was considered pursuant to a unanimous-consent agreement, propounded by Mr. Thomas D. McKeown, of Oklahoma, who called up the resolution, to allow a substitute amendment recommending impeachment to be offered:<sup>(7)</sup>

MR. MCKEOWN: Mr. Speaker, I ask unanimous consent that the time for debate be limited to two hours to be controlled by myself, that during that time the gentleman from New York [Mr. La Guardia] be permitted to offer a substitute for the resolution and at the conclusion of the time for debate the previous question be considered as ordered.

THE SPEAKER:<sup>(8)</sup> Then the Chair submits this: The gentleman from Oklahoma asks unanimous consent that debate be limited to two hours, to be controlled by the gentleman from

6. Joseph W. Byrns (Tenn.).

7. 76 CONG. REC. 4914, 72d Cong. 2d Sess.

8. John N. Garner (Tex.).

Oklahoma, that at the end of that time the previous question shall be considered as ordered, with the privilege, however, of a substitute resolution being offered, to be included in the previous question. Is there objection?

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Speaker, reserving the right to object for the purpose of getting the parliamentary situation clarified before we get to the merits, is there any question in the mind of the Speaker, if it is fair to submit such a suggestion, as to whether or not the substitute providing for absolute impeachment would be in order as a substitute for this report?

THE SPEAKER: That is the understanding of the Chair, that the unanimous-consent agreement is, that the gentleman from New York [Mr. LaGuardia] may offer a substitute, the previous question to be considered as ordered on the substitute and the original resolution at the expiration of the two hours. Is there objection?

There was no objection.

On Mar. 30, 1926, the House by unanimous consent agreed to a procedure for the consideration of a resolution impeaching Judge George English; the request was propounded by Chairman George S. Graham, of Pennsylvania, of the Committee on the Judiciary:

THE SPEAKER:<sup>(9)</sup> The gentleman from Pennsylvania [Mr. Graham] asks unanimous consent that during today the debate be equally divided between the affirmative and the negative, and that he control one-half of the time and

9. Nicholas Longworth (Ohio).

that the other half be controlled by the gentleman from Alabama [Mr. Bowling].<sup>(10)</sup>

In earlier practice, resolutions and articles were considered separately, the articles being considered in the Committee of the Whole on occasion. For example, the articles of impeachment against Justice Samuel Chase were considered in the Committee of the Whole and were read for amendment, although the resolution to impeach was earlier considered in the House.<sup>(11)</sup> Again, during proceedings against President Andrew Johnson, the House adopted a resolution which provided for consideration and amendment of the articles in the Committee of the Whole under the five-minute rule, at the conclusion of general debate.<sup>(12)</sup>

The resolution and the articles of impeachment against Judge Charles Swaine (1904, 1905) were considered separately but were both considered in the House.<sup>(13)</sup>

In the impeachment of Judge Robert Archbald (1912) the House instituted the modern practice of considering the resolution and the

articles of impeachment together in the House, as opposed to the Committee of the Whole.<sup>(14)</sup>

### ***Reports Privileged for Immediate Consideration***

#### **§ 8.2 Resolutions of impeachment, resolutions proposing abatement of proceedings, and resolutions incidental to the question of impeachment are privileged for immediate consideration when reported from the committee to which propositions of impeachment have been referred**

On Mar. 2, 1936, Chairman Hatton W. Sumners, of Texas, of the Committee on the Judiciary, called up as privileged House Resolution 422, impeaching Judge Halsted Ritter, and the House proceeded to its immediate consideration.<sup>(15)</sup>

On Feb. 24, 1933, Speaker John N. Garner, of Texas, held that a resolution reported from the Committee on the Judiciary, proposing discontinuance of impeachment proceedings, was privileged for immediate consideration:

THE SPEAKER: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

10. 67 CONG. REC. 6585-90, 69th Cong. 1st Sess. New agreements were obtained on each succeeding day during debate on the resolution.

11. 3 Hinds' Precedents §§ 2343, 2344.

12. 3 Hinds' Precedents § 2414.

13. 3 Hinds' Precedents §§ 2472, 2474.

14. 6 Cannon's Precedents §§ 499, 500.

15. 80 CONG. REC. 3066, 74th Cong. 2d Sess.

## HOUSE RESOLUTION 387

*Resolved*, That the evidence submitted on the charges against Hon. Harold Louderback, district judge for the northern district of California, does not warrant the interposition of the constitutional powers of impeachment of the House.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, when they report back a resolution of that kind, is it a privileged matter?

THE SPEAKER: It is not only a privileged matter but a highly privileged matter.

MR. [LEONIDAS C.] DYER [of Missouri]: Mr. Speaker, this is the first instance to my knowledge, in my service here, where the committee has reported adversely on an impeachment charge.

THE SPEAKER: The gentleman's memory should be refreshed. The Mellon case was reported back from the committee, recommending that impeachment proceedings be discontinued.

MR. SNELL: Was that taken up on the floor as a privileged matter?

THE SPEAKER: It was.<sup>(16)</sup>

On Mar. 24, 1939, Mr. Sam Hobbs, of Alabama, called up a report of the Committee on the Judiciary, which report was adverse to House Resolution 67, on the impeachment of Secretary of Labor Frances Perkins. The report was called up as privileged and the

16. 76 CONG. REC. 4913, 72d Cong. 2d Sess. (See also 6 Cannon's Precedents §514.)

House immediately agreed to Mr. Hobbs' motion to lay the resolution on the table.<sup>(17)</sup>

On Feb. 6, 1974, Chairman Peter W. Rodino, Jr., of New Jersey, of the Committee on the Judiciary, called up as privileged House Resolution 803, authorizing that committee to investigate the sufficiency of grounds for impeachment of President Richard Nixon, various resolutions of impeachment having been referred to the committee. The House proceeded to its immediate consideration.<sup>(18)</sup>

***Motion to Discharge Committee From Consideration of Impeachment Proposal***

**§ 8.3 A Member announced his filing of a motion to discharge the Committee on the Judiciary from further consideration of a resolution proposing impeachment of the President.**

17. 84 CONG. REC. 3273, 76th Cong. 1st Sess.

18. 120 CONG. REC. 2349-63, 93d Cong. 2d Sess. For additional discussion as to high privilege for consideration of impeachment resolutions notwithstanding the normal application of House rules, and of other resolutions incidental to impeachment called up by the investigating committee, see §7.4, *supra*.

On June 17, 1952,<sup>(19)</sup> a Member made an announcement relating to impeachment charges against President Harry S. Truman:

MR. [PAUL W.] SHAFER [of Michigan]: Mr. Speaker, on April 28 of this year I introduced House Resolution 614, to impeach Harry S. Truman, President of the United States, of high crimes and misdemeanors in office. This resolution was referred to the Committee on the Judiciary, which committee has failed to take action thereon.

Thirty legislative days having now elapsed since introduction of this resolution, I today have placed on the Clerk's desk a petition to discharge the committee from further consideration of the resolution.

In my judgment, developments since I introduced the Resolution April 28 have immeasurably enlarged and strengthened the case for impeachment and have added new urgency for such action by this House.

First. Since the introduction of this resolution, the United States Supreme Court, by a 6-to-3 vote, has held that in his seizure of the steel mills Harry S. Truman, President of the United States, exceeded his authority and powers, violated the Constitution of the United States, and flouted the expressed will and intent of the Congress—and, in so finding, the Court gave unprecedented warnings against the threat to freedom and constitutional government implicit in his act.

Second. Despite the President's technical compliance with the finding of

the Court, prior to the Court decision he reasserted his claim to the powers then in question, and subsequent to that decision he has contemptuously called into question "the intention of the Court's majority" and contemptuously attributed the limits set on the President's powers not to Congress, or to the Court, or to the Constitution, but to "the Court's majority."

Third. The Court, in its finding in the steel case, emphasized not only the unconstitutionality of the Presidential seizure but also stressed his failure to utilize and exhaust existing and available legal resources for dealing with the situation, including the Taft-Hartley law.

Fourth. The President's failure and refusal to utilize and exhaust existing and available legal resources for dealing with the emergency has persisted since the Court decision and in spite of clear and unmistakable evidences of the will and intent of Congress given in response to his latest request for special legislation authorizing seizure or other special procedures.

The discharge petition did not gain the requisite number of signatures for its consideration by the House.

### *Amendment of Resolution and Articles*

**§ 8.4 A resolution with articles of impeachment, being considered in the House under a unanimous-consent agreement fixing control of debate, is not subject to amend-**

19. 98 CONG. REC. 7424, 82d Cong. 2d Sess.

**ment unless the agreement allows an amendment to be offered, or the Member in control offers an amendment or yields for amendment.**

On Apr. 1, 1926, the House was considering a resolution impeaching Judge George English. Pursuant to a unanimous-consent agreement, the time for debate was being controlled by two Members. Following the ordering of the previous question on the resolution, Speaker Nicholas Longworth, of Ohio, answered a parliamentary inquiry propounded by Mr. Tom T. Connally, of Texas:

Under the rules of the House would not this resolution be subject to consideration under the five-minute rule for amendment?

THE SPEAKER: The Chair thinks not.<sup>(20)</sup>

In the Harold Louderback impeachment proceedings in the House, the resolution reported by the Committee on the Judiciary recommended against impeachment, but the minority of the committee proposed a resolution impeaching Judge Louderback. The substitute impeaching the accused was offered and adopted by the House, pursuant to a unanimous-consent agreement which fixed control and time of debate, but

20. 67 CONG. REC. 6733, 69th Cong. 1st Sess.

specifically allowed the substitute resolution to be offered and voted upon.<sup>(1)</sup>

In the Charles Swayne impeachment, Mr. Henry W. Palmer, of Pennsylvania, of the Committee on the Judiciary called up the resolution of impeachment and controlled the time thereon. Before moving the previous question, he offered an amendment to the resolution of impeachment, to add clarifying and technical changes. The amendment was agreed to.<sup>(2)</sup>

### *Debate on Impeachment Resolutions and Articles*

**§ 8.5 In debating articles of impeachment, a Member may refer to the political, social, and family background of the accused.**

On Mar. 2, 1936,<sup>(3)</sup> the House was debating articles of impeachment against Judge Halsted Ritter. Mr. Louis Ludlow, of Indiana, had the floor, and Speaker Joseph W. Byrns, of Tennessee, overruled

1. 76 CONG. REC. 4913, 4914, 72d Cong. 2d Sess., Feb. 24, 1933. For a complete analysis of the procedure followed for consideration of the Louderback impeachment, see §§ 17.1 et seq., *infra*.

2. 39 CONG. REC. 248, 58th Cong. 3d Sess., Dec. 13, 1904.

3. 80 CONG. REC. 3069, 74th Cong. 2d Sess.

a point of order based on the irrelevancy of his remarks. The proceedings were as follows:

MR. LUDLOW: . . . I feel there is imposed upon me today a duty and a responsibility to raise my voice in this case if for no other purpose than to present myself as a character witness—a duty which I could not conscientiously avoid and which I am very glad to perform. Judge Ritter was born in Indianapolis, Ind. He springs from a long and honored Hoosier ancestry, rooted in the pioneer life of our Commonwealth. There are no better people than those who comprised his ancestral train. People do not come any better anywhere on this globe. Rugged honesty, outspoken truthfulness, and high ideals are characteristics of his family. His father, Col. Eli F. Ritter, was a man of outstanding character and personality, one of the most public-spirited men I ever have known, a lawyer of distinction, ranking high in a bar of great brilliancy that included such stellar lights as Thomas A. Hendricks, Joseph E. McDonald, and Benjamin Harrison, an unofficial advocate of the people's cause in many a fight against vice and privilege, for whom even those who felt his steel had a wholesome respect because of his militant ardor on the side of right and civic virtue.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, I rise to a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. TARVER: The gentleman is endeavoring to read into the Record a statement with regard to the progenitors of the gentleman against

whom these impeachment proceedings are pending. He is referring to something that should not affect the judgment of the House one way or the other, and, in my judgment, it is highly improper, and the gentleman should not be allowed to continue.

THE SPEAKER PRO TEMPORE: The chairman understands the gentleman is proceeding under the order of the House, which provided for two hours and a half on one side and 2 hours on the other. Of course, the Chair cannot dictate to the gentleman just how he shall proceed in his discussion of this resolution.

MR. TARVER: It is then the ruling of the Speaker that during the time for general debate Members may address themselves to whatever subject they desire.

THE SPEAKER: Members must address themselves to the resolution.

MR. LUDLOW: That is what I am trying to do, Mr. Speaker.

THE SPEAKER: The gentleman will proceed in order.

**§ 8.6 During debate on a resolution of impeachment, the Speaker ruled that unparliamentary language, even if a recitation of testimony or evidence, could not be used in debate.**

On Mar. 30, 1926, during debate on the resolution and articles of impeachment against Judge George English, Speaker Nicholas Longworth, of Ohio, delivered a ruling on the use of unparliamentary language in debate, and the House discussed his decision:

THE SPEAKER: The Chair desires to make a statement. The Chair has been in doubt on one or two occasions this afternoon whether he should permit the use of certain language even by way of quotation. The Chair at the time realized, of course, that the members of the majority of the committee might think the use of this language would be material in describing an individual. The Chair hopes that it will not be used further during this debate and suggests also that those words be stricken from the Record. [Applause.]

MR. [JOHN N.] TILLMAN [of Arkansas]: I think the Speaker will remember I stated when I put the speech in the Record that I intended to strike out those words.

THE SPEAKER: There were other occasions besides that to which the gentleman refers.

MR. [EDWARD J.] KING [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. KING: Will the language also be stricken out of the evidence in the case and in the report of the committee?

THE SPEAKER: The Chair does not think that has anything to do with the use of language on the floor of the House.

MR. [TOM T.] CONNALLY of Texas: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CONNALLY of Texas: Without taking any exception to the Chair's views as to striking from the printed Record what has already happened, it seems to me the Chair ought to make clear his ruling so that we may know as to how far it shall be regarded as a

precedent in the future. The House, as I understand it, at the present moment is proceeding as an inquisitorial body, somewhat as a grand jury, as in a semijudicial proceeding; and if we have unpleasant matters in court, the court can not avoid its duty because they are unpleasant, and if it becomes necessary in this Chamber for Members to properly present this case or to quote the testimony in the record to use unpleasant and offensive language to establish the truth, I think the House ought to hear it. It is neither wise nor safe to censor the evidence. We must hear it, good or bad, because it is the evidence. If it is suppressed or colored, it is no longer the true evidence in the case. I sympathize with the Chair's position, and I know he is prompted by the best motives, by a sense of delicacy and consideration for the galleries. I think it is well for the House and Chair now to understand that the ruling of the Chair ought not to be regarded as a precedent in the future which might operate to exclude competent evidence, because when we are dealing with a matter of this kind, serious and important as it is, we want to know the truth, whatever it may be, and those who come here to hear these proceedings of course do so at their own risk. [Laughter.]

THE SPEAKER: The Chair thinks his ruling ought to be regarded as a precedent as far as these proceedings in the House are concerned. If the Chair should be officially advised that the use of this language is actually necessary, he might order the galleries cleared.

MR. [FIORELLO H.] LAGUARDIA [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. LAGUARDIA: The Chair's ruling, as I understand it, is that under the rules of the House language that is not parliamentary should not be used; but that does not prevent the consideration of whether or not a particular judge whose case we are trying used the language or not?

THE SPEAKER: Not at all. It is simply the use of certain language on the floor of the House.

MR. [CHARLES R.] CRISP [of Georgia]: Mr. Speaker, I want to enter my approval of the course the Speaker has taken. Members of this House, if they desire to know what the language is, can read the record, and I thoroughly endorse the course the Speaker pursued.

**§ 8.7 During debate in the House objection was made to extensions of remarks in the Congressional Record in order that an accurate record of impeachment proceedings be preserved.**

In April 1926,<sup>(4)</sup> the House was considering a resolution impeaching Judge George English. When a Member asked unanimous consent to revise and extend his remarks in the Record, Mr. C. William Ramseyer, of Iowa, objected stating that his object was to "have the Record, preceding the vote, show exactly what tran-

4. 67 CONG. REC. 6602, 69th Cong. 1st Sess.

spired and what was said." He indicated that no objection would be made to the extension of remarks after the vote had occurred on the resolution of impeachment.<sup>(5)</sup>

***Motion for Previous Question***

**§ 8.8 The motion for the previous question is applicable to a resolution of impeachment.**

On Dec. 13, 1904, the House was considering a resolution impeaching Judge Charles Swayne of high crimes and misdemeanors. The manager of the resolution, Mr. Henry W. Palmer, of Pennsylvania, moved the previous question on the resolution at the conclusion of debate thereon. Mr. Richard Wayne Parker, of New Jersey, made a point of order against the offering of the motion, on the ground that the previous question should not be directly ordered upon a question of high privilege such as impeachment. Speaker Joseph G. Cannon, of Illinois, ruled that under the precedents the previous question was in order.<sup>(6)</sup>

***Motion to Recommit***

**§ 8.9 After the previous question has been ordered on a**

5. *Id.* at p. 6717.

6. 39 CONG. REC. 248, 58th Cong. 3d Sess.



**resolution of impeachment, a motion to recommit, with or without instructions, is in order, but is not debatable.**

On Apr. 1, 1926, the House was considering House Resolution 195, impeaching Judge George English, United States District Judge for the Eastern District of Illinois. After the previous question was ordered, a motion was offered to recommit the resolution with instructions. The instructions directed the Committee on the Judiciary to take the testimony of certain persons and authorized the committee to send for persons and papers, administer oaths, and report at any time.

The motion was rejected on a yea and nay vote.<sup>(7)</sup>

*Parliamentarian's Note:* A motion to recommit, with or without instructions, on a resolution of impeachment, is not debatable. Rule XVI clause 4, *House Rules and Manual* §782 (1973), amended in the 92d Congress to allow debate on certain motions to recommit with instructions, does not apply to simple resolutions but only to bills or joint resolutions.<sup>(8)</sup>

### ***Division of the Question***

#### **§ 8.10 A separate vote may be demanded on any sub-**

7. 67 CONG. REC. 6734, 69th Cong. 1st Sess.

8. See Ch. 23, *infra*, for the motion to recommit and debate thereon.

**stantive proposition contained in a resolution of impeachment, when the question recurs on the resolution.**

On Mar. 30, 1926, the House was considering a resolution and articles of impeachment against Judge George English. Mr. Charles R. Crisp, of Georgia, inquired whether, under Rule XVI clause 6, a separate vote could be demanded on any substantive proposition contained in the resolution of impeachment. Speaker Nicholas Longworth, of Ohio, responded in the affirmative.<sup>(9)</sup>

When the vote recurred on the resolution of impeachment, on Apr. 1, 1926, a separate vote was demanded on Article I. The House rejected the motion to strike the article.<sup>(10)</sup>

*Parliamentarian's Note:* A division of the question may be demanded at any time before the question is put on the resolution. During the Judge English proceedings, the Speaker put the question on the resolution and announced that it was adopted. A Member objected that he had meant to ask for a separate vote and the Speaker allowed such a

9. 67 CONG. REC. 6589, 6590, 69th Cong. 1st Sess. See *House Rules and Manual* §791 (1973).

10. 67 CONG. REC. 6734, 69th Cong. 1st Sess.

demand (thereby vacating the proceedings by unanimous consent) because of confusion in the Chamber, although he stated that the demand was untimely.<sup>(11)</sup>

***Broadcasting House Proceedings***

**§ 8.11 The House adopted a resolution in the 93d Congress authorizing television, radio, and photographic coverage of projected House consideration of a resolution impeaching President Richard Nixon, thereby waiving rulings of the Speaker prohibiting such coverage of House proceedings.**

On Aug. 7, 1974,<sup>(12)</sup> Mr. Ray J. Madden, of Indiana, called up by direction of the Committee on Rules House Resolution 802, with committee amendments, for the broadcasting of House proceedings on the impeachment of President Nixon, the Committee on the Judiciary having decided on July 27, 29, and 30 to report to the House recommending the President's impeachment. The House agreed to the resolution as amended by the committee amendments:

That, notwithstanding any rule, ruling, or custom to the contrary, the pro-

ceedings in the Chamber of the House of Representatives relating to the resolution reported from the Committee on the Judiciary, recommending the impeachment of Richard M. Nixon, President of the United States, may be broadcast by radio and television and may be open to photographic coverage, subject to the provisions of section 2 of this resolution.

Sec. 2. A special committee of four members, composed of the majority and minority leaders of the House, and the majority and minority whips of the House, is hereby authorized to arrange for the coverage made in order by this resolution and to establish such regulations as they may deem necessary and appropriate with respect to such broadcast or photographic coverage: *Provided, however,* That any such arrangements or regulations shall be subject to the final approval of the Speaker; and if the special committee or the Speaker shall determine that the actual coverage is not in conformity with such arrangements and regulations, the Speaker is authorized and directed to terminate or limit such coverage in such manner as may protect the interests of the House of Representatives.

The House briefly debated the resolution before adopting it, and discussed suitable restrictions on broadcast coverage as well as the broadcasting of the Committee on the Judiciary meetings on the resolution and articles of impeachment pursuant to House Resolution 1107, adopted on July 18, 1974.<sup>(13)</sup>

11. *Id.* at pp. 6734, 6735.

12. 120 CONG. REC. 27266-69, 93d Cong. 2d Sess.

13. See §7.3, *Supra*, for the adoption of H. Res. 1107, amending the rules of the House.

*Parliamentarian's Note:* The Speaker of the House has consistently ruled that coverage of House proceedings, either by radio, television or still photography, was prohibited under the rules and precedents of the House. See for example, the statements of Speaker Sam Rayburn, of Texas, on Feb. 25, 1952, and on Jan. 24, 1955.<sup>(14)</sup>

### § 9. Presentation to Senate; Managers

Following the adoption of a resolution and articles of impeachment, the House proceeds to the adoption of privileged resolutions (1) appointing managers to conduct the trial on the part of the House and directing them to present the articles to the Senate; (2) notifying the Senate of the adoption of articles and appointment of managers; and (3) granting the managers necessary powers and funds.<sup>(15)</sup>

The managers have jurisdiction over the answer of the respondent

14. 98 CONG. REC. 1334, 1335, 82d Cong. 2d Sess.; 101 CONG. REC. 628, 629, 84th Cong. 1st Sess.

15. See § 9.1, *infra*.

In former Congresses, managers were elected by ballot or appointed by the Speaker pursuant to an authorizing resolution (see § 9.3, *infra*).

to the articles impeaching him, and may prepare the replication of the House to the respondent's answer. The replication has not in the last two impeachment cases been submitted to the House for approval.<sup>(16)</sup>

In the Harold Louderback proceedings, where the accused was impeached in one Congress and tried in the next, the issue arose as to the authority of the managers beyond the expiration of the Congress in which elected. In that case, the resolution authorizing the managers powers and funds was not offered and adopted until the succeeding Congress.<sup>(17)</sup>

#### Forms

Form of resolution appointing managers to conduct an impeachment trial:<sup>(18)</sup>

#### HOUSE RESOLUTION 439

*Resolved,* That Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida; that said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Rep-

16. See § 10, *infra*.

17. See § 4.2, *supra*.

18. 80 CONG. REC. 3393, 74th Cong. 2d Sess., Mar. 6, 1936.

representatives and of all the people of the United States to impeach the said Halsted L. Ritter of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Halsted L. Ritter to answer said impeachment, and demand his impeachment, conviction, and removal from office.

Form of resolution notifying the Senate of the adoption of articles and the appointment of managers:<sup>(19)</sup>

HOUSE RESOLUTION 440

*Resolved*, That a message be sent to the Senate to inform them that this House has impeached for high crimes and misdemeanors Halsted L. Ritter, United States District Judge for the southern district of Florida, and that the House adopted articles of impeachment against said Halsted L. Ritter, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, have been appointed such managers.

Form of resolution empowering managers:<sup>(20)</sup>

HOUSE RESOLUTION 441

*Resolved*, That the managers on the part of the House in the matter of the

19. *Id.*

20. *Id.* at p. 3394.

impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, be, and they are hereby, authorized to employ legal, clerical, and other necessary assistants and to incur such expenses as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House on vouchers approved by the managers, and the managers have power to send for persons and papers, and also that the managers have authority to file with the Secretary of the Senate, on the part of the House of Representatives, any subsequent pleadings which they shall deem necessary: *Provided*, That the total expenditures authorized by this resolution shall not exceed \$2,500.

**Cross References**

Arguments and conduct of trial by managers, see § 12, *infra*.

Effect of adjournment on managers' authority, see § 4, *supra*.

Managers' appearance and functions in the Senate sitting as a Court of Impeachment, see §§ 11–13, *infra*.

Managers' jurisdiction over replication and amendments to articles, see § 10, *infra*.

***Electing and Empowering Managers; Notifying the Senate***

**§ 9.1 After the House has adopted a resolution and articles of impeachment, the House considers resolutions appointing managers to ap-**

**pear before the Senate, notifying the Senate of the adoption of articles and election of managers, and authorizing the managers to prepare for and conduct the trial in the Senate, to employ assistants, and to incur expenses payable from the contingent fund of the House.**

On Feb. 27, 1933, the House having adopted articles of impeachment against Judge Harold Louderback on Feb. 24, Mr. Hatton W. Sumners, of Texas, offered resolutions electing managers and notifying the Senate of House action:

IMPEACHMENT OF JUDGE HAROLD LOUDERBACK

MR. SUMNERS of Texas: Mr. Speaker, I offer the following privileged report from the Committee on the Judiciary, which I send to the desk and ask to have read, and ask its immediate adoption.

The Clerk read as follows:

HOUSE RESOLUTION 402

*Resolved*, That Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Harold Louderback, United States district judge for the northern district of California; and said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the

House of Representatives and of all the people of the United States to impeach the said Harold Louderback of misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by the House; and that the said managers do demand the Senate take order for the appearance of said Harold Louderback to answer said impeachment, and demand his impeachment, conviction, and removal from office.

THE SPEAKER PRO TEMPORE: The question is on agreeing to the resolution. . . .

The resolution was agreed to.

A motion to reconsider the vote by which the resolution was agreed to was laid on the table.

MR. SUMNERS of Texas: Mr. Speaker, I desire to present a privileged resolution.

The Clerk read as follows:

HOUSE RESOLUTION 403

*Resolved*, That a message be sent to the Senate to inform them that this House has impeached Harold Louderback, United States district judge for the Northern District of California, for misdemeanors in office, and that the House has adopted articles of impeachment against said Harold Louderback, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, have been appointed such managers.

The resolution was agreed to.<sup>(1)</sup>

On Mar. 6, 1936, Mr. Sumners offered three resolutions relating

1. 76 CONG. REC. 5177, 5178, 72d Cong. 2d Sess.

to the impeachment proceedings against Judge Halsted Ritter, the House having adopted articles of impeachment on Mar. 2. The resolutions elected managers, informed the Senate that articles had been adopted and managers appointed, and gave the managers powers and funds:<sup>(2)</sup>

IMPEACHMENT OF HALSTED L. RITTER

MR. SUMNERS of Texas: Mr. Speaker, I send to the desk the three resolutions which are the usual resolutions offered when an impeachment has been voted by the House, and I ask unanimous consent that they may be read and considered en bloc. . . .

HOUSE RESOLUTION 439

*Resolved*, That Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida; that said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Halsted L. Ritter of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Halsted L. Ritter to answer said impeachment, and demand

his impeachment, conviction, and removal from office.

HOUSE RESOLUTION 440

*Resolved*, That a message be sent to the Senate to inform them that this House has impeached for high crimes and misdemeanors Halsted L. Ritter, United States district judge for the southern district of Florida, and that the House adopted articles of impeachment against said Halsted L. Ritter, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, have been appointed such managers.

HOUSE RESOLUTION 441

*Resolved*, That the managers on the part of the House in the matter of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, be, and they are hereby, authorized to employ legal, clerical, and other necessary assistants and to incur such expenses as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House on vouchers approved by the managers, and the managers have power to send for persons and papers, and also that the managers have authority to file with the Secretary of the Senate, on the part of the House of Representatives, any subsequent pleadings which they shall deem necessary: *Provided*, That the total expenditures authorized by this resolution shall not exceed \$2,500.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, may I ask the gentleman from Texas one further question? Is this exactly the procedure that has always been followed by the House under similar conditions?

2. 80 CONG. REC. 3393, 3394, 74th Cong. 2d Sess.

MR. SUMNERS of Texas: Insofar as I know, it does not vary from the procedure that has been followed since the beginning of the Government.

MR. SNELL: If that is true, while, of course, I think the House made a mistake, I have no desire to delay carrying out the will of the majority of the House in the matter.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: I yield to the gentleman from Texas.

MR. BLANTON: The only difference between this and other such cases is that our colleague from Texas has asked only for \$2,500, which is very small in comparison with amounts heretofore appropriated under such conditions.

The resolutions were agreed to.

### ***Composition and Number of Managers***

**§ 9.2 Managers elected by the House, or appointed by the Speaker, have always been Members of the House and have always constituted an odd number.<sup>(3)</sup>**

In 1933, in the Harold Louderback impeachment five managers were elected by resolu-

3. For a summary of the composition of managers from the William Blount impeachment in 1797 through the Robert Archbald impeachment in 1912, see 6 Cannon's Precedents § 467.

tion—all from the Committee on the Judiciary—three from the majority party and two from the minority party.<sup>(4)</sup> In the Halsted Ritter impeachment in 1936, three managers were elected from the Committee on the Judiciary, two from the majority party and one from the minority party.<sup>(5)</sup> In both the Louderback and Ritter impeachments, the Chairman of the Committee on the Judiciary, Hatton W. Sumners, of Texas, was elected as a manager. Ordinarily, the managers are chosen from among those Members who have voted for the resolution and articles of impeachment.<sup>(6)</sup>

### ***Appointment of Managers by Resolution***

**§ 9.3 In the later practice, managers on the part of the House to conduct impeachment trials have been appointed by resolution.**

On Mar. 6, 1936, the House adopted a resolution offered by

4. Cannon's Precedents § 514.

5. 80 CONG. REC. 3393, 74th Cong. 2d Sess.

6. During the Belknap proceedings, it was proposed to elect a minority Member to fill a vacancy created when a manager was excused from service. The House discussed the principle that managers should be in accord with the sentiments of the House. 3 Hinds' Precedents § 2448.

Hatton W. Sumners, of Texas, Chairman of the Committee on the Judiciary, appointing Members of the House to serve as managers in the impeachment trial of Judge Halsted Ritter:

HOUSE RESOLUTION 439

*Resolved*, That Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida; that said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Halsted L. Ritter of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Halsted L. Ritter to answer said impeachment, and demand his impeachment, conviction, and removal from office.<sup>(7)</sup>

This method, of appointing managers by House resolution, was also used in 1912 in the Robert Archbald impeachment, in 1926 in the George English impeachment, and in 1933 in the Harold Louderback impeachment.<sup>(8)</sup>

7. 80 CONG. REC. 3393, 74th Cong. 2d Sess.

8. 6 Cannon's Precedents §§500, 514, 545. Managers for the trial of former

On two occasions, in the Charles Swayne and West Humphreys impeachments, managers were appointed by the Speaker pursuant to authorizing resolution.<sup>(9)</sup>

In other impeachments, managers were elected by ballot, a procedure largely obsolete in the House, its last use having been for the election of managers in the Andrew Johnson impeachment. In that case, the motion adopted by the House providing for the consideration of the articles against President Johnson provided that in the event any articles were adopted, the House was to proceed by ballot to elect managers.<sup>(10)</sup>

***Managers, Excused From Attending House Sessions***

**§9.4 Managers on the part of the House to conduct impeachment proceedings may be excused from attending the sessions of the House by unanimous consent.**

On Apr. 10, 1933, Mr. Hatton W. Sumners, of Texas, one of the managers on the part of the House for impeachment pro-

Secretary of War William Belknap were also chosen by resolution. See 3 Hinds' Precedents §2448.

9. 3 Hinds' Precedents §§2388, 2475.

10. 3 Hinds' Precedents §2414.



ceedings against Judge Harold Louderback, made a unanimous-consent request:<sup>(11)</sup>

MR. SUMNERS of Texas: Mr. Speaker, I ask unanimous consent that the managers on the part of the House in the Louderback impeachment matter be excused from attending upon the sessions of the House during this week.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

***Appearance of Managers in Senate***

**§ 9.5 The managers on the part of the House appear in the Senate for the opening of an impeachment trial on the date messaged by the Senate.**

On Mar. 9, 1936,<sup>(13)</sup> the Senate messaged to the House the date the Senate would be ready to receive the managers on the part of the House for the impeachment trial of Judge Halsted Ritter:

A message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate had—

*Ordered,* That the Secretary inform the House of Representatives that the Senate is ready to receive

- 11. 77 CONG. REC. 1449, 73d Cong. 1st Sess.
- 12. Henry T. Rainey (Ill.).
- 13. 80 CONG. REC. 3449, 74th Cong. 2d Sess.

the managers appointed by the House for the purpose of exhibiting articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, agreeably to the notice communicated to the Senate, and that at the hour of 1 o'clock p.m. on Tuesday, March 10, 1936, the Senate will receive the honorable managers on the part of the House of Representatives, in order that they may present and exhibit the said articles of impeachment against the said Halsted L. Ritter, United States district judge for the southern district of Florida.<sup>(14)</sup>

***Jurisdiction of Managers Over Related Matters***

**§ 9.6 Where the House has empowered its managers in an impeachment proceeding to take all steps necessary in the prosecution of the case, the managers may report to the House a resolution proposing to amend the original articles of impeachment.**

On Mar. 30, 1936,<sup>(15)</sup> Mr. Hatton W. Sumners, of Texas, one of the managers on the part of the House to conduct the impeachment trial against Judge Halsted Ritter, reported House Resolution 471, which amended the articles

- 14. For the proceedings in the Senate upon the appearance of the managers for the presentation of articles, see §11.4, *infra* (Ritter proceedings).
- 15. 80 CONG. REC. 4597-99, 74th Cong. 2d Sess.

originally voted by the House on Mar. 2, 1936. Mr. Sumners discussed the power and jurisdiction of the managers to consider and report amendments to the original articles:

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: Yes.

MR. SNELL: I may not be entirely familiar with all this procedure, but as I understand, what the gentleman is doing here today, is to amend the original articles of impeachment passed by the House.

MR. SUMNERS of Texas: That is correct.

MR. SNELL: The original articles of impeachment came to the House as a result of the evidence before the gentleman's committee. Has the gentleman's committee had anything to do with the change or amendment of these charges?

MR. SUMNERS of Texas: No; just the managers.

MR. SNELL: As a matter of procedure, would not that be the proper thing to do?

MR. SUMNERS of Texas: I do not think it is at all necessary, for this reason: The managers are now acting as the agents of the House, and not as the agents of the Committee on the Judiciary. Mr. Manager Perkins and Mr. Manager Hobbs have recently extended the investigation made by the committee.

MR. SNELL: Mr. Speaker, will the gentleman yield further?

MR. SUMNERS of Texas: Yes.

MR. SNELL: Do I understand that the amendments come because of new in-

formation that has come to you as managers that never was presented to the Committee on the Judiciary?

MR. SUMNERS of Texas: Perhaps it would not be true to answer that entirely in the affirmative, but the changes are made largely by reason of new evidence which has come to the attention of the committee, and some of these changes, more or less changes in form, have resulted from further examination of the question. This is somewhat as lawyers do in their pleadings. They often ask the privilege of making an amendment.

MR. SNELL: And the gentleman's position is that as agents of the House it is not necessary to have the approval of his committee, which made the original impeachment charges?

MR. SUMNERS of Texas: I have no doubt about that; I have no doubt about the accuracy of that statement.<sup>(16)</sup>

*Parliamentarian's Note:* After articles of impeachment had been adopted against President Andrew Johnson in 1868, the managers on the part of the House reported to the House, as privileged, an additional article of impeachment. A point of order was made that the managers could not so report, their functions being different from those of a standing committee. Speaker Schuyler Colfax,

16. See also 6 Cannon's Precedents §520 (amendment to articles of impeachment against Judge Harold Louder back prepared and called up by House managers).

of Indiana, overruled the point of order on two grounds: (1) the answer of the respondent is always, when messaged to the House, referred to the managers, who then prepare a replication to the House and (2) any Member of the House, whether a manager or not, may propose additional articles of impeachment.<sup>(17)</sup>

**§ 9.7 The answer of the respondent to articles of impeachment, and supplemental rules to govern the trial, are messaged to the House by the Senate and referred to the managers on the part of the House.**

On Apr. 6, 1936, the answer of respondent Judge Halsted Ritter to the articles of impeachment against him, and supplemental Senate rules, were messaged to the House by the Senate and referred to the managers on the part of the House.<sup>(18)</sup>

**§ 10. Replication; Amending Adopted Articles**

The replication is the answer of the House to the respondents' an-

17. 3 Hinds' Precedents § 2418.

For preparation of the replication in the later practice see § 10.3, *infra*.

18. See 110.2, *infra*.

swer to the articles of impeachment. In recent instances, the managers on the part of the House have submitted the replication to the Senate on their own initiative, without the House voting thereon.<sup>(19)</sup>

The House has always reserved the right to amend the articles of impeachment presented to the Senate and has frequently so amended the articles pursuant to the recommendations of the managers on the part of the House.<sup>(20)</sup>

**Cross References**

Managers and their powers generally, see § 9, *supra*.

Motions to strike articles of impeachment in the Senate, see § 12, *infra*.

Respondent's answer filed in the Senate, see § 11, *infra*.

***Reservation of Right to Amend Articles***

**§ 10.1 In the later practice, the reservation by the House of the right to amend articles of impeachment presented to the Senate has been delivered orally in the Senate by the House managers, and has**

19. See § 10.3, *infra*.

20. See § 10.1, *infra*, for the reservation of the right to amend articles and §§ 10.4–10.6, *infra*, for the procedure in so amending them.

**not been included in the resolution of impeachment.**

On Mar. 10, 1936, the managers on the part of the House to conduct the trial of impeachment against Judge Halsted Ritter appeared in the Senate. After the articles of impeachment adopted by the House had been read to the Senate, Manager Hatton W. Sumners, of Texas, orally reserved the right of the House to further amend or supplement them:

MR. MANAGER SUMNERS: Mr. President, the House of Representatives, by protestation, saving themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Halsted L. Ritter, district judge of the United States for the southern district of Florida, and also of replying to his answers which he shall make unto the articles preferred against him, and of offering proof to the same and every part thereof, and to all and every other article of accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Halsted L. Ritter may be put to answer the misdemeanors in office which have been charged against him in the articles which have been exhibited to the Senate, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Mr. President, the managers on the part of the House of Representatives, in pursuance of the action of the House of Representatives by the adoption of the articles of impeachment which

have just been read to the Senate, do now demand that the Senate take order for the appearance of the said Halsted L. Ritter to answer said impeachment, and do now demand his impeachment, conviction, and removal from office.<sup>(1)</sup>

A similar procedure had been followed in the Robert Archbald and Harold Louderback impeachment proceedings, with the managers orally reserving in the Senate the right of the House to amend articles, without such reservation being included in the resolution and articles of impeachment.<sup>(2)</sup>

Prior to the Archbald impeachment, language reserving the right of the House to amend articles was voted on by the House and included at the end of the articles presented to the Senate. For example, the House in the Andrew Johnson impeachment agreed to a reservation-of-amendment clause by unanimous consent following the adoption of articles against the President, and it was included in the formal articles presented to the Senate.<sup>(3)</sup>

***Answer of Respondent and Replication of House***

**§ 10.2 The answer of the respondent in impeachment**

1. 80 CONG. REC. 3488, 74th Cong. 2d Sess.
2. 6 Cannon's Precedents §§ 501, 515.
3. 3 Hinds' Precedents § 2416.

**proceedings is messaged by the Senate to the House together with any supplemental Senate rules therefore, and are referred to the managers on the part of the House.**

On Apr. 6, 1936,<sup>(4)</sup> the answer of respondent Judge Halsted Ritter to the articles of impeachment against him and the supplemental rules adopted by the Senate for the trial were messaged to the House by the Senate and referred to the managers on the part of the House:

IMPEACHMENT OF HALSTED L. RITTER

The Speaker laid before the House the following order from the Senate of the United States:

In the Senate of the United States sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida

APRIL 3, 1936.

*Ordered*, That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Halsted L. Ritter United States district judge for the southern district of Florida, to the articles of impeachment, as amended, and also a copy of the order entered on the 12th ultimo prescribing supplemental rules for the said impeachment trial.

The answer and the supplemental rules to govern the impeachment trial

4. 80 CONG. REC. 5020, 74th Cong. 2d Sess.

were referred to the House managers and ordered printed.

**§ 10.3 In the Halsted Ritter and Harold Louderback impeachments, the managers on the part of the House prepared the replication of the House to the respondent's answer; in contrast to earlier practice, the replication was submitted to the Senate without being voted on by the House.**

On Apr. 6, 1936, Mr. Hatton W. Sumners, of Texas, one of the managers on the part of the House in the impeachment trial of Judge Ritter, filed in the Senate the replication of the House to the answer filed by the respondent, the answer having been referred in the House to the managers. The replication had been prepared and submitted to the Senate by the managers alone, and it was not reported to or considered by the House for adoption.<sup>(5)</sup>

Similarly, the replication in the impeachment of Judge Louderback was filed in the Senate by the managers without being reported to or considered by the House.<sup>(6)</sup> In the impeachment trial of Judge Robert Archbald in

5. 80 CONG. REC. 4971, 4972, 74th Cong. 2d Sess.

6. 6 Cannon's Precedents §522.

1912, however, the replication was reported by the managers to the House where it was considered and adopted.<sup>(7)</sup>

***Procedure in Amending Articles of Impeachment***

**§ 10.4 Articles of impeachment which have been exhibited to the Senate may be subsequently modified or amended by the adoption of a resolution in the House.**

On Mar. 30, 1936,<sup>(8)</sup> a resolution (H. Res. 471) was offered in the House by Mr. Hatton W. Sumners, of Texas, a manager on the part of the House for the impeachment trial against Judge Halsted Ritter. The resolution amended the articles voted by the House against Judge Ritter on Mar. 2, 1936, by adding three new articles. The House agreed to the resolution after a discussion by Mr. Sumners of the nature of the changes and of the power of the managers to report amendments to the articles. Mr. Sumners summarized the changes as follows:

MR. SUMNERS of Texas: Mr. Speaker, the resolution which has just been read proposes three new articles. The change is not as important as that statement would indicate. Two of the

new articles deal with income taxes, and one with practicing law by Judge Ritter, after he went on the bench. In the original resolution, the charge is made that Judge Ritter received certain fees or gratuities and had written a letter, and so forth. No change is proposed in articles 1 and 2. In article 3, as stated, Judge Ritter is charged with practicing law after he went on the bench. That same thing, in effect, was charged, as members of the committee will remember, in the original resolution, but the form of the charge, in the judgment of the managers, could be improved. These charges go further and charge that in the matter connected with G.R. Francis, the judge acted as counsel in two transactions after he went on the bench, and received \$7,500 in compensation. Article 7 is amended to include a reference to these new charges. There is a change in the tense used with reference to the effect of the conduct alleged. It is charged, in the resolution pending at the desk, that the reasonable and probable consequence of the alleged conduct is to injure the confidence of the people in the courts—I am not attempting to quote the exact language—which is a matter of form, I think, more than a matter of substance.<sup>(9)</sup>

**§ 10.5 A resolution reported by the managers proposing amendments to the articles of impeachment previously adopted by the House is privileged.**

9. For discussion of the power of the managers on the part of the House to prepare amendments to the articles and to report them to the House, see §9, *supra*.

7. 6 Cannon's Precedents § 506.

8. 80 CONG. REC. 4597-99, 74th Cong. 2d Sess.

On Mar. 30, 1936,<sup>(10)</sup> Mr. Hatton W. Sumners, of Texas, one of the managers on the part of the House for the Halsted Ritter impeachment trial, offered as privileged a resolution amending the articles of impeachment that had been adopted by the House.<sup>(11)</sup>

**§ 10.6 Where the House agrees to an amendment to articles of impeachment it has adopted, the House directs the Clerk by resolution to so inform the Senate.**

On Mar. 30, 1936,<sup>(12)</sup> the House adopted amendments to the articles previously adopted in the impeachment of Judge Halsted Ritter. Mr. Hatton W. Sumners, of Texas, offered and the House

adopted a privileged resolution informing the Senate of such action:

MR. SUMNERS of Texas: Mr. Speaker, I offer the following privileged resolution.

The Clerk read as follows:

HOUSE RESOLUTION 472

*Resolved*, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted an amendment to the articles of impeachment heretofore exhibited against Halsted L. Ritter, United States district judge for the southern district of Florida, and that the same will be presented to the Senate by the managers on the part of the House.

And also, that the managers have authority to file with the Secretary of the Senate, on the part of the House any subsequent pleadings they shall deem necessary.

The resolution was agreed to.

## C. TRIAL IN THE SENATE

### § 11. Organization and Rules

The standing Senate rules governing procedure in impeachment trials originally date from 1804 and continue from Congress to

10. 80 CONG. REC. 4597, 74th Cong. 2d Sess.

11. For a discussion of the power of the managers to prepare and report to the House amendments to the articles of impeachment, see § 9, supra.

12. 80 CONG. REC. 4601, 74th Cong. 2d Sess.

Congress unless amended; the rules are set forth in the Senate Manual as “Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.”<sup>(13)</sup> The last amendment to the impeachment trial rules was

13. See *Senate Manual* §§ 100–126 (1973). The rules are set out in full below.

For adoption of rules to govern impeachment trials in 1804, see 3 Hinds’ Precedents § 2099.

adopted in 1935, to allow the appointment of a committee to receive evidence (Rule XI). Amendments to the rules were also reported in the 93d Congress, pending impeachment proceedings in the House in relation to President Richard Nixon, but the Senate did not formally consider them.<sup>(14)</sup> The Senate has also, when commencing a particular impeachment trial, adopted supplemental rules governing pleadings, requests, stipulations, and motions.<sup>(15)</sup>

When the Senate is notified by the House of the adoption of a resolution and articles of impeachment, the Senate messages to the House, pursuant to Rule I of the impeachment trial rules, its readiness to receive the managers for the presentation of articles; Rule II provides the procedure for the appearance of the managers and exhibition of the articles to the Senate.<sup>(16)</sup>

Rules VIII through X of the rules for impeachment trials provide that a summons be issued to the person impeached, that the summons be returned, and that the respondent appear and answer the articles against him. Under Rules VIII and X, the trial

<sup>14</sup>. See § 11.2, *infra*.

<sup>15</sup>. See §§ 11.7, 11.8, *infra*.

<sup>16</sup>. See § 111.4, *infra*.

proceeds as on a plea of not guilty if the respondent does not appear either in person or by attorney.<sup>(17)</sup>

Under Rule III, the Senate proceeds to consider the articles of impeachment on the day following the presentation of articles. Organizational questions arising before the actual commencement of an impeachment trial have been held debatable and not subject to Rule XXIV of the rules for impeachment trials, which prohibits debate except when the doors of the Senate are closed for deliberation.<sup>(18)</sup>

#### **Senate Rules for Impeachment Trials**

*Senate Manual* §§ 100–126 (1973). For amendments to the rules for impeachment trials, reported in the 93d Congress but not considered by the Senate, see § 11.2, *infra*.

