

## CHAPTER 10

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## ***Presidential Elections; Electoral College***

### **§ 1. In General; Electoral Certificates**

Under the U.S. Constitution, both the House and Senate formally participate in the process by which the President and Vice President are elected. Congress is directed by the 12th amendment to receive and, in joint session, count the electoral votes certified by the states. And if no candidate receives a majority of the electoral vote, the House of Representatives is directed to elect the President, while the Senate is directed to elect the Vice President.<sup>(1)</sup>

This method of selecting a President, later to become known as the “electoral college,” came about as the result of a compromise after lengthy debate at the Constitutional Convention of 1787. The debate centered on

1. In the Presidential election of 1800, the electors produced a tie vote by casting an equal number of votes for Thomas Jefferson and Aaron Burr. Thus the election had to be determined by the House of Representatives, which ultimately voted for Jefferson. See 3 Hinds’ Precedents §1931. For a general discussion of early electoral-count procedures, see 3 Hinds’ Precedents §§1911–1980 and 6 Cannon’s Precedents §§438–446.

whether the President should be chosen by popular vote, by the Congress, or by some other method. Election by direct popular vote was rejected because it was believed that the people would have insufficient knowledge of the various candidates, and because it was assumed that the people would be unable to agree on a single candidate. A plan that would give Congress the power to select the President was also rejected, because of its potential threat to executive independence. Finding itself in disagreement on both plans, the convention adopted a compromise under which each state was given the power to appoint electors to be chosen in a manner specified by each state legislature. The electors in each state, who were to be equal to the total number of that state’s Representatives and Senators, would then meet and cast votes for President and Vice President.

Historically, the counting of electoral votes has been for the most part a mere formality, because the result of the electoral vote has almost invariably been the same as the result of the popular vote.<sup>(2)</sup>

2. There have been rare instances in which the result of the electoral vote

The electoral vote has generally followed the popular vote because electors came to be chosen merely as representatives of the political parties and because the state legislatures adopted a unit-rule system under which all of a state's electoral votes are to be cast for the party which wins a plurality of popular votes statewide.

The 12th amendment states in part:

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President . . . they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; [t]he President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.

On the sixth day of January after the electors of the several

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has differed from the result of the popular vote. For example, in the Hayes-Tilden election of 1876, determinations by the House and Senate with respect to certain disputed electoral votes resulted in the election of Hayes, although Tilden had received a majority of the popular vote. See 3 Hinds' Precedents §§ 1953–1956.

states have met to cast votes for President and Vice President, the Congress, in accordance with the provisions of law,<sup>(3)</sup> convenes in joint session,<sup>(4)</sup> the Senate and House of Representatives meeting in the Hall of the House, to exercise its constitutional responsibility for counting the electoral vote.

At one o'clock in the afternoon on that day, the joint session of the two Houses is called to order by the President of the Senate,<sup>(5)</sup> the individual designated by statute<sup>(6)</sup> to serve as the joint session's presiding officer. Thereupon, the tellers,<sup>(7)</sup> who have previously been appointed on the part of each House,<sup>(8)</sup> take their respective places at the Clerk's desk. According to the alphabetical order of the states, all the previously transmitted certificates and papers purporting to be certificates of votes given by the electors are then opened by the President of the Senate and handed to the tellers.<sup>(9)</sup> Each certificate so received is read by the tellers in

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3. 3 USC § 15.

4. See § 2.4, *infra*.

5. See § 2.5, *infra*.

6. 3 USC 15.

7. See §§ 3.1–3.4, *infra*, for appointment of tellers.

8. See § 2.1, *infra*.

9. See § 2.1, *infra*.

the presence and hearing of the two Houses. After the reading of each certificate, the President of the Senate calls for objections, if any.

In the event that a written objection should be raised, properly signed by at least one Senator and one Member of the House of Representatives, and when all objections so made to any vote or paper from a state have been received and read, the joint session divides, the Senate repairing to the Senate Chamber, and all such objections are submitted to and considered by each House meeting in separate session.<sup>(10)</sup>

Pursuant to the provisions of the U.S. Code, which govern the procedures in both Houses in the event they divide to consider an objection, each Senator and Representative may speak to such objection for five minutes, and not more than once; and after such debate has lasted two hours, the presiding officer of each House is required to put the main question without further debate.<sup>(11)</sup> When the two Houses have voted, they immediately again meet in joint session, and the presiding officer then announces the decision on the objections submitted.

Once all objections to any certificate or paper from a state have

been so decided, or immediately following the reading of such certificate or paper when no objections thereto are raised, the tellers make a list of the votes as they appear from the certificates.<sup>(12)</sup> The result of the count is then delivered to the President of the Senate who thereupon announces the state of the vote. This announcement is deemed by law a sufficient declaration of the persons, if any, elected President and Vice President of the United States. The announcement, together with a list of the votes, is then entered in the Journals of the two Houses.<sup>(13)</sup>

In addition to its responsibilities in ascertaining and counting the electoral votes cast for President and Vice President, the Congress has been delegated a further constitutional duty relative to the selection of the Vice President. Pursuant to section 2 of the 25th amendment to the U.S. Constitution, whenever there is a vacancy in the Office of Vice President the President nominates a Vice President to take office upon confirmation by a majority vote of both Houses.<sup>(14)</sup>

The House and Senate also have important responsibilities

**10.** See § 3.6, *infra*.

**11.** 3 USC §§ 15, 17.

**12.** See 3 USC § 15.

**13.** 3 USC § 15.

**14.** See §§ 4.1–4.3, *infra*.

under the 20th and 25th amendments of the U.S. Constitution with respect to Presidential succession and disability. The 20th amendment sets forth the procedure to be followed when the President-elect and Vice President-elect fail to qualify at the commencement of their terms. Congress also has the duty, under the 25th amendment, of determining disputes as to Presidential disability.

### *Transmittal and Presentation of Certificates*

**§ 1.1 Copies of the certificates identifying the electors appointed in a state forwarded by the Governor of each state to the Administrator of General Services are, pursuant to 3 USC §6, transmitted in turn to the House; on one occasion, where a certificate was received on the day reserved for the counting of the electoral votes, the Speaker, in order that the receipt of the certificate would appear in the Record before the proceedings of the joint session to count the electoral votes, laid the communication before the House at the beginning of the session.**

On Jan. 6, 1961,<sup>(15)</sup> the Speaker<sup>(16)</sup> laid before the House the following communication which was read and, with accompanying papers, referred to the Committee on House Administration:

GENERAL SERVICES  
ADMINISTRATION,  
*Washington, D.C., January 6, 1961.*  
Hon. SAM RAYBURN,  
*Speaker of the House of Representatives,  
Washington, D.C.