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the

<sup>17</sup>. See §§ 11.5, 11.9, *infra*, for the summons and its return. As indicated in § 11.9, the respondent has not always appeared in person before the Senate sitting as a Court of Impeachment.

<sup>18</sup>. See § 11.11, *infra*.



Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against \_\_\_\_\_": after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they shall

appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the law-

ful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that can not

conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefore as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12:30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ———, do solemnly swear that the return made by me upon the process issued on the ——— day of ———, by the Senate of the United States, against ———, is truly made, and that I have performed such service as therein described: So help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If

he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any

witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ———, in the Senate Chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.; and when the hour for such thing shall arrive, the Presiding Officer of the Senate shall so announce; and thereupon the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XVI. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if he, or any Senator, shall require it, they shall be

committed to writing, and read at the Secretary's table.

XVII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVIII. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

XIX. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

XXII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XXIII. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said ar-

ticles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

XXIV. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

XXV. Witnesses shall be sworn in the following form, viz: "You, ——, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States and ——, shall be the truth, the whole truth, and nothing but the truth: So help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

*Form of a subpoena be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel*

To ——, greeting:

You and each of you are hereby commanded to appear before the Senate of

the United States, on the \_\_\_\_\_ day of \_\_\_\_\_, at the Senate Chamber in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate in which the House of Representatives have impeached \_\_\_\_\_.

Fail not.

Witness \_\_\_\_\_, and Presiding Officer of the Senate, at the city of Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_,  
Presiding Officer of the Senate.

*Form of direction for the service of said subpoena*

The Senate of the United States to \_\_\_\_\_, greeting:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_,  
Secretary of the Senate.

*Form of oath to be administered to the members of the Senate sitting in the trial of impeachments*

“I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of \_\_\_\_\_, now pending, I will do impartial justice according to the Constitution and laws: So help me God.”

*Form of summons to be issued and served upon the person impeached*  
THE UNITED STATES OF AMERICA, ss:  
The Senate of the United States to \_\_\_\_\_, greeting:

Whereas the House of Representatives of the United States of America

did, on the \_\_\_\_\_ day of \_\_\_\_\_, exhibit to the Senate articles of impeachment against you, the said \_\_\_\_\_, in the words following:

[Here insert the articles]

And demand that you, the said \_\_\_\_\_, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said \_\_\_\_\_, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the \_\_\_\_\_ day of \_\_\_\_\_, at 12:30 o'clock afternoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness \_\_\_\_\_, and Presiding Officer of the said Senate, at the city of Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_,  
Presiding Officer of the Senate.

*Form of precept to be indorsed on said writ of summons*

THE UNITED STATES OF AMERICA, ss:  
The Senate of the United States to \_\_\_\_\_, greeting:

You are hereby commanded to deliver to and leave with \_\_\_\_\_, if

conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least ——— days before the appearance day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness ———, and Presiding Officer of the Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ———, and of the Independence of the United States the ———.

Presiding Officer of the Senate.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the court.

XXVI. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

#### Cross References

Functions of the Senate in impeachment generally, see § 1, *supra*.

House-Senate relations generally, see Ch. 32, *infra*.

Senate notified of adoption of impeachment resolution and election of managers by the House, see § 9, *supra*.

#### Collateral References

Functions and practice of the Senate in impeachments, see Riddick, Senate

Procedure 495–504, S. Doc. No. 93–21, 93d Cong. 1st Sess. (1973); Riddick, Procedure and Guidelines for Impeachment Trials in the United States Senate, S. Doc. No. 93–102, 93d Cong. 2d Sess. (1974).

Standing rules of the Senate generally, see Riddick, Senate Procedure 774–779, S. Doc. No. 93–21, 93d Cong. 1st Sess. (1973).

### *Senate Rules for Impeachment Trials*

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

On July 29, 1974,<sup>(19)</sup> 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

<sup>19</sup> 120 CONG. REC. 25468, 93d Cong. 2d Sess.

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:<sup>(20)</sup> 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. 370) was agreed to.

*Parliamentarian's Note:* The Senate, unlike the House, is a continuing legislative body. Therefore, the standing rules of the Senate, including the rules for impeachment trials, continue from Congress to Congress unless amended.<sup>(21)</sup>

20. Jesse Helms (N.C.).

21. See Rule XXXII, *Senate Manual* §32.2 (1973).

**§ 11.2 The Senate having directed its Committee on Rules and Administration to review Senate rules and precedents applicable to impeachment trials (pending impeachment proceedings in the House against President Richard Nixon), the committee reported back various amendments to those Senate rules, which amendments were not considered in the Senate.**

On July 29, 1974, during the pendency of an investigation in the House of alleged impeachable offenses committed by President Nixon, the Senate adopted Senate Resolution 370, directing its Committee on Rules and Administration to review any and all existing rules and precedents that apply to impeachment trials, with a view to recommending any necessary revisions.

The Committee on Rules and Administration reported (S. Rept. No. 93-1125) on Aug. 22, 1974, a resolution (S. Res. 390) amending the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials. The resolution was not considered by the Senate.

The amendments provided: (1) that the Chief Justice, when presiding over impeachment trials of

the President or Vice President, be administered the oath by the Presiding Officer; (2) that the term "person accused" in reference to the respondent, be changed in all cases to "person impeached"; (3) that the Presiding Officer rule on all questions of evidence "including, but not limited to, questions of relevancy, materiality, and redundancy," such decision to be voted upon on demand "without debate" and such vote to be "taken in accordance with the Standing Rules of the Senate"; (4) that a committee of 12 Senators may receive evidence "if the Senate so orders" the appointment of such a committee by the Presiding Officer; (5) that the Senate may order another hour than 12:30 m. o'clock for commencing impeachment proceedings; and other clarifying changes. Other amendments proposed certain rules governing the trial and procedures for voting on the articles:<sup>(1)</sup>

XVI. All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediately to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only,

1. S. Res. 390, 120 CONG. REC. 29811-13, 93d Cong. 2d Sess., Aug. 22, 1974.

and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table. . . .

XIX. If a Senator wishes a question to be put to a witness, or to a manager, or to counsel of the person impeached, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer. The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motions shall be voted on without debate by the yeas and nays, which shall be entered on the record.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour (unless the Senate otherwise orders) on each side. . . .

XXIII. An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or ad-



journals sine die. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person impeached shall be convicted upon any such article by the votes of two-thirds of the members present, the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. Upon pronouncing judgment, a certified copy of such judgment shall be deposited in the office of the Secretary of State. A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order.

FORM OF PUTTING THE QUESTION ON  
EACH ARTICLE OF IMPEACHMENT

The Presiding Officer shall first state the question; thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty.

XXIV. All the orders and decisions may be acted upon without objection, or, if objection is heard, the orders and decisions shall be voted on without debate by yeas and nays, which shall be entered on the record, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be

decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes here in allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

**§ 11.3 The Senate amended its rules for impeachment trials in the 74th Congress to allow a committee of 12 Senators to receive evidence and take testimony.**

On May 28, 1935, the Senate considered and agreed to a resolution (S. Res. 18) amending the rules of procedure and practice in the Senate when sitting on impeachment trials. The resolution added a new rule relating to the reception of evidence by a committee appointed by the Presiding Officer:

*Resolved*, That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.<sup>(2)</sup>

### *Appearance of Managers*

#### **§ 11.4 The managers on the part of the House appear in the Senate to exhibit the articles of impeachment at the time messaged for that purpose by the Senate.**

On Mar. 9, 1936,<sup>(3)</sup> the Senate messaged to the House its readiness to receive the managers on the part of the House to present articles of impeachment against

2. 79 CONG. REC. 8309, 8310, 74th Cong. 1st Sess.

3. 80 CONG. REC. 3449, 74th Cong. 2d Sess.

#### **U.S. District Judge Halsted Ritter at a specified time:**

A message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate had—

*Ordered.* That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, agreeably to the notice communicated to the Senate and that at the hour of 1 o'clock p.m. on Tuesday, March 10, 1936, the Senate will receive the honorable managers on the part of the House of Representatives, in order that they may present and exhibit the said articles of impeachment against the said Halsted L. Ritter, United States district judge for the southern district of Florida.

On Mar. 10, the managers on the part of the House appeared in the Senate pursuant to the order and the following proceedings took place:

THE VICE PRESIDENT:<sup>(4)</sup> Will the Senator from North Carolina suspend in order to permit the managers on the part of the House of Representatives in the impeachment proceedings to appear and present the articles of impeachment?

MR. [JOSIAH W.] BAILEY [of North Carolina]: Mr. President, may I take my seat with the right to resume at the end of the impeachment proceedings?

THE VICE PRESIDENT: The Senator will have the floor when the Senate resumes legislative session.

4. John N. Garner (Tex.).

IMPEACHMENT OF HALSTED L. RITTER

At 1 o'clock p.m. the managers on the part of the House of Representatives of the impeachment of Halsted L. Ritter appeared below the bar of the Senate, and the secretary to the majority, Leslie L. Biffle, announced their presence, as follows:

I have the honor to announce the managers on the part of the House of Representatives to conduct the proceedings in the impeachment of Halsted L. Ritter, United States district judge in and for the southern district of Florida.

THE VICE PRESIDENT: The managers on the part of the House will be received and assigned their seats.

The managers, accompanied by the Deputy Sergeant at Arms of the House of Representatives, William K. Weber, were thereupon escorted by the secretary to the majority to the seats assigned to them in the area in front and to the left of the Chair.

THE VICE PRESIDENT: The Chair understands the managers on the part of the House of Representatives are ready to proceed with the impeachment. The Sergeant at Arms will make proclamation.

The Sergeant at Arms, Chesley W. Jurney, made proclamation, as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Halsted L. Ritter, United States district judge in and for the southern district of Florida.

MR. [JOSEPH T.] ROBINSON [of Arkansas]: I suggest the absence of a quorum.

THE VICE PRESIDENT: The clerk will call the roll.

The legislative clerk (Emery L. Frazier) galled the roll, and the following Senators answered to their names. . . .

THE VICE PRESIDENT: Eighty-six Senators have answered to their names. A quorum is present. The managers on the part of the House will proceed.

MR. MANAGER [HATTON W.] SUMNERS [of Texas]: Mr. President, the managers on the part of the House of Representatives are here present and ready to present the articles of impeachment which have been preferred by the House of Representatives against Halsted L. Ritter, a district judge of the United States for the southern district of Florida.

The House adopted the following resolution, which, with the permission of the Senate, I will read:

HOUSE RESOLUTION 439

IN THE HOUSE  
OF REPRESENTATIVES,  
*March 6, 1936.*

*Resolved*, That Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida; that said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Halsted L. Ritter of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment

against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Halsted L. Ritter to answer said impeachment, and demand his impeachment, conviction, and removal from office.

JOSEPH W. BYRNS,  
*Speaker of the  
House of Representatives.*

Attest:

SOUTH TRIMBLE, *Clerk.*

[Seal of the House of Representatives.]

Mr. President, with the permission of the Vice President and the Senate, I will ask Mr. Manager Hobbs to read the articles of impeachment.

THE VICE PRESIDENT: Mr. Manager Hobbs will proceed, and the Chair will take the liberty of suggesting that he stand at the desk in front of the Chair, as from that position the Senate will probably be able to hear him better.

Mr. Manager Hobbs, from the place suggested by the Vice President, said:

Mr. President and gentlemen of the Senate:

ARTICLES OF IMPEACHMENT AGAINST  
HALSTED L. RITTER

House Resolution 422, Seventy-fourth  
Congress, second session, Congress  
of the United States of America

[Mr. Hobbs read the resolution and articles of impeachment].

MR. MANAGER SUMNERS: Mr. President, the House of Representatives, by protestation, saving themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Halsted L. Ritter, district judge of the United

States for the southern district of Florida, and also of replying to his answers which he shall make unto the articles preferred against him, and of offering proof to the same and every part thereof, and to all and every other article of accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Halsted L. Ritter may be put to answer the misdemeanors in office which have been charged against him in the articles which have been exhibited to the Senate, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Mr. President, the managers on the part of the House of Representatives, in pursuance of the action of the House of Representatives by the adoption of the articles of impeachment which have just been read to the Senate, do now demand that the Senate take order for the appearance of the said Halsted L. Ritter to answer said impeachment, and do now demand his impeachment, conviction, and removal from office.

THE VICE PRESIDENT: The Senate will take proper order and notify the House of Representatives.<sup>(5)</sup>

***Organization of Senate as  
Court of Impeachment***

**§ 11.5 Following the appearance of the managers and their presentation of the articles of impeachment to the Senate, the oath is adminis-**

5. 80 CONG. REC. 3485-89, 74th Cong. 2d Sess.

**tered, the Senate organizes for the trial of impeachment and notifies the House thereof, the articles are printed for the use of the Senate, a summons is issued for the appearance of the respondent, and provision is made for payment of trial expenses.**

On Mar. 10, 1936,<sup>(6)</sup> immediately following the presentation of articles of impeachment against Judge Halsted Ritter by the managers on the part of the House to the Senate, the following proceedings took place in the Senate:

MR. [HENRY F.] ASHURST [of Arizona]: Mr. President, I move that the senior Senator from Idaho [Mr. Borah], who is the senior Senator in point of service in the Senate, be now designated by the Senate to administer the oath to the Presiding Officer of the Court of Impeachment.

The motion was agreed to; and Mr. Borah advanced to the Vice President's desk and administered the oath to Vice President Garner as Presiding Officer, as follows:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

MR. ASHURST: Mr. President, at this time the oath should be administered

to all the Senators, but I should make the observation that if any Senator desires to be excused from this service, now is the appropriate time to make known such desire. If there be no Senator who desires to be excused, I move that the Presiding Officer administer the oath to the Senators, so that they may form a Court of Impeachment.

THE VICE PRESIDENT:<sup>(7)</sup> Is there objection? The Chair hears none, and it is so ordered. Senators will now be sworn.

Thereupon the Vice President administered the oath to the Senators present, as follows:

You do each solemnly swear that in all things appertaining to the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

THE VICE PRESIDENT: The Sergeant at Arms will now make proclamation that the Senate is sitting as a Court of Impeachment.

THE SERGEANT AT ARMS: Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Halsted L. Ritter, United States district judge for the southern district of Florida.

MR. ASHURST: Mr. President, I send to the desk an order, which I ask to have read and agreed to.

THE VICE PRESIDENT: The clerk will read.

6. 80 CONG. REC. 3488, 3489, 74th Cong. 2d Sess.

7. John N. Garner (Tex.).

The Chief Clerk (John C. Crockett) read as follows:

*Ordered*, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida.

THE VICE PRESIDENT: Without objection, the order will be entered.

MR. ASHURST: Mr. President, I send another proposed order to the desk, and ask for its adoption.

THE VICE PRESIDENT: The clerk will read the proposed order.

The Chief Clerk read as follows:

*Ordered*, That the articles of impeachment presented against Halsted L. Ritter, United States district judge for the southern district of Florida, be printed for the use of the Senate.

THE VICE PRESIDENT: Without objection, the order will be entered.

MR. ASHURST: Mr. President, I send a further order to the desk, and ask for its adoption.

THE VICE PRESIDENT: The clerk will read the proposed order.

The Chief Clerk read as follows:

*Ordered*, That a summons to the accused be issued as required by the rules of procedure and practice in the Senate, when sitting for the trial of the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, returnable on Thursday, the 12th day of March 1936, at 1 o'clock in the afternoon.

THE VICE PRESIDENT: Is there objection? Without objection, the order will be entered.

MR. [CHARLES L.] MCNARY [of Oregon]: Mr. President, permit me to make an inquiry.

THE VICE PRESIDENT: The Senator will make it.

MR. MCNARY: What record is being made of the Senators who have taken their oaths as jurors?

THE VICE PRESIDENT: No record has been made so far as the Chair knows; but the Chair assumes that any Senator who was not in the Senate Chamber at the time the oath was administered to Senators en bloc will make the fact known to the Chair, so that he may take the oath at some future time.

MR. ASHURST: The Chair is correct in his statement in that any Senator who was not I resent when the oath was taken en bloc, and who desires to take the oath, may do so at any time before the admission of evidence begins.

MR. MCNARY subsequently said: Mr. President, I am advised that the able Senator from New Jersey [Mr. Barbour] will be absent from the city on next Thursday, and would like to be sworn at this time.

THE VICE PRESIDENT: The Senator from Oregon asks unanimous consent that the Senator from New Jersey may take the oath at this time as a juror in the impeachment trial of Halsted L. Ritter.

MR. [ELLISON D.] SMITH [of South Carolina]: Mr. President, in order to save time, I ask the same privilege. I was absent when Senators were sworn as jurors en bloc.

THE VICE PRESIDENT: If there are any other Senators in the Senate Chamber at the moment who did not take their oaths as jurors when Senators were sworn en bloc, it would be advisable that they make it known; and, if agreeable to the Senate, they may all be sworn as jurors at one time.

MR. ASHURST: The Senator from Texas [Mr. Sheppard], who was not present when other Senators were sworn, is now present, and wishes to be sworn.

THE VICE PRESIDENT: Is there objection to such action being taken at this time? The Chair hears none. Such Senators as are in the Chamber at this time who were not present when Senators were sworn en bloc as jurors will raise their right hands and be sworn.

Mr. Barbour, Mr. Overton, Mr. Sheppard, Mr. Smith, and Mr. Townsend rose, and the oath was administered to them by the Vice President.

MR. ASHURST: Mr. President, I move that the Senate, sitting as a Court of Impeachment, adjourn until Thursday next at 1 p.m.

The motion was agreed to; and (at 1 o'clock and 50 minutes p.m.) the Senate, sitting as a Court of Impeachment, adjourned until Thursday, March 12, 1936, at 1 p.m.

IMPEACHMENT OF HALSTED L. RITTER—  
EXPENSES OF TRIAL

MR. [JAMES F.] BYRNES [of South Carolina]: From the Committee to Audit and Control the Contingent Expenses of the Senate, I report back favorably, without amendment, Senate Resolution 244, providing for defraying the expenses of the impeachment proceedings relative to Halsted L. Ritter. I ask unanimous consent for the present consideration of the resolution.

THE VICE PRESIDENT: The resolution will be read.

The Chief Clerk read Senate Resolution 244, submitted by Mr. Ashurst on the 9th instant, and it was considered by unanimous consent and agreed to, as follows:

*Resolved*, That not to exceed \$5,000 is authorized to be expended from the appropriation for miscellaneous items, contingent expenses of the Senate, to defray the expenses of the Senate in the impeachment trial of Halsted L. Ritter.

**§ 11.6 Senators who have not taken the oath following the commencement of the trial take the oath not in legislative session but while the Senate is sitting as a Court of Impeachment, and the Journal Clerk maintains records of those Senators who have taken the oath.**

On Mar. 12, 1936, the Senate was conducting legislative business before resolving itself into a Court of Impeachment for further proceedings in the trial of Judge Halsted L. Ritter. When a Senator who had not yet taken the oath for the impeachment trial indicated he wished to be sworn at that time, Vice President John N. Garner, of Texas, ruled as follows:

THE VICE PRESIDENT: After a thorough survey of the situation, the best judgment of the Chair is that Senators who have not heretofore taken the oath as jurors of the court should take it after the Senate resolves itself into a court; all Senators who have not as yet taken the oath as jurors will take the oath at that time.<sup>(8)</sup>

Later on the same day, it was announced that the Journal Clerk

8. 80 CONG. REC. 3641, 74th Cong. 2d Sess.

had the duty to record the names of those Senators already having taken the oath, there being no other record thereof.<sup>(9)</sup>

### ***Supplemental Rules for Trial***

#### **§ 11.7 For the Halsted Ritter impeachment trial, the Senate sitting as a Court of Impeachment adopted supplemental rules similar to those in the Harold Louderback trial.**

On Mar. 12, 1936, the Court of Impeachment in the impeachment trial of Judge Ritter adopted supplemental rules:

MR. [HENRY F.] ASHURST [of Arizona]: . . . Mr. President, in order that Senators, sitting as judges and jurors, may have an opportunity to study this matter, I ask for the adoption, after it shall have been read, of the order which I send to the desk. This is in haec verba the same order that was adopted in the Louderback case.

THE VICE PRESIDENT:<sup>(10)</sup> The clerk will read.

The Chief Clerk read as follows:

*Ordered*, That in addition to the rules of procedure and practice in the Senate when sitting on impeachment trials, heretofore adopted, and supplementary to such rules, the following rules shall be applicable in the trial of the impeachment of Halsted L. Ritter, United States judge for the southern district of Florida:

1. In all matters relating to the procedure of the Senate, whether as to form or otherwise, the managers on the part of the House or the counsel representing the respondent may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

2. In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers on the part of the House or counsel representing the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

3. It shall not be in order for any Senator, except as provided in the rules of procedure and practice in the Senate when sitting on impeachment trials, to engage in colloquy or to address questions either to the managers on the part of the House or to counsel for the respondent, nor shall it be in order for Senators to address each other; but they shall address their remarks directly to the Presiding Officer and not otherwise.

4. The parties may, by stipulation in writing filed with the Secretary of the Senate and by him laid before the Senate or presented at the trial, agree upon any facts involved in the trial; and such stipulation shall be received by the Senate for all intents and purposes as though the facts therein agreed upon had been established by legal evidence adduced at the trial.

5. The parties or their counsel may interpose objection to witnesses answering questions propounded at the request of any Senator, and the merits of any such objection may be argued by the parties or their counsel; and the Presiding Officer may rule on any such objection, which ruling

9. *Id.* at p. 3646.

10. John N. Garner (Tex.).



shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without debate and without a division, unless the ayes and nays be demanded by one-fifth of the Members present, when the same shall be taken.<sup>(11)</sup>

**§ 11.8 Supplemental rules adopted by the Senate for an impeachment trial are messaged to the House and referred to the managers on the part of the House.**

On Apr. 6, 1936,<sup>(12)</sup> there was laid before the House a message from the Senate informing the House of the adoption of supplemental rules to govern the impeachment trial against Judge Halsted Ritter. They were referred to the managers:

The Speaker laid before the House the following order from the Senate of the United States:

In the Senate of the United States sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida  
 APRIL 3, 1936.

- 11. 80 CONG. REC. 3648, 3649, 74th Cong. 2d Sess. For the adoption of identical supplemental rules in the Louderback case, see 6 Cannon's Precedents § 519.
- 12. 80 CONG. REC. 5020, 74th Cong. 2d Sess.

*Ordered,* That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Halsted L. Ritter, United States district judge for the southern district of Florida, to the articles of impeachment, as amended, and also a copy of the order entered on the 12th ultimo prescribing supplemental rules for the said impeachment trial.

The answer and the supplemental rules to govern the impeachment trial were referred to the House managers and ordered printed.

***Appearance and Answer of Respondent***

**§ 11.9 When and if the respondent appears before the Court of Impeachment, the return of the summons by the Sergeant at Arms is presented and the respondent files an entry of appearance.**

On Mar. 12, 1936,<sup>(13)</sup> the following proceedings took place before the Court of Impeachment in the Halsted Ritter case:

THE VICE PRESIDENT:<sup>(14)</sup> . . . The Secretary will read the return of the Sergeant at Arms.

The Chief Clerk read as follows:

SENATE OF THE UNITED STATES,  
 OFFICE OF THE  
 SERGEANT AT ARMS.

The foregoing writ of summons addressed to Halsted L. Ritter and the

- 13. 80 CONG. REC. 3646, 3647, 74th Cong. 2d Sess.
- 14. John N. Garner (Tex.).

foregoing precept, addressed to me, were duly served upon the said Halsted L. Ritter by me by delivering true and attested copies of the same to the said Halsted L. Ritter at the Carlton Hotel, Washington, D.C., on Thursday, the 12th day of March 1936, at 11 o'clock in the forenoon of that day.

CHESLEY W. JURNEY,  
*Sergeant at Arms,*  
*United States Senate.*

THE VICE PRESIDENT: The Secretary of the Senate will administer the oath to the Sergeant at Arms.

The Secretary of the Senate, Edwin A. Halsey, administered the oath to the Sergeant at Arms, as follows:

You, Chesley W. Journey, do solemnly swear that the return made by you upon the process issued on the 10th day of March 1936 by the Senate of the United States against Halsted L. Ritter, United States district judge for the southern district of Florida, is truly made, and that you have performed such service as therein described. So help you God.

THE VICE PRESIDENT: The Sergeant at Arms will make proclamation.

The Sergeant at Arms made proclamation as follows:

Halsted L. Ritter! Halsted L. Ritter! Halsted L. Ritter! United States district judge for the southern district of Florida, appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

The respondent, Halsted L. Ritter, and his counsel, Frank P. Walsh, Esq., of New York City, N.Y., and Carl T. Hoffman, Esq., of Miami, Fla., entered the Chamber and were conducted to the seats assigned them in the space in front of the Secretary's desk, on the right of the Chair.

THE VICE PRESIDENT: Counsel for the respondent are advised that the Senate is now sitting for the trial of articles of impeachment exhibited by the House of Representatives against Halsted L. Ritter, United States district judge for the southern district of Florida.

MR. WALSH (of counsel): May it please you, Mr. President, and honorable Members of the Senate, I beg to inform you that, in response to your summons, the respondent, Halsted L. Ritter, is now present with his counsel and asks leave to file a formal entry of appearance.

THE VICE PRESIDENT: Is there objection? The Chair hears none, and the appearance will be filed with the Secretary, and will be read.

The Chief Clerk read as follows:

IN THE SENATE OF THE UNITED STATES OF AMERICA SITTING AS A COURT OF IMPEACHMENT

MARCH 12, 1936.

*The United States of America v.*  
*Halsted L. Ritter*

The respondent, Halsted L. Ritter, having this day been served with a summons requiring him to appear before the Senate of the United States of America in the city of Washington, D.C., on March 12, 1936, at 1 o'clock afternoon to answer certain articles of impeachment presented against him by the House of Representatives of the United States of America, now appears in his proper person and also by his counsel, who are instructed by this respondent to inform the Senate that respondent stands ready to file his pleadings to such articles of impeachment within such reasonable period of time as may be fixed.

Dated March 12, 1936.

HALSTED L. RITTER,  
*Respondent.*  
 CARL T. HOFFMAN,  
 FRANK P. WALSH,  
*Counsel for Respondent.*

*Parliamentarian's Note:* The respondent has not appeared in all cases before the Senate. In this century, Judges Ritter, Harold Louderback, and Robert Archbald appeared in person, but Judge Charles Swayne appeared by attorney. President Andrew Johnson did not appear in 1868. Pursuant to Rule X of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials, the respondent may appear by attorney, and if neither the respondent or his counsel appear, the trial proceeds as upon a plea of not guilty, under Rule VIII.

**§ 11.10 The answer of the respondent in an impeachment proceeding is messaged to the House and referred to the managers on the part of the House.**

On Apr. 6, 1936,<sup>(15)</sup> the answer of Judge Halsted Ritter to the articles of impeachment against him was messaged by order from the Senate to the House.

The answer was referred to the managers on the part of the House and ordered printed.

15. 80 CONG. REC. 5020, 74th Cong. 2d Sess.

***Debate on Organizational Questions***

**§ 11.11 Where the Senate is sitting as a Court of Impeachment, organizational questions arising prior to trial are debatable.**

On May 5, 1926, Vice President Charles G. Dawes, of Illinois, held that debate was in order on a motion to fix the opening date of an impeachment trial (of Judge George English), notwithstanding Rule XXIII (now Rule XIV), precluding debate during impeachment trials:

The Chair will state that in impeachment trials had heretofore such questions have been considered as debatable, and that Rule XXIII, which refers to the decision of questions without debate, has been held to apply after the trial has actually commenced. The Senate has always debated the question of the time at which the trial should start, and the Chair is inclined to hold that debate is in order on a question of this sort.<sup>(16)</sup>

Likewise, the rule on debate was held not applicable to an organizational question preceding the trial of President Andrew Johnson.<sup>(17)</sup>

On Mar. 3, 1933, however, following the presentation to the

16. 67 CONG. REC. 8725, 69th Cong. 1st Sess.

17. 3 Hinds' Precedents §2100.

Senate of articles of impeachment against Judge Harold Louderback by the managers on the part of the House, the Vice President, Charles Curtis, of Kansas, held that a motion to defer further consideration of the impeachment charges was not debatable.<sup>(18)</sup>

***Appointment of Presiding Officer***

**§ 11.12 The Senate adopted in the Harold Louderback impeachment trial an order authorizing the Vice President or President pro tempore to name a Presiding Officer to perform the duties of the Chair.**

On May 15, 1933, in the Senate sitting as a Court of Impeachment for the trial of Judge Louderback, the following order was adopted:

*Ordered.* That during the trial of the impeachment of Harold Louderback, United States district judge for the northern district of California, the Vice President, in the absence of the President pro tempore, shall have the right to name in open Senate, sitting for said trial, a Senator to perform the duties of the Chair.

The President pro tempore shall likewise have the right to name in open Senate, sitting for said trial, or, if absent, in writing, a Senator to perform the duties of the Chair; but such

**18.** 76 CONG. REC. 5473, 72d Cong. 2d Sess.

substitution in the case of either the Vice President or the President pro tempore shall not extend beyond an adjournment or recess, except by unanimous consent.<sup>(19)</sup>

***Floor Privileges***

**§ 11.13 The Senate sitting as a Court of Impeachment may allow floor privileges during the trial to assistants and clerks, to the managers, and to the respondent's counsel.**

On Apr. 8, 1936, requests were made in the Senate, sitting as a Court of Impeachment in the trial of Judge Halsted Ritter, to allow certain assistants and others the privilege of the Senate floor. By unanimous consent, the Senate extended floor privileges to the clerk of the House Committee on the Judiciary, a special agent of the FBI, and an assistant to the respondent's counsel.<sup>(20)</sup>

In the Louderback trial, requests were made by the House managers that the clerk of the House Committee on the Judiciary and a member of the bar be permitted to sit with the managers during the trial. The Senate voted to allow the requests, after the Presiding Officer of the Senate

**19.** 77 CONG. REC. 3394, 73d Cong. 1st Sess.

**20.** 80 CONG. REC. 5132, 74th Cong. 2d Sess.

indicated he wished to submit the question to the Senate.<sup>(1)</sup>

*Parliamentarian's Note:* In an impeachment trial, the managers on the part of the House and counsel for the respondent have the privilege of the Senate floor under the Senate rules for impeachment trials.

## § 12. Conduct of Trial

The conduct of an impeachment trial is governed by the standing rules of the Senate on impeachment trials and by any supplemental rules or orders adopted by the Senate for a particular trial.<sup>(2)</sup>

An impeachment trial is a full adversary proceeding, and counsel are admitted to appear, to be heard, to argue on preliminary and interlocutory questions, to deliver opening and final arguments, to submit motions, and to present evidence and examine and cross-examine witnesses.<sup>(3)</sup>

1. 6 Cannon's Precedents § 522.
2. For the text of the rules for impeachment trials, see § 11, *supra*. For supplemental rules adopted by the Senate, see §§ 11.7, 11.8, *supra*. For examples of orders adopted during or for the trial, see §§ 11.12, *supra* (appointment of Presiding Officer), 12.1, *infra* (opening arguments), 12.9, *infra* (return of evidence), and 12.12, *infra* (final arguments).
3. See Rules XV–XXII of the rules for impeachment trials set out in § 11, *supra*.

The Presiding Officer rules on questions of evidence and on incidental questions subject to a demand for a formal vote, or may submit questions in the first instance to the Senate under Rule VII of the rules for impeachment trials.<sup>(4)</sup>

The trial may be temporarily suspended for the transaction of legislative business or for the reception of messages.<sup>(5)</sup>

### Collateral Reference

Riddick, Procedure and Guidelines for Impeachment Trials in the United States Senate, S. Doc. No. 93–102 93d Cong. 2d Sess. (1974).

## Opening Arguments

### § 12.1 The Senate sitting as a Court of Impeachment customarily adopts an order providing for opening arguments to be made by one person on behalf of the man-

4. See § 12.7, *infra*, for rulings on admissibility of evidence and §§ 12.3, 12.4, *infra*, for rulings on motions to strike articles.
5. See §§ 12.5, 12.6, *infra*. Rule XIII of the rules for impeachment trials provides that the adjournment of the Senate sitting as a Court of Impeachment shall not operate to adjourn the Senate, but that the Senate may then resume consideration of legislative and executive business.

**agers and one person on behalf of the respondent.**

On Apr. 6, 1936, the Senate sitting as a Court of Impeachment for the trial of Judge Halsted L. Ritter adopted the following order on opening arguments:

*Ordered.* That the opening statement on the part of the managers shall be made by one person, to be immediately followed by one person who shall make the opening statement on behalf of the respondent.<sup>(6)</sup>

Identical orders had been adopted in past impeachment trials.<sup>(7)</sup>

***Motions to Strike***

**§ 12.2 During an impeachment trial, the managers on the part of the House made and the Senate granted a motion to strike certain specifications from an article of impeachment.**

On Apr. 3, 1936,<sup>(8)</sup> the following proceedings occurred on the floor of the Senate during the impeachment trial of Judge Halsted L. Ritter:

MR. MANAGER [HATTON W.] SUMNERS [of Texas] (speaking from the

6. 80 CONG. REC. 4971, 74th Cong. 2d Sess.
7. See, for example, 6 Cannon's Precedents §524 (Harold Louderback); 6 Cannon's Precedents §509 (Robert Archbald).
8. 80 CONG. REC. 4899, 74th Cong. 2d Sess.

desk in front of the Vice President): Mr. President, the suggestion which the managers desire to make at this time has reference to specifications 1 and 2 of article VII. These two specifications have reference to what I assume counsel for respondent and the managers as well, recognize are rather involved matters, which would possibly require as much time to develop and to argue as would be required on the remainder of the case.

The managers respectfully move that those two counts be stricken. If that motion shall be sustained, the managers will stand upon the other specifications in article VII to establish article VII. The suggestion on the part of the managers is that those two specifications in article VII be stricken from the article.

THE PRESIDING OFFICER:<sup>(9)</sup> What is the response of counsel for the respondent?

MR. [CHARLES L.] McNARY [of Oregon]: Mr. President, there was so much rumbling and noise in the Chamber that I did not hear the position taken by the managers on the part of the House.

THE PRESIDING OFFICER: The managers on the part of the House have suggested that specifications 1 and 2 of article VII be stricken on their motion.

MR. HOFFMAN [of counsel]: Mr. President, the respondent is ready to file his answer to article I, to articles II and III as amended, and to articles IV, V, and VI. In view of the announcement just made asking that specifications 1 and 2 of article VII be stricken, it will be necessary for us to revise our

9. Nathan L. Bachman (Tenn.).

answer to article VII and to eliminate paragraphs 1 and 2 thereof. That can be very speedily done with 15 or 20 minutes if it can be arranged for the Senate to indulge us for that length of time.

THE PRESIDING OFFICER: Is there objection to the motion submitted on the part of the managers?

MR. HOFFMAN: We have no objection.

THE PRESIDING OFFICER: The motion is made. Is there objection? The Chair hears none, and the motion to strike is granted.

**§ 12.3 Where the respondent in an impeachment trial moves to strike certain articles or, in the alternative, to require election as to which articles the managers on the part of the House will stand upon, the Presiding Officer may rule on the motion in the first instance subject to the approval of the Senate.**

On Mar. 31, 1936, the respondent in an impeachment trial, Judge Halsted Ritter, offered a motion to strike certain articles, his purpose being to compel the House to proceed on the basis of Article I or Article II, but not both. On Apr. 3, the Chair (Presiding Officer Nathan L. Bachman, of Tennessee) ruled that the motion was not well taken and overruled it. The proceedings were as follows:<sup>(10)</sup>

10. 80 CONG. REC. 4656, 4657, 74th Cong. 2d Sess., Mar. 31, 1936, and

The motion as duly filed by counsel for the respondent is as follows:

IN THE SENATE OF THE UNITED STATES OF AMERICA SITTING AS A COURT OF IMPEACHMENT. *The United States of America v Halsted L. Ritter, respondent*

MOTION TO STRIKE ARTICLE I, OR, IN THE ALTERNATIVE, TO REQUIRE ELECTION AS TO ARTICLES I AND II; AND MOTION TO STRIKE ARTICLE VII

The respondent, Halsted L. Ritter, moves the honorable Senate, sitting as a Court of Impeachment, for an order striking and dismissing article I of the articles of impeachment, or, in the alternative, to require the honorable managers on the part of the House of Representatives to elect as to whether they will proceed upon article I or upon article II, and for grounds of such motion respondent says:

1. Article II reiterates and embraces all the charges and allegations of article I, and the respondent is thus and thereby twice charged in separate articles with the same and identical offense, and twice required to defend against the charge presented in article I.

2. The presentation of the same and identical charge in the two articles in question tends to prejudice the respondent in his defense, and tends to oppress the respondent in that the articles are so framed as to collect, or accumulate upon the second article, the adverse votes, if any, upon the first article.

3. The Constitution of the United States contemplates but one vote of the Senate upon the charge contained in each article of impeachment, whereas articles I and II are constructed and arranged in such

80 CONG. REC. 4898, 74th Cong. 2d Sess., Apr. 3, 1936.

form and manner as to require and exact of the Senate a second vote upon the subject matter of article I.

#### MOTION TO STRIKE ARTICLE VII

And the respondent further moves the honorable Senate, sitting as a Court of Impeachment, for an order striking and dismissing article VII, and for grounds of such motion, respondent says:

1. Article VII includes and embraces all the charges set forth in articles I, II, III, IV, V, and VI.

2. Article VII constitutes an accumulation and massing of all charges in preceding articles upon which the Court is to pass judgment prior to the vote on article VII, and the prosecution should be required to abide by the judgment of the Senate rendered upon such prior articles and the Senate ought not to countenance the arrangement of pleading designed to procure a second vote and the collection or accumulation of adverse votes, if any, upon such matters.

3. The presentation in article VII of more than one subject and the charges arising out of a single subject is unjust and prejudicial to respondent.

4. In fairness and justice to respondent, the Court ought to require separation and singleness of the subject matter of the charges in separate and distinct articles, upon which a single and final vote of the Senate upon each article and charge can be had.

FRANK P. WALSH,  
CARL T. HOFFMAN,  
*Of Counsel for Respondent.*

#### RULING ON THE MOTION OF RESPONDENT TO STRIKE OUT

THE PRESIDING OFFICER: On the motion of the honorable counsel for the respondent to strike article I of the articles of impeachment or, in the alter-

native, to require the honorable managers on the part of the House to make an election as to whether they will stand upon article I or upon article II, the Chair is ready to rule.

The Chair is clearly of the opinion that the motion to strike article I or to require an election is not well taken and should be overruled.

His reason for such opinion is that articles I and II present entirely different bases for impeachment.

Article I alleges the illegal and corrupt receipt by the respondent of \$4,500 from his former law partner, Mr. Rankin.

Article II sets out as a basis for impeachment an alleged conspiracy between Judge Ritter; his former partner, Mr. Rankin; one Richardson, Metcalf & Sweeney; and goes into detail as to the means and manner employed whereby the respondent is alleged to have corruptly received the \$4,500 above mentioned.

The two allegations, one of corrupt and illegal receipt and the other of conspiracy to effectuate the purpose, are, in the judgment of the Chair, wholly distinct, and the respondent should be called to answer each of the articles.

What is the judgment of the Court with reference to that particular phase of the motion to strike?

MR. [WILLIAM H.] KING [of Utah]: Mr. President, if it be necessary, I move that the ruling of the honorable Presiding Officer be considered as and stand for the judgment of the Senate sitting as a Court of Impeachment.

THE PRESIDING OFFICER: Is there objection? The Chair hears none, and the ruling of the Chair is sustained by the Senate.



**§ 12.4 Where the respondent in an impeachment trial moves to strike an article on grounds that have not been previously presented in impeachment proceedings in the Senate, the Presiding Officer may submit the motion to the Senate sitting as a Court of Impeachment for decision.**

On Mar. 31, 1936,<sup>(11)</sup> Judge Halsted Ritter, the respondent in an impeachment trial, moved to strike Article VII of the articles presented against him, on the following grounds:

1. Article VII includes and embraces all the charges set forth in articles I, II, III, IV, V, and VI.
2. Article VII constitutes an accumulation and massing of all charges in preceding articles upon which the Court is to pass judgment prior to the vote on article VII, and the prosecution should be required to abide by the judgment of the Senate rendered upon such prior articles and the Senate ought not to countenance the arrangement of pleading designed to procure a second vote and the collection or accumulation of adverse votes, if any, upon such matters.
3. The presentation in article VII of more than one subject and the charges arising out of a single subject is unjust and prejudicial to respondent.
4. In fairness and justice to respondent, the Court ought to require separa-

tion and singleness of the subject matter of the charges in separate and distinct articles, upon which a single and final vote of the Senate upon each article and charge can be had.

On Apr. 3, 1936, Presiding Officer Nathan L. Bachman, of Tennessee, submitted the motion to the Court of Impeachment for decision:<sup>(12)</sup>

THE PRESIDING OFFICER: . . . With reference to article VII of the articles of impeachment, formerly article IV, the Chair desires to exercise his prerogative of calling on the Court for a determination of this question.

His reason for so doing is that an impeachment proceeding before the Senate sitting as a Court is sui generis, partaking neither of the harshness and rigidity of the criminal law nor of the civil proceedings requiring less particularity.

The question of duplicity in impeachment proceedings presented by the honorable counsel for the respondent is a controversial one, and the Chair feels that it is the right and duty of each Member of the Senate, sitting as a Court, to express his views thereon.

Precedents in proceedings of this character are rare and not binding upon this Court in any course that it might desire to pursue.

The question presented in the motion to strike article VII on account of duplicity has not, so far as the Chair is advised, been presented in any impeachment proceeding heretofore had before this body.

The Chair therefore submits the question to the Court.

11. 80 CONG. REC. 4656, 4657, 74th Cong. 2d Sess.

12. *Id.* at p. 4898.

MR. [HENRY F.] ASHURST [of Arizona]: Mr. President, under the rules of the Senate, sitting as a Court of Impeachment, all such questions, when submitted by the Presiding Officer, shall be decided without debate and without division, unless the yeas and nays are demanded by one-fifth of the Members present, when the yeas and nays shall be taken.

THE PRESIDING OFFICER: The Chair, therefore, will put the motion. All those in favor of the motion of counsel for the respondent to strike article VII will say "aye." Those opposed will say "no."

The noes have it, and the motion in its entirety is overruled.

***Suspension of Trial for Messages and Legislative Business***

**§ 12.5 While the Senate is sitting as a Court of Impeachment, the impeachment proceedings may be suspended by motion in order that legislative business be considered.**

On Apr. 6, 1936, the Senate was sitting as a Court of Impeachment in the trial of Judge Halsted Ritter. A motion was made and adopted to proceed to the consideration of legislative business, the regular order for the termination of the session (5 :30 p.m.) not having arrived:

MR. [JOSEPH T.] ROBINSON [of Arkansas]: Mr. President, I move that

the Court suspend its proceedings and that the Senate proceed to the consideration of legislative business; and I should like to make a brief statement as to the reasons for the motion. Some Senators have said that they desire an opportunity to present amendments to general appropriation bills which are pending, and that it will be necessary that the amendments be presented today in order that they may be considered by the committee having jurisdiction of the subject matter. I make the motion.

The motion was agreed to; and the Senate proceeded to the consideration of legislative business.<sup>(13)</sup>

**§ 12.6 Impeachment proceedings in the Senate, sitting as a Court of Impeachment, may be suspended for the reception of a message from the House.**

On Apr. 8, 1936, the Senate was sitting as a Court of Impeachment in the trial of Judge Halsted Ritter and examination of witnesses was in progress. A message was then received:

MR. [JOSEPH T.] ROBINSON [of Arkansas]: Mr. President, may I interrupt the proceedings for a moment? In order that a message may be received from the House of Representatives, I ask that the proceedings of the Senate sitting as a Court of Impeachment be suspended temporarily, and that the Senate proceed with the consideration of legislative business.

**13.** 80 CONG. REC. 4994, 74th Cong. 2d Sess.

THE PRESIDENT PRO TEMPORE:<sup>(14)</sup> Is there objection?

There being no objection, the Senate resumed the consideration of legislative business.

(The message from the House of Representatives appears elsewhere in the legislative proceedings of today's RECORD.)

IMPEACHMENT OF HALSTED L. RITTER

MR. ROBINSON: I move that the Senate, in legislative session, take a recess in order that the Court may resume its business.

The motion was agreed to; and the Senate, sitting as a Court of Impeachment, resumed the trial of the articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida.<sup>(15)</sup>

*Evidence*

**§ 12.7 The Presiding Officer at an impeachment trial rules on the admissibility of documentary evidence when a document is offered and specific objection is made thereto.**

During the impeachment trial of Judge Halsted Ritter in the 74th Congress, the Presiding Officer set out guidelines under which rulings on the admissibility of evidence would be made. At issue was a large number of letters, to

which a general objection was raised:<sup>(16)</sup>

MR. WALSH (of counsel): For the sake of saving time, we have these letters which have gotten into our possession, which have been given to us, and I suggest to the House managers that we have copies of this entire correspondence, a continuous list of them chronologically copied. We are going to ask you, if you will agree, that instead of reading these letters to Mr. Sweeny we be permitted to offer them all in evidence and give you copies of them.

MR. MANAGER [RANDOBPH] PERKINS [of New Jersey]: Mr. President, the managers on the part of the House object to that procedure. These letters are incompetent, immaterial, and irrelevant, and will only encumber the record.

MR. WALSH (of counsel): I desire to say that these letters predate and antedate this transaction. They show the effort that was being made, and they throw a strong light upon the proposition that this was not a champertous proceeding, but that it was a proceeding started by these men who had invested their money, and upon whose names and credit these bonds were sold. It is in answer to that.

THE PRESIDING OFFICER:<sup>(17)</sup> It is the ruling of the Chair that the letters shall be exhibited to the managers on the part of the House, and that the managers on the part of the House may make specific objections to each document to which they wish to lodge

14. Key Pittman (Nev.).

15. 80 CONG. REC. 5129, 74th Cong. 2d Sess.

16. 80 CONG. REC. 5245-53, 74th Cong. 2d Sess., Apr. 9, 1936.

17. Walter F. George (Ga.).

objection. There can be no ruling with respect to a large number of documents without specific objection.

MR. WALSH (of counsel): Will you take that suggestion of the Presiding Officer and go through these documents?

MR. MANAGER PERKINS: Mr. President, we understand that these letters are to be offered, and objection made as they are offered; or are we to examine the file and find out what documents we object to?

THE PRESIDING OFFICER: The ruling of the Chair was that the letters shall be exhibited to the managers on the part of the House, and that specific objection shall be lodged to documents to which the managers wish to lodge objections.

MR. MANAGER PERKINS: Mr. President, we will examine them during the recess and be prepared to follow that procedure. . . .

MR. MANAGER [SAM] HOBBS [of Alabama]: . . .

Q. Judge, I will ask you if the matter of the requirement of a supersedeas bond, and fixing the amount thereof, was one of the questions which would probably come up immediately after the final decree was rendered.

MR. WALSH (of counsel): I wish to object to that question for the reason that the record in the case and the papers in the case are the best evidence. I should like to have them here. I should like to have them identified, so that, if we thought it necessary, we could interrogate the witness on cross-examination.

THE PRESIDENT PRO TEMPORE:<sup>(18)</sup> The Presiding Officer thinks, if the

witness knows matters that he himself attended to, the original documents not being in question, he has a right to answer the question.

[JUDGE RITTER]: A. I have no independent recollection of the matter at all. The official court records or this memorandum would have to control.

### § 12.8 Exhibits in evidence in an impeachment trial should be identified and printed in the Record if necessary.

On Apr. 8, 1936, a proposal was made in the Senate, sitting as a Court of Impeachment in the Halsted Ritter trial, as to the identification of certain exhibits:<sup>(19)</sup>

MR. WALSH (of counsel): Have you the letter that is referred to in that letter?

MR. MANAGER [RANDOLPH] PERKINS [of New Jersey]: I have not it at hand at this moment, but I have it here somewhere.

MR. WALSH (of counsel): I should like to see the letter if it is here.

MR. MANAGER PERKINS: I understood that Mr. Rankin would resume the stand at this time.

MR. [SHERMAN] MINTON [of Indiana]: Mr. President, far be it from me to suggest to eminent counsel engaged in this case how they should conduct a lawsuit, but I respectfully suggest that they identify their exhibits in some way, and also the papers that are introduced in the record, so that we may keep track of them.

19. 80 CONG. REC. 5137, 74th Cong. 2d Sess.

18. Key Pittman (Nev.).

THE PRESIDING OFFICER:<sup>(20)</sup> The Chair takes the liberty of suggesting that the statement made by the Senator from Indiana is a wise one, and is followed in court. The Chair sees no reason why identification should not be made of the exhibits which are received in evidence. Counsel will proceed.

Certain exhibits were ordered printed, while others were merely introduced in evidence. One exhibit was printed in the Record by unanimous consent.<sup>(21)</sup>

MR. [HOMER T.] BONE [of Washington]: Mr. President, may I inquire of the Chair if all the exhibits counsel are introducing are to be printed in the daily Record?

THE PRESIDING OFFICER:<sup>(1)</sup> The Chair thinks not.

MR. BONE: I am wondering how we may later scrutinize them if counsel are going to rely on them.

THE PRESIDING OFFICER: Some of the exhibits are being ordered printed and others are merely introduced in evidence for the use of counsel upon argument and consideration of the court.

MR. WALSH (of counsel): I had supposed that all correspondence would be printed in full in the Record.

THE PRESIDING OFFICER: The Chair assumes that all documents and correspondence which have been read or which have been ordered printed have been or will be printed in the Record.

MR. WALSH (of counsel): I think perhaps a mere reference to this order

would be sufficient to advise those of the Senators who have not heard it. However, as to this particular order, I will ask that it be printed in the Record.

THE PRESIDING OFFICER: Is there objection?

Federal income-tax returns of the respondent, offered in evidence by the managers, were printed in full in the, Record.<sup>(2)</sup>

**§ 12.9 The Senate sitting as a Court of Impeachment may at the conclusion of the trial provide by order for the return of evidence to proper owners or officials.**

On Apr. 16, 1936, the Senate sitting as a Court of Impeachment in the trial of Judge Halsted Ritter adopted, at the conclusion of trial, orders for the return of evidence:<sup>(3)</sup>

*Ordered,* That the Secretary be, and he is hereby, directed to return to A. L. Rankin, a witness on the part of the United States, the two documents showing the lists of cases, pending and closed, in the law office of said A. L. Rankin, introduced in evidence during the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida. . . .

*Ordered,* That the Secretary of the Senate be, and he is hereby, directed

20. William H. King (Utah).  
 21. 80 CONG. REC. 5341, 74th Cong. 2d Sess., Apr. 10, 1936.  
 1. Matthew M. Neely (W. Va.).

2. 80 CONG. REC. 5256-61, 74th Cong. 2d Sess., Apr. 9, 1936.  
 3. 80 CONG. REC. 5558, 5559, 74th Cong. 2d Sess.

to return to the clerk of the United States District Court for the Southern District of Florida and the clerk of the circuit court, Palm Beach County, Fla., sitting in chancery, the original papers filed in said courts which were offered in evidence during the proceedings of the Senate sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida.

In the Harold Louderback trial, the Senate returned papers by order to a U.S. District Court.<sup>(4)</sup>

### *Witnesses*

#### **§ 12.10 The Senate sitting as a Court of Impeachment has adopted orders requiring witnesses to stand while giving testimony during impeachment trials.**

On Apr. 6, 1936, during the trial of Judge Halsted Ritter before the Senate sitting as a Court of Impeachment, an order was adopted as to the position of witnesses while testifying:<sup>(5)</sup>

MR. [WILLIAM H.] KING [of Utah]: Pursuant to the practice heretofore observed in impeachment cases, I send to the desk an order, and ask for its adoption.

THE VICE PRESIDENT:<sup>(6)</sup> The order will be stated.

4. 77 CONG. REC. 4142, 73d Cong. 1st Sess., May 25, 1933.
5. 80 CONG. REC. 4971, 74th Cong. 2d Sess. See also 6 Cannon's Precedents § 488.
6. John N. Garner (Tex.).

The legislative clerk read as follows:

*Ordered,* That the witnesses shall stand while giving their testimony.

THE VICE PRESIDENT: Is there objection to the adoption of the order? The Chair hears none, and the order is entered.

#### **§ 12.11 The respondent may take the stand and be examined and cross-examined at his impeachment trial.**

On Apr. 11, 1936, Judge Halsted Ritter, the respondent in a trial of impeachment, was called as a witness by his counsel. He was cross examined by the managers on the part of the House and by Senators sitting on the Court of Impeachment, who submitted their questions in writing.<sup>(7)</sup>

*Parliamentarian's Note:* The respondent in an impeachment trial is not required to appear, and the trial may proceed in his absence. Impeachment rules VIII and IX provide for appearance and answer by attorney and provide for continuance of trial in the absence of any appearance. The respondent first testified in his own behalf in the Robert Archbald impeachment trial in 1913, and Judge Harold Louderback testified at his trial in 1933.<sup>(8)</sup>

7. 80 CONG. REC. 5370-86, 74th Cong. 2d Sess.
8. See 6 Cannon's Precedents §§ 511 (Archbald), 524 (Louderback).

*Final Arguments***§ 12.12 Following the presentation of evidence in an impeachment trial, the Court of Impeachment adopts an order setting the time to be allocated for final arguments.**

On Apr. 13, 1936, the Senate sitting as a Court of Impeachment in the trial of Judge Halsted Ritter adopted, at the close of the presentation of evidence, an order limiting final arguments:

*Ordered,* That the time for final argument of the case of Halsted L. Ritter shall be limited to 4 hours, which said time shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, and the time thus assigned to each side shall be divided as each side for itself may determine.<sup>(9)</sup>

9. 80 CONG. REC. 5401, 74th Cong. 2d Sess. An identical order was adopted in the Harold Louderback impeachment trial (see 6 Cannon's Precedents §524).

Orders for final arguments have varied as to the time and number of arguments permitted, although in one instance—the trial of President Andrew Johnson—no limitations were imposed as to the time for and number of final arguments. See 3 Hinds' Precedents §2434.

**§ 13. Voting; Deliberation and Judgment**

The applicable rules on impeachment trials provide for deliberation behind closed doors, for a vote on the articles of impeachment, and for pronouncement of judgment. (See Rules XXIII and XXIV.)<sup>(10)</sup> Except for organizational questions, debate is in order during an impeachment trial only while the Senate is deliberating behind closed doors, at which time the respondent, his counsel, and the managers are not present. Rule XXIV, of the rules for impeachment trials, provides that orders and decisions shall be determined by the yeas and nays without debate.<sup>(11)</sup>

Under article I, section 3, clause 6 of the U.S. Constitution, a two-thirds vote is required to convict the respondent on an article of impeachment, the articles being voted on separately under Rule XXIII of the rules for impeachment trials.<sup>(12)</sup>

10. The Senate rules on impeachment are set out in § 11, *supra*.

11. For debate on organizational questions before trial commences, see § 11.11, *supra*.

12. Overruled in the Ritter impeachment trial was a point of order that the respondent was not properly convicted, a two-thirds vote having been obtained on an article which cumulated offenses (see §§ 13.5, 13.6, *infra*).

Article I, section 3, clause 7 provides for removal from office upon conviction and also allows the further judgment of disqualification from holding and enjoying “any office of honor, trust or profit under the United States.” In the most recent conviction by the Senate, of Judge Ritter in 1936, it was held for the first time that no vote was required on removal following conviction, inasmuch as removal follows automatically from conviction under article II, section 4.<sup>(13)</sup> But the further judgment of disqualification requires a majority vote.<sup>(14)</sup>

#### Cross References

Constitutional provisions governing judgment in impeachment trials, see §1, supra.

Deliberation, vote and judgment in the Ritter impeachment trial, see §18, infra.

Grounds for impeachment and conviction generally, see §3, supra.

Judicial review of impeachment convictions, see §1, supra.

Trial and judgment where person impeached has resigned, see §2, supra.

#### Collateral Reference

Riddick, Procedure and Guidelines for Impeachment Trials in the United States Senate, S. Doc. No. 93-102, 93d Cong. 2d Sess. (1974).

<sup>13</sup>. See §13.9, infra.

<sup>14</sup>. See §13.10, infra.

### *Deliberation Behind Closed Doors*

**§ 13.1 Final arguments having been presented to a Court of Impeachment, the Senate closes the doors in order to deliberate in closed session, and the respondent, his counsel, and the managers withdraw.**

On Apr. 15, 1936, the Senate convened sitting as a Court of Impeachment in the trial of Judge Halsted Ritter. Final arguments had been completed on the preceding day. The following proceedings took place:

#### IMPEACHMENT OF HALSTED L. RITTER

The Senate, sitting for the trial of the articles of impeachment against Halsted L. Ritter, judge of the United States District Court for the Southern District of Florida, met at 12 o'clock meridian.

The respondent, Halsted L. Ritter, with his counsel, Frank P. Walsh, Esq., and Carl T. Hoffman, Esq., appeared in the seats assigned them.

THE VICE PRESIDENT:<sup>(15)</sup> The Sergeant at Arms by proclamation will open the proceedings of the Senate sitting for the trial of the articles of impeachment.

The Sergeant at Arms made the usual proclamation.

On request of Mr. Ashurst, and by unanimous consent, the reading of the

<sup>15</sup>. John N. Garner (Tex.).



Journal of the proceedings of the Senate, sitting for the trial of the articles of impeachment, for Tuesday, April 14, 1936, was dispensed with, and the Journal was approved. . . .

THE VICE PRESIDENT: Eighty-six Senators have answered to their names. A quorum is present.

#### DELIBERATION WITH CLOSED DOORS

MR. [HENRY F.] ASHURST [of Arizona]: I move that the doors of the Senate be closed for deliberation.

THE VICE PRESIDENT: The question is on the motion of the Senator from Arizona.

The motion was agreed to.

The respondent and his counsel withdrew from the Chamber.

The galleries having been previously cleared, the Senate (at 12 o'clock and 8 minutes p.m.) proceeded to deliberate with closed doors.

At 4 o'clock and 45 minutes p.m. the doors were opened.<sup>(16)</sup>

Rule XX of the rules of the Senate on impeachment trials provides: "At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions."

16. 80 CONG. REC. 5505, 74th Cong. 2d Sess. In the Ritter case, the managers on the part of the House were not present when the Senate closed its doors. Where they are present, they withdraw. See, for example, 6 Cannon's Precedents §524 (Harold Louderback).

Rule XXIV provides for debate, during impeachment trials, only when the Senate is deliberating in closed session, wherein "no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate. . . . The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment."

#### *Orders for Time and Method of Voting*

#### **§ 13.2 Following or during deliberation behind closed doors, the Senate sitting as a Court of Impeachment adopts orders to provide the time and method of voting.**

On Apr. 15, 1936, the Senate, sitting as a Court of Impeachment in the trial of Judge Halsted Ritter, opened its doors after having deliberated in closed session. By unanimous consent, the order setting a date for the taking of a vote was published in the Record:

*Ordered*, by unanimous consent, That when the Senate, sitting as a Court, concludes its session on today it take a recess until 12 o'clock tomorrow, and that upon the convening of the

Court on Friday it proceed to vote upon the various articles of impeachment.

Senate Majority Leader Joseph T. Robinson, of Arkansas, explained the purpose of the agreement, which was to postpone the vote until Friday so that a number of Senators who wished to vote could be present for that purpose.<sup>(17)</sup>

On Apr. 16, 1936, the Senate, after deliberating behind closed doors, agreed to an order providing a method of voting:

*Ordered*, That upon the final vote in the pending impeachment of Halsted L. Ritter, the Secretary shall read the articles of impeachment separately and successively, and when the reading of each article shall have been concluded the Presiding Officer shall state the question thereon as follows:

"Senators, how say you? Is the respondent, Halsted L. Ritter, guilty or not guilty?"

Thereupon the roll of the Senate shall be called, and each Senator as his name is called, unless excused, shall arise in his place and answer "guilty" or "not guilty."<sup>(18)</sup>

This method of consideration—that of reading and voting on the articles separately and in sequence—has been used consistently in impeachment proceedings, though in the Andrew

17. 80 CONG. REC. 5505, 74th Cong. 2d Sess.

18. *Id.* at p. 5558.

Johnson trial Article XI was first voted on.<sup>(19)</sup>

The form of putting the question and calling the roll in the Johnson trial also differed from current practice, the Chief Justice in that case putting the question "Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor, as charged in this article?"<sup>(20)</sup>

### *Recognition of Pairs*

#### **§ 13.3 Pairs are not recognized during the vote by a Court of Impeachment on articles of impeachment.**

On Apr. 17, 1936, the Senate sitting as a Court of Impeachment in the trial of Judge Halsted Ritter convened to vote on the articles of impeachment. Preceding the vote, Senator Joseph T. Robinson, of Arkansas, the Majority Leader, announced as follows:

I have been asked to announce also that pairs are not recognized in this proceeding.<sup>(1)</sup>

Likewise, it was announced on May 23, 1933, preceding the vote

19. See 3 Hinds' Precedents §§2439–2443. 6 Cannon's Precedents §524.

20. 3 Hinds' Precedents §2440.

1. 80 CONG. REC. 5602, 74th Cong. 2d Sess.

on the articles impeaching Judge Harold Louderback, that pairs would not be recognized.<sup>(2)</sup>

***Excuse or Disqualification From Voting***

**§ 13.4 Members of the House and Senate have been excused but not disqualified from voting on articles of impeachment.**

On Mar. 12, 1936, preceding the appearance of respondent Judge Halsted Ritter before the Senate sitting as a Court of Impeachment, Senator Edward P. Costigan, of Colorado, asked to be excused from participation in the impeachment proceedings. He inserted in the Record a statement assigning the reasons for his request, based on personal acquaintance with the respondent.<sup>(3)</sup> Similarly, on Mar. 31, Senator Millard E. Tydings, of Maryland, asked to be excused from participating in the proceedings and from voting on the ground of family illness.<sup>(4)</sup>

During the consideration in the House of the resolution impeaching Senator William Blount, of Tennessee, his brother, Mr. Thom-

2. 77 CONG. REC. 4083, 73d Cong. 1st Sess.

3. 80 CONG. REC. 3646, 74th Cong. 2d Sess.

4. *Id.* at p. 4654.

as Blount, of North Carolina, a Member of the House, asked to be excused from voting on any matter affecting his brother.<sup>(5)</sup>

In the impeachment of Judge Harold Louderback, two Members of the Senate were excused from voting thereon since they had been Members of the House when Judge Louderback was impeached.<sup>(6)</sup>

The issue of disqualification from voting either in the House on impeachment or in the Senate on conviction has not been directly presented. During the trial of President Andrew Johnson, a Senator offered and then withdrew a challenge to the competency of the President pro tempore of the Senate, Benjamin F. Wade, of Ohio, to preside over or vote in the trial of the President. Before withdrawing his objection, Senator Thomas A. Hendricks, of Indiana, argued that the President pro tempore was an interested party because of his possible succession to the Presidency. The President pro tempore voted on that occasion.<sup>(7)</sup>

5. 3 Hinds' Precedents § 2295.

6. 6 Cannon's Precedents § 516.

7. 3 Hinds' Precedents § 2061.

During the Johnson impeachment, succession to the Presidency was governed by an Act of 1792 providing that the President pro tempore and then the Speaker of the House should succeed to the Presidency,

Speaker Schuyler Colfax, of Indiana, chose to vote on the resolution impeaching President Johnson in 1868, and delivered the following explanatory statement:

The Speaker said: The occupant of the Chair cannot consent that his constituents should be silent on so grave a question, and therefore, as a member of this House, he votes "ay." On agreeing to the resolution, there are—yeas 126, nays 47. So the resolution is adopted.<sup>(8)</sup>

It has been generally determined in the House that the individual Member should decide the question whether he is disqualified from voting because of a personal interest in the vote.<sup>(9)</sup>

after the Vice President. 1 Stat. 239. Presently, 3 USC §19 provides for the Speaker and then the President pro tempore to succeed to the Presidency after the Vice President, but the 25th amendment to the U.S. Constitution provides a mechanism for selection of a Vice President upon vacancy in that office, by succession to the Presidency or otherwise.

8. 66 CONG. GLOBE 1400, 40th Cong. 2d Sess., Feb. 24, 1868.

In the Johnson impeachment, the minority party members generally refrained from voting on the ballot for the choice of managers following the adoption of articles, where a request to excuse all who sought to be excused had been objected to. 3 Hinds' Precedents §2417.

9. See Rule VIII clause 1 and comments thereto, *House Rules and Manual* §§656–659 (1973).

### ***Points of Order Against Vote***

**§ 13.5 In making a point of order against the result of a vote on an article of impeachment, a Senator may state the grounds for his point of order but debate or argument thereon is not in order.**

On Apr. 17, 1936, following a two-thirds vote for conviction by the Senate, sitting as a Court of Impeachment in the trial of Judge Halsted Ritter, Senator Warren R. Austin, of Vermont, made a point of order against the vote. The President pro tempore, Key Pittman, of Nevada, subsequently ruled against allowing debate or argument on that point of order:<sup>(10)</sup>

MR. AUSTIN: Mr. President, a point of order.

THE PRESIDENT PRO TEMPORE: The Senator will state the point of order.

MR. AUSTIN: I make the point of order that the respondent is not guilty, not having been found guilty by a vote of two-thirds of the Senators present.

Article VII is an omnibus article, the ingredients of which, as stated on page 36, paragraph 4, are—

In Senate practice, no rule requires a Member of the Senate to withdraw from voting because of personal interest, but a Member may be excused from voting under Rule XII clause 2, *Senate Manual* §12.2 (1973).

10. 80 CONG. REC. 5606, 74th Cong. 2d Sess.

MR. [ROBERT M.] LA FOLLETTE [Jr., of Wisconsin]: Mr. President, I rise to a parliamentary inquiry.

THE PRESIDENT PRO TEMPORE: The Senator will state it.

MR. LA FOLLETTE: Is debate upon the point of order in order?

THE PRESIDENT PRO TEMPORE: It is not in order.

MR. LA FOLLETTE: I ask for the regular order.

MR. AUSTIN: Mr. President, a parliamentary inquiry.

THE PRESIDENT PRO TEMPORE: The Senator will state it.

MR. AUSTIN: In stating a point of order, is it not appropriate to state the grounds of the point of order?

THE PRESIDENT PRO TEMPORE: Providing the statement is not argument.

MR. AUSTIN: That is what the Senator from Vermont is undertaking to do, and no more.

THE PRESIDENT PRO TEMPORE: If the statement is argument, the point of order may be made against the argument.

MR. AUSTIN: The first reason for the point of order is that here is a combination of facts in the indictment, the ingredients of which are the several articles which precede article VII, as seen by paragraph marked 4 on page 36. The second reason is contained in the Constitution of the United States, which provides that no person shall be convicted without the concurrence of two-thirds of the members present. The third reason is that this matter has been passed upon judicially, and it has been held that an attempt to convict upon a combination of circumstances—

MR. [GEORGE] MCGILL [of Kansas]: Mr. President, a parliamentary inquiry.

MR. AUSTIN: Of which the respondent has been found innocent would be monstrous. I refer to the case of *Andrews v. King* (77 Maine, 235).

MR. [JOSEPH T.] ROBINSON [of Arkansas]: Mr. President, I rise to a point of order.

THE PRESIDENT PRO TEMPORE: The Senator from Arkansas will state the point of order.

MR. ROBINSON: The Senator from Vermont is not in order.

THE PRESIDENT PRO TEMPORE: The point of order is sustained. The Senator from Vermont is making an argument on the point of order he has made.

**§ 13.6 During the Halsted Ritter impeachment trial, the President pro tempore overruled a point of order against a vote of conviction on the seventh article (charging general misbehavior), where the point of order was based on the contention that the article repeated and combined facts, circumstances, and charges contained in the preceding articles.**

On Apr. 17, 1936,<sup>(11)</sup> the President pro tempore, Key Pittman, of Nevada, stated that the Senate had by a two-thirds vote adjudged the respondent Judge Ritter guilty as charged in Article VII of the articles of impeachment. He over-

11. 80 CONG. REC. 5606, 74th Cong. 2d Sess.

ruled a point of order that had been raised against the vote, as follows:

MR. [WARREN R.] AUSTIN [of Vermont]: Mr. President, a point of order.

THE PRESIDENT PRO TEMPORE: The Senator will state the point of order.

MR. AUSTIN: I make the point of order that the respondent is not guilty, not having been found guilty by a vote of two-thirds of the Senators present.

Article VII is an omnibus article, the ingredients of which, as stated on page 36, paragraph 4, are—

A point of order was made against debate or argument on the point of order.<sup>(12)</sup>

MR. AUSTIN: The first reason for the point of order is that here is a combination of facts in the indictment, the ingredients of which are the several articles which precede article VII, as seen by paragraph marked 4 on page 36. The second reason is contained in the Constitution of the United States, which provides that no person shall be convicted without the concurrence of two-thirds of the members present. The third reason is that this matter has been passed upon judicially, and it has been held that an attempt to convict upon a combination of circumstances—

MR. [GEORGE] MCGILL [of Kansas]: Mr. President, a parliamentary inquiry.

MR. AUSTIN: Of which the respondent has been found innocent would be monstrous. I refer to the case of *Andrews v. King* (77 Maine, 235).

12. See §13.5 supra.

MR. [JOSEPH T.] ROBINSON [of Arkansas]: Mr. President, I rise to a point of order.

THE PRESIDENT PRO TEMPORE: The Senator from Arkansas will state the point of order.

MR. ROBINSON: The Senator from Vermont is not in order.

THE PRESIDENT PRO TEMPORE: The point of order is sustained. The Senator from Vermont is making an argument on the point of order he has made.

MR. AUSTIN: Mr. President, I have concluded my motion.

THE PRESIDENT PRO TEMPORE: A point of order is made as to article VII, in which the respondent is charged with general misbehavior. It is a separate charge from any other charge, and the point of order is overruled.

### *Judgment as Debatable*

#### **§ 13.7 An order of judgment in an impeachment trial is not debatable.**

On Apr. 17, 1936, the President pro tempore, Key Pittman, of Nevada, answered a parliamentary inquiry relating to debate on an order of judgment in the impeachment trial of Halsted Ritter:

THE PRESIDENT PRO TEMPORE: The Senator from Arizona submits an order, which will be read.

The legislative clerk read as follows:

*Ordered further*, That the respondent, Halsted L. Ritter, United States district judge for the southern district of Florida, be forever disqualified from holding and enjoying any

office of honor, trust, or profit under the United States.

MR. [DANIEL O.] HASTINGS [of Delaware]: Mr. President, I understand that matter is subject to debate.

MR. [HENRY F.] ASHURST [of Arizona]: No, Mr. President. The yeas and nays are in order, if Senators wish, but it is not subject to debate.

MR. HASTINGS: Will the Chair state just why it is not subject to debate?

THE PRESIDENT PRO TEMPORE: The Chair is of opinion that the rules governing impeachment proceedings require that all orders or decisions be determined without debate, but the yeas and nays may be ordered.<sup>(13)</sup>

### ***Divisibility of Order of Judgment***

#### **§ 13.8 An order of judgment on conviction in an impeachment trial is divisible where it contains provisions for removal from office and for disqualification of the respondent.**

On Apr. 17, 1936, Senator Henry F. Ashurst, of Arizona, offered an order of judgment following the conviction of Halsted Ritter on an article of impeachment. It was agreed, before the order was withdrawn, that it was divisible:<sup>(14)</sup>

13. 80 CONG. REC. 5607, 74th Cong. 2d Sess.

14. 80 CONG. REC. 5606, 5607, 74th Cong. 2d Sess.

The Senate hereby orders and decrees and it is hereby adjudged that the respondent, Halsted L. Ritter, United States district judge for the southern district of Florida, be, and he is hereby, removed from office, and that he be, and is hereby, forever disqualified to hold and enjoy any office of honor, trust, or profit under the United States, and that the Secretary be directed to communicate to the President of the United States and to the House of Representatives the foregoing order and judgment of the Senate, and transmit a copy of same to each.

MR. [ROBERT M.] LA FOLLETTE [Jr., of Wisconsin]: Mr. President, I ask for a division of the question.

MR. ASHURST: Mr. President, to divide the question is perfectly proper. Any Senator who desires that the order be divided is within his rights in thus asking that it be divided. The judgment of removal from office would ipso facto follow the vote of guilty.

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, do I understand there is to be a division of the question?

MR. LA FOLLETTE: I have asked for a division of the question.

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In the trial of Judge Robert Archbald, a division was demanded on the order of judgment, which both removed and disqualified the respondent. 6 Cannon's Precedents § 512. A division of the question was likewise demanded in the West Humphreys impeachment. See 3 Hinds' Precedents § 2397. In the John Pickering impeachment, the Court of Impeachment voted on removal but did not consider disqualification. See 3 Hinds' Precedents § 2341.

MR. [GEORGE W.] NORRIS [of Nebraska]: Mr. President, it seems to me the chairman of the Committee on the Judiciary should submit two orders. One follows from what we have done. The other does not follow, but we ought to vote on it.

MR. ASHURST: I accept the suggestion. I believe the Senator from Nebraska is correct. Therefore, I withdraw the order sent to the desk.

### *Vote on Removal Following Conviction*

#### **§ 13.9 On conviction of the respondent on an article of impeachment, no vote is required on judgment of removal, since removal follows automatically after conviction under section 4, article II, of the U.S. Constitution.**

On Apr. 17, 1936, following the conviction by the Senate, sitting as a Court of Impeachment, of Halsted Ritter on Article VII of the articles of impeachment, President pro tempore Key Pittman, of Nevada, ruled that no vote was required on judgment of removal:<sup>(15)</sup>

THE PRESIDENT PRO TEMPORE: The Senator from Arizona, having withdrawn the first order, submits another one, which the clerk will read.

The legislative clerk read as follows:

*Ordered,* That the respondent, Halsted L. Ritter, United States dis-

trict judge for the southern district of Florida, be removed from office.

THE PRESIDENT PRO TEMPORE: Are the yeas and nays desired on the question of agreeing to the order?

MR. [HENRY F.] ASHURST [of Arizona]: The yeas and nays are not necessary.

MR. [HIRAM W.] JOHNSON [of California]: Mr. President, how, affirmatively, do we adopt the order, unless it is put before the Senate, and unless the roll be called upon it or the Senate otherwise votes?

THE PRESIDENT PRO TEMPORE: The Chair is of the opinion that the order would follow the final vote as a matter of course, and no vote is required.

MR. ASHURST: Mr. President, the vote of guilty, in and of itself, is sufficient without the order, under the Constitution, but to be precisely formal I have presented the order, in accordance with established precedent, and I ask for a vote on its adoption.

MR. [DANIEL O.] HASTINGS [of Delaware]: Mr. President, will the Senator yield?

MR. ASHURST: I yield.

MR. HASTINGS: Just what is the language in the Constitution as to what necessarily follows conviction on an article of impeachment?

MR. [GEORGE] MCGILL, [of Kansas]: It is found in section 4, article II, of the Constitution.

MR. HASTINGS: What is the language of the Constitution which makes removal from office necessary, and to follow as a matter of course?

MR. MCGILL: Mr. President—

MR. ASHURST: If the Senator from Kansas has the reference, I shall ask him to read it.

15. 80 CONG. REC. 5607, 74th Cong. 2d Sess.



MR. MCGILL: Section 4 of article II of the constitution reads:

The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

MR. HASTINGS: I thank the Senator. Then may I suggest was not the Chair correct in the first instance? Does not the removal from office follow without any vote of the Senate?

THE PRESIDENT PRO TEMPORE: That was the opinion of the Chair.

MR. HASTINGS: I think the President pro tempore was correct.

THE PRESIDENT PRO TEMPORE: The Chair will then direct that the order be entered.

MR. [GEORGE W.] NORRIS [of Nebraska]: Mr. President, upon the action of the Senate why does not the Chair make the proper declaration without anything further?

THE PRESIDENT PRO TEMPORE: The Chair was about to do so. The Chair directs judgment to be entered in accordance with the vote of the Senate, as follows:

JUDGMENT

The Senate having tried Halsted L. Ritter, United States district judge for the southern district of Florida, upon seven several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of charges contained therein: It is therefore

*Ordered and adjudged*, That the said Halsted L. Ritter be, and he is hereby, removed from office.

*Parliamentarian's Note:* The procedure and ruling in the Ritter

impeachment trial, for automatic removal on conviction of at least one article of impeachment, differs from the practice in three prior cases where the Senate sitting as a Court of Impeachment has voted to convict. In the John Pickering trial, the vote was taken, in the affirmative, on the question of removal, following the vote on the articles; the question of disqualification was apparently not considered.<sup>(16)</sup> In the West Humphreys impeachment, following conviction on five articles of impeachment, the Court of Impeachment proceeded to vote, under a division of the question, on removal and disqualification, both decided in the affirmative.<sup>(17)</sup> And in the Robert Archbald impeachment, the Court of Impeachment voted first on removal and then on disqualification, under a division of the question. Both orders were voted in the affirmative.<sup>(18)</sup>

***Vote Required for Disqualification***

**§ 13.10 The question of disqualification from holding an office of honor, trust, or profit under the United States, following conviction and**

16. 3 Hinds' Precedents § 2341.

17. 3 Hinds' Precedents § 2397.

18. 6 Cannon's Precedents § 512.

**judgment of removal in an impeachment trial, requires only a majority vote of the Senate sitting as a Court of Impeachment.**

On Apr. 17, 1936, the Senate sitting as a Court of Impeachment in the trial of Halsted Ritter proceeded to consider an order disqualifying the respondent from ever holding an office of honor, trust, or profit under the United States; the court had convicted the respondent and he had been ordered removed from office.

A parliamentary inquiry was propounded as to the vote required on the question of disqualification:

THE PRESIDENT PRO TEMPORE:<sup>(19)</sup> The Senator from Arizona submits an order, which will be read.

The legislative clerk read as follows:

*Ordered further.* That the respondent, Halsted L. Ritter, United States district judge for the southern district of Florida, be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States. . . .

MR. [F. RYAN] DUFFY [of Wisconsin]: A parliamentary inquiry.

THE PRESIDENT PRO TEMPORE: The Senator will state it.

MR. DUFFY: Upon this question is a majority vote sufficient to adopt the order, or must there be a two-thirds vote?

MR. [HENRY F.] ASHURST [of Arizona]: Mr. President, in reply to the in-

quiry, I may say that in the Archbald case that very question arose. A Senator asked that a question be divided, and on the second part of the order, which was identical with the order now proposed, the yeas and nays were ordered, and the result was yeas 39, nays 35, so the order further disqualifying respondent from holding any office of honor, trust, or profit under the United States was entered. It requires only a majority vote.

THE PRESIDENT PRO TEMPORE: The question is on agreeing to the order submitted by the Senator from Arizona.<sup>(20)</sup>

*Parliamentarian's Note:* In the impeachment trial of Robert Archbald, a division of the question was demanded on an order removing and disqualifying the respondent. Removal was agreed to by voice vote and disqualification was agreed to by the yeas and nays—yeas 39, nays 35.<sup>(21)</sup>

***Filing of Separate Opinions***

**§ 13.11 The Senate, sitting as a Court of Impeachment, may provide by order at the conclusion of the trial for Senators to file written opinions following the final vote.**

On Apr. 16, 1936, the Senate sitting as a Court of Impeachment in the trial of Judge Halsted Rit-

<sup>20</sup> 80 CONG. REC. 5607, 74th Cong. 2d Sess.

<sup>21</sup> 6 Cannon's Precedents § 512.

<sup>19</sup> Key Pittman (Nev.).

ter adopted the following order at the conclusion of the trial:

*Ordered*, That upon the final vote in the pending impeachment of Halsted L. Ritter each Senator may, within 4 days after the final vote, file his opinion in writing, to be published in the printed proceedings in the case.<sup>(22)</sup>

### ***House Informed of Judgment***

#### **§ 13.12 The Senate informs the President and the House of the order and judgment of the Senate in an impeachment trial.**

On Apr. 20, 1936,<sup>(1)</sup> a message from the Senate was received in the House informing the House of the order and judgment in the impeachment trial of Judge Halsted Ritter:

##### MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate had ordered that the Secretary be directed to communicate to the President of the United States and to the House of Representatives the order and judgment of the Senate in the case of Halsted L. Ritter, and transmit a certified copy of same to each, as follows:

I, Edwin A. Halsey, Secretary of the Senate of the United States of

America, do hereby certify that the hereto attached document is a true and correct copy of the order and judgment of the Senate, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, entered in the said trial on April 17, 1936.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Senate of the United States of America, this the 18th day of April, A. D. 1936.

EDWIN A. HALSEY,  
*Secretary of the Senate  
of the United States.*

In the Senate of the United States of America, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida

##### JUDGMENT

APRIL 17, 1936.

The Senate having tried Halsted L. Ritter, United States district judge for the southern district of Florida, upon seven several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of charges contained therein: It is therefore

*Ordered and adjudged*, That the said Halsted L. Ritter be, and he is hereby removed from office.

Attest:

EDWIN A. HALSEY,  
*Secretary.*

<sup>22.</sup> 80 CONG. REC. 5558, 74th Cong. 2d Sess.

<sup>1.</sup> 80 CONG. REC. 5703, 5704, 74th Cong. 2d Sess.

## D. HISTORY OF PROCEEDINGS

**§ 14. Charges Not Resulting in Impeachment**

The following is a compilation of impeachment charges made from 1932 to the present which did not result in impeachment by the House.

**Cross References**

Committee reports adverse to impeachment, their privilege and consideration, see §§ 7.8–7.10, 8.2, *supra*.

House proceedings against Associate Justice Douglas, discussion in the House, and portions of final subcommittee report relative to grounds for impeachment of federal judges, see §§ 3.9–3.13, *supra*.

House proceedings on impeachment discontinued against President Nixon, following his resignation, see § 15, *infra*.

Resignations and effect on impeachment and trial, see § 2, *supra*.

Trial of Judge English dismissed following his resignation, see § 16, *infra*.

***Charges Against Secretary of the Treasury Mellon***

**§ 14.1 In the 72d Congress a Member rose to a question of constitutional privilege, impeached Secretary of the Treasury Andrew Mellon, and submitted a resolution authorizing the Committee on the Judiciary to investigate the charges, which resolution was referred to the Committee on the Judiciary.**

**On Jan. 6, 1932, Mr. Wright Patman, of Texas, rose to impeach Mr. Mellon, Secretary of the Treasury:**

IMPEACHMENT OF ANDREW W. MELLON,  
SECRETARY OF THE TREASURY

MR. PATMAN: Mr. Speaker, I rise to a question of constitutional privilege. On my own responsibility as a Member of this House, I impeach Andrew William Mellon, Secretary of the Treasury of the United States for high crimes and misdemeanors, and offer the following resolution:

Whereas the said Andrew William Mellon, of Pennsylvania, was nominated Secretary of the Treasury of the United States by the then Chief Executive of the Nation, Warren G. Harding, March 4, 1921; his nomination was confirmed by the Senate of the United States on March 4, 1921; he has held said office since March 4, 1921, without further nominations or confirmations.

Whereas section 243 of title 5 of the Code of Laws of the United States provides:

“Sec. 243. Restrictions upon Secretary of Treasury: No person appointed to the office of Secretary of the Treasury, or Treasurer, or register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public secu-

—

rities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of \$3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of \$3,000 when recovered shall be for the use of the person giving such information.

Whereas the said Andrew William Mellon has not only been indirectly concerned in carrying on the business of trade and commerce in violation of the above-quoted section of the law but has been directly interested in carrying on the business of trade and commerce in that he is now and has been since taking the oath of office as Secretary of the Treasury of the United States the owner of a substantial interest in the form of voting stock in more than 300 corporations with resources aggregating more than \$3,000,000,000, being some of the largest corporations on earth, and he and his family and close business associates in many instances own a majority of the stock of said corporations and, in some instances, constitute ownership of practically the entire outstanding capital stock; said corporations are engaged in the business of trade and commerce in every State, county, and village in the United States, every country in the world, and upon the Seven Seas; said corporations are extensively engaged in the following businesses: Mining prop-

erties, bauxite, magnesium, carbon electrodes, aluminum, sales, railroads, Pullman cars, gas, electric light, street railways, copper, glass, brass, steel, tar, banking, locomotives, water power, steamship, shipbuilding, oil, coke, coal, and many other different industries; said corporations are directly interested in the tariff, in the levying and collections of Federal taxes, and in the shipping of products upon the high seas; many of the products of these corporations are protected by our tariff laws and the Secretary of the Treasury has direct charge of the enforcement of these laws.

#### MELLON'S OWNERSHIP OF SEA VESSELS AND CONTROL OF UNITED STATES COAST GUARD

Whereas the Coast Guard (sec. 1, ch. 1, title 14, of the United States Code) is a part of the military forces of the United States and is operated under the Treasury Department in time of peace; that the Secretary of the Treasury directs the performance of the Coast Guard (sec. 51, ch. 1, title 14, of the Code of Laws of the United States); that officers of the Coast Guard are deemed officers of the customs (sec. 6, ch. 2, title 14, United States Code), and it is their duty to go on board the vessels which arrive within the United States, or within 4 leagues of the coast thereof, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port of their destination; that the said Andrew William Mellon is now, and has been since becoming Secretary of the Treasury, the owner in whole or in part of many sea vessels operating to and from the United States, and in competition

with other steamship lines; that his interest in the sea vessels and his control over the Coast Guard represent a violation of section 243 of title 5 of the Code of Laws of the United States.

#### CUSTOMS OFFICERS

Whereas the Secretary of the Treasury of the United States superintends the collection of the duties on imports (sec. 3, ch. 1, title 19, Code of Laws of the United States); he establishes and promulgates rules and regulations for the appraisement of imported merchandise and the classification and assessment of duties thereon at various ports of entry (sec. 382, ch. 3, title 19, Code of Laws of United States); that the present Secretary of the Treasury, Andrew W. Mellon, is now and has been since becoming Secretary of the Treasury personally interested in the importation of goods, wares, articles, and merchandise in substantial quantities and large amounts; that it is repugnant to American principles and a violation of the laws of the United States for such an officer to hold the dual position of serving two masters—himself and the United States.

#### OWNERSHIP OF SEA VESSELS

Whereas the said Andrew W. Mellon is now, and has been since becoming Secretary of the Treasury of the United States, holding said office in violation of that part of section 243 of title 5 of the Code of Laws of the United States, which provides that "no person appointed to the office of Secretary of the Treasury . . . shall be the owner in whole or in part of any sea vessel," in that he was and is now the owner in whole or in part of the following sea vessels:

Registered in Norway: *Austvangen, Nordvangen, Sorvangen, Vestvangen.*

Venezuelan flag: 14 tankers, of 36,654 gross tons.

United States flag: *S. Haiti*; 13 general cargo vessels, *Conemaugh, Gulf of Mexico, Gulfbird, Gulfcoast, Gulfgem, Gulfking, Gulfprince, Gulfstar, Gulfstream, Gulfwax, Harmony, Ligonier, Ohio, Susquehanna, Winifred, Currier, Gulf of Venezuela, Gulf breeze, Gulfcrest, Gulphawk, Gulfland, Gulfmaid, Gulfpenn, Gulfpride, Gulfqueen, Gulfstate, Gulftrade, Gulfwing, Juniata, Monongahela, Supreme, Trinidadian.*

#### INCOME TAXES PAID BY MELLON COMPANIES AND REFUNDS MADE TO THEM—BY HIMSELF

Whereas section 1 (2), chapter 1, title 26, of the Code of laws of the United States, provides "The Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, shall have general superintendence of the assessment and collection of all duties and taxes imposed by any law providing internal revenue. . . ." The tax laws of the United States, including the granting of refunds, credits, and abatements, are administered in secret under the direction of the Secretary of the Treasury; that income-tax returns and evidence upon which refunds are made, or granted, to taxpayers are not subject to public inspection; that under the direction of the present Secretary of the Treasury, Andrew W. Mellon, many hundred corporations that are substantially owned by him annually make settlement for their taxes and many such corporations have been granted under his direction large tax refunds amounting to tens of millions of dollars.

## OWNERSHIP OF BANK STOCK

Whereas section 244, chapter 3, title 12, of the Code of Laws of the United States, provides:

"Sec. 244. Chairman of the board; qualifications of members; vacancies.—The Secretary of the Treasury shall be ex officio chairman of the Federal Reserve Board. No member of the Federal Reserve Board shall be an officer or director of any bank, banking institution, trust company, or Federal reserve bank, nor hold stock in any bank, banking institution, or trust company. . . .

That the present Secretary of the Treasury, Andrew W. Mellon, is now and has been since-becoming Secretary of the Treasury the owner of stock in a bank, banking institution, and trust company in violation of this law.

## WHISKY BUSINESS

Whereas the said Andrew W. Mellon has held the office of Secretary of the Treasury in violation of section 243 of title 5 of the Code of Laws of the United States, in that from March 4, 1921, to October 2, 1928, he was interested in and received his share of the proceeds and profits from the sale of distilled whisky, which said whisky was sold as a commodity in trade and commerce.

## ALUMINUM IN PUBLIC BUILDINGS

Whereas the said Andrew W. Mellon has further violated the law which prohibits the Secretary of the Treasury from being directly or indirectly interested or concerned in the carrying on of business or trade or commerce, in that as Secretary of the Treasury he controls the construction and maintenance of public buildings; the Office of the Supervising Architect is subject to the direction and approval of the Secretary of the Treasury; the duties performed by the Supervising Architect

embrace the following: Preparation of drawings, estimates, specifications, etc., for and the superintendence of the work of constructing, rebuilding, extending, or repairing public buildings; under the supervision of the Supervising Architect and subject to the direction and approval of the Secretary of the Treasury the Government of the United States has spent and will soon spend several hundred million dollars in the construction of public buildings. The said Andrew W. Mellon is the principal owner and controls the Aluminum Co. of America, which produces and markets practically all of the aluminum in the United States used for all purposes. The said Andrew W. Mellon has, while occupying the position as Secretary of the Treasury, directly interested himself in the carrying on and promotion of the business of the Aluminum Co. of America by causing to be published in Room 410 of the Treasury Building of the United States, located between the United States Capitol and the White House, a magazine known as the Federal Architect, published quarterly, which carries the pictures of public buildings in which aluminum is used in their construction and carries articles concerning the use of aluminum in architecture which suggest how aluminum can be used for different purposes in the construction of public buildings for the purpose of convincing the architects who draw the plans and specifications for public buildings that aluminum can and should be used for certain construction work and ornamental purposes. The use of aluminum in the construction of public buildings displaces materials which can be purchased on competitive bids, whereas the Aluminum Co. of America holds a monopoly and has no competitors. Said magazine is published by employees of the United States Government in the Office of the Supervising

Architect and distributed to the architects of the Nation, many of whom have been or will be employed by the Supervising Architect to draw plans and specifications for public buildings in their local communities. More aluminum is now being used in the construction of public buildings, under the direction of the Secretary of the Treasury, than has ever before been used, as a result of this advantage.

MELLON INTEREST IN SOVIET UNION  
(RUSSIA)

Whereas section 140 of title 19 of the Code of Laws of the United States provides—

“Sec. 140. Goods manufactured by convict labor prohibited.—All goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision”—

charges are now being made that goods, wares, articles, and merchandise are being transported to the United States from the Soviet Union (Russia) in violation of this act; the present Secretary of the Treasury, Andrew W. Mellon, whose duty it is to enforce this provision of the law, is one of the principal owners of the Koppers Co., a company with resources amounting to \$143,379,352, which is carrying on trade and commerce in all parts of the world; that said company during the year 1930 made a contract with the Soviet Union whereby the Koppers Co. obligated itself to build coke ovens and steel mills in the Soviet Union aggregating in value \$200,000,000, in furtherance of the Soviet's 5-year plan; that said contract is now being car-

ried into effect, and the said Andrew W. Mellon is financially interested in its success; that his interest in this contract with the Soviet Union destroys his impartiality as an officer of the United States to enforce the above-quoted law; his interest in said company, which is engaged in the business of carrying on trade and commerce, disqualifies him as Secretary of the Treasury under section 243 of title 5 of the Code of Laws of the United States and makes him guilty of a high misdemeanor and subject to impeachment: Therefore be it

*Resolved*, That the Committee on the Judiciary is authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Andrew W. Mellon, Secretary of the Treasury, to determine whether, in its opinion, 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. Such 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 purposes 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 or elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to employ such experts, and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony, to have such printing and binding done, and to make such expenditures not exceeding \$5,000, as it deems necessary.

MR. [JOSEPH W.] BYRNS [of Tennessee]: Mr. Speaker, I move that the articles just read be referred to the



Committee on the Judiciary, and upon that motion I demand the previous question.

The previous question was ordered.

THE SPEAKER:<sup>(2)</sup> The question is on the motion of the gentleman from Tennessee, that the articles be referred to the Committee on the Judiciary.

The motion was agreed to.<sup>(3)</sup>

**§ 14.2 The House discontinued by resolution further proceedings of impeachment against Secretary of the Treasury Andrew Mellon, after he had been nominated and confirmed for another position and had resigned his Cabinet post.**

On Feb. 13, 1932, Mr. Hatton W. Sumners, of Texas, presented House Report No. 444 and House Resolution 143, discontinuing proceedings against Secretary of the Treasury Mellon:

IMPEACHMENT CHARGES—REPORT  
FROM COMMITTEE ON THE JUDICIARY

MR. SUMNERS of Texas: Mr. Speaker, I offer a report from the Committee on the Judiciary, and I would like to give notice that immediately upon the reading of the report I shall move the previous question.

THE SPEAKER:<sup>(4)</sup> The gentleman from Texas offers a report, which the Clerk will read.

2. John N. Garner (Tex.).
3. 75 CONG REC. 1400 72d Cong. 1st Sess.
4. John N. Garner (Tex.).

The Clerk read the report, as follows:

HOUSE OF REPRESENTATIVES—RELATIVE TO THE ACTION OF THE COMMITTEE ON THE JUDICIARY WITH REFERENCE TO HOUSE RESOLUTION 92

Mr. Sumners of Texas, from the Committee on the Judiciary, submitted the following report (to accompany H. Res. 143):

I am directed by the Committee on the Judiciary to submit to the House, as its report to the House, the following resolution adopted by the Committee on the Judiciary indicating its action with reference to House Resolution No. 92 heretofore referred by the House to the Committee on the Judiciary:

Whereas Hon. Wright Patman, Member of the House of Representatives, filed certain impeachment charges against Hon. Andrew W. Mellon, Secretary of the Treasury, which were referred to this committee; and

Whereas pending the investigation of said charges by said committee, and before said investigation had been completed, the said Hon. Andrew W. Mellon was nominated by the President of the United States for the post of ambassador to the Court of St. James and the said nomination was duly confirmed by the United States Senate pursuant to law, and the said Andrew W. Mellon has resigned the position of Secretary of the Treasury: Be it

*Resolved by this committee,* That the further consideration of the said charges made against the said Andrew W. Mellon, as Secretary of the Treasury, be, and the same are hereby, discontinued.

MINORITY VIEWS

We cannot join in the majority views and findings. While we concur in the conclusions of the majority

that section 243 of the Revised Statutes, upon which the proceedings herein were based, provides for action in the nature of an ouster proceeding, it is our view that the Hon. Andrew W. Mellon, the former Secretary of the Treasury, having removed himself from that office, no useful purpose would be served by continuing the investigation of the charges filed by the Hon. Wright Patman. We desire to stress that the action of the undersigned is based on that reason alone, particularly when the prohibition contained in said section 243 is not applicable to the office now held by Mr. Mellon.

FIORIELLO H. LAGUARDIA.  
GORDON BROWNING.  
M. C. TARVER.  
FRANCIS B. CONDON.

MR. SUMNERS of Texas: Mr. Speaker, I think the resolution is fairly explanatory of the views held by the different members of the committee. No useful purpose could be served by the consumption of the usual 40 minutes, so I move the previous question.

The previous question was ordered.

THE SPEAKER: The question is on agreeing to the resolution.

The resolution was agreed to.<sup>(5)</sup>

### ***Charges Against President Hoover***

#### **§ 14.3 Impeachment of President Herbert Hoover was proposed but not considered**

5. 75 CONG. REC. 3850, 72d Cong. 1st Sess.

The House Journal (p. 382) for this date indicates that Mr. Sumners called up H. Res. 143 which was debated prior to its adoption.

#### **by the House or by committee in the 72d Congress.**

On Jan. 17, 1933, Mr. Louis T. McFadden, of Pennsylvania, rose and on his own responsibility as a Member of the House impeached President Hoover as follows:

MR. MCFADDEN: On my own responsibility, as a Member of the House of Representatives, I impeach Herbert Hoover, President of the United States, for high crimes and misdemeanors.

He offered a resolution with a lengthy preamble, which concluded as follows:

*Resolved*, That the Committee on the Judiciary is authorized to investigate the official conduct of Herbert Hoover, President of the United States, and all matters related thereto, to determine whether, in the opinion of the 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. Such committee shall report its findings to the House, together with such resolution of impeachment or other recommendation as it deems proper, in order that the House of Representatives may, if necessary, present its complaint to the Senate, to the end that Herbert Hoover may be tried according to the manner prescribed for the trial of the Executive by the Constitution and the people be given their constitutional remedy and be relieved of their present apprehension that a criminal may be in office.

For the purposes 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 or elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to employ such experts, and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony, to have such printing and binding done, and to make such expenditures as it deems necessary.

Mr. Henry T. Rainey, of Illinois, moved that the resolution be laid on the table and the House adopted the motion, precluding any debate by Mr. McFadden on his resolution of impeachment.

Pending a vote on the motion, Speaker John N. Garner, of Texas, stated in response to a parliamentary inquiry that the language which had transpired could not be expunged from the *Congressional Record* by motion but must be done by unanimous consent since no unparliamentary language was involved.<sup>(6)</sup>

On Jan. 18, 1933, Mr. McFadden rose to state a question of privilege, with the intention of impeaching President Hoover. In response to a point of order, Speaker Garner held that a question of constitutional privilege or a question of privilege of the House, as

6. 76 CONG. REC. 1965-68, 72d Cong. 2d Sess.

distinguished from a question of personal privilege, could not be presented until a motion or resolution was submitted. He declined to recognize Mr. McFadden since no resolution was presented.<sup>(7)</sup>

### ***Charges Against U.S. District Judge Lowell***

**§ 14.4 In the 73d Congress the Committee on the Judiciary conducted an investigation into impeachment charges against District Judge James Lowell and later recommended that further proceedings be discontinued.**

On Apr. 26, 1933, Mr. Howard W. Smith, of Virginia, rose to a question of constitutional privilege and impeached Mr. Lowell, a U.S. District Judge for the District of Massachusetts. He specified the following charges:

First. I charge that the said James A. Lowell, having been nominated by the President of the United States and confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as district judge for the district of Massachusetts, did on divers and various occasions so abuse the powers of his high office and so misconduct himself as to be guilty of favoritism, oppression, and judicial misconduct, whereby he has brought the administration of justice in said

7. *Id.* at pp. 2041, 2042.

district in the court of which he is judge into disrepute by his aforesaid misconduct and acts, and is guilty of misbehavior and misconduct, falling under the constitutional provision as ground for impeachment and removal from office.

Second. I charge that the said James A. Lowell did knowingly and willfully violate his oath to support the Constitution in his refusal to comply with the provisions of article IV, section 2, clause 2, of the Constitution of the United States, wherein it is provided:

A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Third. I charge that the said James A. Lowell did, on the 24th day of April, 1933, unlawfully, willfully, and contrary to well-established law, order the discharge from custody of one George Crawford, who had been regularly indicted for first-degree murder in Loudoun County, Va., had confessed his crime, and whose extradition from the State of Massachusetts had, after full hearing and investigation, been officially ordered by Joseph B. Ely, Governor of the State of Massachusetts.

Fourth. I charge that the said James A. Lowell did deliberately and willfully by ordering the release of said George Crawford, unlawfully and contrary to the law in such cases made and provided, seek to defeat the ends of justice and to prevent the said George Crawford from being duly and regularly tried in the tribunal having juris-

diction thereof for the crime with which he is charged, to which he had confessed.

Fifth. I charge that the said James A. Lowell did on the said 24th day of April 1933 willfully, deliberately, and viciously attempt to nullify the operation of the laws for the punishment of crime of the State of Virginia and many other States in the Union, notwithstanding numerous decisions directly to the contrary by the Supreme Court of the United States, all of which decisions were brought to the attention of the said judge by the attorney general of Massachusetts and the Commonwealth's attorney of Loudoun County, Va., at the time of said action.

Sixth. I further charge that the said James A. Lowell, on the said 24th day of April 1933, in rendering said decision did use his judicial position for the unlawful purpose of casting aspersions upon and attempting to bring disrepute upon the administration of law in the Commonwealth of Virginia and various other States in this Union, and that in so doing he used the following language:

I say this whole thing is absolutely wrong. It goes against my Yankee common sense to have a case go on trial for 2 or 3 years and then have the whole thing thrown out by the Supreme Court.

They say justice is blind. Justice should not be as blind as a bat. In this case it would be if a writ of habeas corpus were denied.

Why should I send a negro back from Boston to Virginia, when I know and everybody knows that the Supreme Court will say that the trial is illegal? The only persons who would get any good out of it would be the lawyers.

Governor Ely in signing the extradition papers was bound only by the

question of whether the indictment from Virginia is in order. But why shouldn't I, sitting here in this court, have a different constitutional outlook from the governor who sits on the case merely to see if the indictment satisfies the law in Virginia?

I keep on good terms with Chief Justice Rugg, of the Massachusetts Supreme Court, but I don't have to keep on good terms with the chief justice of Virginia, because I don't have to see him.

I'd rather be wrong on my law than give my sanction to legal nonsense.

Seventh. I further charge that the said James A. Lowell has been arbitrary, capricious, and czarlike in the administration of the duties of his high office and has been grossly and willfully indifferent to the rights of litigants in his court, particularly in the case of George Crawford against Frank G. Hale.<sup>(8)</sup>

The charges were referred to the Committee on the Judiciary. Mr. Smith then offered House Resolution 120, authorizing an investigation of such charges, which resolution was adopted by the House:

*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 James A. Lowell, a district judge for the United States District Court for the District of Massachusetts, to determine whether in the opinion of said committee he has been guilty of any high crime or mis-

demeanor 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 hearings, 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.<sup>(9)</sup>

On May 4, 1933, Mr. Smith offered House Resolution 132, providing for payment out of the contingent fund for the expenses of the Committee on the Judiciary incurred under House Resolution 120. The resolution was referred to the Committee on Accounts and was called up by that committee on May 8, when it was adopted by the House.<sup>(10)</sup>

On Feb. 6, 1934, the House agreed to House Resolution 226, reported by Mr. Gordon Browning, of Tennessee, of the Committee on

8. H. JOUR. 205, 206, 73d Cong. 1st Sess.

9. *Id.* at p. 206.

10. *Id.* at pp. 233, 238.

the Judiciary, providing that no further proceedings be had under House Resolution 120:

*Resolved*, That no further proceedings be had under H. Res. 120, agreed to April 26, 1933, providing for an investigation of the official conduct of James A. Lowell, United States district judge for the district of Massachusetts, and that the Committee on the Judiciary be discharged.<sup>(11)</sup>

***Charges Against Federal Reserve Board Members***

**§ 14.5 After a Member of the House offered a resolution to impeach various members and former members of the Federal Reserve Board, and Federal Reserve agents, his resolution was referred to the Committee on the Judiciary and not acted upon.**

On May 23, 1933, Mr. Louis T. McFadden, of Pennsylvania, rose to a question of constitutional privilege and impeached on his own responsibility Eugene Meyer, former member of the Federal Reserve Board, and a number of other former members, members, and Federal Reserve agents. His resolution, House Resolution 1458, was referred to the Committee on the Judiciary, pursuant to a motion to refer offered by Mr. Joseph W. Byrns, of Tennessee. The com-

11. H. JOUR. 137, 73d Cong. 2d Sess.

mittee took no action on the resolution.

During debate on the resolution, Mr. Carl E. Mapes, of Michigan, rose to a point of order against the resolution, claiming it was not privileged because it called for the impeachment of various persons who were no longer U.S. civil officers. Speaker Henry T. Rainey, of Illinois, held that the issue presented was a constitutional question upon which the House and not the Chair should pass.<sup>(12)</sup>

***Charges Against U.S. District Judge Molyneaux***

**§ 14.6 Impeachment of U.S. District Judge Joseph Molyneaux was proposed in the 73d Congress but not acted upon by the House or the Committee on the Judiciary, to which the charges were referred.**

On Jan. 22, 1934, Mr. Francis H. Shoemaker, of Minnesota, introduced House Resolution 233, authorizing an investigation by the Committee on the Judiciary into the official conduct of Mr. Molyneaux, a U.S. District Judge for the District of Minnesota, to determine whether he was guilty of high crimes or misdemeanors

12. H. JOUR. 298-302, 73d Cong. 1st Sess.

requiring the “interposition of the constitutional powers of the House.” The resolution was referred to the Committee on the Judiciary.<sup>(13)</sup>

The Committee on the Judiciary having taken no action on his resolution, Mr. Shoemaker rose to a question of constitutional privilege on Apr. 20, 1934, and impeached Judge Molyneaux on his own responsibility. He offered charges and a resolution (H. Res. 344) impeaching the judge, which resolution was referred on motion to the Committee on the Judiciary. The resolution charged corruption in the appointment of receivers, in the disposal of estates, interference with justice, and mental senility, and dishonesty. The committee took no action thereon.<sup>(14)</sup>

### *Charges Against U.S. Circuit Judge Alschuler*

**§ 14.7 A Member having impeached Judge Samuel Alschuler, a Circuit Judge for the seventh circuit, the Committee on the Judiciary reported adversely on the resolution authorizing an investigation, and the resolution was laid on the table.**

On May 7, 1935, Mr. Everett M. Dirksen, of Illinois, rose to a ques-

13. H. JOUR. 87, 73d Cong. 2d Sess.

14. *Id.* at p. 423.

tion of “high constitutional privilege” and impeached Samuel Alschuler, U.S. Circuit Judge for the seventh circuit. He discussed his charges (principally that the accused improperly favored a litigant before his court) and offered House Resolution 214, authorizing an investigation by the Committee on the Judiciary. The resolution was referred on motion of Mr. Hatton W. Sumners, of Texas, to the Committee on the Judiciary.<sup>(15)</sup>

On Aug. 15, 1935, Mr. Sumners reported adversely (H. Rept. No. 1802) on House Resolution 214, by direction of the Committee on the Judiciary. Mr. Sumners moved to lay the resolution on the table, and the House agreed to the motion.<sup>(16)</sup>

### *Charges Against Secretary of Labor Perkins*

**§ 14.8 In the 76th Congress, a resolution was offered impeaching Secretary of Labor Frances Perkins and two other officials of the Department of Labor, and was referred on motion to the Committee on the Judiciary.**

On Jan. 24, 1939,<sup>(17)</sup> a Member impeached certain officials of the

15. H. JOUR. 668–71, 74th Cong. 1st Sess.

16. *Id.* at p. 1093.

17. 84 CONG. REC. 702–11, 76th Cong. 1st Sess.

executive branch and introduced a resolution authorizing an investigation:

IMPEACHMENT OF FRANCES PERKINS,  
SECRETARY OF LABOR; JAMES L.  
HOUGHTELING; AND GERARD D.  
REILLY

MR. [J. PARNELL] THOMAS of New Jersey: Mr. Speaker, on my own responsibility as a Member of the House of Representatives, I impeach Frances Perkins, Secretary of Labor of the United States; James L. Houghteling, Commissioner of the Immigration and Naturalization Service of the Department of Labor; and Gerard D. Reilly, Solicitor of the Department of Labor, as civil officers of the United States, for high crimes and misdemeanors in violation of the Constitution and laws of the United States, and I charge that the aforesaid Frances Perkins, James L. Houghteling, and Gerard D. Reilly, as civil officers of the United States, were and are guilty of high crimes and misdemeanors in office in manner and form as follows, to wit: That they did willfully, unlawfully, and feloniously conspire, confederate, and agree together from on or about September 1, 1937, to and including this date, to commit offenses against the United States and to defraud the United States by failing, neglecting, and refusing to enforce the immigration laws of the United States, including to wit section 137, title 8, United States Code, and section 156, title 8, United States Code, against Alfred Renton Bryant Bridges, alias Harry Renton Bridges, alias Harry Dorgan, alias Canfield, alias Rossi, an alien, who advises, advocates, or teaches and is a member of

or affiliated with an organization, association, society, or group that advises, advocates, or teaches the overthrow by force or violence of the Government of the United States, or the unlawful damage, injury, or destruction of property, or sabotage; and that the aforesaid Frances Perkins, James L. Houghteling, and Gerard D. Reilly have unlawfully conspired together to release said alien after his arrest on his own recognizance, without requiring a bond of not less than \$500; and that said Frances Perkins, James L. Houghteling, and Gerard D. Reilly and each of them have committed many overt acts to effect the object of said conspiracy, all in violation of the Constitution of the United States in such cases made and provided.

And I further charge that Frances Perkins, James L. Houghteling, and Gerard D. Reilly, as civil officers of the United States, were and are guilty of high crimes and misdemeanors by unlawfully conspiring together to commit offenses against the United States and to defraud the United States by causing the Strecker case to be appealed to the Supreme Court of the United States, and by failing, neglecting, and refusing to enforce section 137, United States Code, against other aliens illegally within the United States contrary to the Constitution of the United States and the statutes of the United States in such cases made and provided.

In support of the foregoing charges and impeachment, I now present a resolution setting forth specifically, facts, circumstances, and allegations with a view to their consideration by a committee of the House and by the House itself to determine their truth or falsity.



Mr. Speaker, I offer the following resolution and ask that it be considered at this time.

THE SPEAKER:<sup>(18)</sup> The Clerk will report the resolution.

The Clerk read as follows:

HOUSE RESOLUTION 67

Whereas Frances Perkins, of New York, was nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned on March 4, 1933, and has since March 4, 1933, without further nominations or confirmations, acted as Secretary of Labor and as a civil officer of the United States.

Whereas James L. Houghteling, of Illinois, was nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned on August 4, 1937, as Commissioner of the Immigration and Naturalization Service of the Department of Labor and has since August 4, 1937, without further nominations or confirmations, acted as Commissioner of the Immigration and Naturalization Service of the Department of Labor and as a civil officer of the United States.

Whereas Gerard D. Reilly, of Massachusetts, was nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned on August 10, 1937, as Solicitor of the Department of Labor, and has since August 10, 1937, without further nominations or confirmations, acted as Solicitor of the Department of Labor and as a civil officer of the United States.

*Resolved*, That the Committee on the Judiciary be and is hereby authorized and directed, as a whole or by subcommittee, to investigate the

official conduct of Frances Perkins, Secretary of Labor; James L. Houghteling, Commissioner of Immigration and Naturalization Service, Department of Labor; and Gerard D. Reilly, Solicitor, Department of Labor, to determine whether, in its opinion, they have been guilty of any high crimes or misdemeanors which, in the contemplation of the Constitution, requires the interposition of the constitutional powers of the House. Such committee shall report its findings to the House, together with such articles of impeachment as the facts may warrant.

For the purposes of this resolution the committee is authorized and directed to sit and act, during the present session of Congress, at such times and places in the District of Columbia, or elsewhere, whether or not the House is sitting, has recessed, or has adjourned; to hold hearings; to employ such experts and such clerical, stenographic and other assistance; and to require the attendance of such witnesses and the production of such books, papers, and documents; and to take such testimony and to have such printing and binding done; and to make such expenditures not exceeding \$10,000, as it deems necessary.

The resolution was referred as follows:

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, I move that the resolution be referred to the Committee on the Judiciary of the House and upon that I desire to say just a word. A great many suggestions have been made as to what should be done with this resolution, but I think this would be the orderly procedure so that the facts may be developed. The resolution will come out of that committee or remain in it according to the testimony adduced.

I therefore move the previous question on my motion to refer, Mr. Speaker.

18. William B. Bankhead (Ala.).

The previous question was ordered.  
The motion was agreed to.

**§ 14.9 The Committee on the Judiciary agreed unanimously to report adversely the resolution urging an investigation of Secretary of Labor Frances Perkins and the House agreed to a motion to lay the resolution on the table.**

On Mar. 24, 1939,<sup>(19)</sup> charges of impeachment against Secretary of Labor Perkins were finally and adversely disposed of:

IMPEACHMENT PROCEEDINGS—FRANCES PERKINS

MR. [SAM] HOBBS [of Alabama]: Mr. Speaker, by direction of the Committee on the Judiciary I present a privileged report upon House Resolution 67, which I send to the desk.

THE SPEAKER:<sup>(20)</sup> The Clerk will report the resolution.

The Clerk read House Resolution 67.

MR. HOBBS: Mr. Speaker, this is a unanimous report from the Committee on the Judiciary adverse to this resolution. I move to lay the resolution on the table.

THE SPEAKER: The question is on the motion of the gentleman from Alabama to lay the resolution on the table.

The motion was agreed to.

19. 84 CONG. REC. 3273, 76th Cong. 1st Sess.

20. William B. Bankhead (Ala.).

***Charges Against U.S. District Judges Johnson and Watson***

**§ 14.10 The House authorized the Committee on the Judiciary to investigate allegations of impeachable offenses charged against U.S. District Court Judges Johnson and Watson but no final report was submitted.**

On Jan. 24, 1944, Mr. Hatton W. Sumners, of Texas, introduced House Resolution 406 authorizing an investigation by the Committee on the Judiciary into the conduct of U.S. District Court Judges Albert Johnson and Albert Watson from Pennsylvania. The resolution was referred to the Committee on the Judiciary. House Resolution 407, also introduced by Mr. Sumners and providing for the expenses of the committee in conducting such an investigation, was referred to the Committee on the Judiciary.<sup>(1)</sup>

On Jan. 26, 1944, Mr. Sumners called up by direction of the Committee on the Judiciary House Resolution 406, authorizing the investigation and the House agreed thereto.<sup>(2)</sup>

*Parliamentarian's Note:* Extensive hearings, presided over by Mr. Estes Kefauver, of Tennessee,

1. H. JOUR. 46, 78th Cong. 2d Sess.

2. *Id.* at p. 57.

were held relative to the conduct of Judge Johnson. The subcommittee report recommended impeachment based on evidence of corrupt practices and acts including corrupt appointment to court offices. Judge Johnson having resigned, the Committee on the Judiciary discontinued the proceedings.

### *Charges Against President Truman*

**§ 14.11 In the 82d Congress, a resolution proposing an inquiry as to whether President Harry Truman should be impeached was referred to the Committee on the Judiciary, which took no action thereon.**

On Apr. 23, 1952,<sup>(3)</sup> a resolution relating to impeachment was referred to the Committee on the Judiciary, which took no action thereon:

By Mr. [George H.] Bender [of Ohio]:

H. Res. 607. Resolution creating a select committee to inquire and report to the House whether Harry S. Truman, President of the United States, shall be impeached; to the Committee on the Judiciary.

**§ 14.12 A petition was filed to discharge the Committee on**

3. 98 CONG. REC. 4325, 82d Cong. 2d Sess.

**the Judiciary from the further consideration of a resolution impeaching President Harry Truman but did not gain the requisite number of signatures.**

On June 17, 1952, Mr. John C. Schafer, of Wisconsin, announced that he was filing a petition to discharge the Committee on the Judiciary from the further consideration of House Resolution 614, impeaching President Truman:<sup>(4)</sup>

MR. SCHAFFER: Mr. Speaker, on April 28 of this year I introduced House Resolution 614, to impeach Harry S. Truman, President of the United States, of high crimes and misdemeanors in office. This resolution was referred to the Committee on the Judiciary, which committee has failed to take action thereon.

Thirty legislative days having now elapsed since introduction of this resolution, I today have placed on the Clerk's desk a petition to discharge the committee from further consideration of the resolution.

In my judgment, developments since I introduced the Resolution April 28 have immeasurably enlarged and strengthened the case for impeachment and have added new urgency for such action by this House.

First. Since the introduction of this resolution, the United States Supreme Court, by a 6-to-3 vote, has held that in his seizure of the steel mills Harry S. Truman, President of the United

4. 98 CONG. REC. 7424, 82d Cong. 2d Sess.

States, exceeded his authority and powers, violated the Constitution of the United States, and flouted the expressed will and intent of the Congress—and, in so finding, the Court gave unprecedented warnings against the threat to freedom and constitutional government implicit in his act.

Second. Despite the President's technical compliance with the finding of the Court, prior to the Court decision he reasserted his claim to the powers then in question, and subsequent to that decision he has contemptuously called into question "the intention of the Court's majority" and contemptuously attributed the limits set on the President's powers not to Congress, or to the Court, or to the Constitution, but to "the Court's majority."

Third. The Court, in its finding in the steel case, emphasized not only the unconstitutionality of the Presidential seizure but also stressed his failure to utilize and exhaust existing and available legal resources for dealing with the situation, including the Taft-Hartley law.

Fourth. The President's failure and refusal to utilize and exhaust existing and available legal resources for dealing with the emergency has persisted since the Court decision and in spite of clear and unmistakable evidence of the will and intent of Congress given in response to his latest request for special legislation authorizing seizure or other special procedures.

The discharge petition, No. 14, was not signed by a majority of the Members of the House and was therefore not eligible for consideration in the House under

Rule XXVII clause 4, *House Rules and Manual* § 908 (1973).

***Charges Against Judges  
Murrah, Chandler, and  
Bohanon***

**§ 14.13 A resolution authorizing an investigation in the 89th Congress into the conduct of three federal judges was referred to the Committee on Rules but not acted on.**

On Feb. 22, 1966, Mr. H. R. Gross, of Iowa, introduced House Resolution 739, authorizing the Committee on the Judiciary to inquire into and investigate the conduct of Alfred Murrah, Chief Judge of the 10th Circuit, Stephen Chandler, District Judge, Western District of Oklahoma, and Luther Bohanon, District Judge, Eastern, Northern, and Western Districts of Oklahoma, in order to determine whether any of the three judges had been guilty of high crimes or misdemeanors. The resolution was referred to the Committee on Rules.<sup>(5)</sup>

Mr. Gross stated the purpose of the resolution as follows:

Mr. Segal, Judge John Biggs, Jr., the chairman of the judicial conference committee on court administration,

5. 112 CONG. REC. 3665, 89th Cong. 2d Sess.

and Mr. Joseph Borkin, Washington attorney and author of the book, "The Corrupt Judge," were in agreement that impeachment is the only remedy available today for action against judicial misconduct.

Both Mr. Borkin and the chairman of the subcommittee emphasized the serious problem that has arisen in Oklahoma where the Judicial Council of the 10th Judicial Circuit made an attempt to bar Judge Stephen S. Chandler from handling cases because it was stated he was "either unwilling or unable" to perform his judicial functions adequately.

Mr. Borkin, a man with an impressive background in the study of the problems of corruption and misconduct in the judiciary, pointed out that Judge Chandler, in return, has made serious charges of attempted bribery and other misconduct against two other judges—Alfred P. Murrah, chief judge, 10th Circuit, U.S. Court of Appeals, and Luther Bohanon, district judge, U.S. District Court for the Eastern, Northern, and Western Districts of Oklahoma.

Mr. Borkin stressed that this dispute in Oklahoma has been an upsetting factor in the Federal courts in Oklahoma since 1962, and he declared that these charges should not be permitted to stand. He emphasized that there can be no compromise short of a full investigation to clear the judges or to force their removal.

I agree with Mr. Borkin that great damage has been done because the courts, the executive branch, and the Congress have taken no effective steps to clear up this scandalous situation. I have waited patiently for months, and I have hoped that the Justice Depart-

ment, the courts, or the Congress would initiate or suggest a proper legal investigation to clear the air and put an end to this outrageous situation in the judiciary in the 10th circuit.

There has been no effective action taken, or even started. Therefore, I am today instituting the only action available to try to get to the bottom of this.

I have introduced a House resolution authorizing and directing the House Committee on the Judiciary to investigate the conduct of the three Federal judges in Oklahoma involved in this controversy. Upon its finding of fact, the House Judiciary Committee would be empowered to institute impeachment proceedings or make any other recommendations it deems proper.

The committee would also be empowered to require the attendance of witnesses and the production of such books, papers, and documents—including financial statements, contracts, and bank accounts—as it deems necessary.

The resolution in no way establishes the guilt of the principals involved. It is necessary to the launching of an investigation for the purpose of determining the facts essential to an intelligent conclusion and eliminating the cloud now hanging over the Federal judiciary.<sup>6</sup>

The Committee on Rules took no action on the resolution.

### ***Charges Against Associate Supreme Court Justice Douglas***

#### **§ 14.14 When the Minority Leader criticized the conduct**

6. *Id.* at p. 3653.

**of Associate Justice William O. Douglas of the U.S. Supreme Court during a special order speech in the 91st Congress and suggested the creation of a select committee to investigate such conduct to determine whether impeachment was warranted, another Member announced on the floor that he was introducing a resolution of impeachment; the resolution was referred to the Committee on the Judiciary.**

On Apr. 15, 1970, Minority Leader Gerald R. Ford, of Michigan, took the floor for a special order speech in which he criticized the conduct of Associate Justice Douglas of the U.S. Supreme Court. Mr. Ford suggested that a select committee of the House be created to investigate such conduct in order to determine whether impeachment proceedings might be warranted.<sup>(7)</sup>

Mr. Louis C. Wyman, of New Hampshire, then took the floor under a special order speech to discuss the same subject. He

7. 116 CONG. REC. 11912-17, 91st Cong. 2d Sess. Mr. Ford discussed the standard for impeachable offenses and concluded in part that such an offense was "whatever a majority of the House of Representatives considers [it] to be at a given moment in history." *Id.* at p. 11913.

yielded time to Mr. Andrew Jacobs, Jr., of Indiana, as follows:

MR. JACOBS: Mr. Speaker, will the gentleman yield for a three-sentence statement?

MR. WYMAN: I yield to the gentleman from Indiana.

MR. JACOBS: Mr. Speaker, the gentleman from Michigan has stated publicly that he favors impeachment of Justice Douglas.

He, therefore, has a duty to this House and this country to file a resolution of impeachment.

Since he refuses to do so and since he raises grave questions, the answers to which I do not know, but every American is entitled to know, I introduce at this time the resolution of impeachment in order that a proper and dignified inquiry into this matter might be held.

At this point Mr. Jacobs introduced the resolution by placing it in the hopper at the Clerk's desk.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The gentleman from New Hampshire has the floor.

MR. WYMAN: I did not yield for that purpose.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana has introduced a resolution.<sup>(9)</sup>

Mr. Jacobs' resolution, House Resolution 920, which was referred to the Committee on the Judiciary<sup>(10)</sup> declared:

8. Charles M. Price (Ill.).

9. 116 CONG. REC. 11920, 91st Cong. 2d Sess.

10. *Id.* at p. 11942. For a similar resolution proposed in the 83d Congress,

*Resolved*, That William O. Douglas, Associate Justice of the Supreme Court of the United States be impeached [for] high crimes and misdemeanors and misbehavior in office.

Other resolutions, all of which called for the creation of a select committee to conduct an investigation and to determine whether impeachment proceedings were warranted, were referred to the Committee on Rules. For example, House Resolution 922, introduced by Mr. Wyman, with 24 cosponsors, read as follows:<sup>(11)</sup>

Whereas, the Constitution of the United States provides in Article III, Section 1, that Justices of the Supreme Court shall hold office only “during good behavior”, and

Whereas, the Constitution also provides in Article II, Section 4, that Justices of the Supreme Court shall be removed from Office on Impeachment for High Crimes and Misdemeanors, and

Whereas the Constitution also provides in Article VI that Justices of the Supreme Court shall be bound by “Oath or Affirmation to support this Constitution” and the United States

but not acted upon, impeaching Justice Douglas, see H. Res. 290, introduced June 17, 1953, 99 CONG. REC. 6760, 83d Cong. 1st Sess.

11. H. Res. 922 was referred to the Committee on Rules. 116 CONG. REC. 12130, 12131, 91st Cong. 2d Sess., Apr. 16, 1970.

See also H. Res. 923, H. Res. 924, H. Res. 925, H. Res. 926, H. Res. 927, H. Res. 928, 91st Cong. 2d Sess.

Code (5 U.S.C. 16) prescribes the following form of oath which was taken and sworn to by William Orville Douglas prior to his accession to incumbency on the United States Supreme Court:

I, William Orville Douglas, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

and

Whereas, integrity and objectivity in respect to issues and causes to be presented to the United States Supreme Court for final determination make it mandatory that Members thereof refrain from public advocacy of a position on any matter that may come before the High Court lest public confidence in this constitutionally co-equal judicial body be undermined, and

Whereas, the said William Orville Douglas has, on frequent occasions in published writings, speeches, lectures and statements, declared a personal position on issues to come before the United States Supreme Court indicative of a prejudiced and nonjudicial attitude incompatible with good behavior and contrary to the requirements of judicial decorum obligatory upon the Federal judiciary in general and members of the United States Supreme Court in particular, and

Whereas, by the aforementioned conduct and writings, the said William Orville Douglas has established himself before the public, including liti-

gants whose lives, rights and future are seriously affected by decisions of the Court of which the said William Orville Douglas is a member, as a partisan advocate and not as a judge, and

Whereas, by indicating in advance of Supreme Court decisions, on the basis of declared, printed, or quoted convictions, how he would decide matters in controversy pending and to become pending before the Court of which he is a member, the said William Orville Douglas has committed the high misdemeanor of undermining the integrity of the highest constitutional Court in America, and has willfully and deliberately undermined public confidence in the said Court as an institution, and

Whereas, contrary to his Oath of Office as well as patently in conflict with the Canons of Ethics for the Judiciary of the American Bar Association, the said William Orville Douglas nevertheless on February 19, 1970, did publish and publicly distribute throughout the United States, statements encouraging, aggravating and inciting violence, anarchy and civil unrest in the form of a book entitled "Points of Rebellion" in which the said William Orville Douglas, all the while an incumbent on the Highest Court of last resort in the United States, stated, among other things, that:

But where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response. (pp. 88-89, "Points of Rebellion," Random House, Inc., February 19, 1970, William O. Douglas.)

The special interests that control government use its powers to favor themselves and to perpetuate regimes of oppression, exploitation, and discrimination against the many (ibid, p. 92).

People march and protest but they are not heard (ibid, p. 88).

Where there is a persistent sense of futility, there is violence; and that is where we are today (ibid, p. 56).

The two parties have become almost indistinguishable; and each is controlled by the Establishment. The modern day dissenters and protesters are functioning as the loyal opposition functions in England. They are the mounting voice of political opposition to the status quo, calling for revolutionary changes in our institutions. Yet the powers-that-be faintly echo Adolph Hitler (ibid, p. 57).

Yet American protesters need not be submissive. A speaker who resists arrest is acting as a free man (ibid, p. 6).

We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution (ibid, p. 95).

and thus willfully and deliberately fanned the fires of unrest, rebellion, and revolution in the United States, and

Whereas, in the April 1970 issue of Evergreen Magazine, the said William Orville Douglas for pay did, while an incumbent on the United States Supreme Court, publish an article entitled Redress and Revolution, appearing on page 41 of said issue immediately following a malicious caricature of the President of the United States as George III, as well as photographs of nudes engaging in various acts of sexual intercourse, in which article the said William Orville Douglas again wrote for pay that:

George III was the symbol against which our Founders made a revolution now considered bright and glorious. . . . We must realize that to-



day's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also Revolution.

and

Whereas, the said William Orville Douglas, prepared, authored, and received payment for an article which appeared in the March 1969 issue of the magazine, *Avant Garde*, published by Ralph Ginzburg, previously convicted of sending obscene literature through the United States Mails, (see 383 U.S. 463) at a time when the said Ralph Ginzburg was actively pursuing an appeal from his conviction upon a charge of malicious libel before the Supreme Court of the United States, yet nevertheless the said William Orville Douglas, as a sitting member of the Supreme Court of the United States, knowing full well his own financial relationship with this litigant before the Court, sat in judgment on the Ginzburg appeal, all in clear violation and conflict with his Oath of Office, the Canons of Judicial Ethics, and Federal law (396 U.S. 1049), and

Whereas, while an incumbent on the United States Supreme Court the said William Orville Douglas for hire has served and is reported to still serve as a Director and as Chairman of the Executive Committee of the Center for the Study of Democratic Institutions in Santa Barbara, California, a politically oriented action organization which, among other things, has organized national conferences designed to seek détente with the Soviet Union and openly encouraged student radicalism, and

Whereas, the said Center for the Study of Democratic Institutions, in

violation of the Logan Act, sponsored and financed a "Pacem in Terris II Convocation" at Geneva, Switzerland, May 28-31, 1967, to discuss foreign affairs and U.S. foreign policy including the "Case of Vietnam" and the "Case of Germany", to which Ho Chi Minh was publicly invited, and all while the United States was in the midst of war in which Communists directed by the same Ho Chi Minh were killing American boys fighting to give South Vietnam the independence and freedom from aggression we had promised that Nation, and from this same Center there were paid to the said William Orville Douglas fees of \$500 per day for Seminars and Articles, and

Whereas, paid activity of this type by a sitting Justice of the Supreme Court of the United States is contrary to his Oath of Office to uphold the United States Constitution, violative the Canons of Ethics of the American Bar Association and is believed to constitute misdemeanors of the most fundamental type in the context in which that term appears in the United States Constitution (Article II, Section 4) as well as failing to constitute "good behavior" as that term appears in the Constitution (Article III, Section 1), upon which the tenure of all Federal judges is expressly conditioned, and

Whereas, moneys paid to the said William Orville Douglas from and by the aforementioned Center are at least as follows: 1962, \$900; 1963, \$800; 1965, \$1,000; 1966, \$1,000; 1968, \$1,100; 1969, \$2,000; all during tenure on the United States Supreme Court, and all while a Director on a Board of Directors that meets (and met) biannually to determine the general policies of the Center, and

Whereas, the said William Orville Douglas, contrary to his sworn obligation to refrain therefrom and in violation of the Canons of Ethics, has repeatedly engaged in political activity while an incumbent of the High Court, evidenced in part by his authorization for the use of his name in a recent political fund-raising letter, has continued public advocacy of the recognition of Red China by the United States, has publicly criticized the military posture of the United States, has authored for pay several articles on subjects patently related to causes pending or to be pending before the United States Supreme Court in Playboy Magazine on such subjects as invasions of privacy and civil liberties, and most recently has expressed in Brazil public criticism of United States foreign policy while on a visit to Brazil in 1969, plainly designed to undermine public confidence in South and Latin American countries in the motives and objectives of the foreign policy of the United States in Latin America, and

Whereas, in addition to the foregoing, and while a sitting Justice on the Supreme Court of the United States, the said William Orville Douglas has charged, been paid and received \$12,000 per annum as President and Director of the Parvin Foundation from 1960 to 1969, which Foundation received substantial income from gambling interests in the Freemont Casino at Las Vegas, Nevada, as well as the Flamingo at the same location, accompanied by innumerable conflicts of interest and overlapping financial maneuvers frequently involved in litigation the ultimate appeal from which could only be to the Supreme Court of which the said William Orville Douglas

was and is a member, the tenure of the said William Orville Douglas with the Parvin Foundation being reported to have existed since 1960 in the capacity of President, and resulting in the receipt by the said William Orville Douglas from the Parvin Foundation of fees aggregating at least \$85,000, all while a member of the United States Supreme Court, and all while referring to Internal Revenue Service investigation of the Parvin Foundation while a Justice of the United States Supreme Court as a "manufactured case" intended to force him to leave the bench all while he was still President and Director of the said Foundation and was earning a \$12,000 annual salary in those posts, a patent conflict of interest, and

Whereas, it has been repeatedly alleged that the said William Orville Douglas in his position as President of the Parvin Foundation did in fact give the said Foundation tax advice, with particular reference to matters known by the said William Orville Douglas at the time to have been under investigation by the United States Internal Revenue Service, all contrary to the basic legal and judicial requirement that a Supreme Court Justice may not give legal advice, and particularly not for a fee, and

Whereas, the said William Orville Douglas has, from time to time over the past ten years, had dealings with, involved himself with, and may actually have received fees and travel expenses, either directly or indirectly, from known criminals, gamblers, and gangsters or their representatives and associates, for services, both within the United States and abroad, and

Whereas, the foregoing conduct on the part of the said William Orville

Douglas while a Justice of the Supreme Court is incompatible with his constitutional obligation to refrain from non-judicial activity of a patently unethical nature, and

Whereas, the foregoing conduct and other activities on the part of the said William Orville Douglas while a sitting Justice on the United States Supreme Court, establishes that the said William Orville Douglas in the conduct of his solemn judicial responsibilities has become a prejudiced advocate of pre-determined position on matters in controversy or to become in controversy before the High Court to the demonstrated detriment of American jurisprudence, and

Whereas, from the foregoing, and without reference to whatever additional relevant information may be developed through investigation under oath, it appears that the said William Orville Douglas, among other things, has sat in judgment on a case involving a party from whom the said William Orville Douglas to his knowledge received financial gain, as well as that the said William Orville Douglas for personal financial gain, while a member of the United States Supreme Court, has encouraged violence to alter the present form of government of the United States of America, and has received and accepted substantial financial compensation from various sources for various duties incompatible with his judicial position and constitutional obligation, and has publicly and repeatedly, both orally and in writings, declared himself a partisan on issues pending or likely to become pending before the Court of which he is a member: Now, therefore, be it

*Resolved, That—*

(1) The Speaker of the House shall within fourteen days hereafter appoint a select committee of six Members of the House, equally divided between the majority and the minority parties and shall designate one member to serve as chairman, which select committee shall proceed to investigate and determine whether Associate Justice William Orville Douglas has committed high crimes and misdemeanors as that phrase appears in the Constitution, Article II, Section 4, or has, while an incumbent, failed to be of the good behavior upon which his Commission as said Justice is conditioned by the Constitution, Article III, Section 1. The select committee shall report to the House the results of its investigation, together with its recommendations on this resolution for impeachment of the said William Orville Douglas not later than ninety days following the designation of its full membership by the Speaker.

(2) For the purpose of carrying out this resolution the committee, or any subcommittee thereof, is authorized to sit and act during the present Congress at such times and places within the United States whether the House is sitting, has recessed, or has adjourned, to hold such hearings, and to require by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

*Parliamentarian's Note:* On Apr. 24, 1970, Chairman William M. Colmer, of Mississippi, of the Committee on Rules stated that pursuant to the statement of Emanuel Celler, of New York, Chairman of the Committee on the Judiciary, that the latter committee would hold hearings and take action on the impeachment within 60 days, he would not program for consideration by the Committee on Rules the resolutions creating a select committee to study the charges of impeachment.

**§ 14.15 A subcommittee of the Committee on the Judiciary investigated charges of impeachable offenses against Associate Justice William O. Douglas and issued an interim report.**

On June 20, 1970, the special subcommittee of the Committee on the Judiciary on House Resolution 920, impeaching Associate Justice Douglas, issued an interim report on the progress of its investigation of the charges.<sup>(12)</sup> The creation of the subcommittee and

<sup>12</sup>. 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.

scope of its authority was set out on the first page of the report:

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

The subcommittee held no hearings but gathered information on the various charges contained in House Resolution 922. As stated in the report, the subcommittee requested inspection of tax returns of Justice Douglas. Pursuant to advice by the Internal Revenue Service that a special resolution of the full committee would be required, as well as an executive order by the President, the committee adopted the following resolution on May 26, 1970:

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 appropriate 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 Thrower. 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.<sup>(13)</sup>

The President subsequently issued the following executive order:

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 ea.) 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

13. Subcommittee report at pp. 18, 19.

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.<sup>(14)</sup>

The subcommittee recommended in its first report that the Committee on the Judiciary authorize an additional 60 days for the subcommittee to complete its investigation.<sup>(15)</sup>

**§ 14.16 In its final report on its investigation into charges of impeachment against Associate Justice William O. Douglas, a subcommittee of the Committee on the Judiciary concluded that a federal judge could be impeached (1) for judicial conduct which is criminal or which is a serious dereliction from public duty, and (2) for nonjudicial conduct which is criminal; the subcommittee recommended that the evidence**

14. Exec. Order No. 11535, issued June 12, 1970, subcommittee report at p. 19.

15. Subcommittee report at pp. 25, 26.

**against Justice Douglas did not warrant impeachment.**

On Sept. 17, 1970, the Special Subcommittee on House Resolution 920 of the Committee on the Judiciary, which subcommittee had been created by the committee to investigate and report on charges of impeachment against Associate Justice Douglas of the Supreme Court, submitted its final report to the committee.<sup>(16)</sup>

The report cited the 60-day extension granted the subcommittee by the Committee on the Judiciary on June 24, 1970, to complete its investigation. The report summarized the further investigation undertaken during the 60-day period and the additional requests for information from the Department of State, the Central Intelligence Agency, and various individuals.<sup>(17)</sup>

16. Final report by the Special Subcommittee on H. Res. 920 of the Committee on the Judiciary, committee print, Committee on the Judiciary, 91st Cong. 2d Sess., Sept. 17, 1970.

17. The subcommittee issued on Aug. 11, 1970, a special subcommittee publication entitled "Legal Materials on Impeachment," containing briefs on the impeachment of Justice Douglas, information from the Library of Congress, and relevant extracts from Hinds' and Cannon's Precedents.

The report discussed concepts of impeachment and grounds for impeachment of federal civil officers and of federal judges in particular. The report concluded as follows on the grounds for impeachment of a federal judge:

Reconciliation of the differences between the concept that a judge has a right to his office during "good behavior" and the concept that the legislature has a duty to remove him if his conduct constitutes a "misdemeanor" is facilitated by distinguishing conduct that occurs in connection with the exercise of his judicial office from conduct that is non-judicially connected. Such a distinction permits recognition that the content of the word "misdemeanor" for conduct that occurs in the course of exercise of the power of the judicial office includes a broader spectrum of action than is the case when nonjudicial activities are involved.

When such a distinction is made, the two concepts on the necessity for judicial conduct to be criminal in nature to be subject to impeachment becomes defined and may be reconciled under the overriding requirement that to be a "misdemeanor," and hence impeachable, conduct must amount to a serious dereliction of an obligation owed to society.

To facilitate exposition, the two concepts may be summarized as follows:

Both concepts must satisfy the requirements of Article II, Section 4, that the challenged activity must constitute ". . . Treason, Bribery or High Crimes and Misdemeanors."

Both concepts would allow a judge to be impeached for acts which occur in the exercise of judicial office that

(1) involve criminal conduct in violation of law, or (2) that involve serious dereliction from public duty, but not necessarily in violation of positive statutory law or forbidden by the common law. . . . When such misbehavior occurs in connection with the federal office, actual criminal conduct should not be a requisite to impeachment of a judge or any other federal official. While such conduct need not be criminal, it nonetheless must be sufficiently serious to be offenses [sic] against good morals and injurious to the social body.

Both concepts would allow a judge to be impeached for conduct not connected with the duties and responsibilities of the judicial office which involve criminal acts in violation of law.

The two concepts differ only with respect to impeachability of judicial behavior not connected with the duties and responsibilities of the judicial office. Concept 2 would define "misdemeanor" to permit impeachment for serious derelictions of public duty but not necessarily violations of statutory or common law.

In summary, an outline of the two concepts would look this way:

A judge may be impeached for ". . . Treason, Bribery, or High Crimes or Misdemeanors."

A. Behavior, connected with judicial office or exercise of judicial power.

*Concept I*

1. Criminal conduct.
2. Serious dereliction from public duty.

*Concept II*

1. Criminal conduct.
2. Serious dereliction from public duty.

B. Behavior not connected with the duties and responsibilities of the judicial office.

*Concept I*

1. Criminal conduct.

*Concept II*

1. Criminal conduct.
2. Serious dereliction from public duty.

Chapter III, Disposition of Charges sets forth the Special Subcommittee's analysis of the charges that involve activities of Associate Justice William O. Douglas. Under this analysis it is not necessary for the members of the Judiciary Committee to choose between Concept I and II.<sup>(18)</sup>

The subcommittee's recommendation to the full committee read as follows:

IV. RECOMMENDATIONS OF SPECIAL SUBCOMMITTEE TO JUDICIARY COMMITTEE

1. It is not necessary for the members of the Judiciary Committee to take a position on either of the concepts of impeachment that are discussed in Chapter II.

2. Intensive investigation of the Special Subcommittee has not disclosed creditable evidence that would warrant preparation of charges on any acceptable concept of an impeachable offense.<sup>(19)</sup>

EMANUEL CELLER,  
BYRON G. ROGERS,  
JACK BROOKS.

**18.** Special subcommittee report at pp. 37-39. For the entire portion of the subcommittee report entitled "Concepts of Impeachment", see §3.13, *supra*.

**19.** Special subcommittee report at p. 349.



The report included minority views of Mr. Edward Hutchinson, of Michigan, stating (1) that the portion of the report on concepts of impeachment was mere dicta under the circumstances and (2) that the investigation was incomplete and should have been further pursued, not only as to impeachment for improper conduct but also as to other action such as censure or official rebuke:

The report contains a chapter on the Concepts of Impeachment. At the same time, it takes the position that it is unnecessary to choose among the concepts mentioned because it finds no impeachable offense under any. It is evident, therefore, that while a discussion of the theory of impeachment is interesting, it is unnecessary to a resolution of the case as the Subcommittee views it. This chapter on Concepts is nothing more than dicta under the circumstances. Certainly the Subcommittee should not even indirectly narrow the power of the House to impeach through a recitation of two or three theories and a very apparent choice of one over the others, while at the same time asserting that no choice is necessary. The Subcommittee's report adopts the view that a Federal judge cannot be impeached unless he is found to have committed a crime, or a serious indiscretion in his judicially connected activities. Although it is purely dicta, inclusion of this chapter in the report may be mischievous since it might unjustifiably restrict the scope of further investigation.

The Subcommittee's report, which is called a final report, addresses itself

only to the question of impeachment. Admittedly no investigation has been undertaken to determine whether some of the Justice's activities, if not impeachable, seem so improper as to merit congressional censure or other official criticism by the House. There is considerable precedent for censure or other official rebuke even though a particular activity, while improper, was found not impeachable. This Subcommittee, however, did not investigate with the thoroughness requisite for judging questionable activities short of impeachment. The majority concludes that it finds no grounds for impeachment and stops there. In my opinion, it should have pursued the matter further. <sup>(20)</sup>

The Committee on the Judiciary discontinued further proceedings against Justice Douglas, and the matter was not further considered by the House.<sup>(1)</sup>

### ***Charges Against Vice President Agnew***

#### **§ 14.17 The Speaker laid before the House in the 93d Con-**

20. *Id.* at pp. 351, 352.

1. For remarks on the final subcommittee report and the Judiciary Committee's failure to act on the final report, see 116 CONG. REC. 43147, 43148, 91st Cong. 2d Sess., Dec. 21, 1970 (remarks of Mr. David W. Dennis [Ind.]). For the minority views on the report of Mr. Hutchinson, printed in the Record, see 116 CONG. REC. 43486, 91st Cong. 2d Sess., Dec. 22, 1970.

**gress a communication from Vice President Spiro Agnew requesting the House to initiate an investigation of charges which might “assume the character of impeachable offenses,” made against him during an investigation by a U.S. Attorney, and offering the House full cooperation in such a House investigation. No action was taken on the request.**

On Sept. 25, 1973,<sup>(2)</sup> Speaker Carl Albert, of Oklahoma, laid before the House a communication from Vice President Agnew requesting that the House investigate certain charges brought against him by a U.S. Attorney:

The Speaker laid before the House the following communication from the Vice President of the United States:

THE VICE PRESIDENT,  
*Washington, September 25, 1973.*  
Hon. CARL ALBERT,  
*Speaker of the House of Representatives, the House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: I respectfully request that the House of Representatives undertake a full inquiry into the charges which have apparently been made against me in the course of an investigation by the United States Attorney for the District of Maryland.

This request is made in the dual interests of preserving the Constitutional stature of my Office and accomplishing my personal vindication.

After the most careful study, my counsel have advised me that the Constitution bars a criminal proceeding of any kind—federal or state, county or town—against a President or Vice President while he holds office.

Accordingly, I cannot acquiesce in any criminal proceeding being lodged against me in Maryland or elsewhere. And I cannot look to any such proceeding for vindication.

In these circumstances, I believe, it is the right and duty of the Vice President to turn to the House. A closely parallel precedent so suggests.

Almost a century and a half ago, Vice President Calhoun was beset with charges of improper participation in the profits of an Army contract made while he had been Secretary of War. On December 29, 1826, he addressed to your Body a communication whose eloquent language I can better quote than rival:

“An imperious sense of duty, and a sacred regard to the honor of the station which I occupy, compel me to approach your body in its high character of grand inquest of the nation.

“Charges have been made against me of the most serious nature, and which, if true ought to degrade me from the high station in which I have been placed by the choice of my fellow-citizens, and to consign my name to perpetual infamy.

“In claiming the investigation of the House, I am sensible that, under our free and happy institutions, the conduct of public servants is a fair subject of the closest scrutiny and the freest remarks, and that a firm and faithful discharge of duty affords, ordinarily, ample protection against political attacks; but, when such attacks assume the character of impeachable offenses, and become, in some degree, official, by being placed among the public records, an officer thus assailed, however base the instrument used, if conscious of inno-

2. 119 CONG. REC. 31368, 93d Cong. 1st Sess.

cence, can look for refuge only to the Hall of the immediate Representatives of the People.”

Vice President Calhoun concluded his communication with a “challenge” to “the freest investigation of the House, as the only means effectively to repel this premeditated attack.” Your Body responded at once by establishing a select committee, which subpoenaed witnesses and documents, held exhaustive hearings, and submitted a Report on February 13, 1827. The Report, exonerating the Vice President of any wrongdoing, was laid on the table (together with minority views even more strongly in his favor) and the accusations were thereby put to rest.

Like my predecessor Calhoun I am the subject of public attacks that may “assume the character of impeachable offenses,” and thus require investigation by the House as the repository of “the sole Power of Impeachment” and the “grand inquest of the nation.” No investigation in any other forum could either substitute for the investigation by the House contemplated by Article I, Section 2, Clause 5 of the Constitution or lay to rest in a timely and definitive manner the unfounded charges whose currency unavoidably jeopardizes the functions of my Office.

The wisdom of the Framers of the Constitution in making the House the only proper agency to investigate the conduct of a President or Vice President has been borne out by recent events. Since the Maryland investigation became a matter of public knowledge some seven weeks ago, there has been a constant and ever-broadening stream of rumors, accusations and speculations aimed at me. I regret to say that the source, in many instances, can have been only the prosecutors themselves.

The result has been so to foul the atmosphere that no grand or petit

jury could fairly consider this matter on the merits.

I therefore respectfully call upon the House to discharge its Constitutional obligation.

I shall, of course, cooperate fully. As I have said before, I have nothing to hide. I have directed my counsel to deliver forthwith to the Clerk of the House all of my original records of which copies have previously been furnished to the United States Attorney. If there is any other way in which I can be of aid, I am wholly at the disposal of the House.

I am confident that, like Vice President Calhoun, I shall be vindicated by the House.

Respectfully yours

SPIRO T. AGNEW.

On Sept. 26, 1973,<sup>(3)</sup> Majority Leader Thomas P. O’Neill, Jr., of Massachusetts, made an announcement in relation to Vice President Agnew’s request for an investigation into possible impeachable offenses against him:

(Mr. O’Neill asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

MR. O’NEILL: Mr. Speaker, I rise at this time merely to make an announcement to the House that in the press conference the Speaker made the following statement:

The Vice President’s letter relates to matters before the courts. In view of that fact, I, as Speaker, will not take any action on the letter at this time.

The House took no action on the Vice President’s request, although

3. *Id.* at p. 31453.

resolutions were introduced on Sept. 26, 1973, calling for investigation of the charges referred to by the Vice President, such charges to be investigated by the Committee on the Judiciary or by a select committee.<sup>(4)</sup>

*Parliamentarian's Note:* The request cited by the Vice President in his letter was made by Vice President John Calhoun in 1826 and is 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.

In 1873, however, the Committee on the Judiciary reported that a civil officer, in that case Vice President Schuyler Colfax, could not be impeached for offenses allegedly committed prior to his term of office as a civil offi-

cer under the United States. The committee had investigated 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.

Vice President Agnew resigned his office as Vice President on Oct. 10, 1973. A resolution of inquiry (H. Res. 572), referred to the Committee on the Judiciary on Oct. 1, 1973, and directing the Attorney General to inform the

4. See H. Res. 566, H. Res. 567, H. Res. 569, H. Res. 570, referred to the Committee on Rules.

House of facts relating to Vice President Agnew's conduct, was discharged by unanimous consent on Oct. 10, 1973, and laid on the table.<sup>(5)</sup>

## § 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,

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

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 censure without prejudice to impeachment; to the Committee on the Judiciary.

By Ms. Abzug:

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.

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.<sup>(6)</sup>

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.<sup>(7)</sup>

***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 subpoena 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 com-**

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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.

**mittee 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—

(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. 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 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.<sup>8</sup>

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

<sup>8</sup>. 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 subpoenas in relation to the inquiry on Oct. 30, 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."

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.<sup>(9)</sup>

It was considered necessary for the House to specifically vest the Committee on the Judiciary with the investigatory and subpoena power to conduct the impeachment investigation and to specifically provide for payment of resultant expenses from the contingent fund of the House.<sup>(10)</sup>

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.<sup>(11)</sup>

***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.<sup>(12)</sup>

### *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:

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).

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.<sup>(13)</sup>

### *Presenting Evidence and Examining Witnesses*

#### **§ 15.6 In the Nixon impeachment inquiry, the Committee**

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.<sup>(14)</sup>

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."<sup>(15)</sup>

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*

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.

§ 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.<sup>(16)</sup>

***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

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.<sup>(17)</sup>

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.  
 . . .<sup>(18)</sup>

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.<sup>(19)</sup>

**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.<sup>(20)</sup>

### ***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, 1974,<sup>(1)</sup> 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.<sup>(2)</sup>

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

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.<sup>(3)</sup>

***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,<sup>(4)</sup> 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

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.

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

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 reso-

lution (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.<sup>(5)</sup>

#### **§ 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,<sup>(6)</sup> 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.<sup>(7)</sup>

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.)

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.<sup>(8)</sup>

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.<sup>(9)</sup>

On Aug. 20, 1974, Mr. Peter W. Rodino, Jr., of New Jersey, submitted as privileged the report of

**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.

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

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 Re-election 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 Water-gate 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 Office 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.<sup>(10)</sup>

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

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.

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.<sup>(11)</sup>

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,<sup>(12)</sup> Speaker Carl Albert, of Oklahoma, laid be-

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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.

fore 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.*

—  
[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 Represent-  
atives, Washington, D.C.

You are hereby commanded to ap-  
pear in the United States District  
Court for the District of Columbia at  
Constitution Avenue and John Mar-  
shall Place, N.W. in the city of  
Washington on the 9th day of Sep-  
tember 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 elec-  
tronic and/or mechanical recordings  
or reproductions, and any memo-  
randa, papers, transcripts, and other  
writings, relating to:

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

This subpoena is issued upon ap-  
plication 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 re-  
sponse to such subpoenas, was of-  
fered 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 fol-  
lows:

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 Sub-  
committee 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 con-  
trol of the House of Representatives:  
Therefore be it

*Resolved*, That by the privileges of  
this House no evidence of a docu-  
mentary 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 Rep-  
resentatives 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 exer-  
cise its constitutional power of im-  
peachment; 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.<sup>(13)</sup>

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.<sup>(14)</sup>

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

H. RES. 1363

*Resolved*, That the President of the United States is hereby requested to

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.

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



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.<sup>(16)</sup> By unanimous consent, the entire report (H. Rept. No. 653) was printed in the *Congressional Record*.<sup>(17)</sup>

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

17. *Id.* at pp. 6280-87.

The committee's recommendation and resolution read as follows:

## RECOMMENDATION

Your committee reports herewith the accompanying resolution and articles of impeachment against Judge George W. English, and recommends that they be adopted by the House and that they be presented to the Senate with a demand for the conviction and removal from office of said George W. English, United States district judge for the eastern district of Illinois.

## RESOLUTION

*Resolved*, That George W. English, United States district judge for the eastern district of Illinois, be impeached of misdemeanors in office; and that the evidence heretofore taken by the special committee of the House of Representatives under House Joint Resolution 347, sustains five articles of impeachment, which are hereinafter set out; and that said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against George W. English, who was appointed, duly qualified, and commissioned to serve during good behavior in office, as United States District Judge for the Eastern District of Illinois, on May 3, 1918<sup>(18)</sup>

18. For a more comprehensive discussion of the impeachment proceedings

### *House Consideration and Debate*

**§ 16.2 The resolution and articles of impeachment in the George English impeachment were considered in the House pursuant to unanimous-consent agreements fixing the control and distribution of debate.**

On Mar. 30, 1926, Mr. George S. Graham, of Pennsylvania, called up for consideration in the House the resolution impeaching Judge English. By unanimous consent, the House agreed to procedures for the control and distribution of debate, thereby allowing every Member who wished to speak to do so:

THE SPEAKER:<sup>(19)</sup> The gentleman from Pennsylvania [Mr. Graham] asks unanimous consent that during today the debate be equally divided between the affirmative and the negative, and that he control one-half of the time and the other half be controlled by the gentleman from Alabama [Mr. Bowling].<sup>(20)</sup>

On Mar. 31, the second day of debate on the resolution, debate proceeded under a unanimous-consent agreement that debate

against Judge English, see 6 Cannon's Precedents §§ 544-547.

19. Nicholas Longworth (Ohio).

20. 67 CONG. REC. 6585-90, 69th Cong. 1st Sess.

continue to be equally divided between Mr. Graham and Mr. William B. Bowling.<sup>(1)</sup> Mr. Graham obtained unanimous consent that debate be concluded in 7½ hours, such time to be equally divided as before.<sup>(2)</sup>

### *Voting; Motions*

#### **§ 16.3 The previous question having been ordered on the resolution of impeachment against Judge George English, a motion to recommit with instructions was offered and rejected, and a separate vote was demanded on the first article, followed by a vote on the resolution.**

On Apr. 1, 1926, Mr. George S. Graham, of Pennsylvania, moved the previous question and it was ordered on the resolution impeaching Judge English. A motion to recommit the resolution with instructions was offered, the instructions directing the Committee on the Judiciary to take further testimony. The motion was rejected on a division vote—yeas 101, noes 260.<sup>(3)</sup>

Pending the motion to recommit, Mr. Tom T. Connally, of

1. *Id.* at p. 6645.

2. *Id.* at pp. 6662, 6663.

3. 67 CONG. REC. 6733, 6734, 69th Cong. 1st Sess.

Texas, stated a parliamentary inquiry:

Under the rules of the House, would not this resolution be subject to consideration under the five-minute rule for amendment?

Speaker Nicholas Longworth, of Ohio, responded, "The Chair thinks not."<sup>(4)</sup>

Following the rejection of the motion to recommit, the Speaker put the question on the resolution of impeachment and stated that it was agreed to. Mr. William B. Bowling, of Alabama, objected and stated that his attention had been diverted and that he had meant to ask for a separate vote on the first article of impeachment. The Speaker stated that the demand for a separate vote then came too late, since the demand was in order when the question recurred on the resolution. Because of the apparent confusion in the Chamber, the Speaker allowed Mr. Bowling to ask for a separate vote (thereby vacating, by unanimous consent, the proceedings whereby the resolution had been agreed to).

The Speaker put the question on Mr. Bowling's motion to strike out Article I, which motion was rejected. The vote then recurred on the resolution, which was

4. *Id.* at p. 6733.

adopted by the yeas and nays—yeas 306, nays 62.<sup>(5)</sup>

The Speaker had previously stated, in response to a parliamentary inquiry by Mr. Charles R. Crisp, of Georgia, that pursuant to Rule XVI clause 6, a separate vote could be demanded on any substantive proposition contained in the resolution of impeachment.<sup>(6)</sup>

### *Discontinuance of Proceedings*

#### **§ 16.4 Judge George English having resigned from the bench, the House adopted a resolution instructing the managers to advise the Senate that the House declined to further prosecute charges of impeachment.**

On Dec. 11, 1926, the House adopted the following resolution in relation to the impeachment proceedings against Judge English:

*Resolved*, That the managers on the part of the House of Representatives in the impeachment proceedings now pending in the Senate against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be instructed to appear before the Senate, sitting as a court of impeachment in

5. *Id.* at pp. 6734, 6735.

6. *Id.* at pp. 6589, 6590, see *House Rules and Manual* § 791 (1973).

said cause, and advise the Senate that in consideration of the fact that said George W. English is no longer a civil officer of the United States, having ceased to be a district judge of the United States for the eastern district of Illinois, the House of Representatives does not desire further to urge the articles of impeachment heretofore filed in the Senate against said George W. English.<sup>(7)</sup>

On Dec. 13, 1926, the Senate adjourned *sine die* as a court of impeachment after agreeing to the following order, which was messaged to the House:

*Ordered*, That the impeachment proceedings against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be and the same are, duly dismissed.<sup>(8)</sup>

## **§ 17. Impeachment of Judge Louderback**

### *Consideration of Committee Report*

#### **§ 17.1 The House considered the matter of the impeachment of U.S. District Judge Harold Louderback under a unanimous-consent agreement which allowed the minority of the Committee on**

7. 68 CONG. REC. 297, 69th Cong. 2d Sess.

8. *Id.* at p. 344.

**the Judiciary to offer, to the reported resolution recommending abatement of proceedings, a substitute amendment impeaching Judge Louderback and setting forth articles of impeachment.**

On Feb. 24, 1933, Speaker John N. Garner, of Texas, recognized Mr. Thomas D. McKeown, of Oklahoma, to call up a resolution, reported by the Committee on the Judiciary, recommending that charges against Harold Louderback, U.S. District Judge for the Northern District of California, did not merit impeachment (H. Res. 387; H. Rept. No. 2065). The minority report dissented from that recommendation and proposed a resolution and articles of impeachment.<sup>(9)</sup>

Mr. Earl C. Michener, of Michigan, commented on the fact that the report of the committee recommended censure of the judge, rather than impeachment:

MR. MICHENER. Mr. Speaker, in answer to the gentleman from Alabama, let me make this observation. The purpose of referring a matter of this kind to the Committee on the Judiciary is to determine whether or not in the opinion of the Committee on the Judiciary there is sufficient evidence to warrant impeachment by the House. If the

9. 76 CONG. REC. 4913, 4914, 72d Cong. 2d Sess. See, generally, 6 Cannon's Precedents § 514.

Committee on the Judiciary finds those facts exist, then the Committee on the Judiciary makes a report to the House recommending impeachment, and that undoubtedly is privileged. However, a custom has grown up recently in the Committee on the Judiciary of including in the report a censure. I do not believe that the constitutional power of impeachment includes censure. We have but one duty, and that is to impeach or not to impeach. Today we find a committee report censuring the judge. The resolution before the House presented by a majority of the committee is against impeachment. The minority members have filed a minority report, recommending impeachment. I am making this observation with the hope that we may get back to the constitutional power of impeachment.<sup>(10)</sup>

Discussion ensued as to controlling debate on the resolution so as to effectuate the understanding agreed on in committee that the previous question not be ordered until the minority had an opportunity to offer an amendment in the nature of a substitute for the resolution.

The House agreed to the following unanimous-consent request

10. *Id.* at p. 4914. The committee report stated "the committee censures the judge for conduct prejudicial to the dignity of the judiciary in appointing incompetent receivers . . . for allowing fees that seem excessive, and for a high degree of indifference to the interest of litigants in receiverships." H. REPT. NO. 2065, Committee on the Judiciary, 72d Cong. 2d Sess.

propounded by Mr. McKeown (and suggested by Speaker Garner):

THE SPEAKER: Under the rules of the House the gentleman from Oklahoma [Mr. McKeown] has one hour in which to discuss this resolution, unless some other arrangement is made.

MR. MCKEOWN: Mr. Speaker, I ask unanimous consent that two hours' time be granted on a side. One-half of mine I shall yield to the gentleman from Missouri [Mr. Dyer]. At the end of the two hours' time, that the previous question shall be considered as ordered.

MR. [FIORELLO H.] LAGUARDIA [of New York]: Mr. Speaker, will the gentleman yield?

MR. MCKEOWN: Yes.

MR. LAGUARDIA: The gentleman will remember that the committee unanimously voted that the previous question should not be considered as ordered until the majority had opportunity to offer the articles of impeachment.

MR. MCKEOWN: I yield now to the gentleman for that purpose.

THE SPEAKER: If gentlemen will permit, let the Chair make a suggestion. The Chair understands that the committee has something of an understanding that there would be an opportunity to vote upon the substitute for the majority resolution. Is that correct?

MR. MCKEOWN: Yes.

THE SPEAKER: Then the Chair suggests to the gentleman from Oklahoma that he ask unanimous consent that general debate be limited to two hours, one-half to be controlled by himself, and one-half to be controlled by the gentleman from New York.

MR. MCKEOWN: I want one-half of my time to be yielded to the gentleman from Missouri, and that the other hour shall be controlled by the gentleman from Texas.

THE SPEAKER: Then the Chair suggests that the gentleman from Oklahoma control all of the time.

MR. [HATTON W.] SUMNERS [of Texas]: Mr. Speaker, I am quite willing that the gentleman from Oklahoma may control the time, because I am sure that he will make a fair distribution of it.

MR. MCKEOWN: Mr. Speaker, I ask unanimous consent that the time for debate be limited to two hours to be controlled by myself, that during that time the gentleman from New York [Mr. La Guardia] be permitted to offer a substitute for the resolution and at the conclusion of the time for debate the previous question be considered as ordered.

THE SPEAKER: Then the Chair submits this: The gentleman from Oklahoma asks unanimous consent that debate be limited to two hours, to be controlled by the gentleman from Oklahoma, that at the end of that time the previous question shall be considered as ordered, with the privilege, however, of a substitute resolution being offered, to be included in the previous question. Is there objection?

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Speaker, reserving the right to object for the purpose of getting the parliamentary situation clarified before we get to the merits, is there any question in the mind of the Speaker, if it is fair to submit such a suggestion, as to whether or not the substitute providing for absolute im-

peachment would be in order as a substitute for this report?

THE SPEAKER: That is the understanding of the Chair, that the unanimous-consent agreement is, that the gentleman from New York [Mr. LaGuardia] may offer a substitute, the previous question to be considered as ordered on the substitute and the original resolution at the expiration of the two hours. Is there objection?

There was no objection.<sup>(11)</sup>

**Voting**

**§ 17.2 At the conclusion of debate on the resolution and substitute therefor, in the Harold Louderback impeachment proceedings, a yea and nay vote was taken on the substitute, which was agreed to.**

On Feb. 24, 1933, the House had under consideration a resolution abating impeachment proceedings against Judge Louderback. A unanimous-consent agreement was adopted, as follows:

THE SPEAKER:<sup>(12)</sup> . . . The gentleman from Oklahoma (Mr. Thomas D. McKeown) asks unanimous consent that debate be limited to two hours . . . that at the end of that time the

- 11. *Id.* For more comprehensive treatment of impeachment proceedings against Judge Louderback, see 6 Cannon's Precedents §§ 513-524.
- 12. John N. Garner (Tex.).

previous question shall be considered as ordered, with the privilege, however, of a substitute resolution being offered, to be included in the previous question. . . .

There was no objection.<sup>(13)</sup>

At the conclusion of the two hours' debate on the resolution abating the impeachment proceedings and on the amendment in the nature of a substitute, the Speaker put the question on the substitute and answered a parliamentary inquiry as to the effect of the vote:

THE SPEAKER: The question is on the substitute of the gentleman from New York [Mr. LaGuardia].

The question was taken, and the Chair announced that he was in doubt.

MR. [THOMAS D.] MCKEOWN of Oklahoma]: Mr. Speaker, a division.

MR. [CARL G.] BACHMANN [of West Virginia]: Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MICHENER: As I understand, a vote of "aye" is a vote for impeachment and a vote of "no" is against impeachment; is that correct?

THE SPEAKER: An aye vote on the substitute of the gentleman from New York is a vote to impeach and a "no" vote is a vote against impeachment.

13. 76 CONG. REC. 4914, 72d Cong. 2d Sess.

The Clerk will call the roll.

The question was taken; and there were—yeas 183, nays 142, answered “present” 4, not voting 97.<sup>(14)</sup>

***Election of Managers; Continuation of Proceedings Into New Congress***

**§ 17.3 The House having adopted articles of impeachment against Judge Harold Louderback, the House adopted resolutions appointing managers and notifying the Senate of its actions, but did not resolve the question whether such managers could, without further authority, continue to represent the House in the succeeding Congress.**

The House having adopted the articles of impeachment against Judge Louderback on Feb. 24, 1933, Chairman Hatton W. Sumners, of Texas, of the Committee on the Judiciary, called up on Feb. 27, 1933, resolutions appointing managers and notifying the Senate of the action of the House. Discussion ensued as to the power of the managers beyond the termination of the Congress (the Congress was to expire on Mar. 3):

14. *Id.* at p. 4925. The resolution, as amended by the substitute, was then agreed to. H. JOUR. 306, 72d Cong. 2d Sess., Feb. 24, 1933.

IMPEACHMENT OF JUDGE HAROLD  
LOUNDERBACK

MR. SUMNERS of Texas: Mr. Speaker, I offer the following privileged report from the Committee on the Judiciary, which I send to the desk and ask to have read, and ask its immediate adoption.

The Clerk read as follows:

HOUSE RESOLUTION 402

*Resolved*, That Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Harold Louderback, United States district judge for the northern district of California; and said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Harold Louderback of misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by the House; and that the said managers do demand the Senate take order for the appearance of said Harold Louderback to answer said impeachment, and demand his impeachment, conviction, and removal from office.

THE SPEAKER PRO TEMPORE: The question is on agreeing to the resolution.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: Yes.

MR. BLANTON: Is it not usual in such cases to provide for the managers on the part of the House to interrogate witnesses?



MR. SUMNERS of Texas: This is the usual resolution which is adopted.

MR. BLANTON: But this resolution does embrace that power and authority?

MR. SUMNERS of Texas: Yes. It is the usual resolution.

MR. [WILLIAM H.] STAFFORD [of Wisconsin]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: Yes.

MR. STAFFORD: This House, which is about to expire, has leveled impeachment articles against a sitting judge. It is impracticable to have the trial of that judge in the expiring days of the Congress. Has the gentleman considered what the procedure will be in respect to having the trial before the Senate in the next Congress?

MR. SUMNERS of Texas: The Committee on the Judiciary today gave full consideration to all of the angles that suggested themselves to the committee for consideration, and this arrangement seems to be more in line with the precedents and to be most definitely suggested by the situation in which we find ourselves.

MR. STAFFORD: Then, I assume, from the gentleman's statement, that it is the purpose that the gentlemen named in the resolution shall represent the House in the next Congress?

MR. SUMNERS of Texas: No; I believe not. I think it is pretty well agreed that the next Congress will probably have to appoint new managers before they may proceed. I think gentlemen on each side agree substantially with that statement as to what probably would be required.

MR. STAFFORD: There is nothing in the Constitution that would prevent

Members of this Congress from serving as representatives of this House before the Senate in the next Congress, even though they be not Members of that Congress.

MR. SUMNERS of Texas: I hope my friend will excuse me for not taking the time of the House to discuss that feature of the matter.

MR. STAFFORD: It is quite an important subject.

MR. SUMNERS of Texas: It is an unsettled subject, and one we have tried to avoid.

THE SPEAKER PRO TEMPORE: The question is on agreeing to the resolution.

The resolution was agreed to.

A motion to reconsider the vote by which the resolution was agreed to was laid on the table.

MR. SUMNERS of Texas: Mr. Speaker, I desire to present a privileged resolution.

The Clerk read as follows:

#### HOUSE RESOLUTION 403

*Resolved*, That a message be sent to the Senate to inform them that this House has impeached Harold Louderback, United States district judge for the Northern District of California, for misdemeanors in office, and that the House has adopted articles of impeachment against said Harold Louderback, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, have been appointed such managers.

The resolution was agreed to.

A motion to reconsider the vote by which the resolution was agreed to was laid on the table.<sup>(15)</sup>

*Parliamentarian's Note:* In the succeeding Congress, an issue arose as to the power of managers elected in one Congress to continue their functions in a new Congress. On Mar. 13, 1933, the 73d Congress having convened, the Senate convened as a Court of Impeachment and received the managers on the part of the House, who were those Members re-elected to the House who had been appointed as managers in the 72d Congress (two of the five managers were not reelected to the House). On Mar. 22, Mr. Sumners called up a resolution appointing two new Members, and reappointing the three re-elected Members, as managers on the part of the House to conduct the impeachment trial of Judge Louderback. Nevertheless, Mr. Sumners asserted that the managers elected in one Congress had the capacity to continue in that function in a new Congress without reappointment.<sup>(16)</sup>

In arguing that the impeachment managers elected by one House should retain their powers

in a succeeding Congress, Chairman Sumners referred to the lengthy period of time that could occur between the appointment of managers, the adjournment of Congress, and the commencement of a trial.<sup>(17)</sup>

**§ 17.4 The resolution of impeachment against Judge Louderback having been presented to the Senate on the last day of the 72d Congress, the Senate conducted the trial in the 73d Congress.**

On Mar. 3, 1933, the last day of the 72d Congress under constitutional practice prior to the adoption of the 20th amendment, the managers on the part of the House in the Harold Louderback impeachment appeared before the Senate and read the resolution and articles of impeachment. The Senate adopted a special order that the Senate begin sitting for trial on the first day of the 73d Congress.<sup>(18)</sup>

President Franklin D. Roosevelt convened the 73d Congress on Mar. 9, 1933, prior to the constitutional day of the first Monday in December, and the Senate organized for trial on that date, pursuant to its special order.<sup>(19)</sup>

15. 76 CONG. REC. 5177, 5178, 72d Cong. 2d Sess.

16. See 6 Cannon's Precedents §§ 516, 517.

17. See 6 Cannon's Precedents § 517.

18. 6 Cannon's Precedents § 515.

19. 6 Cannon's Precedents § 516. For the proclamation convening the 73d Con-

## § 18. Impeachment of Judge Ritter

### *Authorization of Investigation*

**§ 18.1 The Committee on the Judiciary reported in the 73d Congress a resolution authorizing an investigation into the conduct of Halsted Ritter, a U.S. District Court judge; the resolution was referred to the Union Calendar and considered and adopted in the House as in the Committee of the Whole by unanimous consent.**

On May 29, 1933, Mr. J. Mark Wilcox, of Florida, placed in the hopper a resolution (H. Res. 163) authorizing the Committee on the Judiciary to investigate the conduct of Halsted Ritter, District Judge for the U.S. District Court for the Southern District of Florida, to determine whether in the opinion of the committee he had been guilty of any high crime or misdemeanor. The resolution was referred to the Committee on the Judiciary.<sup>(20)</sup>

gress, see H. JOUR. 3, 73d Cong. 1st Sess., Mar. 9, 1933.

On May 24, 1933, the Senate acquitted Judge Louderback on all articles. See 6 Cannon's Precedents § 524.

20. 77 CONG. REC. 4575, 73d Cong. 1st Sess.

On June 1, 1933, the Committee on the Judiciary reported House Resolution 163 (H. Rept. No. 191) with committee amendments; the resolution was referred to the Committee of the Whole House on the state of the Union, since the original resolution contained an appropriation.<sup>(21)</sup>

On the same day, Hatton W. Sumners, of Texas, Chairman of the Committee on the Judiciary, asked unanimous consent to consider House Resolution 163 in the House as in the Committee of the Whole. The resolution and committee amendments read as follows:

#### 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 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

21. *Id.* at p. 4796.

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."

After brief debate, the House as in the Committee of the Whole adopted the resolution as amended by the committee amendments.<sup>(1)</sup>

The Committee on the Judiciary made no report to the House, prior to the expiration of the 73d Congress, in the matter of charges

1. *Id.* at pp. 4784, 4785.

The House adopted a resolution, reported by the Committee on Accounts, authorizing payment out of the contingent fund for expenses of the Committee on the Judiciary in conducting its investigation under H. Res. 163; see H. Res. 172, 77 CONG. REC. 5429, 5430, 73d Cong. 1st Sess., June 9, 1933.

against Judge Ritter, but a subcommittee of the committee investigated the charges and gathered testimony and evidence pursuant to House Resolution 163.

The evidence gathered was the basis for House Resolution 422 in the 74th Congress, impeaching Judge Ritter, and both that resolution and the report of the Committee on the Judiciary in the 74th Congress (H. Rept. No. 2025) referred to the investigation conducted under House Resolution 163, 73d Congress.

The Chairman of the subcommittee, Malcolm C. Tarver, of Georgia, made a report recommending impeachment to the full committee; the report was printed in the Record in the 74th Congress.<sup>(2)</sup>

### *Presentation of Charges*

**§ 18.2 In the 74th Congress, a Member rose to a question of constitutional privilege and presented charges against Judge Ritter, which were referred to the Committee on the Judiciary.**

On Jan. 14, 1936, Mr. Robert A. Green, of Florida, a member of the Committee on the Judiciary, rose to a question of constitutional

2. 80 CONG. REC. 408-10, 74th Cong. 2d Sess., Jan. 14, 1936.

privilege and on his own responsibility impeached Judge Halsted Ritter for high crimes and misdemeanors. Although he presented no resolution, he delivered lengthy and specific charges against the accused. He indicated his intention to read, as part of his speech, a report submitted to the Committee on the Judiciary by Malcolm C. Tarver, of Georgia, past Chairman of a subcommittee of the Committee on the Judiciary, which subcommittee had investigated the charges against Judge Ritter pursuant to House Resolution 163, adopted by the House in the 73d Congress.

In response to inquiries, Mr. Green summarized the status of the investigation and his reason for rising to a question of constitutional privilege:

MR. [JOHN J.] O'CONNOR [of New York]: Of course, ordinarily the matter would be referred to the Committee on the Judiciary. Does the gentleman think he must proceed longer in the matter at this time?

MR. GREEN: My understanding is, I may say to the chairman of the Rules Committee, that the articles of impeachment will be referred to the Committee on the Judiciary for its further consideration and action. I do not intend to consume any more time than is absolutely necessary.

MR. [THOMAS L.] BLANTON [of Texas]: Will the gentleman yield?

Mr. Green: I yield.

MR. BLANTON: What action was taken on the Tarver report? If this official is the kind of judge the Tarver report indicates, why was he not then impeached and tried by the Senate?

MR. GREEN: That is the question that is now foremost in my mind. Since Judge Tarver's service as chairman of the Judiciary Subcommittee he has been transferred from the House Judiciary Committee to the House Committee on Appropriations. He is not now a member of the Judiciary Committee.

I firmly believe that when our colleagues understand the situation thoroughly, there will be no hesitancy in bringing about Ritter's impeachment by a direct vote on the floor of the House. My purpose in this is to get it in concrete form, in compliance with the rules of the House, so that the direct impeachment will be handled by the Committee on the Judiciary. At present impeachment is not before the committee. This will give the Judiciary something to act upon.

MR. BLANTON: Was he not impeached in the House before when the Tarver investigation was made?

Mr. Green: No. He was never impeached. There was a resolution passed by the House directing an investigation to be made by the Judiciary Committee.

MR. BLANTON: Was that not a resolution that followed just such impeachment charges in the House as the gentleman from Florida is now making?

MR. GREEN: I understand that articles of impeachment have not been heretofore filed in this case.

MR. BLANTON: Was the Tarver report, to which the gentleman has re-

ferred, filed with the Judiciary Committee?

MR. GREEN: It is my understanding that it is now in their hands.<sup>(3)</sup>

Mr. Green inserted the text of the Tarver report, which recommended impeachment, in his remarks.<sup>(4)</sup>

At the conclusion of Mr. Green's remarks, Mr. O'Connor moved that "the proceedings be referred to the Committee on the Judiciary." The motion was agreed to.<sup>(5)</sup>

**§ 18.3 The Committee on the Judiciary reported in the 74th Congress a resolution impeaching Judge Halsted Ritter on four articles of impeachment; the resolution referred to the investigation undertaken pursuant to authorizing resolution in the 73d Congress.**

On Feb. 20, 1936, Mr. Hatton W. Sumners, of Texas, introduced House Resolution 422, impeaching Judge Ritter; the resolution was referred to the Committee on the Judiciary.<sup>(6)</sup> On the same day, Mr. Sumners, Chairman of the committee, submitted a privileged report on the charges of official mis-

3. 80 CONG. REC. 404, 405, 74th Cong. 2d Sess.

4. *Id.* at pp. 408-410.

5. *Id.* at p. 410.

6. 80 CONG. REC. 2534, 74th Cong. 2d Sess.

conduct against Judge Ritter (H. Rept. No. 2025). The report, which was referred to the House Calendar and ordered printed, read as follows:

The Committee on the Judiciary, having had under consideration charges of official misconduct against Halsted L. Ritter, a district judge of the United States for the Southern District of Florida, and having taken testimony with regard to the official conduct of said judge under the authority of House Resolution 163 of the Seventy-third Congress, report the accompanying resolution of impeachment and articles of impeachment against Halsted L. Ritter to the House of Representatives with the recommendation that the same be adopted by the House and presented to the Senate.<sup>(7)</sup>

The resolving clause of the resolution recited that the evidence taken by a subcommittee of the Committee on the Judiciary under House Resolution 163 of the 73d Congress sustained impeachment.<sup>(8)</sup>

***Consideration and Adoption of Articles of Impeachment***

**§ 18.4 The House considered and adopted a resolution and articles of impeachment against Judge Halsted Ritter,**

7. *Id.* at p. 2528.

8. For the text of the resolution and articles of impeachment, see §18.7, *infra*.

**pursuant to a unanimous-consent agreement fixing the time for and control of debate.**

On Mar. 2, 1936, Mr. Hatton W. Sumners, of Texas, called up for immediate consideration a resolution (H. Res. 422), which the Clerk read at the direction of Speaker Joseph W. Byrns, of Tennessee. Mr. Sumners indicated his intention to conclude the proceedings and have a vote on the resolution before adjournment. The House agreed to his unanimous-consent request for consideration of the resolution:<sup>(9)</sup>

THE SPEAKER: The gentleman from Texas asks unanimous consent that debate on this resolution be continued for 4½ hours, 2½ hours to be controlled by himself and 2 hours by the gentleman from New York [Mr. Hancock]; and at the expiration of the time the previous question shall be considered as ordered. Is there objection?

There was no objection.

The resolving clause to the articles read as follows:

RESOLUTION

*Resolved*, That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior, and for high crimes and misdemeanors; and that the evidence heretofore taken by

9. 80 CONG. REC. 3066–69, 74th Cong. 2d Sess.

the subcommittee of the Committee on the Judiciary of the House of Representatives under House Resolution 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit: . . .<sup>(10)</sup>

The House then discussed the maintenance of order during debate on the resolution:

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Speaker, I realize that there is a full membership of the House here today, and properly so, because impeachment proceedings are a matter of grave importance.

The proceedings are inquisitorial, and in order that we may arrive at a correct judgment with reference to the matter and form an intelligent opinion as to how we shall vote, it is absolutely necessary and essential that we have order in the Chamber during the proceedings.

I know it is difficult at all times to get gentlemen to refrain from conversation, but I make a special appeal to the membership of the House on this occasion, in view of the serious importance of the proceedings, that they will be quiet and listen to the speakers so that we may vote intelligently on this matter. [Applause.]

THE SPEAKER: The Chair wishes to emphasize what the gentleman from

10. *Id.* at p. 3066. For the full text of the resolution and articles, see § 18.7, *infra*.

Alabama has said. There is but one way to maintain order, and that is for Members to cease conversation, because a little conversation here and a little there creates confusion that makes it difficult for speakers to be heard.<sup>(11)</sup>

Time for debate having expired, Speaker Byrns stated that pursuant to the order of the House the previous question was ordered. By the yeas and nays, the House agreed to the resolution of impeachment—yeas 181, nays 146, present 7, not voting 96.<sup>(12)</sup>

### *Election of Managers*

**§ 18.5 The House adopted resolutions appointing managers to conduct the impeachment trial, empowering the managers to employ staff and to prepare and conduct impeachment proceedings, and notifying the Senate that the House had adopted articles and appointed managers.**

On Mar. 6, 1936,<sup>(13)</sup> following the adoption of articles of impeachment on Mar. 2, Mr. Hatton W. Sumners, of Texas, offered resolutions of a privileged nature re-

11. *Id.* at p. 3069.

12. *Id.* at p. 3091.

13. 80 CONG. REC. 3393, 3394, 74th Cong. 2d Sess.

lated to impeachment proceedings against Judge Ritter:

#### IMPEACHMENT OF HALSTED L. RITTER

MR. SUMNERS of Texas: Mr. Speaker, I send to the desk the three resolutions which are the usual resolutions offered when an impeachment has been voted by the House, and I ask unanimous consent that they may be read and considered en bloc.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, reserving the right to object, I do not know that I understand the situation we are in at the present time. Will the gentleman restate his request?

THE SPEAKER:<sup>(14)</sup> The request is to have read the three resolutions and have them considered en bloc.

MR. SUMNERS of Texas: I may say to the gentleman from New York, they are the three resolutions usually offered and they are in the language used when the House has voted an impeachment.

MR. SNELL: And the gentleman from Texas wants them considered at one time?

MR. SUMNERS of Texas: Yes.

There being no objection, the Clerk read the resolutions, as follows:

#### HOUSE RESOLUTION 439

*Resolved*, That Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida; that said managers are hereby instructed to ap-

14. Joseph W. Byrns (Tenn.).



pear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Halsted L. Ritter of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Halsted L. Ritter to answer said impeachment, and demand his impeachment, conviction, and removal from office.

HOUSE RESOLUTION 440

*Resolved*, That a message be sent to the Senate to inform them that this House has impeached for high crimes and misdemeanors Halsted L. Ritter, United States district judge for the southern district of Florida, and that the House adopted articles of impeachment against said Halsted L. Ritter, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, have been appointed such managers.

HOUSE RESOLUTION 441

*Resolved*, That the managers on the part of the House in the matter of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, be, and they are hereby, authorized to employ legal, clerical, and other necessary assistants and to incur such expenses as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House on vouchers approved by the managers, and the managers have power to send for persons and papers, and also that the managers have authority to file

with the Secretary of the Senate, on the part of the House of Representatives, any subsequent pleadings which they shall deem necessary: *Provided*, That the total expenditures authorized by this resolution shall not exceed \$2,500.

MR. SNELL: Mr. Speaker, may I ask the gentleman from Texas one further question? Is this exactly the procedure that has always been followed by the House under similar conditions?

MR. SUMNERS of Texas: Insofar as I know, it does not vary from the procedure that has been followed since the beginning of the Government.

The resolutions were agreed to.

***House-Senate Communications***

**§ 18.6 The House having notified the Senate of its impeachment of Judge Halsted Ritter, the Senate communicated its readiness to receive the House managers and discussed the Senate rules for impeachment trials.**

On Mar. 9, 1936, Vice President John N. Garner laid before the Senate a communication from the House of Representatives:

HOUSE RESOLUTION 440  
IN THE HOUSE  
OF REPRESENTATIVES,  
*United States, March 6, 1936.*

*Resolved*, That a message be sent to the Senate to inform them that this House has impeached for high crimes and misdemeanors Halsted L. Ritter, United States district judge for the southern district of Florida, and that

the House adopted articles of impeachment against said Halsted L. Ritter, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, have been appointed such managers.

The Senate adopted the following order:

*Ordered*, That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, agreeably to the notice communicated to the Senate, and that at the hour of 1 o'clock p.m. on Tuesday, March 10, 1936, the Senate will receive the honorable managers on the part of the House of Representatives, in order that they may present and exhibit the said articles of impeachment against the said Halsted L. Ritter, United States district judge for the southern district of Florida.

THE VICE PRESIDENT: The Secretary will carry out the order of the senate<sup>(15)</sup>

Senator Elbert D. Thomas, of Utah, discussed the function of the Senate in sitting as a court of impeachment and inquired whether any review was being undertaken of the Senate rules for impeachment trials.

15. 80 CONG. REC. 3423, 3424, 74th Cong. 2d Sess.

Senator Henry F. Ashurst, of Arizona, responded that the Senate Committee on the Judiciary had considered the rules and cited a change recently made in the rules for impeachment trials:

It will be remembered that in the trial of the Louderback case it was suggested that the trial was dreary, involved, and protracted, and that it was not according to public policy to have 96 Senators sit and take testimony. Subsequently, not a dozen, not 20, but at least 40 Senators urged that the Senate Committee on the Judiciary give its attention to the question whether or not a committee appointed by the Presiding Officer could take the testimony in impeachment trials, whereupon a resolution was introduced by the chairman of the Senate Committee on the Judiciary and was adopted. I ask that that resolution be incorporated in my remarks at this point.

THE PRESIDENT PRO TEMPORE:<sup>(16)</sup> Without objection, it is so ordered.

The resolution is as follows (Submitted by Mr. Ashurst):

*Resolved*, That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of 12 Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively,

16. Key Pittman (Nev.).

under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

MR. ASHURST: The resolution was agreed to by the Senate. It does not provide for a trial by 12 Senators. It simply provides that a committee of 12, appointed by the Presiding Officer of the Senate, may take the testimony, the Senate declaring and determining in advance whether it desires that procedure, or otherwise, and that after such evidence is taken by this committee of 12, the Senate reviews the testimony in its printed form, and the Senate may take additional testimony or may then rehear the testimony of any of the witnesses heard by the committee. The Senate reserves to itself every power and every authority it has under the Constitution.

It could not be expected that I would draw, present, and urge the Senate to pass such resolution and then subse-

quently decline to defend it, but I am not defending it more than to say that, in my opinion, it is perfectly constitutional to do what the resolution provides. If the Senate so desired, it could appoint a committee to take the testimony, which would be reduced to writing, and be laid before the Senators the next morning in the Congressional Record. If a Senator were absent during one day of the trial, he could read the testimony as printed the next morning.<sup>(17)</sup>

Senator Warren R. Austin, of Vermont, of the Committee on the Judiciary, asked unanimous consent to have printed in the Record a ruling, cited in 3 Hinds' Precedents section 2006, that an impeachment trial could only proceed when Congress was in session.<sup>(18)</sup>

### *Initiation of Impeachment Trial*

**§ 18.7 The managers on the part of the House appeared in the Senate, read the articles, reserved their right to amend them, and demanded that Judge Halsted Ritter be put to answer the charges; the Senate organized for**

17. 80 CONG. REC. 3424, 3425, 74th Cong. 2d Sess. For the adoption of the change referred to by Senator Ashurst, see 79 CONG. REC. 8309, 8310, 74th Cong. 1st Sess., May 28, 1935.

18. *Id.* at p. 3426.

**trial as a Court of Impeachment.**

On Mar. 10, 1936, pursuant to the Senate's order of Mar. 9, the managers on the part of the House appeared before the bar of the Senate and were announced by the Secretary to the majority, who escorted them to their assigned seats.

Vice President John N. Garner directed the Sergeant at Arms to make proclamation:

The Sergeant at Arms, Chesley W. Jurney, made proclamation, as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Halsted L. Ritter, United States district judge in and for the southern district of Florida.<sup>(19)</sup>

Representative Hatton W. Sumners, of Texas, read the resolution adopted by the House (H. Res. 439) which directed the managers to appear before the bar of the Senate. Representative Sam Hobbs, of Alabama, read the articles of impeachment, the Vice President requesting that he

19. 80 CONG. REC. 3485, 74th Cong. 2d Sess.

For the text of the proceedings in the Senate upon the appearance of the managers to present the articles of impeachment against Judge Ritter, see §11.4, *supra*.

stand at the desk in front of the Chair:<sup>(20)</sup>

Mr. Manager Hobbs, from the place suggested by the Vice President, said:

Mr. President and gentlemen of the Senate:

ARTICLES OF IMPEACHMENT AGAINST  
HALSTED L. RITTER

House Resolution 422, Seventy-fourth Congress, second session

Congress of the United States of  
America

IN THE HOUSE OF REPRESENTATIVES,  
UNITED STATES

*March 2, 1936.*

*Resolved*, That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under House Resolution 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Halsted L. Ritter, who was appointed, duly qualified, and commissioned to serve, during good behavior in office, as United

20. 80 CONG. REC. 3486-88, 74th Cong. 2d Sess.

States district judge for the southern district of Florida, on February 15, 1929.

#### ARTICLE I

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of a high crime and misdemeanor in office in manner and form as follows, to wit: On or about October 11, 1929, A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge), as solicitor for the plaintiff, filed in the court of the said Judge Ritter a certain foreclosure suit and receivership proceeding, the same being styled "Bert E. Holland and others against Whitehall Building and Operating Company and others" (No. 678-M-Eq.). On or about May 15, 1930, the said Judge Ritter allowed the said Rankin an advance of \$2,500 on his fee for his services in said case. On or about July 2, 1930, the said Judge Ritter by letter requested another judge of the United States District Court for the Southern District of Florida, to wit, Hon. Alexander Akerman, to fix and determine the total allowance for the said Rankin for his services in said case for the reason as stated by Judge Ritter in said letter, that the said Rankin had formerly been the law partner of the said Judge Ritter, and he did not feel that he should pass upon the total allowance made said Rankin in that case, and that if Judge Akerman would fix the allowance it would relieve the writer, Judge Ritter, from any embarrassment if thereafter any question should arise as to his, Judge Ritter's favoring said Rankin with an exorbitant fee.

Thereafterward, notwithstanding the said Judge Akerman, in compliance with Judge Ritter's request, allowed the said Rankin a fee of \$15,000 for his services in said case, from which sum the said \$2,500 theretofore allowed the said Rankin by Judge Ritter as an advance on his fee was deducted, the said Judge Ritter, well knowing that at his request compensation had been fixed by Judge Akerman for the said Rankin's services in said case, and notwithstanding the restraint of propriety expressed in his said letter to Judge Akerman, and ignoring the danger of embarrassment mentioned in said letter, did fix an additional and exorbitant fee for the said Rankin in said case. On or about December 24, 1930, when the final decree in said case was signed, the said Judge Ritter allowed the said Rankin, additional to the total allowance of \$15,000 theretofore allowed by Judge Akerman, a fee of \$75,000 for his services in said case, out of which allowance the said Judge Ritter directly profited. On the same day, December 24, 1930, the receiver in said case paid the said Rankin, as part of his said additional fee, the sum of \$25,000, and the said Rankin on the same day privately paid and delivered to the said Judge Ritter the sum of \$2,500 in cash; \$2,000 of said \$2,500 was deposited in bank by Judge Ritter on, to wit, December 29, 1930, the remaining \$500 being kept by Judge Ritter and not deposited in bank until, to wit, July 10, 1931. Between the time of such initial payment on said additional fee and April 6, 1931, the said receiver paid said Rankin thereon \$5,000. On or about April 6, 1931, the said Rankin received the balance of the said additional fee allowed him by Judge Ritter, said balance amounting to \$45,000. Shortly thereafter, on or about April 14, 1931, the said Rankin paid and delivered to the said Judge Ritter, privately, in cash,

an additional sum of \$2,000. The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said A. L. Rankin the aforesaid sums of money, amounting to \$4,500.

Wherefore the said Judge Halsted L. Ritter was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor.

#### ARTICLE II

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

On the 15th day of February 1929 the said Halsted L. Ritter, having been appointed as United States district judge for the southern district of Florida, was duly qualified and commissioned to serve as such during good behavior in office. Immediately prior thereto and for several years the said Halsted L. Ritter had practiced law in said district in partnership with one A. L. Rankin, which partnership was dissolved upon the appointment of said Ritter as said United States district judge.

On the 18th day of July 1928 one Walter S. Richardson was elected trustee in bankruptcy of the Whitehall Building & Operating Co., which company had been adjudicated in said district as a bankrupt, and as such trustee took charge of the assets of said Whitehall Building & Operating Co., which consisted of a hotel property located in Palm Beach in said district. That the said Richardson as such trustee operated said hotel property from the time of his

said appointment until its sale on the 3d of January 1929, under the foreclosure of a third mortgage thereon. On the 1st of November and the 13th of December 1929, the said Judge Ritter made orders in said bankruptcy proceedings allowing the said Walter S. Richardson as trustee the sum of \$16,500 as compensation for his services as trustee. That before the discharge of said Walter S. Richardson as such trustee, said Richardson, together with said A. L. Rankin, one Ernest Metcalf, one Martin Sweeney, and the said Halsted L. Ritter, entered into an arrangement to secure permission of the holder or holders of at least \$50,000 of first-mortgage bonds on said hotel property for the purpose of filing a bill to foreclose the first mortgage on said premises in the court of said Halsted L. Ritter, by which means the said Richardson, Rankin, Metcalf, Sweeney, and Ritter were to continue said property in litigation before said Ritter. On the 30th day of August 1929, the said Walter S. Richardson, in furtherance of said arrangement and understanding, wrote a letter to the said Martin Sweeney, in New York, suggesting the desirability of contacting as many first mortgage bondholders as possible in order that their cooperation might be secured, directing special attention to Mr. Bert E. Holland, an attorney, whose address was in the Tremont Building in Boston, and who, as cotrustee, was the holder of \$50,000 of first-mortgage bonds, the amount of bonds required to institute the contemplated proceedings in Judge Ritter's court.

On October 3, 1929, the said Bert E. Holland, being solicited by the said Sweeney, requested the said Rankin and Metcalf to prepare a complaint to file in said Judge Ritter's court for foreclosure of said first mortgage and the appointment of a receiver. At this time Judge Ritter was holding court in Brooklyn, N.Y.,

and the said Rankin and Richardson went from West Palm Beach, Fla., to Brooklyn, N.Y., and called upon said Judge Ritter a short time previous to filing the bill for foreclosure and appointment of a receiver of said hotel property.

On October 10, 1929, and before the filing of said bill for foreclosure and receiver, the said Holland withdrew his authority to said Rankin and Metcalf to file said bill and notified the said Rankin not to file the said bill. Notwithstanding the said instructions to said Rankin not to file said bill, said Rankin, on the 11th day of October, 1929, filed said bill with the clerk of the United States District Court for the Southern District of Florida, but with the specific request to said clerk to lock up the said bill as soon as it was filed and hold until Judge Ritter's return so that there would be no newspaper publicity before the matter was heard by Judge Ritter for the appointment of a receiver, which request on the part of the said Rankin was complied with by the said clerk.

On October 16, 1929, the said Holland telegraphed to the said Rankin, referring to his previous wire requesting him to refrain from filing the bill and insisting that the matter remain in its then status until further instruction was given; and on October 17, 1929, the said Rankin wired to Holland that he would not make an application on his behalf for the appointment of a receiver. On October 28, 1929, a hearing on the complaint and petition for receivership was heard before Judge Halsted L. Ritter at Miami, at which hearing the said Bert E. Holland appeared in person before said Judge Ritter and advised the judge that he wished to withdraw the suit and asked for dismissal of the bill of complaint on the ground that the bill was filed without his authority.

But the said Judge Ritter, fully advised of the facts and circumstances

hereinbefore recited, wrongfully and oppressively exercised the powers of his office to carry into execution said plan and agreement theretofore arrived at, and refused to grant the request of the said Holland and made effective the champertous undertaking of the said Richardson and Rankin and appointed the said Richardson receiver of the said hotel property, notwithstanding that objection was made to Judge Ritter that said Richardson had been active in fomenting this litigation and was not a proper person to act as receiver.

On October 15, 1929, said Rankin made oath to each of the bills for intervenors which were filed the next day.

On October 16, 1929, bills for intervention in said foreclosure suit were filed by said Rankin and Metcalf in the names of holders of approximately \$5,000 of said first-mortgage bonds, which intervenors did not possess the said requisite \$50,000 in bonds required by said first mortgage to bring foreclosure proceedings on the part of the bondholders.

The said Rankin and Metcalf appeared as attorneys for complainants and intervenors, and in response to a suggestion of the said Judge Ritter, the said Metcalf withdrew as attorney for complainants and intervenors and said Judge Ritter thereupon appointed said Metcalf as attorney for the said Richardson, the receiver.

And in the further carrying out of said arrangement and understanding, the said Richardson employed the said Martin Sweeney and one Bemis, together with Ed Sweeney, as managers of said property, for which they were paid the sum of \$60,000 for the management of said hotel for the two seasons the property remained in the custody of said Richardson as receiver.

On or about the 15th of May 1930 the said Judge Ritter allowed the

said Rankin an advance on his fee of \$2,500 for his services in said case.

On or about July 2, 1930, the said Judge Ritter requested Judge Alexander Akerman, also a judge of the United States District Court for the Southern District of Florida, to fix the total allowance for the said Rankin for his services in said case, said request and the reasons therefor being set forth in a letter by the said Judge Ritter, in words and figures as follows, to wit:

JULY 2, 1930.

Hon. ALEXANDER AKERMAN,  
*United States District Judge,*  
*Tampa, Fla.*

MY DEAR JUDGE: In the case of *Holland et al. v. Whitehall Building & Operating Co.* (No. 678-M-Eq.), pending in my division, my former law partner, Judge A. L. Rankin, of West Palm Beach, has filed a petition for an order allowing compensation for his services on behalf of the plaintiff.

I do not feel that I should pass, under the circumstances, upon the total allowance to be made Judge Rankin in this matter. I did issue an order, which Judge Rankin will exhibit to you, approving an advance of \$2,500 on his claim, which was approved by all attorneys.

You will appreciate my position in the matter, and I request you to pass upon the total allowance which should be made Judge Rankin in the premises as an accommodation to me. This will relieve me from any embarrassment hereafter if the question should arise as to my favoring Judge Rankin in this matter by an exorbitant allowance.

Appreciating very much your kindness in this matter, I am,

Yours sincerely,

HALSTED L. RITTER.

In compliance with said request the said Judge Akerman allowed the said Rankin \$12,500 in addition to

the \$2,500 theretofore allowed by Judge Ritter, making a total of \$15,000 as the fee of the said Rankin in the said case.

But notwithstanding the said request on the part of said Ritter and the compliance by the said Judge Akerman and the reasons for the making of said request by said Judge Ritter of Judge Akerman, the said Judge Ritter, on the 24th day of December 1930, allowed the said Rankin an additional fee of \$75,000.

And on the same date when the receiver in said case paid to the said Rankin as a part of said additional fee the sum of \$25,000, said Rankin privately paid and delivered to said Judge Ritter out of the said \$25,000 the sum of \$2,500 in cash, \$2,000 of which the said Judge Ritter deposited in a bank and \$500 of which was put in a tin box and not deposited until the 10th day of July 1931, when it was deposited in a bank with an additional sum of \$600.

On or about the 6th day of April 1931, the said Rankin received as a part of the \$75,000 additional fee the sum of \$45,000, and shortly thereafter, on or before the 14th day of April 1931, the said Rankin paid and delivered to said Judge Ritter, privately and in cash, out of said \$45,000 the sum of \$2,000.

The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said Rankin the aforesaid sums of \$2,500 in cash and \$2,000 in cash, amounting in all to \$4,500.

Of the total allowance made to said A. L. Rankin in said foreclosure suit, amounting in all to \$90,000, the following sums were paid out by said Rankin with the knowledge and consent of said Judge Ritter, to wit, to said Walter S. Richardson, the sum of \$5,000; to said Metcalf, the sum of \$10,000; to Shutts and Bowen, also attorneys for the receiver, the sum of



\$25,000; and to said Halsted L. Ritter, the sum of \$4,500.

In addition to the said sum of \$5,000 received by the said Richardson, as aforesaid, said Ritter by order in said proceedings allowed said Richardson a fee of \$30,000 for services as such receiver.

The said fees allowed by said Judge Ritter to A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge) as solicitor for the plaintiff in said case were excessive and unwarranted, and said judge profited personally thereby in that out of the money so allowed said solicitor he received personally, privately, and in cash \$4,500 for his own use and benefit.

While the Whitehall Hotel was being operated in receivership under said proceeding pending in said court (and in which proceeding the receiver in charge of said hotel by appointment of said judge was allowed large compensation by said judge) the said judge stayed at said hotel from time to time without cost to himself and received free rooms, free meals, and free valet service, and, with the knowledge and consent of said judge, members of his family, including his wife, his son, Thurston Ritter, his daughter, Mrs. M. R. Walker, his secretary, Mrs. Lloyd C. Hooks, and her husband, Lloyd C. Hooks, each likewise on various occasions stayed at said hotel without cost to themselves or to said judge, and received free rooms, and some or all of them received from said hotel free meals and free valet service; all of which expenses were borne by the said receivership to the loss and damage of the creditors whose interests were involved therein.

The said judge willfully failed and neglected to perform his duty to conserve the assets of the Whitehall Building & Operating Co. in receivership in his court, but to the contrary, permitted waste and dissipa-

tion of its assets, to the loss and damage of the creditors of said corporation, and was a party to the waste and dissipation of such assets while under the control of his said court, and personally profited thereby, in the manner and form hereinabove specifically set out.

Wherefore the said Judge Halsted L. Ritter was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor in office.

#### ARTICLE III

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C. Annotated, title 28, sec. 373), making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that after the employment of the law firm of Ritter & Rankin (which, at the time of the appointment of Halsted L. Ritter to be judge of the United States District Court for the Southern District of Florida, was composed of Halsted L. Ritter and A. L. Rankin) in the case of Trust Co. of Georgia and Robert G. Stephens, trustees, against Brazilian Court Building Corporation and others, No. 5704 in the Circuit Court of the Fifteenth Judicial Circuit of Florida, and after the final decree had been entered in said cause, and after the fee of \$4,000 which had been agreed upon at the

outset of said employment had been fully paid to the firm of Ritter & Rankin, and after Halsted L. Ritter had on, to wit, February 15, 1929, become judge of the United States District Court for the Southern District of Florida, Judge Ritter on, to wit, March 11, 1929, wrote a letter to Charles A. Brodek, of counsel for Mulford Realty Corporation (the client which his former law firm had been representing in said litigation), stating that there had been much extra and unanticipated work in the case; that he was then a Federal judge; that his partner, A. L. Rankin, would carry through further proceedings in the case, but that he, Judge Ritter, would be consulted about the matter until the case was all closed up; and that "this matter is one among very few which I am assuming to continue my interest in until finally closed up"; and stating specifically in said letter:

"I do not know whether any appeal will be taken in the case or not; but if so, we hope to get Mr. Howard Paschal or some other person as receiver who will be amenable to our directions, and the hotel can be operated at a profit, of course, pending the appeal. We shall demand a very heavy supersedeas bond, which I doubt whether D'Esterre can give."

And further that he was "of course, primarily interested in getting some money in the case," and that he thought "\$2,000 more by way of attorneys' fees should be allowed"; and asked that he be communicated with direct about the matter, giving his post-office box number. On, to wit, March 13, 1929, said Brodek replied favorably, and on March 30, 1929, a check of Brodek, Raphael & Eisner, a law firm of New York City, representing Mulford Realty Corporation, in which Charles A. Brodek, senior member of the firm of Brodek, Raphael & Eisner, was one of the directors, was drawn, payable to the order of "Hon. Halsted L. Rit-

ter" for \$2,000, and which was duly endorsed "Hon. Halsted L. Ritter. H. L. Ritter" and was paid on, to wit, April 4, 1929, and the proceeds thereof were received and appropriated by Judge Ritter to his own individual use and benefit, without advising his said former partner that said \$2,000 had been received, without consulting with his said former partner thereabout, and without the knowledge or consent of his said former partner, appropriated the entire amount thus solicited and received to the use and benefit of himself, the said Judge Ritter.

At the time said letter was written by Judge Ritter and said \$2,000 received by him, Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Fla., said holdings being within the territorial jurisdiction of the United States district court, of which Judge Ritter was a judge from February 15, 1929.

Which acts of said judge were calculated to bring his office into disrepute, constitute a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373), and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE IV

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a

United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

The said Judge Ritter by his actions and conduct, as an individual and as such judge, has brought his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice in his said court, and to the prejudice of public respect for and confidence in the Federal judiciary:

1. In that in the Florida Power Co. case (Florida Power & Light Co. against City of Miami and others, No. 1183-M-Eq.), which was a case wherein said judge had granted the complainant power company a temporary injunction restraining the enforcement of an ordinance of the city of Miami, which ordinance prescribed a reduction in the rates for electric current being charged in said city, said judge improperly appointed one Cary T. Hutchinson, who had long been associated with and employed by power and utility interests, special master in chancery in said suit, and refused to revoke his order so appointing said Hutchinson. Thereafter, when criticism of such action had become current in the city of Miami, and within 2 weeks after a resolution (H. Res. 163, 73d Cong.) had been agreed to in the House of Representatives of the Congress of the United States authorizing and directing the Judiciary Committee thereof to investigate the official conduct of said judge and to make a report concerning said conduct to said House of Representatives, an arrangement was entered into with the city commissioners of the city of Miami or with the city attorney of said city by which the said city commissioners were to pass a resolution expressing faith and confidence in the integrity of said judge, and the said judge recuse himself as judge [in] said power suit. The said agree-

ment was carried out by the parties thereto, and said judge, after the passage of such resolution, recused himself from sitting as judge in said power suit, thereby bartering his judicial authority in said case for a vote of confidence. Nevertheless, the succeeding judge allowed said Hutchinson as special master in chancery in said case a fee of \$5,000, although he performed little, if any, service as such, and in the order making such allowance recited: "And it appearing to the court that a minimum fee of \$5,000 was approved by the court for the said Cary T. Hutchinson, special master in this cause."

2. In that in the Trust Co. of Florida cases (Illick against Trust Co. of Florida et al., No. 1043-M-Eq., and Edmunds Committee et al. against Marlon Mortgage Co. et al., No. 1124-M-Eq.) after the State banking department of Florida, through its comptroller, Honorable Ernest Amos, had closed the doors of the Trust Co. of Florida and appointed J. H. Therrell liquidator for said trust company, and had interviewed in the said Illick case, said Judge Ritter wrongfully and erroneously refused to recognize the right of said State authority to administer the affairs of the said trust company, and appointed Julian S. Eaton and Clark D. Stearns as receivers of the property of said trust company. On appeal, the United States Circuit Court of Appeals for the Fifth Circuit reversed the said order or decree of Judge Ritter, and ordered the said property surrendered to the State liquidator. Thereafter, on, to wit, September 12, 1932, there was filed in the United States District Court for the Southern District of Florida the Edmunds Committee case, supra. Marion Mortgage Co. was a subsidiary of the Trust Co. of Florida. Judge Ritter being absent from his district at the time of the filing of said case, an application for the appointment of receivers therein was

presented to another judge of said district, namely, Honorable Alexander Akerman. Judge Ritter, however, prior to the appointment of such receivers, telegraphed Judge Akerman, requesting him to appoint the aforesaid Eaton and Stearns as receivers in said case, which appointments were made by Judge Akerman. Thereafter the United States Circuit Court of Appeals for the Fifth Circuit reversed the order of Judge Akerman, appointing said Eaton and Stearns as receivers in said case. In November 1932 J. H. Therrell, as liquidator, filed a bill of complaint in the Circuit Court of Dade County, Fla.—a court of the State of Florida—alleging that the various trust properties of the Trust Co. of Florida were burdensome to the liquidator to keep, and asking that the court appoint a succeeding trustee. Upon petition for removal of said cause from said State court into the United States District Court for the Southern District of Florida, Judge Ritter took jurisdiction, notwithstanding the previous rulings of the United States Circuit Court of Appeals above referred to, and again appointed the said Eaton and Stearns as the receivers of the said trust properties. In December 1932 the said Therrell surrendered all of the trust properties to said Eaton and Stearns as receivers, together with all records of the Trust Co. of Florida pertaining thereto. During the time said Eaton and Stearns, as such receivers, were in control of said trust properties, Judge Ritter wrongfully and improperly approved their accounts without notice or opportunity for objection thereto to be heard. With the knowledge of Judge Ritter, said receivers appointed the sister-in-law of Judge Ritter, namely, Mrs. G. M. Wickard, who had had no previous hotel-management experience, to be manager of the Julia Tuttle Hotel and Apartment Building, one of said trust properties. On,

to wit, January ], 1933, Honorable J. M. Lee succeeded Honorable Ernest Amos as comptroller of the State of Florida and appointed M. A. Smith liquidator in said Trust Co. of Florida cases to succeed J. H. Therrell. An appeal was again taken to the United States Circuit Court of Appeals for the Fifth Circuit from the then latest order or decree of Judge Ritter, and again the order or decree of Judge Ritter appealed from was reversed by the said circuit court of appeals, which held that Judge Ritter, or the court in which he presided, had been without jurisdiction in the matter of the appointment of said Eaton and Stearns as receivers. Thereafter, and with the knowledge of the decision of the said circuit court of appeals, Judge Ritter wrongfully and improperly allowed said Eaton and Stearns and their attorneys some \$26,000 as fees out of said trust-estate properties, and endeavored to require, as a condition precedent to releasing said trust properties from the control of his court, a promise from counsel for the said State liquidator not to appeal from his order allowing the said fees to said Eaton and Stearns and their attorneys.

3. In that the said Halsted L. Ritter, while such Federal judge, accepted, in addition to \$4,500 from his former law partner as alleged in article I hereof, other large fees or gratuities, to wit, \$7,500 from J. R. Francis, on or about April 19, 1929, J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge. On, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of \$2,000 from said Brodek, Raphael & Eisner, representing Mulford Realty Corporation, through his attorney, Charles A. Brodek, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large

interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Fla., said holdings being within the territorial jurisdiction of the United States District Court of which Judge Ritter was a judge from February 15, 1929.

4. By his conduct as detailed in articles I and II hereof.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office.

Attest:

JOSEPH W. BYRNS,  
*Speaker of the*  
*House of Representatives.*  
SOUTH TRIMBLE,  
*Clerk.*

Representative Sumners entered a reservation of the right of the House to amend or supplement the articles and demanded that the respondent be put to trial:

MR. MANAGER SUMNERS: Mr. President, the House of Representatives, by protestation, saving themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Halsted L. Ritter, district judge of the United States for the southern district of Florida, and also of replying to his answers which he shall make unto the articles preferred against him, and of offering proof to the same and every part thereof, and to all and every other article of accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Halsted L. Ritter may be put to answer

the misdemeanors in office which have been charged against him in the articles which have been exhibited to the Senate, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Mr. President, the managers on the part of the House of Representatives, in pursuance of the action of the House of Representatives by the adoption of the articles of impeachment which have just been read to the Senate, do now demand that the Senate take order for the appearance of the said Halsted L. Ritter to answer said impeachment, and do now demand his impeachment, conviction, and removal from office.

THE VICE PRESIDENT: The Senate will take proper order and notify the House of Representatives.<sup>(1)</sup>

The most senior Member of the Senate, Senator William E. Borah, of Idaho, then administered the oath to Vice President Garner, who administered the oath to the other Senators present.

The Sergeant at Arms made proclamation that the Senate was then sitting as a Court of Impeachment. Orders were adopted notifying the House of the organization of the court and issuing a summons to the respondent.<sup>(2)</sup>

### § 18.8 In response to a summons, Judge Halsted Ritter

1. *Id.* at p. 3488.
2. *Id.* at pp. 3488, 3489. For the text of the proceedings whereby the Senate organized for the Ritter impeachment trial, see § 11.5, *supra*.

**appeared before the Senate sitting as a Court of Impeachment.**

On Mar. 12, 1936, respondent Halsted Ritter appeared before the Court of Impeachment pursuant to the summons previously issued, and filed an entry of appearance:<sup>(3)</sup>

THE VICE PRESIDENT:<sup>(4)</sup> . . . The Secretary will read the return of the Sergeant at Arms.

The Chief Clerk read as follows:

SENATE OF THE UNITED STATES,  
OFFICE OF THE SERGEANT AT ARMS.

The foregoing writ of summons addressed to Halsted L. Ritter, and the foregoing precept, addressed to me, were duly served upon the said Halsted L. Ritter by me by delivering true and attested copies of the same to the said Halsted L. Ritter at the Carlton Hotel, Washington, D.C., on Thursday, the 12th day of March 1936, at 11 o'clock in the forenoon of that day.

CHESLEY W. JURNEY,  
*Sergeant at Arms,*  
*United States Senate.*

THE VICE PRESIDENT: The Secretary of the Senate will administer the oath to the Sergeant at Arms.

The Secretary of the Senate, Edwin A. Halsey, administered the oath to the Sergeant at Arms, as follows:

You, Chesley W. Journey, do solemnly swear that the return made by you upon the process issued on the 10th day of March 1936 by the

Senate of the United States against Halsted L. Ritter, United States district judge for the southern district of Florida, is truly made, and that you have performed such service as therein described. So help you God.

THE VICE PRESIDENT: The Sergeant at Arms will make proclamation.

The Sergeant at Arms made proclamation as follows:

Halsted L. Ritter! Halsted L. Ritter! Halsted L. Ritter! United States district judge for the southern district of Florida, appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

The respondent, Halsted L. Ritter, and his counsel, Frank P. Walsh, Esq., of New York City, N.Y., and Carl T. Hoffman, Esq., of Miami, Fla., entered the Chamber and were conducted to the seats assigned them in the space in front of the Secretary's desk, on the right of the Chair.

THE VICE PRESIDENT: Counsel for the respondent are advised that the Senate is now sitting for the trial of articles of impeachment exhibited by the House of Representatives against Halsted L. Ritter, United States district judge for the southern district of Florida.

MR. WALSH (of counsel): May it please you, Mr. President, and honorable Members of the Senate, I beg to inform you that, in response to your summons, the respondent, Halsted L. Ritter, is now present with his counsel and asks leave to file a formal entry of appearance.

THE VICE PRESIDENT: Is there objection? The Chair hears none, and the appearance will be filed with the Secretary, and will be read.

The Chief Clerk read as follows:

3. 80 CONG. REC. 3646, 3647, 74th Cong. 2d Sess.

4. John N. Garner (Tex.).

IN THE SENATE OF THE UNITED STATES  
OF AMERICA SITTING AS A COURT OF  
IMPEACHMENT

MARCH 12, 1936.

*The United States of America v.  
Halsted L. Ritter*

The respondent, Halsted L. Ritter, having this day been served with a summons requiring him to appear before the Senate of the United States of America in the city of Washington, D.C., on March 12, 1936, at 1 o'clock afternoon to answer certain articles of impeachment presented against him by the House of Representatives of the United States of America, now appears in his proper person and also by his counsel, who are instructed by this respondent to inform the Senate that respondent stands ready to file his pleadings to such articles of impeachment within such reasonable period of time as may be fixed.

Dated March 12, 1936.

**§ 18.9 The Senate, sitting as a Court of Impeachment, excused a Senator from service at his request, fixed a trial date, allowed respondent 18 days to file his answer, and adopted supplemental rules for trial.**

On Mar. 12, 1936, the Senate convened as a Court of Impeachment in the Halsted Ritter case. Preceding the administration of the oath to members not theretofore sworn, the court granted the request of Senator Edward P. Costigan, of Colorado, that he be excused from service on the Court of Impeachment. Senator Costigan

caused to be printed in the Record the reasons for his request, based on a long personal acquaintance with the respondent.<sup>(5)</sup>

The Senate ratified an agreement, between the managers and counsel for the respondent, as to the time permitted the respondent to file his answer with the Court of Impeachment:

MR. [JOSEPH T.] ROBINSON [of Arkansas]: Mr. President, I think there is not a clear understanding as to the arrangement which has been entered into between the managers and the counsel for the respondent. It is my understanding, and if I am in error someone who is better informed will please correct me, that the agreement is that counsel for the respondent will place their response in the possession of the managers on the part of the House not later than the 26th instant, and that the Court may reconvene again on the 30th when the response will be filed in the Senate.

THE VICE PRESIDENT:<sup>(6)</sup> Is there objection to that agreement?

There was no objection.<sup>(7)</sup>

The Court of Impeachment adopted a motion fixing the trial date at Apr. 6, 1936.<sup>(8)</sup>

The court adopted supplemental rules, which Senator Henry F.

5. 80 CONG. REC. 3646, 74th Cong. 2d Sess.

6. John N. Garner (Tex.).

7. 80 CONG. REC. 3647, 74th Cong. 2d Sess.

8. *Id.* at p. 3648.

Ashurst, of Arizona, stated to be the same as those adopted in the trial of Judge Harold Louderback:

*Ordered,* That in addition to the rules of procedure and practice in the Senate when sitting on impeachment trials, heretofore adopted, and supplementary to such rules, the following rules shall be applicable in the trial of the impeachment of Halsted L. Ritter, United States judge for the southern district of Florida:

1. In all matters relating to the procedure of the Senate, whether as to form or otherwise, the managers on the part of the House or the counsel representing the respondent may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

2. In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers on the part of the House or counsel representing the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

3. It shall not be in order for any Senator, except as provided in the rules of procedure and practice in the Senate when sitting on impeachment trials, to engage in colloquy or to address questions either to the managers on the part of the House or to counsel for the respondent, nor shall it be in order for Senators to address each other; but they shall address their remarks directly to the Presiding Officer and not otherwise.

4. The parties may, by stipulation in writing filed with the Secretary of the Senate and by him laid before the Senate or presented at the trial, agree upon any facts involved in the trial; and such stipulation shall be received by the Senate for all intents and purposes as though the facts therein agreed upon had been established by legal evidence adduced at the trial.

5. The parties or their counsel may interpose objection to witnesses answering questions propounded at the request of any Senator, and the merits of any such objection may be argued by the parties or their counsel; and the Presiding Officer may rule on any such objection, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without debate and without a division, unless the ayes and nays be demanded by one-fifth of the Members present when the same shall be taken.<sup>(9)</sup>

### *Amendment of Articles of Impeachment*

**§ 18.10 The House adopted a resolution, reported as privileged by the managers on the part of the House in the Halsted Ritter impeachment, amending the articles previously voted by the House.**

9. *Id.*



On Mar. 30, 1936,<sup>(10)</sup> Mr. Hatton W. Sumners, of Texas, called up the following privileged resolution (H. Res. 471) amending the articles of impeachment against Judge Ritter:

*Resolved*, That the articles of impeachment heretofore adopted by the House of Representatives in and by House Resolution 422, House Calendar No. 279, be, and they are hereby, amended as follows:

Article III is amended so as to read as follows:

#### ARTICLE II

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373), making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that after the employment of the law firm of Ritter & Rankin (which at the time of the appointment of Halsted L. Ritter to be judge of the United States District Court for the Southern District of Florida, was composed of Halsted L. Ritter and A. L. Rankin) in the

case of *Trust Co. of Georgia and Robert G. Stephens, Trustee v. Brazilian Court Building Corporation et al.*, no. 5704, in the Circuit Court of the Fifteenth Judicial Circuit of Florida, and after the fee of \$4,000 which had been agreed upon at the outset of said employment had been fully paid to the firm of Ritter & Rankin, and after Halsted L. Ritter had, on, to wit, February 15, 1929, become judge of the United States District Court for the Southern District of Florida, Judge Ritter on, to wit, March 11, 1929, wrote a letter to Charles A. Brodek, of counsel for Mulford Realty Corporation (the client which his former law firm had been representing in said litigation), stating that there had been much extra and unanticipated work in the case, that he was then a Federal judge; that his partner, A. L. Rankin, would carry through further proceedings in the case, but that he, Judge Ritter, would be consulted about the matter until the case was all closed up; and that "this matter is one among very few which I am assuming to continue my interest in until finally closed up"; and stating specifically in said letter:

"I do not know whether any appeal will be taken in the case or not, but, if so, we hope to get Mr. Howard Paschal or some other person as receiver who will be amenable to our directions, and the hotel can be operated at a profit, of course, pending the appeal. We shall demand a very heavy supersedeas bond, which I doubt whether D'Esterre can give"; and further that he was "of course primarily interested in getting some money in the case", and that he thought "\$2,000 more by way of attorney's fees should be allowed"; and asked that he be communicated with direct about the matter, giving his post-office box number. On, to wit, March 13, 1929, said Brodek replied favorably, and on March 30, 1929, a check of Brodek, Raphael & Eisner,

10. 80 CONG. REC. 4597-99. 74th Cong. 2d Sess.

a law firm of New York City, representing Mulford Realty Corporation, in which Charles A. Brodek, senior member of the firm of Brodek, Raphael & Eisner, was one of the directors, was drawn, payable to the order of "Hon. Halsted L. Ritter" for \$2,000 and which was duly endorsed "Hon. Halsted L. Ritter. H. L. Ritter" and was paid on, to wit, April 4, 1929, and the proceeds thereof were received and appropriated by Judge Ritter to his own individual use and benefit, without advising his said former partner that said \$2,000 had been received, without consulting with his former partner thereabout, and without the knowledge or consent of his said former partner, appropriated the entire amount thus solicited and received to the use and benefit of himself, the said Judge Ritter.

At the time said letter was written by Judge Ritter and said \$2,000 received by him, Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Fla., said holdings being within the territorial jurisdiction of the United States district court, of which Judge Ritter was a judge from, to wit, February 15, 1929.

After writing said letter of March 11, 1929, Judge Ritter further exercised the profession or employment of counsel or attorney, or engaged in the practice of the law, with relation to said case.

Which acts of said judge were calculated to bring his office into disrepute, constitute a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373), and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

By adding the following articles immediately after article III as amended:

#### ARTICLE IV

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373), making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that Judge Ritter did exercise the profession or employment of counsel or attorney, or engaged in the practice of the law, representing J. R. Francis, with relation to the Boca Raton matter and the segregation and saving of the interest of J. R. Francis therein, or in obtaining a deed or deeds to J. R. Francis from the Spanish River Land Co. to certain pieces of realty, and in the Edgewater Ocean Beach Development Co. matter, for which services the said Judge Ritter received from the said J. R. Francis the sum of \$7,500.

Which acts of said judge were calculated to bring his office into disrepute, constitute a violation of the law above recited, and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE V

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of violation of section 146(b) of the Revenue Act of 1928, making it unlawful for any person willfully to attempt in any manner to evade or defeat the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1929 said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of some \$12,000, yet paid no income tax thereon.

Among the fees included in said gross taxable income for 1929 were the extra fee of \$2,000 solicited and received by Judge Ritter in the Brazilian Court case, as described in article III, and the fee of \$7,500 received by Judge Ritter from J. R. Francis.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

#### ARTICLE VI

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in of-

fice in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was guilty of violation of section 146(b) of the Revenue Act of 1928, making it unlawful for any person willfully to attempt in any manner to evade or defeat the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1930 the said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of, to wit, \$5,300, yet failed to report any part thereof in his income-tax return for the year 1930, and paid no income tax thereon.

Two thousand five hundred dollars of said gross taxable income for 1930 was that amount of cash paid Judge Ritter by A. L. Rankin on December 24, 1930, as described in article I.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

Original article IV is amended so as to read as follows:

#### “ARTICLE VII

“That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

“The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the admin-

istration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him unfit to continue to serve as such judge:

"1. In that in the Florida Power Co. case (*Florida Power & Light Co. v. City of Miami et al.*, no. 1183-M-Eq.), which was a case wherein said judge had granted the complainant power company a temporary injunction restraining the enforcement of an ordinance of the city of Miami, which ordinance prescribed a reduction in the rates for electric current being charged in said city, said judge improperly appointed one Cary T. Hutchinson, who had long been associated with and employed by power and utility interests, special master in chancery in said suit, and refused to revoke his order so appointing said Hutchinson. Thereafter, when criticism of such action had become current in the city of Miami, and within 2 weeks after a resolution (H. Res. 163, 73d Cong.) had been agreed to in the House of Representatives of the Congress of the United States, authorizing and directing the Judiciary Committee thereof to investigate the official conduct of said judge and to make a report concerning said conduct to said House of Representatives, an arrangement was entered into with the city commissioners of the city of Miami or with the city attorney of said city by which the said city commissioners were to pass a resolution expressing faith and confidence in the integrity of said judge, and the said judge recuse himself as judge in said power suit. The said agreement was carried out by the parties thereto, and said judge; after the passage of such resolution, recused himself from sitting as judge in said power suit, thereby bartering his judicial authority in said case for a vote of confidence. Nevertheless, the succeeding judge allowed said Hutchinson as special master in chancery

in said case a fee of \$5,000, although he performed little, if any, service as such, and in the order making such allowance recited: 'And it appearing to the court that a minimum fee of \$5,000 was approved by the court for the said Cary T. Hutchinson, special master in this cause.'

"2. In that in the Trust Co. of Florida cases (*Illick v. Trust Co. of Florida et al.*, no. 1043-M-Eq., and *Edmunds Committee et al. v. Marion Mortgage Co. et al.*, no. 1124-M-Eq.), after the State Banking Department of Florida, through its comptroller, Hon. Ernest Amos, had closed the doors of the Trust Co. of Florida and appointed J. H. Therrell liquidator for said trust company, and had intervened in the said Illick case, said Judge Ritter wrongfully and erroneously refused to recognize the right of said State authority to administer the affairs of the said trust company and appointed Julian S. Eaton and Clark D. Stearns as receivers of the property of said trust company. On appeal the United States Circuit Court of Appeals for the Fifth Circuit reversed the said order or decree of Judge Ritter and ordered the said property surrendered to the State liquidator. Thereafter, on, to wit, September 12, 1932, there was filed in the United States District Court for the Southern District of Florida the Edmunds Committee case, supra. Marion Mortgage Co. was a subsidiary of the Trust Co. of Florida. Judge Ritter being absent from his district at the time of the filing of said case, an application for the appointment of receivers therein was presented to another judge of said district, namely, Hon. Alexander Akerman. Judge Ritter, however, prior to the appointment of such receivers, telegraphed Judge Akerman, requesting him to appoint the aforesaid Eaton and Stearns as receivers in said case, which appointments were made by Judge Akerman. Thereafter the United

States Circuit Court of Appeals for the Fifth Circuit reversed the order of Judge Akerman, appointing said Eaton and Stearns as receivers in said case. In November 1932 J. H. Therrell, as liquidator, filed a bill of complaint in the Circuit Court of Dade County, Fla.—a court of the State of Florida—alleging that the various trust properties of the Trust Co. of Florida were burdensome to the liquidator to keep, and asking that the court appoint a succeeding trustee. Upon petition for removal of said cause from said State court into the United States District Court for the Southern District of Florida, Judge Ritter took jurisdiction, notwithstanding the previous rulings of the United States Circuit Court of Appeals above referred to, and again appointed the said Eaton and Stearns as the receivers of the said trust properties. In December 1932 the said Therrell surrendered all of the trust properties to said Eaton and Stearns as receivers, together with all records of the Trust Co. of Florida pertaining thereto. During the time said Eaton and Stearns, as such receivers, were in control of said trust properties. Judge Ritter wrongfully and improperly approved their accounts without notice or opportunity for objection thereto to be heard. With the knowledge of Judge Ritter, said receivers appointed the sister-in-law of Judge Ritter, namely, Mrs. G. M. Wickard, who had had no previous hotel-management experience, to be manager of the Julia Tuttle Hotel and Apartment Building, one of said trust properties. On, to wit, January 1, 1933, Hon. J. M. Lee succeeded Hon. Ernest Amos as comptroller of the State of Florida and appointed M. A. Smith liquidator in said Trust Co. of Florida cases to succeed J. H. Therrell. An appeal was again taken to the United States Circuit Court of Appeals for the Fifth Circuit from the then latest order or decree of Judge

Ritter, and again the order or decree of Judge Ritter appealed from was reversed by the said circuit court of appeals which held that the State officer was entitled to the custody of the property involved and that said Eaton and Stearns as receivers were not entitled to such custody. Thereafter, and with the knowledge of the decision of the said circuit court of appeals, Judge Ritter wrongfully and improperly allowed said Eaton and Stearns and their attorneys some \$26,000 as fees out of said trust-estate properties and endeavored to require, as a condition precedent to releasing said trust properties from the control of his court, a promise from counsel for the said State liquidator not to appeal from his order allowing the said fees to said Eaton and Stearns and their attorneys.

“3. In that the said Halsted L. Ritter, while such Federal judge, accepted, in addition to \$4,500 from his former law partner, as alleged in article I hereof, other large fees or gratuities, to wit, \$7,500 from J. R. Francis, on or about April 19, 1929, J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge; and on, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of \$2,000 from Brodek, Raphael & Eisner, representing Mulford Realty Corporation as its attorneys, through Charles A. Brodek, senior member of said firm and a director of said corporation, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District

Court of which Ritter was a judge from, to wit, February 15, 1929.

"4. By his conduct as detailed in articles I, II, III, and IV hereof, and by his income-tax evasions as set forth in articles V and VI hereof.

"Wherefore the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office."

The House adopted the resolution amending the articles after Mr. Sumners discussed its provisions and stated his opinion that the managers had the power to report amendments to the articles:

MR. SUMNERS of Texas: Mr. Speaker, the resolution which has just been read proposes three new articles. The change is not as important as that statement would indicate. Two of the new articles deal with income taxes, and one with practicing law by Judge Ritter, after he went on the bench. In the original resolution, the charge is made that Judge Ritter received certain fees or gratuities and had written a letter, and so forth. No change is proposed in articles 1 and 2. In article 3, as stated, Judge Ritter is charged with practicing law after he went on the bench. That same thing, in effect, was charged, as members of the committee will remember, in the original resolution, but the form of the charge, in the judgment of the managers, could be improved. These charges go further and charge that in the matter connected with J. R. Francis, the judge acted as counsel in two transactions after he went on the bench, and received \$7,500 in compensation. Article 7 is amended to include a reference to

these new charges. There is a change in the tense used with reference to the effect of the conduct alleged. It is charged, in the resolution pending at the desk, that the reasonable and probable consequence of the alleged conduct is to injure the confidence of the people in the courts—I am not attempting to quote the exact language—which is a matter of form, I think, more than a matter of substance.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas: Yes.

MR. SNELL: I may not be entirely familiar with all this procedure, but as I understand, what the gentleman is doing here today, is to amend the original articles of impeachment passed by the House.

MR. SUMNERS of Texas: That is correct.

MR. SNELL: The original articles of impeachment came to the House as a result of the evidence before the gentleman's committee. Has the gentleman's committee had anything to do with the change or amendment of these charges?

MR. SUMNERS of Texas: No; just the managers.

MR. SNELL: As a matter of procedure, would not that be the proper thing to do?

MR. SUMNERS of Texas: I do not think it is at all necessary, for this reason: The managers are now acting as the agents of the House, and not as the agents of the Committee on the Judiciary. Mr. Manager Perkins and Mr. Manager Hobbs have recently extended the investigation made by the committee.

MR. SNELL: Mr. Speaker, will the gentleman yield further?

MR. SUMNERS of Texas: Yes.

MR. SNELL: Do I understand that the amendments come because of new information that has come to you as managers that never was presented to the Committee on the Judiciary?

MR. SUMNERS of Texas: Perhaps it would not be true to answer that entirely in the affirmative, but the changes are made largely by reason of new evidence which has come to the attention of the committee, and some of these changes, more or less changes in form, have resulted from further examination of the question. This is somewhat as lawyers do in their pleadings. They often ask the privilege of making an amendment.

MR. SNELL: And the gentleman's position is that as agents of the House it is not necessary to have the approval of his committee, which made the original impeachment charges?

MR. SUMNERS of Texas: I have no doubt about that; I have no doubt about the accuracy of that statement.

**§ 18.11 Following the amendment of the articles of impeachment against Judge Halsted Ritter, the House adopted a resolution to inform the Senate thereof.**

On Mar. 30, 1936,<sup>(11)</sup> following the amendment by the House of the articles in the impeachment against Judge Ritter, the Senate

11. 80 CONG. REC. 4601, 74th Cong. 2d Sess.

was informed by resolution thereof:

MR. [HATTON W.] SUMNERS of Texas: Mr. Speaker, I offer the following privileged resolution.

The Clerk read as follows:

HOUSE RESOLUTION 472

*Resolved*, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted an amendment to the articles of impeachment heretofore exhibited against Halsted L. Ritter, United States district judge for the southern district of Florida, and that the same will be presented to the Senate by the managers on the part of the House.

And also, that the managers have authority to file with the Secretary of the Senate, on the part of the House any subsequent pleadings they shall deem necessary.

The resolution was agreed to.

A motion to reconsider was laid on the table.

On Mar. 31, the amendments to the articles were presented to the Court of Impeachment and printed in the Record;<sup>(12)</sup> counsel for the respondent was granted 48 hours to file his response to the new articles.

***Motions to Strike Articles***

**§ 18.12 During the impeachment trial of Judge Halsted Ritter, the respondent moved to strike Article I or, in the**

12. *Id.* at pp. 4654–56.

**alternative, to require election as to Articles I and II, and moved to strike Article VII.**

On Mar. 31, 1936,<sup>(13)</sup> the respondent, Judge Ritter, filed the following motion:

In the Senate of the United States of America sitting as a Court of Impeachment. *The United States of America v. Halsted L. Ritter, respondent*

MOTION TO STRIKE ARTICLE I, OR, IN THE ALTERNATIVE, TO REQUIRE ELECTION AS TO ARTICLES I AND II; AND MOTION TO STRIKE ARTICLE VII

The respondent, Halsted L. Ritter, moves the honorable Senate, sitting as a Court of Impeachment, for an order striking and dismissing article I of the articles of impeachment, or, in the alternative, to require the honorable managers on the part of the House of Representatives to elect as to whether they will proceed upon article I or upon article II, and for grounds of such motion respondent says:

1. Article II reiterates and embraces all the charges and allegations of article I, and the respondent is thus and thereby twice charged in separate articles with the same and identical offense, and twice required to defend against the charge presented in article I.

2. The presentation of the same and identical charge in the two articles in question tends to prejudice the respondent in his defense, and tends to

oppress the respondent in that the articles are so framed as to collect, or accumulate upon the second article, the adverse votes, if any, upon the first article.

3. The Constitution of the United States contemplates but one vote of the Senate upon the charge contained in each article of impeachment, whereas articles I and II are constructed and arranged in such form and manner as to require and exact of the Senate a second vote upon the subject matter of article I.

MOTION TO STRIKE ARTICLE VII

And the respondent further moves the honorable Senate, sitting as a Court of Impeachment, for an order striking and dismissing article VII, and for grounds of such motion, respondent says:

1. Article VII includes and embraces all the charges set forth in articles I, II, III, IV, V, and VI.

2. Article VII constitutes an accumulation and massing of all charges in preceding articles upon which the Court is to pass judgment prior to the vote on article VII, and the prosecution should be required to abide by the judgment of the Senate rendered upon such prior articles and the Senate ought not to countenance the arrangement of pleading designed to procure a second vote and the collection or accumulation of adverse votes, if any, upon such matters.

3. The presentation in article VII of more than one subject and the charges arising out of a single subject is unjust and prejudicial to respondent.

4. In fairness and justice to respondent, the Court ought to require separa-

13. 80 CONG. REC. 4656, 4657, 74th Cong. 2d Sess.



tion and singleness of the subject matter of the charges in separate and distinct articles, upon which a single and final vote of the Senate upon each article and charge can be had.

(Signed) FRANK P. WALSH,  
CARL T. HOFFMAN,  
*Of Counsel for Respondent.*

Mr. Hoffman, counsel for respondent, argued that Article II duplicated charges set forth in Article I. He also contended that the rule of duplicity, or the principle of civil and criminal pleading that one count should contain no more than one charge or cause of action, was violated by Article VII.

Mr. Sumners argued in response that Article II was clearly not a duplication of Article I, two distinct charges being presented. As to Article VII, Mr. Sumners contended that impeachment was essentially an ouster proceeding as opposed to a criminal proceeding. He referred to the fact that the articles of impeachment against Judge Harold Louderback had contained a similar article charging that "by specifically alleged conduct" the respondent "has done those things the reasonable and probable consequences of which are to arouse a substantial doubt as to his judicial integrity."<sup>14</sup>

14. *Id.* at p. 4658.

For Article V, as amended, in the Louderback impeachment, charging

At the suggestion of the Chair, decision on the motions of respondent were reserved for investigation and deliberation:

MR. [HENRY F.] ASHURST [of Arizona]: Mr. President, I assume that the Presiding Officer will desire to take some time to examine all the pleadings and will not be prepared to announce a decision on this point until the next session of the Court?

THE PRESIDING OFFICER [NATHAN L. BACHMAN (Tenn.)]: It is the opinion of the present occupant of the chair that while the necessity for early decision is apparent, the importance of the matter would justify the occupant of the chair in saying that no decision should be made until the proceedings are printed and every member of the Court has an opportunity to investigate and consider them. Is there objection to that suggestion of the Chair? The Chair hears none.<sup>15</sup>

**§ 18.13 On the respondent's motion to strike, the Chair overruled that part of the motion which sought to strike Article I or to require election between Articles I and II; the Chair submitted that part of the motion which sought to strike Article VII to the Court of Impeachment, which overruled that part of the motion.**

such conduct as to destroy public confidence in the court, see 6 Canon's Precedents § 520.

15. *Id.* at p. 4659.

On Apr. 3, 1936,<sup>(16)</sup> the following disposition was made of the motion of the respondent, Judge Halsted Ritter, to strike certain articles:

THE PRESIDING OFFICER [NATHAN L. BACHMAN (Tenn.)]: On the motion of the honorable counsel for the respondent to strike article I of the articles of impeachment or, in the alternative, to require the honorable managers on the part of the House to make an election as to whether they will stand upon article I or upon article II, the Chair is ready to rule.

The Chair is clearly of the opinion that the motion to strike article I or to require an election is not well taken and should be overruled.

His reason for such opinion is that articles I and II present entirely different bases for impeachment.

Article I alleges the illegal and corrupt receipt by the respondent of \$4,500 from his former law partner, Mr. Rankin.

Article II sets out as a basis for impeachment an alleged conspiracy between Judge Ritter; his former partner, Mr. Rankin; one Richardson, Metcalf & Sweeny; and goes into detail as to the means and manner employed whereby the respondent is alleged to have corruptly received the \$4,500 above mentioned.

The two allegations, one of corrupt and illegal receipt and the other of conspiracy to effectuate the purpose, are, in the judgment of the Chair, wholly distinct, and the respondent should be called to answer each of the articles.

What is the judgment of the Court with reference to that particular phase of the motion to strike?

MR. [WILLIAM H.] KING [of Utah]: Mr. President, if it be necessary, I move that the ruling of the honorable Presiding Officer be considered as and stand for the judgment of the Senate sitting as a Court of Impeachment.

THE PRESIDING OFFICER: Is there objection? The Chair hears none, and the ruling of the Chair is sustained, by the Senate.

With reference to article VII of the articles of impeachment, formerly article IV, the Chair desires to exercise his prerogative of calling on the Court for a determination of this question.

His reason for so doing is that an impeachment proceeding before the Senate sitting as a Court is sui generis, partaking neither of the harshness and rigidity of the criminal law nor of the civil proceedings requiring less particularity.

The question of duplicity in impeachment proceedings presented by the honorable counsel for the respondent is a controversial one, and the Chair feels that it is the right and duty of each Member of the Senate, sitting as a Court, to express his views thereon.

Precedents in proceedings of this character are rare and not binding upon this Court in any course that it might desire to pursue.

The question presented in the motion to strike article VII on account of duplicity has not, so far as the Chair is advised, been presented in any impeachment proceeding heretofore had before this body.

The Chair therefore submits the question to the Court.

16. 80 CONG. REC. 4898, 74th Cong. 2d Sess.

MR. [HENRY F.] ASHURST [of Arizona]: Mr. President, under the rules of the Senate, sitting as a Court of Impeachment, all such questions, when submitted by the Presiding Officer, shall be decided without debate and without division, unless the yeas and nays are demanded by one-fifth of the Members present, when the yeas and nays shall be taken.

THE PRESIDING OFFICER: The Chair therefore, will put the motion. All those in favor of the motion of counsel for the respondent to strike article VII will say "aye." Those opposed will say "no."

The noes have it, and the motion in its entirety is overruled.

**§ 18.14 During the impeachment trial of Judge Halsted Ritter, the managers on the part of the House made and the Senate granted a motion to strike certain specifications from an article of impeachment.**

On Apr. 3, 1936,<sup>(17)</sup> during the impeachment trial of Judge Ritter, the managers on the part of the House moved that two counts be stricken. The motion was granted by the Senate:

MR. MANAGER [HATTON W.] SUMNERS [of Texas] (speaking from the desk in front of the Vice President): Mr. President, the suggestion which the managers desire to make at this time has reference to specifications 1

and 2 of article VII. These two specifications have reference to what I assume counsel for respondent and the managers as well, recognize are rather involved matters, which would possibly require as much time to develop and to argue as would be required on the remainder of the case.

The managers respectfully move that those two counts be stricken. If that motion shall be sustained, the managers will stand upon the other specifications in article VII to establish article VII. The suggestion on the part of the managers is that those two specifications in article VII be stricken from the article.

THE PRESIDING OFFICER:<sup>(18)</sup> What is the response of counsel for the respondent?

MR. [CHARLES L.] MCNARY [of Oregon]: Mr. President, there was so much rumbling and noise in the Chamber that I did not hear the position taken by the managers on the part of the House.

THE PRESIDING OFFICER: The managers on the part of the House have suggested that specifications 1 and 2 of article VII be stricken on their motion.

. . .

MR. HOFFMAN [of counsel]: Mr. President, the respondent is ready to file his answer to article I, to articles II and III as amended, and to articles IV, V, and VI. In view of the announcement just made asking that specifications 1 and 2 of article VII be stricken, it will be necessary for us to revise our answer to article VII and to eliminate paragraphs 1 and 2 thereof. That can be very speedily done with 15 or 20 minutes if it can be arranged for the

17. 80 CONG. REC. 4899, 74th Cong. 2d Sess.

18. Nathan L. Bachman (Tenn.).

Senate to indulge us for that length of time.

THE PRESIDING OFFICER: Is there objection to the motion submitted on the part of the managers?

MR. HOFFMAN: We have no objection.

THE PRESIDING OFFICER: The motion is made. Is there objection? The Chair hears none, and the motion to strike is granted.

MR. [JOSEPH T.] ROBINSON [of Arkansas]: Mr. President, it would seem that in the interest of the conservation of time and for the convenience of the Court, the motion should have been made prior to the decision on the question involved in the motion of counsel to strike certain articles. I merely make that observation for the consideration of the Court.

### ***Answer and Replication***

#### **§ 18.15 In the Ritter impeachment trial, an answer to the charges was filed by the respondent, and a replication thereto was submitted by the managers.**

On Apr. 3, 1936, the answer of the respondent in the Ritter impeachment was read in the Senate, ordered printed, and mesaged to the House. The answer stated that the facts set forth therein did not constitute impeachable high crimes and misdemeanors and that the respondent was not guilty of the offenses charged.<sup>(19)</sup>

19. 80 CONG. REC. 4899-4906, 74th Cong. 2d Sess.

On Apr. 6, the respondent's answer was laid before the House and referred to the managers on the part of the House.<sup>(20)</sup> On the same day, the managers filed a replication in the Senate, sitting as a Court of Impeachment, to the answer of the respondent Judge Ritter. The replication was prepared and submitted by the managers on their own initiative, the House not having voted thereon:<sup>(1)</sup>

REPLICATION OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA TO THE ANSWER OF HALSTED L. RITTER, DISTRICT JUDGE OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, TO THE ARTICLES OF IMPEACHMENT, AS AMENDED, EXHIBITED AGAINST HIM BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA

The House of Representatives of the United States of America, having considered the several answers of Halsted L. Ritter, district judge of the United States for the southern district of Florida, to the several articles of impeachment, as amended, against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantages of exception to the insufficiency, irrelevancy, and impertinency of his answer to each and all of the several articles of impeachment, as amended, so exhibited against the said Halsted L. Ritter, judge as aforesaid, do say:

20. *Id.* at p. 5020.

1. *Id.* at pp. 4971, 4972.

(1) That the said articles, as amended do severally set forth impeachable offenses, misbehaviors, and misdemeanors as defined in the Constitution of the United States, and that the same are proper to be answered unto by the said Halsted L. Ritter, judge as aforesaid, and sufficient to be entertained and adjudicated by the Senate sitting as a Court of Impeachment.

(2) That the said House of Representatives of the United States of America do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, misbehaviors, or misdemeanors charged against the said Halsted L. Ritter in said articles of impeachment, as amended, or either of them, and for replication to said answers do say that Halsted L. Ritter, district judge of the United States for the southern district of Florida, is guilty of the impeachable offenses, misbehaviors, and misdemeanors charged in said articles, as amended, and that the House of Representatives are ready to prove the same.

HATTON W. SUMNERS,  
*On behalf of the Managers.*

### *The Trial; Arguments*

#### **§ 18.16 Opening statements and closing arguments in an impeachment trial may consist of statements by the managers on the part of the House and statements by counsel for the accused.**

On Apr. 6, 1936,<sup>(2)</sup> in the impeachment trial of Judge Halsted

2. 80 CONG. REC. 4972–82, 74th Cong. 2d Sess.

Ritter, opening statements were made in the Senate by the managers on the part of the House and by counsel for the accused.<sup>(3)</sup> The respondent himself testified before the Court of Impeachment.<sup>(4)</sup> Final arguments were made on Apr. 13 and 14 first by Mr. Sam Hobbs, of Alabama, for the managers, then by Mr. Walsh for the respondent, and finally by Mr. Hatton W. Sumners, of Texas, for the managers, the arguments being limited by an order adopted on Apr. 13:

Ordered, That the time for final argument of the case of Halsted L. Ritter shall be limited to 4 hours, which said time shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, and the time thus assigned to each side shall be divided as each side for itself may determine.<sup>(5)</sup>

Mr. Hobbs argued three principles bearing on the weight of evidence and burden of proof in an impeachment trial:

The statement of the law of the case, as we see it, will largely be left to the distinguished chairman of the Judici-

3. For precedents during the trial as to the evidence, see §§ 12.7–12.9, *supra*.
4. 80 CONG. REC. 5370–86, 74th Cong. 2d Sess., Apr. 11 and Apr. 13, 1936.
5. *Id.* at p. 5401.

For final arguments on Apr. 13, 1936, see *id.* at pp. 5401–10; for Apr. 14, 1936, see *id.* at pp. 5464–73.

ary Committee of the House [Mr. Manager Sumners], the chairman of the managers on the part of the House in this case, and I will not attempt to go into that, save to observe these three points which, to my mind, should be in the minds of the Members of this high Court of Impeachment at all times in weighing this evidence:

First, that impeachment trials are not criminal trials in any sense of the word.

Second, that the burden of proof in this case is not "beyond a reasonable doubt", as it is in criminal cases.

Third, that the presumption of innocence, which attends a defendant in a criminal case, is not to be indulged in behalf of the respondent in an impeachment trial. Those three principles of law, I believe, are well recognized, and we respectfully ask the Members of this high Court of Impeachment to bear them in mind.

The present distinguished senior Senator from Nebraska [Mr. Norris], when acting as one of the managers on the part of the House in the impeachment trial of Judge Robert W. Archbald, made as clear and cogent a statement as has ever been made upon the subject of impeachable conduct. With his kind permission, I should like to take that as my text, so to speak, for the remarks that will follow:

If judges can hold their offices only during good behavior, then it necessarily and logically follows that they cannot hold their offices when they have been convicted of any behavior that is not good. If good behavior is an essential of holding the office, then misbehavior is a sufficient reason for removal from office.<sup>(6)</sup>

6. *Id.* at p. 5401.

Mr. Walsh concluded his argument based on the lack of evidence of charges and on the good character and reputation of the respondent:

Gentlemen, all I can say to you is that if this case were being tried in an ordinary court a demurrer to the evidence would be sustained. The law is that those bringing these charges must prove the receipt of income; they must prove the amount that was paid out against that income; they must prove what his exemptions were; they must prove what his allowances were; they must prove a tax liability. Those matters would all have been looked into, and as we look into them in this case there is no tax liability. When Judge Ritter swears he did not defraud the Government of a dollar, when he says that the \$6.25 tax was not due because his exemptions exceeded that sum, the court would direct a verdict in his favor.

In 1930 Judge Ritter had a loss which, added to his taxes and other expenditures, gave him a leeway of \$4,600 over and above the income that he could be charged with having received. He testified to this, and you ought to believe that he testified to the truth, for a charge must be supported by something greater, I say, than the mere assertion of counsel, and nothing else has been introduced in this case in support of that charge. If Judge Ritter were found guilty upon that charge, which was filed in this Court on March 30, 1936—after he came here to defend himself against the other charges—that would be a monstrous thing. Those bringing the charge did not, nor

could they, make proof that Judge Ritter owed his Government a cent of income taxes or that Judge Ritter did anything improper in the filing of his return. It ought to be the pleasure of this body to acquit him of the charges with respect to income taxes, because the law protects him, because he is innocent of any offense in that regard.

Take this whole case in its entirety, gentlemen. I have tried to argue it on the facts. I have drawn no conclusions which I did not honestly believe came from these facts. My argument is backed up by the belief that you must recognize and accept his innocence as he stood here, a brave and manly man, testifying in opposition to these charges which have been made against him. It will not do to say that he undermined the dignity or the honor of the court. He did nothing in his whole career in Florida, according to the witnesses, which would belittle that dignity or besmirch his honor.

There is another thing I wish to call to your attention. I know and you know that a judge ought to have a good reputation. In this case, however, where a charge is made against his integrity, where a charge of corruption is made against him, he put his reputation in that community in evidence before this body.<sup>(7)</sup>

Mr. Sumners began and concluded his argument, the final argument in the case, as follows:

We do not assume the responsibility, Members of this distinguished Court, of proving that the respondent in this case is guilty of a crime as that term

is known to criminal jurisprudence. We do assume the responsibility of bringing before you a case, proven facts, the reasonable and probable consequences of which are to cause the people to doubt the integrity of the respondent presiding as a judge among a free people.

We take the position, first, that justice must be done to the respondent. The respondent must be protected against those who would make him afraid. But we take the position also that when a judge on the bench, by his own conduct, does that which makes an ordinary person doubt his integrity, doubt whether his court is a fair place to go, doubt whether he, that ordinary person, will get a square deal there; doubt whether the judge will be influenced by something other than the sworn testimony, that judge must go.

This august body writes the code of judicial ethics. This Court fixes the standard of permissible judicial conduct. It will not be, it cannot be, that someone on the street corner will destroy the confidence of the American people in the courts of this country. That cannot happen if the courts are kept clean. If confidence in the courts of this country is destroyed it is going to be destroyed from within by the judges themselves. I declare to you, standing in my place of responsibility, that that is one thing which neither the House nor the Senate can permit to be tampered with or which they can be easy about. . . .

Now, let us look at this case. I do not know anything about what happened in Colorado, but when we see this respondent in this record he is down there in Florida as the secretary of a real-estate concern. After that he forms

7. *Id.* at p. 5468.

a copartnership with Mr. Rankin. Two years and three months after that time he occupies a position on the Federal bench, and when the Government put him there, when the people put him there, they said to him, "All we ask of you is to behave yourself." Good behavior! What does that mean? It means obey the law, keep yourself free from questionable conduct, free from embarrassing entanglements, free from acts which justify suspicion; hold in clean hands the scales of justice. That means that he shall not take chances that would tend to cause the people to question the integrity of the court, because where doubt enters confidence departs. Is not that sound? When a judge on the bench, by his own conduct, arouses a substantial doubt as to his judicial integrity he commits the highest crime that a judge can commit under the Constitution. It is not essential to prove guilt. There is nothing in the Constitution and nothing in the philosophy of a free government that holds that a man shall continue to occupy office until it can be established beyond a reasonable doubt that he is not fit for the office. It is the other way. When there is resulting from the judge's conduct a reasonable doubt as to his integrity he has no right to stay longer. He has forfeited his right. It is the high duty of this Court to write the judgment and make effective the terms of that contract. . . .<sup>(8)</sup>

MR. MANAGER SUMNERS: I do not want to be tedious, but this is very important, because these things go down to the depths of this man's character.

When he wrote this letter he referred to him as "A. L. Rankin, of An-

dalusia, Ala." Why did he do that? Because the job Rankin was trying to get was in Alabama. Just think of that, and weigh it.

In another letter he said:

I want to say that Judge Rankin is a man of the highest character and integrity. He is one of the ablest common-law lawyers in the South.

That is a statement made by a judge upon his responsibility.

We were partners in the practice of law in West Palm Beach before my appointment on the bench. I know of no man better qualified from the standpoint of experience, ability, and character for the position.

And so forth. Then he writes again in another letter that if he is appointed he will raise the bench to a high place.

I say a man who will not speak the truth above his signed name will not swear it, and a man who will not state the truth, and who does those things which arouse doubt as to his integrity must go from the bench.

I appreciate profoundly the attention which the Members of this honorable Court have given the case.

There ought to be a unanimous judgment in this case, and let it ring out from this Chamber all over the Nation that from now on men who hold positions in the Federal judiciary must be obedient to the high principles which in the nature of things it is essential for a judge to manifest.

A few Federal judges can reflect upon the great body of honorable men who hold these high positions.

There is another thing I was about to forget. Of course, the bondholders in Chicago did not protest the \$90,000 fee to Rankin. The attorneys for the bond-

8. *Id.* at p. 5469.



holders and Mr. Holland were in the respondent's court at the same time. They came to represent 93 percent of the \$2,500,000 of the first-mortgage bonds. They heard the respondent advised of the champertous conduct of Richardson, Rankin et al., and they saw the respondent approve. They were virtually kicked out of the court. They wanted the case out of that court and away from Rankin and the respondent just as quickly as they could get it out, and they would have stood not only for that fee of \$90,000 but for more; and any of you practicing law would have done the same thing under the circumstances. You remember McPherson said respondent was positive, very positive, about Mr. Holland. Respondent was a great deal stronger with regard to the attorney for the bondholders. Remember the judge asked Holland, "Who bought you off?" of course they were glad to get out at almost any price.

Members of the Court, there is a great deal more which ought to be said, but you have the record and my time has about expired. I have a duty to perform and you have yours. Mine is finished.

The House has done all the House can do toward protecting the judiciary of the country. The people have trusted in you. Counsel for the respondent kept emphasizing the fact that this respondent stood and swore, stood and swore, stood and swore. I remember that I saw the Members of this honorable Court lift their hands to God Almighty, and, in that oath which they took, pledge themselves to rise above section and party entanglements and to be true to the people of the Nation in the exercise of this high power. I have no doubt you will do it.

I thank this honorable Court for the courtesy and consideration which have been shown to my colleagues and to me as we have tried to discharge our constitutional duty in this matter.<sup>(9)</sup>

### *Deliberation and Judgment*

#### **§ 18.17 Deliberation was followed by conviction on a general article of impeachment and by judgment of removal from office in the trial of Judge Halsted Ritter.**

Final arguments in the Ritter trial having been concluded on Apr. 14, 1936, the Court of Impeachment adjourned until Apr. 15, when the doors of the Senate were closed for deliberation on motion of Senator Henry F. Ashurst, of Arizona. The Senate deliberated with closed doors for 4 hours and 37 minutes. A unanimous-consent agreement entered into while the Senate was deliberating with closed doors was printed in the Record; the order provided for a vote on the articles of impeachment on Friday, Apr. 17.<sup>(10)</sup>

Deliberation with closed doors was continued on Apr. 16, 1936, for 5 hours and 48 minutes. When the doors were opened, the Senate adopted orders to return evidence

9. *Id.* at pp. 5472, 5473.

10. 80 CONG. REC. 5505, 74th Cong. 2d Sess.

to proper persons, to allow each Senator to file written opinions within four days after the final vote, and to provide a method of vote. The latter order read as follows:

Ordered, That upon the final vote in the pending impeachment of Halsted L. Ritter, the Secretary shall read the articles of impeachment separately and successively, and when the reading of each article shall have been concluded the Presiding Officer shall state the question thereon as follows:

"Senators, how say you? Is the respondent, Halsted L. Ritter, guilty or not guilty?"

Thereupon the roll of the Senate shall be called, and each Senator as his name is called, unless excused, shall arise in his place and answer "guilty" or "not guilty."<sup>(11)</sup>

On Apr. 17, 1936, the Senate convened as a Court of Impeachment to vote on the articles against Judge Ritter. Senator Joseph T. Robinson, of Arkansas, announced those Senators absent and excused and announced that pairs would not be recognized in the proceedings. Eighty-four Senators answered to their names on the quorum call.

President pro tempore Key Pittman, of Nevada, proceeded to put the vote on the articles of impeachment, a two-thirds vote being required to convict. The vote

was insufficient to convict on the first six articles: Article I: 55 "guilty";—29 "not guilty"; Article II: 52 "guilty"—32 "not guilty"; Article III: 44 "guilty"—39 "not guilty"; Article IV: 36 "guilty"—48 "not guilty"; Article V: 36 "guilty"—48 "not guilty"; Article VI: 46 "guilty"—37 "not guilty." But on the final Article, Article VII, the vote was: 56 "guilty"—28 "not guilty." So the Senate convicted Judge Ritter on the seventh article of impeachment, charging general misbehavior and conduct that brought his court into scandal and disrepute.

Senator Warren R. Austin, of Vermont, made a point of order against the vote on the ground that two-thirds had not voted to convict, Article VII being an accumulation of facts and circumstances. The President pro tempore sustained a point of order that Senator Austin was indulging in argument rather than stating the grounds for his point of order, and overruled Senator Austin's point of order.<sup>(12)</sup>

Senator Ashurst submitted an order both removing Judge Ritter from office and disqualifying him from holding and enjoying any office of honor, trust, or profit under the United States. Senator Robert M. La Follette, Jr., of Wisconsin,

11. *Id.* at pp. 5558, 5559.

12. *Id.* at p. 5606.

asked for a division of the question, but Senator George W. Norris, of Nebraska, suggested that Senator Ashurst should submit two orders, since removal followed from conviction but disqualification did not. Senator Ashurst thereupon withdrew the original order and submitted an order removing Judge Ritter from office. The President pro tempore ruled that no vote was required on the order, removal automatically following conviction for high crimes and misdemeanors under section 4 of article II of the U.S. Constitution. The President pro tempore then pronounced judgment:

JUDGMENT

The Senate having tried Halsted L. Ritter, United States district judge for the southern district of Florida, upon seven several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of charges contained therein: It is therefore

*Ordered and adjudged*, That the said Halsted L. Ritter be, and he is hereby, removed from office.

Senator Ashurst submitted a second order disqualifying the respondent from holding an office of honor, trust, or profit under the United States. It was agreed, in reliance on the Robert Archbald proceedings, that only a majority vote was required for passage.

The order for disqualification failed on a yea and nay vote—yeas 0, nays 76.

The Senate adopted an order communicating the order and judgment to the House, and the Senate adjourned *sine die* from the Court of Impeachment.<sup>(13)</sup>

Subsequent to his conviction and removal from office, the respondent brought an action in the U.S. Court of Claims for back salary, claiming that the Senate had exceeded its jurisdiction in trying him for nonimpeachable charges. The Court of Claims dismissed the claim for want of jurisdiction on the ground that the impeachment power was vested in Congress and was not subject to judicial review.<sup>(14)</sup>

**§ 18.18 The order and judgment of the Senate in the Ritter impeachment trial were messaged to the House.**

On Apr. 20, 1936,<sup>(15)</sup> the order and judgment in the Halsted Rit-

13. *Id.* at pp. 5606, 5607.

14. *Ritter v United States*, 84 Ct. Cl 293 (1936), cert. denied, 300 U.S. 668 (1937). The opinion of the Court of Claims cited dicta in the case of *Mississippi v Johnson*, 71 U.S. 475 (1866), to support the conclusion that the impeachment power was political in nature and not subject to judicial review.

15. 80 CONG. REC. 5703, 5704, 74th Cong. 2d Sess.

ter impeachment trial were received in the House:

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Home, its enrolling clerk, announced that the Senate had ordered that the Secretary be directed to communicate to the President of the United States and the House of Representatives the order and judgment of the Senate in the case of Halsted L. Ritter, and transmit a certified copy of same to each, as follows:

I, Edwin A. Halsey, Secretary of the Senate of the United States of America, do hereby certify that the hereto attached document is a true and correct copy of the order and judgment of the Senate, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, entered in the said trial on April 17, 1936.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Senate of the United States of

America, this the 18th day of April, A.D. 1936.

EDWIN A. HALSEY,  
*Secretary of the Senate  
of the United States.*

In the Senate of the United States of America, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida

JUDGMENT

APRIL 17, 1936.

The Senate having tried Halsted L. Ritter, United States district judge for the southern district of Florida, upon seven several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of charges contained therein: It is therefore

Ordered and adjudged, That the said Halsted L. Ritter be, and he is hereby, removed from office.

Attest:

EDWIN A. HALSEY  
*Secretary.*

## APPENDIX

### **Report by the Staff of the Impeachment Inquiry on the Constitutional Grounds for Presidential Impeachment, Committee Print, Committee on the Judiciary, 93d Cong. 2d Sess., Feb. 1974**

#### **I. Introduction**

The Constitution deals with the subject of impeachment and conviction at six places. The scope of the power is set out in Article II, Section 4:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Other provisions deal with procedures and consequences. Article I, Section 2 states:

The House of Representatives . . . shall have the sole Power of Impeachment.

Similarly, Article I, Section 3, describes the Senate's role:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

The same section limits the consequences of judgment in cases of impeachment:

Judgment in Cases of Impeachment shall not extend further than to re-

moval from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Of lesser significance, although mentioning the subject, are: Article II, Section 2:

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Article III, Section 2:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . .

Before November 15, 1973 a number of Resolutions calling for the impeachment of President Richard M. Nixon had been introduced in the House of Representatives, and had been referred by the Speaker of the House, Hon. Carl Albert, to the Committee on the Judiciary for consideration, investigation and report. On November 15, anticipating the magnitude of the Committee's task, the House voted funds to enable the Committee to carry out its assignment and in that regard to select an inquiry staff to assist the Committee.

On February 6, 1974, the House of Representatives by a vote of 410 to 4

“authorized and directed” the Committee on the Judiciary “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.”

To implement the authorization (H. Res. 803) the House also provided that “For the purpose of making such investigation, the committee is authorized to require . . . by subpoena or otherwise . . . the attendance and testimony of any person . . . and . . . the production of such things; and . . . by interrogatory, the furnishing of such information, as it deems necessary to such investigation.”

This was but the second time in the history of the United States that the House of Representatives resolved to investigate the possibility of impeachment of a President. Some 107 years earlier the House had investigated whether President Andrew Johnson should be impeached. Understandably, little attention or thought has been given the subject of the presidential impeachment process during the intervening years. The Inquiry Staff, at the request of the Judiciary Committee, has prepared this memorandum on constitutional grounds for presidential impeachment. As the factual investigation progresses, it will become possible to state more specifically the constitutional, legal and conceptual framework within which the staff and the Committee work.

Delicate issues of basic constitutional law are involved. Those issues cannot be defined in detail in advance of full investigation of the facts. The Supreme Court of the United States does not reach out, in the abstract, to rule on the constitutionality of statutes or of conduct. Cases must be brought and adjudicated on par-

ticular facts in terms of the Constitution. Similarly, the House does not engage in abstract, advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers; rather, it must await full development of the facts and understanding of the events to which those facts relate.

What is said here does not reflect any prejudgment of the facts or any opinion or inference respecting the allegations being investigated. This memorandum is written before completion of the full and fair factual investigation the House directed be undertaken. It is intended to be a review of the precedents and available interpretive materials, seeking general principles to guide the Committee.

This memorandum offers no fixed standards for determining whether grounds for impeachment exist. The framers did not write a fixed standard. Instead they adopted from English history a standard sufficiently general and flexible to meet future circumstances and events, the nature and character of which they could not foresee.

The House has set in motion an unusual constitutional process, conferred solely upon it by the Constitution, by directing the Judiciary Committee to “investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach.” This action was not partisan. It was supported by the overwhelming majority of both political parties. Nor was it intended to obstruct or weaken the presidency. It was supported by Members firmly committed to the need for a strong presidency and a healthy executive branch of our government. The House of Representatives acted out of a clear sense of constitu-

tional duty to resolve issues of a kind that more familiar constitutional processes are unable to resolve.

To assist the Committee in working toward that resolution, this memorandum

reports upon the history, purpose and meaning of the constitutional phrase, "Treason, Bribery, or other high Crimes and Misdemeanors."

## II. The Historical Origins of Impeachment

The Constitution provides that the President ". . . shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." The framers could have written simply "or other crimes"—as indeed they did in the provision for extradition of criminal offenders from one state to another. They did not do that. If they had meant simply to denote seriousness, they could have done so directly. They did not do that either. They adopted instead a unique phrase used for centuries in English parliamentary impeachments, for the meaning of which one must look to history.

The origins and use of impeachment in England, the circumstances under which impeachment became a part of the American constitutional system, and the American experience with impeachment are the best available sources for developing an understanding of the function of impeachment and the circumstances in which it may become appropriate in relation to the presidency.

### A. THE ENGLISH PARLIAMENTARY PRACTICE

Alexander Hamilton wrote, in No. 65 of *The Federalist*, that Great Britain had served as "the model from which [impeachment] has been borrowed." Accordingly, its history in England is useful to an understanding of the purpose and scope of impeachment in the United States.

Parliament developed the impeachment process as a means to exercise some measure of control over the power of the King. An impeachment proceeding in England was a direct method of bringing to account the King's ministers and favorites—men who might otherwise have been beyond reach. Impeachment, at least in its early history, has been called "the most powerful weapon in the political armoury, short of civil war."<sup>(1)</sup> It played a continuing role in the struggles between King and Parliament that resulted in the formation of the unwritten English constitution. In this respect impeachment was one of the tools used by the English Parliament to create more responsive and responsible government and to redress imbalances when they occurred.<sup>(2)</sup>

The long struggle by Parliament to assert legal restraints over the unbridled will of the King ultimately reached a climax with the execution of Charles I in 1649 and the establishment of the Commonwealth under Oliver Cromwell. In the course of that struggle, Parliament sought to exert restraints over the King by removing those of his ministers who most effectively advanced the King's absolutist purposes. Chief among them was

1. Plucknett, "Presidential Address" reproduced in 3 *Transactions, Royal Historical Society*, 5th Series, 145 (1952).

2. See generally C. Roberts, *The Growth of Responsible Government in Stuart England* (Cambridge 1966).

Thomas Wentworth, Earl of Strafford. The House of Commons impeached him in 1640. As with earlier impeachments, the thrust of the charge was damage to the state.<sup>(3)</sup> The first article of impeachment alleged.<sup>(4)</sup>

That he . . . hath traiterously endeavored to subvert the Fundamental Laws and Government of the Realms . . . and in stead thereof, to introduce Arbitrary and Tyrannical Government against Law. . . .

The other articles against Strafford included charges ranging from the allegation that he had assumed regal power and exercised it tyrannically to the charge that he had subverted the rights of Parliament.<sup>(5)</sup>

Characteristically, impeachment was used in individual cases to reach of-

fenses, as perceived by Parliament, against the system of government. The charges, variously denominated "treason," "high treason," "misdemeanors," "malversations," and "high Crimes and Misdemeanors," thus included allegations of misconduct as various as the kings (or their ministers) were ingenious in devising means of expanding royal power.

At the time of the Constitutional Convention the phrase "high Crimes and Misdemeanors" had been in use for over 400 years in impeachment proceedings in Parliament.<sup>(6)</sup> It first appears in 1386 in the impeachment of the King's Chancellor, Michael de la Pole, Earl of Suffolk.<sup>(7)</sup> Some of the charges may have involved common law offenses.<sup>(8)</sup> Others

3. Strafford was charged with treason, a term defined in 1352 by the Statute of Treasons. 25 Edw. 3, stat. 5, c. 2 (1352). The particular charges against him presumably would have been within the compass of the general, or "salvo," clause of that statute, but did not fall within any of the enumerated acts of treason. Strafford rested his defense in part on that failure; his eloquence on the question of retrospective treasons ("Beware you do not awake these sleeping lions, by the searching out some neglected moth-eaten records, they may one day tear you and your posterity in pieces: it was your ancestors' care to chain them up within the barricadoes of statutes; be not you ambitious to be more skillful and curious than your forefathers in the art of killing." *Celebrated Trials* 518 [Phila. 1837]) may have dissuaded the Commons from bringing the trial to a vote in the House of Lords: instead they caused his execution by bill of attainder.
4. J. Rushworth, *The Tryal of Thomas Earl of Strafford*, in 8 Historical Collections 8 (1686).
5. Rushworth, *supra* n. 4, at 8–9. R. Berger, *Impeachment: The Constitutional Problems* 30 (1973), states that the impeachment of Strafford ". . . constitutes a great watershed in English constitutional history of which the Founders were aware."

6. See generally A. Simpson, *A Treatise on Federal Impeachments* 81–190 (Philadelphia, 1916) (Appendix of English Impeachment Trials); M. V. Clarke, "The Origin of Impeachment" in *Oxford Essays in Medieval History* 164 (Oxford, 1934). Reading and analyzing the early history of English impeachments is complicated by the paucity and ambiguity of the records. The analysis that follows in this section has been drawn largely from the scholarship of others, checked against the original records where possible.

The basis for what became the impeachment procedure apparently originated in 1341, when the King and Parliament alike accepted the principle that the King's ministers were to answer in Parliament for their misdeeds. C. Roberts, *supra* n. 2, at 7. Offenses against Magna Carta, for example, were failing for technicalities in the ordinary courts, and therefore Parliament provided that offenders against Magna Carta be declared in Parliament and judged by their peers. Clarke, *supra*, at 173.

7. Simpson, *supra* n. 6, at 86; Berger, *supra* n. 5, at 61, Adams and Stevens, *Select Documents of English Constitutional History* 148 (London, 1927).
8. For example, de la Pole was charged with purchasing property of great value from the King while using his position as Chancellor to have the lands appraised at less than they were



plainly did not: de la Pole was charged with breaking a promise he made to the full Parliament to execute in connection with a parliamentary ordinance the advice of a committee of nine lords regarding the improvement of the estate of the King and the realm; “this was not done, and it was the fault of himself as he was then chief officer.” He was also charged with failing to expend a sum that Parliament had directed be used to ransom the town of Ghent, because of which “the said town was lost.”<sup>(9)</sup>

The phrase does not reappear in impeachment proceedings until 1450. In that year articles of impeachment against William de la Pole, Duke of Suffolk (a descendant of Michael), charged him with several acts of high treason, but also with “high Crimes and Misdemeanors,”<sup>(10)</sup> including such various offenses as “advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of the laws” “procuring offices for persons who were unfit, and unworthy of them” and “squandering away the public treasure.”<sup>(11)</sup>

Impeachment was used frequently during the reigns of James I (1603–1625) and Charles I (1628–1649). During the period from 1620 to 1649 over 100 impeachments were voted by the House of Commons.<sup>(12)</sup> Some of these impeachments charged high treason, as in the

- 
- worth, all in violation of his oath, in deceit of the King and in neglect of the need of the realm. Adams and Stevens, *supra* n. 7, at 148.
9. Adams and Stevens, *supra* n. 7, at 148–150.
  10. 4 Hatsell 67 (Shannon, Ireland, 1971, reprint of London 1796, 1818).
  11. 4 Hatsell, *supra* n. 10, at 67, charges 2, 6 and 12.
  12. The Long Parliament (1640–48) alone impeached 98 persons. Roberts *supra* n. 2, at 133.

case of Strafford; others charged high crimes and misdemeanors. The latter included both statutory offenses, particularly with respect to the Crown monopolies, and nonstatutory offenses. For example, Sir Henry Yelverton, the King’s Attorney General, was impeached in 1621 of high crimes and misdemeanors in that he failed to prosecute after commencing suits, and exercised authority before it was properly vested in him.<sup>(13)</sup>

There were no impeachments during the Commonwealth (1649–1660). Following the end of the Commonwealth and the Restoration of Charles II (1660–1685) a more powerful Parliament expanded somewhat the scope of “high Crimes and Misdemeanors” by impeaching officers of the Crown for such things as negligent discharge of duties<sup>(14)</sup> and improprieties in office.<sup>(15)</sup>

The phrase “high Crimes and Misdemeanors” appears in nearly all of the comparatively few impeachments that occurred in the eighteenth century. Many of the charges involved abuse of official power or trust. For example, Edward, Earl of Oxford, was charged in 1701 with “violation of his duty and trust” in that,

13. 2 Howell *State Trials* 1135, 1136–37 (charges 1, 2 and 6). See generally Simpson, *supra* n. 6, at 91–127; Berger, *supra* n. 5, at 67–73.
14. Peter Pett, Commissioner of the Navy, was charged in 1668 with negligent preparation for an invasion by the Dutch, and negligent loss of a ship. The latter charge was predicated on alleged willful neglect in failing to insure that the ship was brought to a mooring. 6 Howell *State Trials* 865, 866–67 (charges 1, 5).
15. Chief Justice Scroggs was charged in 1680, among other things, with browbeating witnesses and commenting on their credibility, and with cursing and drinking to excess, thereby bringing “the highest scandal on the public justice of the kingdom.” 8 Howell *State Trials* 197, 200 (charges 7, 8).

while a member of the King's privy council, he took advantage of the ready access he had to the King to secure various royal rents and revenues for his own use, thereby greatly diminishing the revenues of the crown and subjecting the people of England to "grievous taxes."<sup>(16)</sup> Oxford was also charged with procuring a naval commission for William Kidd, "known to be a person of ill fame and reputation," and ordering him "to pursue the intended voyage, in which Kidd did commit diverse piracies . . . being thereto encouraged through hopes of being protected by the high station and interest of Oxford, in violation of the law of nations, and the interruption and discouragement of the trade of England."<sup>(17)</sup>

The impeachment of Warren Hastings, first attempted in 1786 and concluded in 1795,<sup>(18)</sup> is particularly important because contemporaneous with the American Convention debates. Hastings was the first Governor-General of India. The articles indicate that Hastings was being charged with high crimes and misdemeanors in the form of gross maladministration, corruption in office, and cruelty toward the people of India.<sup>(19)</sup>

16. Simpson, *supra* n. 6, at 144.

17. Simpson, *supra* n. 6, at 144.

18. See generally Marshall, *The Impeachment of Warren Hastings* (Oxford, 1965).

19. Of the original resolutions proposed by Edmund Burke in 1786 and accepted by the House as articles of impeachment in 1787, both criminal and non-criminal offenses appear. The fourth article, for example, charging that Hastings had confiscated the landed income of the Begums of Oudh, was described by Pitt as that of all others that bore the strongest marks of criminality, Marshall, *supra* n. 19, at 53.

The third article, on the other hand, known as the Benares charge, claimed that circumstances imposed upon the Governor-General duty to conduct himself "on the most dis-

Two points emerge from the 400 years of English parliamentary experience with the phrase "high Crimes and Misdemeanors." First, the particular allegations of misconduct alleged damage to the state in such forms as misapplication of funds, abuse of official power, neglect of duty, encroachment on Parliament's prerogatives, corruption, and betrayal of trust.<sup>(20)</sup> Second, the phrase "high Crimes and Misdemeanors" was confined to parliamentary impeachments; it had no roots in the ordinary criminal law,<sup>(21)</sup> and the particular allegations of misconduct under that heading were not necessarily limited to common law or statutory derelictions or crimes.

#### B. THE INTENTION OF THE FRAMERS

The debates on impeachment at the Constitutional Convention in Philadelphia focus principally on its applicability to the President. The framers sought to create a responsible though strong executive; they hoped, in the words of Elbridge Gerry of Massachusetts, that "the maxim would never be adopted here that the chief Magistrate could do [no] wrong."<sup>(22)</sup> Impeachment was to be one of the central elements of executive responsibility

tinguished principles of good faith, equity, moderation and mildness." Instead, continued the charge, Hastings provoked a revolt in Benares, resulting in "the arrest of the rajah, three revolutions in the country and great loss, whereby the said Hastings is guilty of a high crime and misdemeanor in the destruction of the country aforesaid." The Commons accepted this article, voting 119-79 that these were grounds for impeachment. Simpson, *supra* n. 6, at 168-170; Marshall, *supra* n. 19, at xv, 46.

20. See, e.g., Berger, *supra* n. 5, at 70-71.

21. Berger, *supra* n. 5, at 62.

22. *The Records of the Federal Convention* 66 (M. Farrand ed. 1911) (brackets in original). Hereafter cited as Farrand.

in the framework of the new government as they conceived it.

The constitutional grounds for impeachment of the President received little direct attention in the Convention; the phrase “other high Crimes and Misdemeanors” was ultimately added to “Treason” and “Bribery” with virtually no debate. There is evidence, however, that the framers were aware of the technical meaning the phrase had acquired in English impeachments.

Ratification by nine states was required to convert the Constitution from a proposed plan of government to the supreme law of the land. The public debates in the state ratifying conventions offer evidence of the contemporaneous understanding of the Constitution equally as compelling as the secret deliberations of the delegates in Philadelphia. That evidence, together with the evidence found in the debates during the First Congress on the power of the President to discharge an executive officer appointed with the advice and consent of the Senate, shows that the framers intended impeachment to be a constitutional safeguard of the public trust, the powers of government conferred upon the President and other civil officers, and the division of powers among the legislative, judicial and executive departments.

#### 1. THE PURPOSE OF THE IMPEACHMENT REMEDY

Among the weaknesses of the Articles of Confederation apparent to the delegates to the Constitutional Convention was that they provided for a purely legislative form of government whose ministers were subservient to Congress. One of the first decisions of the delegates was that their new plan should include a sep-

arate executive judiciary, and legislature.<sup>(23)</sup> However, the framers sought to avoid the creation of a too-powerful executive. The Revolution had been fought against the tyranny of a king and his council, and the framers sought to build in safeguards against executive abuse and usurpation of power. They explicitly rejected a plural executive, despite arguments that they were creating “the fetus of monarchy,”<sup>(24)</sup> because a single person would give the most responsibility to the office.<sup>(25)</sup> For the same reason, they rejected proposals for a council of advice or privy council to the executive (footnote omitted).

The provision for a single executive was vigorously defended at the time of the state ratifying conventions as a protection against executive tyranny and wrongdoing. Alexander Hamilton made the most carefully reasoned argument in *Federalist* No. 70, one of the series of *Federalist Papers* prepared to advocate the ratification of the Constitution by the State of New York. Hamilton criticized both a plural executive and a council because they tend “to conceal faults and destroy responsibility.” A plural executive, he wrote, deprives the people of “the two greatest securities they can have for the faithful exercise of any delegated power”—“[r]esponsibility . . . to censure and to punishment.” When censure is divided and responsibility uncertain, “the restraints of public opinion . . . lose their efficacy” and “the opportunity of discovering with facility and clearness

23. 1 Farrand 322.

24. 1 Farrand 66.

25. This argument was made by James Wilson of Pennsylvania, who also said that he preferred a single executive as “giving most energy dispatch and responsibility to the office.” 1 Farrand 65.

the misconduct of the persons [the public] trust, in order either to their removal from office, or to their actual punishment. in cases which admit of it" is lost.<sup>(26)</sup> A council, too, "would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the (Chief Magistrate himself."<sup>(27)</sup> It is, Hamilton concluded, "far more safe [that] there should be a single object for the jealousy and watchfulness of the people; . . . all multiplication of the Executive is rather dangerous than friendly to liberty."<sup>(28)</sup>

James Iredell, who played a leading role in the North Carolina ratifying convention and later became a justice of the Supreme Court, said that under the proposed Constitution the President "is of a very different nature from a monarch. He

26. *The Federalist* No. 70, at 459–61 (Modern Library ea.) (A. Hamilton) (hereinafter cited as *Federalist*). The "multiplication of the Executive," Hamilton wrote, "adds to the difficulty of detection":

The circumstances which may have led to any national miscarriage of misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

If there should be "collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?" *Id.* at 460.

27. *Federalist* No. 70 at 461. Hamilton stated:

A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad, and are almost always a cloak to his faults. *Id.* at 462–63.

28. *Federalist* No. 70 at 462.

is to be . . . personally responsible for any abuse of the great trust reposed in him."<sup>(29)</sup> In the same convention, William R. Davie, who had been a delegate in Philadelphia, explained that the "predominant principle" on which the Convention had provided for a single executive was "the more obvious responsibility of one person." When there was but one man, said Davie, "the public were never at a loss" to fix the blame.<sup>(30)</sup>

James Wilson, in the Pennsylvania convention, described the security furnished by a single executive as one of its "very important advantages":

The executive power is better to be trusted when it has no screen. Sir, we have a responsibility in the person of our President; he cannot act improperly, and hide either his negligence or inattention; he cannot roll upon any other person the weight of his criminality; no appointment can take place without his nomination; and he is responsible for every nomination he makes. . . . Add to all this, that officer is placed high, and is possessed of power far from being contemptible, yet not a *single privilege* is annexed to his character; far from being above the laws, he is amenable to them in his private character as a citizen, and in his public character by *impeachment*.<sup>(31)</sup>

As Wilson's statement suggests, the impeachability of the President was considered to be an important element of his responsibility. Impeachment had been in-

29. 4 J. Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 74 (reprint of 2d ea.) (hereinafter cited as Elliot.)

30. Elliot 104.

31. 2 Elliot 480 (emphasis in original).

cluded in the proposals before the Constitutional Convention from its beginning.<sup>(32)</sup> A specific provision, making the executive removable from office on impeachment and conviction for “mal-practice or neglect of duty,” was unanimously adopted even before it was decided that the executive would be a single person.<sup>(33)</sup>

The only major debate on the desirability of impeachment occurred when it was moved that the provision for impeachment be dropped, a motion that was defeated by a vote of eight states to two.<sup>(34)</sup>

One of the arguments made against the impeachability of the executive was that he “would periodically be tried for his behavior by his electors” and “ought to be subject to no intermediate trial, by impeachment.”<sup>(35)</sup> Another was that the

executive could “do no criminal act without Coadjutors [assistants] who may be punished.”<sup>(36)</sup> Without his subordinates, it was asserted, the executive “can do nothing of consequence,” and they would “be amenable by impeachment to the public Justice.”<sup>(37)</sup>

This latter argument was made by Gouverneur Morris of Pennsylvania, who abandoned it during the course of the debate, concluding that the executive should be impeachable.<sup>(38)</sup> Before Morris changed his position, however, George Mason had replied to his earlier argument:

Shall any man be above justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors.<sup>(39)</sup>

32. The Virginia Plan, fifteen resolutions proposed by Edmund Randolph at the beginning of the Convention, served as the basis of its early deliberations. The ninth resolution gave the national judiciary jurisdiction over “impeachments of any National officers.” 1 Farrand 22.

33. 1 Farrand 88. Just before the adoption of this provision, a proposal to make the executive removable from office by the legislature upon request of a majority of the state legislatures had been overwhelmingly rejected. *Id.* 87. In the course of debate on this proposal, it was suggested that the legislature “should have power to remove the Executive at pleasure”—a suggestion that was promptly criticized as making him “the mere creature of the Legislature” in violation of “the fundamental principle of good Government,” and was never formally proposed to the Convention. *Id.* 85–86.

34. 2 Farrand 64, 69.

35. 2 Farrand 67 (Rufus King). Similarly, Gouverneur Morris contended that if an executive charged with a criminal act were reelected, “that will be sufficient proof of his innocence.” *Id.* 64.

It was also argued in opposition to the impeachment provision, that the executive should

not be impeachable “whilst in office”—an apparent allusion to the constitutions of Virginia and Delaware, which then provided that the governor (unlike other officers) could be impeached only after he left office. *Id.* See 7 Thorpe, *The Federal and State Constitutions* 3818 (1909) and 1 *Id.* 566. In response to this position, it was argued that corrupt elections would result, as an incumbent sought to keep his office in order to maintain his immunity from impeachment. He will “spare no efforts or no means whatever to get himself reelected,” contended William R. Davie of North Carolina. 2 Farrand 64. George Mason asserted that the danger of corrupting electors “furnished a peculiar reason in favor of impeachments whilst in office”: “Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?” *Id.* 65.

36. 2 Farrand 64.

37. 2 Farrand 54.

38. “This Magistrate is not the King but the prime-Minister. The people are the King.” 2 Farrand 69.

39. 2 Farrand 65.

James Madison of Virginia argued in favor of impeachment stating that some provision was “indispensable” to defend the community against “the incapacity, negligence or perfidy of the chief Magistrate.” With a single executive, Madison argued, unlike a legislature whose collective nature provided security, “loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.”<sup>(40)</sup> Benjamin Franklin supported impeachment as “favorable to the executive”; where it was not available and the chief magistrate had “rendered himself obnoxious,” recourse was had to assassination. The Constitution should provide for the “regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.”<sup>(41)</sup> Edmund Randolph also defended “the propriety of impeachments”:

The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided it will be irregularly inflicted by tumults & insurrections.<sup>(42)</sup>

The one argument made by the opponents of impeachment to which no direct response was made during the debate was that the executive would be too dependent on the legislature—that, as Charles Pinckney put it, the legislature would hold impeachment “as a rod over the Executive and by that means effectually destroy his independence.”<sup>(43)</sup>

40. 2 Farrand 65–66.

41. 2 Farrand 65.

42. 2 Farrand 67.

43. 2 Farrand 66.

That issue, which involved the forum for trying impeachments and the mode of electing the executive, troubled the Convention until its closing days. Throughout its deliberations on ways to avoid executive subservience to the legislature, however, the Convention never reconsidered its early decision to make the executive removable through the process of impeachment (footnote omitted).

#### 2. ADOPTION OF “HIGH CRIMES AND MISDEMEANORS”

Briefly, and late in the Convention, the framers addressed the question how to describe the grounds for impeachment consistent with its intended function. They did so only after the mode of the President’s election was settled in a way that did not make him (in the words of James Wilson) “the Minion of the Senate.”<sup>(45)</sup>

The draft of the Constitution then before the Convention provided for his removal upon impeachment and conviction for “treason or bribery.” George Mason objected that these grounds were too limited:

Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offenses. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined—As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments.<sup>(46)</sup>

Mason then moved to add the word “maladministration” to the other two grounds.

45. 2 Farrand 523.

46. 2 Farrand 550.

Maladministration was a term in use in six of the thirteen state constitutions as a ground for impeachment, including Mason's home state of Virginia.<sup>(47)</sup>

When James Madison objected that "so vague a term will be equivalent to a tenure during pleasure of the Senate," Mason withdrew "maladministration" and substituted "high crimes and misdemeanors agst. the State," which was adopted eight states to three, apparently with no further debate.<sup>(48)</sup>

That the framers were familiar with English parliamentary impeachment proceedings is clear. The impeachment of Warren Hastings, Governor-General of India, for high crimes and misdemeanors was voted just a few weeks before the beginning of the Constitutional Convention and George Mason referred to it in the debates.<sup>(49)</sup> Hamilton, in the *Federalist* No. 65, referred to Great Britain as "the model from which [impeachment] has been borrowed." Furthermore, the framers were well-educated men. Many were also lawyers. Of these, at least nine had studied law in England.<sup>(50)</sup>

The Convention had earlier demonstrated its familiarity with the term

"high misdemeanor."<sup>(51)</sup> A draft constitution had used "high misdemeanor" in its provision for the extradition of offenders from one state to another.<sup>(52)</sup> The Convention, apparently unanimously struck "high misdemeanor" and inserted "other crime," "in order to comprehend all proper cases: it being doubtful whether 'high misdemeanor' had not a technical meaning too limited."<sup>(53)</sup>

The "technical meaning" referred to is the parliamentary use of the term "high misdemeanor." Blackstone's *Commentaries on the Laws of England*—a work cited by delegates in other portions of the Convention's deliberations and which Madison later described (in the Virginia ratifying convention) as "a book which is in every man's hand"<sup>(54)</sup>—included "high misdemeanors" as one term

47. The grounds for impeachment of the Governor of Virginia were "mal-administration, corruption, or other means, by which the safety of the State may be endangered." 7 Thorpe, *The Federal and State Constitution* 3818 (1909).

48. 2 Farrand 550. Mason's wording was unanimously changed later the same day from "agst. the State" to "against the United States" in order to avoid ambiguity. This phrase was later dropped in the final draft of the Constitution prepared by the Committee on Style and Revision, which was charged with arranging and improving the language of the articles adopted by the Convention without altering its substance.

49. *Id.*

50. R. Berger, *Impeachment: The Constitutional Problems* 87, 89 and accompanying notes (1973).

51. As a technical term, a "high" crime signified a crime against the system of government, not merely a serious crime. "This element of injury to the commonwealth—that is, to the state itself and to its constitution—was historically the criterion for distinguishing a 'high' crime or misdemeanor from an ordinary one. The distinction goes back to the ancient law of treason, which differentiated 'high' from 'petit' treason." Bestor, Book Review, 49 Wash. L Rev. 255, 263–64 (1973). See 4 W. Blackstone, *Commentaries* 75.

52. The provision (article XV of Committee draft of the Committee on Detail) originally read: "Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence." 2 Farrand 187–88.

This clause was virtually identical with the extradition clause contained in article IV of the Articles of Confederation, which referred to "any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state. . . ."

53. 2 Farrand 443.

54. 3 Elliott 501.

for positive offenses “against the king and government.” The “first and principal” high misdemeanor, according to Blackstone, was “mal-administration of such high officers, as are in public trust and employment,” usually punished by the method of parliamentary impeachment.<sup>(55)</sup>

“High Crimes and Misdemeanors” has traditionally been considered a “term of art,” like such other constitutional phrases as “levying war” and “due process.” The Supreme Court has held that such phrases must be construed, not according to modern usage, but according to what the framers meant when they adopted them.<sup>(56)</sup> Chief Justice Marshall wrote of another such phrase:

It is a technical term. It is used in a very old statute of that country whose language is our language, and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our constitution in the sense which had been affixed to it by those from whom we borrowed it.<sup>(57)</sup>

### 3. GROUNDS FOR IMPEACHMENT

Mason’s suggestion to add “maladministration,” Madison’s objection to it as “vague,” and Mason’s substitution of “high crimes and misdemeanors agst the State” are the only comments in the Philadelphia convention specifically directed to the constitutional language de-

scribing the grounds for impeachment of the President. Mason’s objection to limiting the grounds to treason and bribery was that treason would “not reach many great and dangerous offences” including “[a]ttempts to subvert the Constitution.”<sup>(58)</sup> His willingness to substitute “high Crimes and Misdemeanors,” especially given his apparent familiarity with the English use of the term as evidenced by his reference to the Warren Hastings impeachment, suggests that he believed “high crimes and Misdemeanors” would cover the offenses about which he was concerned.

Contemporaneous comments on the scope of impeachment are persuasive as to the intention of the framers. In *Federalist* No. 65, Alexander Hamilton described the subject of impeachment as:

those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.<sup>(59)</sup>

Comments in the state ratifying conventions also suggest that those who adopted the Constitution viewed impeachment as a remedy for usurpation or abuse of power or serious breach of trust. Thus, Charles Cotesworth Pinckney of South Carolina stated that the impeachment power of the House reaches “those who behave amiss, or betray their public trust.”<sup>(60)</sup> Edmund Randolph said in the Virginia convention that the President may be impeached if he “misbehaves.”<sup>(61)</sup>

55. 4 Blackstone’s Commentaries 121 (emphasis omitted).

56. See *Murray v. Hoboken Land Co.*, 52 U.S. (18 How.) 272 (1856), *Davidson v. New Orleans*, 96 U.S. 97 (1878); *Smith v. Alabama*, 124 U.S. 465 (1888).

57. *United States v. Burr*, 25 Fed. Cas. 1, 159 (No. 14, 693) (C.C.D. Va. 1807).

58. 2 Farrand 550.

59. *The Federalist* No. 65 at 423–24 (Modern Library ed.) (A. Hamilton) (emphasis in original).

60. 4 Elliot 281.

61. 3 Elliot 201.



He later cited the example of the President's receipt of presents or emoluments from a foreign power in violation of the constitutional prohibition of Article I, section 9.<sup>(62)</sup> In the same convention George Mason argued that the President might use his pardoning power to "pardon crimes which were advised by himself" or, before indictment or conviction, "to stop inquiry and prevent detection." James Madison responded:

[I]f the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty. . . .<sup>(63)</sup>

In reply to the suggestion that the President could summon the Senators of only a few states to ratify a treaty, Madison said,

Were the President to commit any thing so atrocious . . . he would be impeached and convicted, as a majority of the states would be affected by his misdemeanor.<sup>(64)</sup>

Edmund Randolph referred to the checks upon the President:

62. 3 Elliot 486.

63. 3 Elliot 497–98. Madison went on to say, contrary to his position in the Philadelphia convention, that the President could be suspended when suspected, and his powers would devolve on the Vice President, who could likewise be suspended until impeached and convicted, if he were also suspected. *Id.* 498.

64. 3 Elliot 500. John Rutledge of South Carolina made the same point, asking "whether gentlemen seriously could suppose that a President, who has a character at stake, would be such a fool and knave as to join with ten others [two-thirds of a minimal quorum of the Senate] to tear up liberty by the roots, when a full Senate were competent to impeach him." 4 Elliot 268.

It has too often happened that powers delegated for the purpose of promoting the happiness of a community have been perverted to the advancement of the personal emoluments of the agents of the people; but the powers of the President are too well guarded and checked to warrant this illiberal aspersion.<sup>(65)</sup>

Randolph also asserted, however, that impeachment would not reach errors of judgment: "No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion resulted from a willful mistake of the heart, or an involuntary fault of the head."<sup>(66)</sup>

James Iredell made a similar distinction in the North Carolina convention, and on the basis of this principle said, "I suppose the only instances, in which the President would be liable to impeachment, would be where he has received a bribe, or had acted from some corrupt motive or other."<sup>(67)</sup> But he went on to argue that the President must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them—in this case, I ask whether, upon an impeachment for a misdemeanor upon such

65. 3 Elliot 117.

66. 3 Elliot 401.

67. 4 Elliot 126.

an account, the Senate would probably favor him.<sup>(68)</sup>

In short, the framers who discussed impeachment in the state ratifying conventions, as well as other delegates who favored the Constitution,<sup>(69)</sup> implied that it reached offenses against the government, and especially abuses of constitutional duties. The opponents did not argue that the grounds for impeachment had been limited to criminal offenses.

An extensive discussion of the scope of the impeachment power occurred in the House of Representatives in the First Session of the First Congress. The House was debating the power of the President to remove the head of an executive department appointed by him with the advice and consent of the Senate, an issue on which it ultimately adopted the position, urged primarily by James Madison, that the Constitution vested the power exclusively in the President. The discussion in the House lends support to the view that the framers intended the impeachment power to reach failure of the President to discharge the responsibilities of his office.<sup>(70)</sup>

68. 4 Elliot 127.

69. For example, Wilson Nicholas in the Virginia convention asserted that the President "is personally amenable for his mal-administration" through impeachment, 3 Elliot 17; George Nicholas in the same convention referred to the President's impeachability if he "deviates from his duty," *id.* 240. Archibald MacLaine in the South Carolina convention also referred to the President's impeachability for "any maladministration in his office," 4 Elliot 47; and Reverend Samuel Stillman of Massachusetts referred to his impeachability for "malconduct," asking, "With such a prospect, who will dare to abuse the powers vested in him by the people?" 2 Elliot 169.

70. Chief Justice Taft wrote with reference to the removal power debate in the opinion for the Court in *Myers v. United States*, that constitu-

Madison argued during the debate that the President would be subject to impeachment for "the wanton removal of meritorious officers."<sup>(71)</sup> He also contended that the power of the President unilaterally to remove subordinates was "absolutely necessary" because "it will make him in a peculiar manner, responsible for [the] conduct" of executive officers. It would, Madison said,

subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses.<sup>(72)</sup>

Elbridge Gerry of Massachusetts, who had also been a framer though he had opposed the ratification of the Constitution, disagreed with Madison's contentions about the impeachability of the President. He could not be impeached for dismissing a good officer, Gerry said, because he would be "doing an act which the Legislature has submitted to his discretion."<sup>(73)</sup> And he should not be held responsible for the acts of subordinate officers, who were themselves subject to impeachment and should bear their own responsibility.<sup>(74)</sup>

tional decisions of the First Congress "have always been regarded, as they should be regarded, as of the greatest weight in the interpretation of that fundamental instrument." 272 U.S. 52, 174-75 (1926).

71. 1 Annals of Cong. 498 (1789).

72. *Id.* 372-73.

73. *Id.* 502.

74. *Id.* 535-36. Gerry also implied, perhaps rhetorically, that a violation of the Constitution was grounds for impeachment. If, he said, the Constitution failed to include provision for removal of executive officers, an attempt by the legislature to cure the omission would be an attempt to amend the Constitution. But the Con-

Another framer, Abraham Baldwin of Georgia, who supported Madison's position on the power to remove subordinates, spoke of the President's impeachability for failure to perform the duties of the executive. If, said Baldwin, the President "in a fit of passion" removed "all the good officers of the Government" and the Senate were unable to choose qualified successors, the consequence would be that the President "would be obliged to do the duties himself; or, if he did not, we would impeach him, and turn him out of office, as he had done others."<sup>(75)</sup>

Those who asserted that the President has exclusive removal power suggested that it was necessary because impeachment, as Elias Boudinot of New Jersey contended, is "intended as a punishment for a crime, and not intended as the ordinary means of re-arranging the Departments."<sup>(76)</sup> Boudinot suggested that disability resulting from sickness or accident "would not furnish any good ground for impeachment; it could not be laid as treason or bribery, nor perhaps as a high crime or misdemeanor."<sup>(77)</sup> Fisher Ames of Massachusetts argued for the Presi-

dent's removal power because "mere intention [to do a mischief] would not be cause of impeachment" and "there may be numerous causes for removal which do not amount to a crime."<sup>(78)</sup> Later in the same speech Ames suggested that impeachment was available if an officer "misbehaves"<sup>(79)</sup> and for "malconduct."<sup>(80)</sup>

One further piece of contemporary evidence is provided by the *Lectures on Law* delivered by James Wilson of Pennsylvania in 1790 and 1791. Wilson described impeachments in the United States as "confined to political characters, to political crimes and misdemeanors, and to political punishment."<sup>(81)</sup> And, he said:

The doctrine of impeachments is of high import in the constitutions of free states. On one hand, the most powerful magistrates should be amenable to the law: on the other hand, elevated characters should not be sacrificed merely on account of their elevation. No one should be secure while he violates the constitution and the laws: every one should be secure while he observes them.<sup>(82)</sup>

stitution provided procedures for its amendment, and "an attempt to amend it in any other way may be a high crime or misdemeanor, or perhaps something worse." *Id.* 503.

75. *Id.* John Vining of Delaware commented: "The President. What are his duties? To see the laws faithfully executed; if he does not do this effectually, he is responsible. To whom? To the people. Have they the means of calling him to account, and punishing him for neglect? They have secured it in the Constitution, by impeachment, to be presented by their immediate representatives; if they fail here, they have another check when the time of election comes round." *Id.* 572.

76. *Id.* 375.

77. *Id.*

78. *Id.* 474.

79. *Id.* 475.

80. *Id.* 477. The proponents of the President's removal power were careful to preserve impeachment as a supplementary method of removing executive officials. Madison said impeachment will reach a subordinate "whose bad actions may be connived at or overlooked by the President." *Id.* 372. Abraham Baldwin said:

"The Constitution provides for—what? That no bad man should come into office. . . . But suppose that one such could be got in, he can be got out again in despite of the President. We can impeach him, and drag him from his place . . . ." *Id.* 558.

81. Wilson, *Lectures on Law*, in 1 *The Works of James Wilson* 426 (R. McCloskey ed. 1967).

82. *Id.* 425.

From the comments of the framers and their contemporaries, the remarks of the delegates to the state ratifying conventions, and the removal power debate in the First Congress, it is apparent that the scope of impeachment was not viewed narrowly. It was intended to provide a check on the President through impeachment, but not to make him dependent on the unbridled will of the Congress.

Impeachment, as Justice Joseph Story wrote in his *Commentaries on the Constitution* in 1833, applies to offenses of “a political character”:

Not but that crimes of a strictly legal character fall within the scope of the power . . . but that it has a more enlarged operation, and reaches, what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged of by the habits and rules and principles of diplomacy, or departmental operations and arrangements, of parliamentary practice, of executive customs and negotiations of foreign as well as domestic political movements; and in short, by a great variety of circumstances, as well those which aggravate as those which extenuate or justify the offensive acts which do not properly belong to the judicial character in the ordinary administration of justice, and are far

removed from the reach of municipal jurisprudence.<sup>(83)</sup>

#### C. THE AMERICAN IMPEACHMENT CASES

Thirteen officers have been impeached by the House since 1787: one President, one cabinet officer, one United States Senator, and ten Federal judges.<sup>(84)</sup> In addition there have been numerous resolutions and investigations in the House not resulting in impeachment. However, the action of the House in declining to impeach an officer is not particularly illuminating. The reasons for failing to impeach are generally not stated, and may have rested upon a failure of proof, legal insufficiency of the grounds, political judgment, the press of legislative business, or the closeness of the expiration of the session of Congress. On the other hand, when the House has voted to impeach an officer, a majority of the Members necessarily have concluded that the conduct alleged constituted grounds for impeachment.<sup>(85)</sup>

Does Article III, Section 1 of the Constitution, which states that judges “shall

**83.** 1 *J. Story Commentaries on the Constitution of the United States*, §764, at 559 (5th ed. 1905).

**84.** Eleven of these officers were tried in the Senate. Articles of impeachment were presented to the Senate against a twelfth (Judge English), but he resigned shortly before the trial. The thirteenth (Judge Delahay) resigned before articles could be drawn.

**85.** Only four of the thirteen impeachments—all involving judges—have resulted in conviction in the Senate and removal from office. While conviction and removal show that the Senate agreed with the House that the charges on which conviction occurred stated legally sufficient grounds for impeachment, acquittals offer no guidance on this question, as they may have resulted from a failure of proof, other factors, or a determination by more than one third of the Senators (as in the Blount and Belknap impeachments) that trial or conviction was inappropriate for want of jurisdiction.

hold their Offices during good Behavior,” limit the relevance of the ten impeachments of judges with respect to presidential impeachment standards as has been argued by some? It does not. The argument is that “good behavior” implies an additional ground for impeachment of judges not applicable to other civil officers. However, the only impeachment provision discussed in the Convention and included in the Constitution is Article II, Section 4, which by its expressed terms, applies to all civil officers, including judges, and defines impeachment offenses as “Treason, Bribery, and other high Crimes and Misdemeanors.”

In any event, the interpretation of the “good behavior” clause adopted by the House has not been made clear in any of the judicial impeachment cases. Which ever view is taken, the judicial impeachments have involved an assessment of the conduct of the officer in terms of the constitutional duties of his office. In this respect, the impeachments of judges are consistent with the three impeachments of nonjudicial officers.

Each of the thirteen American impeachments involved charges of misconduct incompatible with the official position of the officeholder. This conduct falls into three broad categories: (1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.<sup>(86)</sup>

**86.** A procedural note may be useful. The House votes both a resolution of impeachment against an officer and articles of impeachment containing the specific charges that will be

1. EXCEEDING THE POWERS OF THE OFFICE  
IN DEROGATION OF THOSE OF ANOTHER  
BRANCH OF GOVERNMENT

The first American impeachment, of Senator William Blount in 1797, was based on allegations that Blount attempted to incite the Creek and Cherokee Indians to attack the Spanish settlers of Florida and Louisiana, in order to capture the territory for the British. Blount was charged with engaging in a conspiracy to compromise the neutrality of the United States, in disregard of the constitutional provisions for conduct of foreign affairs. He was also charged, in effect, with attempting to oust the President’s lawful appointee as principal agent for Indian affairs and replace him with a rival, thereby intruding upon the President’s supervision of the executive branch.<sup>(87)</sup>

The impeachment of President Andrew Johnson in 1868 also rested on allegations that he had exceeded the power of his office and had failed to respect the prerogatives of Congress. The Johnson impeachment grew out of a bitter partisan struggle over the implementation of Reconstruction in the South following the Civil War, Johnson was charged with violation of the Tenure of Office Act, which purported to take away the President’s authority to remove members of his own cabinet and specifically provided that violation would be a “high misdemeanor,” as well as a crime. Believing the Act unconstitutional, Johnson re-

brought to trial in the Senate. Except for the impeachment of Judge Delahay, the discussion of grounds here is based on the formal articles.

**87.** After Blount had been impeached by the House, but before trial of the impeachment, the Senate expelled him for “having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator.”

moved Secretary of War Edwin M. Stanton and was impeached three days later.

Nine articles of impeachment were originally voted against Johnson, all dealing with his removal of Stanton and the appointment of a successor without the advice and consent of the Senate. The first article, for example, charged that President Johnson,

unmindful of the high duties of this office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, order in writing the removal of Edwin M. Stanton from the office of Secretary for the Department of War.<sup>(88)</sup>

Two more articles were adopted by the House the following day. Article Ten charged that Johnson, “unmindful of the high duties of his office, and the dignity and proprieties thereof,” had made inflammatory speeches that attempted to ridicule and disgrace the Congress.<sup>89</sup> Article Eleven charged him with attempts to prevent the execution of the Tenure of Office Act, an Army appropriations act, and a Reconstruction act designed by Congress “for the more efficient govern-

<sup>88</sup>. Article one further alleged that Johnson’s removal of Stanton was unlawful because the Senate had earlier rejected Johnson’s previous suspension of him.

<sup>89</sup>. Quoting from speeches which Johnson had made in Washington, D.C., Cleveland, Ohio and St. Louis, Missouri, article ten pronounced these speeches “censurable in any, [and] peculiarly indecent and unbecoming in the Chief Magistrate of the United States.” By means of these speeches, the article concluded, Johnson had brought the high office of the presidency “into contempt, ridicule, and disgrace. to the great scandal of all good citizens.”

ment of the rebel States.” On its face, this article involved statutory violations, but it also reflected the underlying challenge to all of Johnson’s post-war policies.

The removal of Stanton was more a catalyst for the impeachment than a fundamental cause.<sup>90</sup> The issue between the President and Congress was which of them should have the constitutional—and ultimately even the military—power to make and enforce Reconstruction policy in the South. The Johnson impeachment, like the British impeachments of great ministers, involved issues of state going to the heart of the constitutional division of executive and legislative power.

2. BEHAVING IN A MANNER GROSSLY  
INCOMPATIBLE WITH THE PROPER  
FUNCTION AND PURPOSE OF THE OFFICE

Judge John Pickering was impeached in 1803, largely for intoxication on the bench.<sup>(91)</sup> Three of the articles alleged errors in a trial in violation of his trust and duty as a judge; the fourth charged that Pickering, “being a man of loose morals and intemperate habits,” had appeared on the bench during the trial in a state of total intoxication and had used profane language. Seventy-three years later another judge, Mark Delahay, was impeached for intoxication both on and

<sup>90</sup>. The Judiciary Committee had reported a resolution of impeachment three months earlier charging President Johnson in its report with omissions of duty, usurpations of power and violations of his oath of office, the laws and the Constitution in his conflict of Reconstruction. The House voted down the resolution.

<sup>91</sup>. The issue of Pickering’s insanity was raised at trial in the Senate, but was not discussed by the House when it voted to impeach or to adopt articles of impeachment.

off the bench but resigned before articles of impeachment were adopted.

A similar concern with conduct incompatible with the proper exercise of judicial office appears in the decision of the House to impeach Associate Supreme Court Justice Samuel Chase in 1804. The House alleged that Justice Chase had permitted his partisan views to influence his conduct of two trials held while he was conducting circuit court several years earlier. The first involved a Pennsylvania farmer who had led a rebellion against a Federal tax collector in 1789 and was later charged with treason. The articles of impeachment alleged that “unmindful of the solemn duties of his office, and contrary to the sacred obligation” of his oath, Chase “did conduct himself in a manner highly arbitrary, oppressive, and unjust,” citing procedural rulings against the defense.

Similar language appeared in articles relating to the trial of a Virginia printer indicted under the Sedition Act of 1798. Specific examples of Chase’s bias were alleged, and his conduct was characterized as “an indecent solicitude . . . for the conviction of the accused, unbecoming even a public prosecutor but highly disgraceful to the character of a judge, as it was subversive of justice.” The eighth article charged that Chase, “disregarding the duties . . . of his judicial character. . . did . . . prevent his official right and duty to address the grand jury” by delivering “an intemperate and inflammatory political harangue.” His conduct was alleged to be a serious breach of his duty to judge impartially and to reflect on his competence to continue to exercise the office.

Judge West H. Humphreys was impeached in 1862 on charges that he joined the Confederacy without resigning

his federal judgeship.<sup>(92)</sup> Judicial prejudice against Union supporters was also alleged.

Judicial favoritism and failure to give impartial consideration to cases before him were also among the allegations in the impeachment of Judge George W. English in 1926. The final article charged that his favoritism had created distrust of the disinterestedness of his official actions and destroyed public confidence in his court.<sup>(93)</sup>

### 3. EMPLOYING THE POWER OF THE OFFICE FOR AN IMPROPER PURPOSE OR PERSONAL GAIN

Two types of official conduct for improper purposes have been alleged in past impeachments. The first type involves vindictive use of their office by federal judges; the second, the use of office for personal gain.

Judge James H. Peck was impeached in 1826 for charging with contempt a lawyer who had publicly criticized one of his decisions, imprisoning him, and ordering his disbarment for 18 months. The House debated whether this single instance of vindictive abuse of power was sufficient to impeach, and decided that it was, alleging that the conduct was unjust, arbitrary, and beyond the scope of Peck’s duty.

Vindictive use of power also constituted an element of the charges in two other impeachments. Judge George W.

<sup>92</sup> Although some of the language in the articles suggested treason, only high crimes and misdemeanors were alleged, and Humphrey’s offenses were characterized as a failure to discharge his judicial duties.

<sup>93</sup> Some of the allegations against Judges Harold Louderback (1932) and Halsted Ritter (1936) also involved judicial favoritism affecting public confidence in their courts.

English was charged in 1926, among other things, with threatening to jail a local newspaper editor for printing a critical editorial and with summoning local officials into court in a non-existent case to harangue them. Some of the articles in the impeachment of Judge Charles Swayne (1903) alleged that he maliciously and unlawfully imprisoned two lawyers and a litigant for contempt.

Six impeachments have alleged the use of office for personal gain or the appearance of financial impropriety while in office. Secretary of War William W. Belknap was impeached in 1876 of high crimes and misdemeanors for conduct that probably constituted bribery and certainly involved the use of his office for highly improper purposes—receiving substantial annual payments through an intermediary in return for his appointing a particular post trader at a frontier military post in Indian territory.

The impeachments of Judges Charles Swayne (1903), Robert W. Archbald (1912), George W. English (1926), Harold Louderback (1932) and Halsted L. Ritter (1936) each involved charges of the use of office for direct or indirect personal monetary gain.<sup>94</sup> In the Archbald and Ritter cases, a number of allegations of improper conduct were combined in a single, final article, as well as being charged separately.

In drawing up articles of impeachment, the House has placed little emphasis on

criminal conduct. Less than one-third of the eighty-three articles the House has adopted have explicitly charged the violation of a criminal statute or used the word “criminal” or “crime” to describe the conduct alleged, and ten of the articles that do were those involving the Tenure of Office Act in the impeachment of President Andrew Johnson. The House has not always used the technical language of the criminal law even when the conduct alleged fairly clearly constituted a criminal offense, as in the Humphreys and Belknap impeachments. Moreover, a number of articles, even though they may have alleged that the conduct was unlawful, do not seem to state criminal conduct—including Article Ten against President Andrew Johnson (charging inflammatory speeches), and some of the charges against all of the judges except Humphreys.

Much more common in the articles are allegations that the officer has violated his duties or his oath or seriously undermined public confidence in his ability to perform his official functions. Recitals that a judge has brought his court or the judicial system into disrepute are commonplace. In the impeachment of President Johnson, nine of the articles allege that he acted “unmindful of the high duties of his office and of his oath of office,” and several specifically refer to his constitutional duty to take care that the laws be faithfully executed.

The formal language of an article of impeachment, however, is less significant than the nature of the allegations that it contains. All have involved charges of conduct incompatible with continued performance of the office; some have explicitly rested upon a “course of conduct” or have combined disparate charges in a single, final article. Some of the indi-

94. Judge Swayne was charged with falsifying expense accounts and using a railroad car in the possession of a receiver he had appointed. Judge Archbald was charged with using his office to secure business favors from litigants and potential litigants before his court. Judges English, Louderback, and Ritter were charged with misusing their power to appoint and set the fees of bankruptcy receivers for personal profit.



vidual articles seem to have alleged conduct that, taken alone, would not have been considered serious, such as two articles in the impeachment of Justice Chase that merely alleged procedural errors at trial. In the early impeachments, the articles were not prepared until after impeachment had been voted by the House, and it seems probable that the decision to impeach was made on the basis of all the allegations viewed as a whole, rather than each separate charge. Unlike the Senate, which votes separately on each article after trial, and where conviction on but one article is required for removal from office, the House appears to have considered the individual offenses less significant than what they said together about the conduct of the official in the performance of his duties.

Two tendencies should be avoided in interpreting the American impeach-

ments. The first is to dismiss them too readily because most have involved judges. The second is to make too much of them. They do not all fit neatly and logically into categories. That, however, is in keeping with the nature of the remedy. It is intended to reach a broad variety of conduct by officers that is both serious and incompatible with the duties of the office.

Past impeachments are not precedents to be read with an eye for an article of impeachment identical to allegations that may be currently under consideration. The American impeachment cases demonstrate a common theme useful in determining whether grounds for impeachment exist—that the grounds are derived from understanding the nature, functions and duties of the office.

### III. The Criminality Issue

The phrase “high Crimes and Misdemeanors” may connote “criminality” to some. This likely is the predicate for some of the contentions that only an indictable crime can constitute impeachable conduct. Other advocates of an indictable-offense requirement would establish a criminal standard of impeachable conduct because that standard is definite, can be known in advance and reflects a contemporary legal view of what conduct should be punished. A requirement of criminality would require resort to familiar criminal laws and concepts to serve as standards in the impeachment process. Furthermore, this would pose problems concerning the applicability of standards of proof and the like pertaining to the trial of crimes.<sup>(1)</sup>

1. See A. Simpson, *A Treatise on Federal Impeachments* 28–29 (1916). It has also been ar-

The central issue raised by these concerns is whether requiring an indictable offense as an essential element of impeachable conduct is consistent with the purposes and intent of the framers in establishing the impeachment power and in setting a constitutional standard for the exercise of that power. This issue must be considered in light of the historical evidence of the framers’ intent.<sup>(2)</sup> It

gued that because Treason and Bribery are crimes, “other high Crimes and Misdemeanors” must refer to crimes under the *ejusdem generis* rule of construction. But *ejusdem generis* merely requires a unifying principle. The question here is whether that principle is criminality or rather conduct subversive of our constitutional institutions and form of government.

2. The rule of construction against redundancy indicates an intent not to require criminality. If criminality is required, the word “Misdemeanors” would add nothing to “high Crimes.”

is also useful to consider whether the purposes of impeachment and criminal law are such that indictable offenses can, consistent with the Constitution, be an essential element of grounds for impeachment. The impeachment of a President must occur only for reasons at least as pressing as those needs of government that give rise to the creation of criminal offenses. But this does not mean that the various elements of proof, defenses, and other substantive concepts surrounding an indictable offense control the impeachment process. Nor does it mean that state or federal criminal codes are necessarily the place to turn to provide a standard under the United States Constitution. Impeachment is a constitutional remedy. The framers intended that the impeachment language they employed should reflect the grave misconduct that so injures or abuses our constitutional institutions and form of government as to justify impeachment.

This view is supported by the historical evidence of the constitutional meaning of the words “high Crimes and Misdemeanors.” That evidence is set out above.<sup>(3)</sup> It establishes that the phrase “high Crimes and Misdemeanors”—which over a period of centuries evolved into the English standard of impeachable conduct—has a special historical meaning different from the ordinary meaning of the terms “crimes” and “misdemeanors.”<sup>(4)</sup> High misdemeanors” referred to a category of offenses that subverted the system of government. Since the fourteenth century the phrase “high Crimes and Misdemeanors” had been used in English impeachment cases to charge officials with a wide range of

3. See part II B. *supra*.

4. See part II B.2. *supra*.

criminal and non-criminal offenses against the institutions and fundamental principles of English government.<sup>(5)</sup>

There is evidence that the framers were aware of this special, non-criminal meaning of the phrase “high Crimes and Misdemeanors” in the English law of impeachment.<sup>(6)</sup> Not only did Hamilton acknowledge Great Britain as “the model from which [impeachment] has been borrowed,” but George Mason referred in the debates to the impeachment of Warren Hastings, then pending before Parliament. Indeed, Mason, who proposed the phrase “high Crimes and Misdemeanors,” expressly stated his intent to encompass “[a]ttempts to subvert the Constitution.”<sup>(7)</sup>

The published records of the state ratifying conventions do not reveal an intention to limit the grounds of impeachment to criminal offenses.<sup>(8)</sup> James Iredell said in the North Carolina debates on ratification:

. . . the person convicted is further liable to a trial at common law, and may receive such common-law punishment as belongs to a description of such offences if it be punishable by that law.<sup>(9)</sup>

Likewise, George Nicholas of Virginia distinguished disqualification to hold office from conviction for criminal conduct:

If [the President] deviates from his duty, he is responsible to his constituents. . . . He will be absolutely disqualified to hold any place of profit, honor, or trust, and liable to further

5. See part II.A. *supra*.

6. See part II.B.2. *supra*.

7. See *Id.*

8. See part II.B.3. *supra*.

9. 4 Elliot 114.

punishment if he has committed such high crimes as are punishable at common law.<sup>(10)</sup>

The post-convention statements and writings of Alexander Hamilton, James Wilson, and James Madison—each a participant in the Constitutional Convention—show that they regarded impeachment as an appropriate device to deal with offenses against constitutional government by those who hold civil office, and not a device limited to criminal offenses.<sup>(11)</sup> Hamilton, in discussing the advantages of a single rather than a plural executive, explained that a single executive gave the people “the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment in cases which admit of it.”<sup>(12)</sup> Hamilton further wrote: “Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment.”<sup>(13)</sup>

The American experience with impeachment, which is summarized above, reflects the principle that impeachable conduct need not be criminal. Of the thirteen impeachments voted by the House since 1789, at least ten involved one or more allegations that did not charge a violation of criminal law.<sup>(14)</sup>

Impeachment and the criminal law serve fundamentally different purposes. Impeachment is the first step in a remedial process—removal from office and

possible disqualification from holding future office. The purpose of impeachment is not personal punishment;<sup>(15)</sup> its function is primarily to maintain constitutional government. Furthermore, the Constitution itself provides that impeachment is no substitute for the ordinary process of criminal law since it specifies that impeachment does not immunize the officer from criminal liability for his wrongdoing.<sup>(16)</sup>

The general applicability of the criminal law also makes it inappropriate as the standard for a process applicable to a highly specific situation such as removal of a President. The criminal law sets a general standard of conduct that all must follow. It does not address itself to the

15. It has been argued that “[i]mpeachment is a special form of punishment for crime,” but that gross and willful neglect of duty would be a violation of the oath of office and “[s]uch violation, by criminal acts of commission or omission, is the only nonindictable offense for which the President, Vice President, judges or other civil officers can be impeached.” I. Brant, *Impeachment, Trials and Errors* 13, 20, 23 (1972). While this approach might in particular instances lead to the same results as the approach to impeachment as a constitutional remedy for action incompatible with constitutional government and the duties of constitutional office, it is, for the reasons stated in this memorandum, the latter approach that best reflects the intent of the framers and the constitutional function of impeachment. At the time the Constitution was adopted, “crime” and “punishment for crime” were terms used far more broadly than today. The seventh edition of Samuel Johnson’s dictionary, published in 1785, defines “crime” as “an act contrary to right, an offense; a great fault; an act of wickedness.” To the extent that the debates on the Constitution and its ratification refer to impeachment as a form of “punishment” it is punishment in the sense that today would be thought a noncriminal sanction, such as removal of a corporate officer for misconduct breaching his duties to the corporation.

10. 3 Elliot 240.

11. See part II.B 1. *supra*; part II.B.3. *supra*.

12. Federalist No. 70, at 461.

13. *Id.* at 459.

14. See part II.C. *supra*.

abuses of presidential power. In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.

Other characteristics of the criminal law make criminality inappropriate as an essential element of impeachable conduct. While the failure to act may be a crime, the traditional focus of criminal law is prohibitory. Impeachable conduct, on the other hand, may include the serious failure to discharge the affirmative duties imposed on the President by the Constitution. Unlike a criminal case, the cause for the removal of a President may be based on his entire course of conduct in office. In particular situations, it may be a course of conduct more than individual acts that has a tendency to subvert constitutional government.

To confine impeachable conduct to indictable offenses may well be to set a standard so restrictive as not to reach conduct that might adversely affect the system of government. Some of the most grievous offenses against our constitutional form of government may not entail violations of the criminal law.

If criminality is to be the basic element of impeachment conduct, what is the standard of criminal conduct to be? Is it to be criminality as known to the common law, or as divined from the Federal Criminal Code, or from an amalgam of State criminal statutes? If one is to turn to State statutes, then which of those of the States is to obtain? If the present Federal Criminal Code is to be the standard, then which of its provisions are to apply? If there is to be new Federal legislation to define the criminal standard, then presumably both the Senate and the President will take part in fixing that standard. How is this to be accomplished without encroachment upon the

constitutional provision that "the sole power" of impeachment is vested in the House of Representatives?

A requirement of criminality would be incompatible with the intent of the framers to provide a mechanism broad enough to maintain the integrity of constitutional government. Impeachment is a constitutional safety valve; to fulfill this function, it must be flexible enough to cope with exigencies not now foreseeable. Congress has never undertaken to define impeachable offenses in the criminal code. Even respecting bribery, which is specifically identified in the Constitution as grounds for impeachment, the federal statute establishing the criminal offense for civil officers generally was enacted over seventy-five years after the Constitutional Convention.<sup>(17)</sup>

In sum, to limit impeachable conduct to criminal offenses would be incompatible with the evidence concerning the constitutional meaning of the phrase "high Crimes and Misdemeanors" and would frustrate the purpose that the framers intended for impeachment. State

16. It is sometimes suggested that various provisions in the Constitution exempting cases of impeachment from certain provisions relating to the trial and punishment of crimes indicate an intention to require an indictable offense as an essential element of impeachable conduct. In addition to the provision referred to in the text (Article I, Section 3), cases of impeachment are exempted from the power of pardon and the right to trial by jury in Article II, Section 2 and Article III, Section 2 respectively. These provisions were placed in the Constitution in recognition that impeachable conduct may entail criminal conduct and to make it clear that even when criminal conduct is involved, the trial of an impeachment was not intended to be a criminal proceeding. The sources quoted at notes 8-13, *supra*, show the understanding that impeachable conduct may, but need not, involve criminal conduct.

and federal criminal laws are not written in order to preserve the nation against serious abuse of the presidential office. But this is the purpose of the constitu-

tional provision for the impeachment of a President and that purpose gives meaning to “high Crimes and Misdemeanors.”

#### IV. Conclusion

Impeachment is a constitutional remedy addressed to serious offenses against the system of government. The purpose of impeachment under the Constitution is indicated by the limited scope of the remedy (removal from office and possible disqualification from future office) and by the stated grounds for impeachment (treason, bribery and other high crimes and misdemeanors). It is not controlling whether treason and bribery are criminal. More important, they are constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself, and thus are “high” offenses in the sense that word was used in English impeachments.

The framers of our Constitution consciously adopted a particular phrase from the English practice to help define the constitutional grounds for removal. The content of the phrase “high Crimes and Misdemeanors” for the framers is to be related to what the framers knew, on the whole, about the English practice—the broad sweep of English constitutional history and the vital role impeachment had played in the limitation of royal prerogative and the control of abuses of ministerial and judicial power.

Impeachment was not a remote subject for the framers. Even as they labored in Philadelphia, the impeachment trial of Warren Hastings, Governor-General of India, was pending in London, a fact to which George Mason made explicit reference in the Convention. Whatever may

be said of the merits of Hastings, conduct, the charges against him exemplified the central aspect of impeachment—the parliamentary effort to reach grave abuses of governmental power.

The framers understood quite clearly that the constitutional system they were creating must include some ultimate check on the conduct of the executive, particularly as they came to reject the suggested plural executive. While insisting that balance between the executive and legislative branches be maintained so that the executive would not become the creature of the legislature, dismissable at its will, the framers also recognized that some means would be needed to deal with excesses by the executive. Impeachment was familiar to them. They understood its essential constitutional functions and perceived its adaptability to the American contest.

While it may be argued that some articles of impeachment have charged conduct that constituted crime and thus that criminality is an essential ingredient, or that some have charged conduct that was not criminal and thus that criminality is not essential, the fact remains that in the English practice and in several of the American impeachments the criminality issue was not raised at all. The emphasis has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of govern-

ment. Clearly, these effects can be brought about in ways not anticipated by the criminal law. Criminal standards and criminal courts were established to control individual conduct. Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards and the impotence of courts to deal with the conduct of great public figures. It would be anomalous if the framers, having barred criminal sanctions from the impeachment remedy and limited it to removal and possible disqualification from office, intended to restrict the grounds for impeachment to conduct that was criminal.

The longing for precise criteria is understandable; advance, precise definition of objective limits would seemingly serve both to direct future conduct and to inhibit arbitrary reaction to past conduct. In private affairs the objective is the control of personal behavior, in part through the punishment of misbehavior. In general, advance definition of standards respecting private conduct works reasonably well. However, where the issue is presidential compliance with the constitutional requirements and limitations on the presidency, the crucial factor is not the intrinsic quality of behavior but the significance of its effect upon our constitutional system or the functioning of our government.

It is useful to note three major presidential duties of broad scope that are explicitly recited in the Constitution: "to take Care that the Laws be faithfully executed," to "faithfully execute the Office of President of the United States" and to "preserve, protect, and defend the Constitution of the United States" to the best of his ability. The first is directly imposed by the Constitution; the second and third are included in the constitu-

tionally prescribed oath that the President is required to take before he enters upon the execution of his office and are, therefore, also expressly imposed by the Constitution.

The duty to take care is affirmative. So is the duty faithfully to execute the office. A President must carry out the obligations of his office diligently and in good faith. The elective character and political role of a President make it difficult to define faithful exercise of his powers in the abstract. A President must make policy and exercise discretion. This discretion necessarily is broad, especially in emergency situations, but the constitutional duties of a President impose limitations on its exercise.

The "take care" duty emphasizes the responsibility of a President for the overall conduct of the executive branch, which the Constitution vests in him alone. He must take care that the executive is so organized and operated that this duty is performed.

The duty of a President to "preserve, protect, and defend the Constitution" to the best of his ability includes the duty not to abuse his powers or transgress their limits—not to violate the rights of citizens, such as those guaranteed by the Bill of Rights, and not to act in derogation of powers vested elsewhere by the Constitution.

Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality. In deciding whether this further requirement has been met, the facts must be considered as a whole in the context of the office, not in terms of separate or isolated events. Because impeachment of a President is a grave step for the nation, it is to be predicated only

upon conduct seriously incompatible with either the constitutional form and prin- ciples of our government or the proper	performance of constitutional duties of the presidential office.
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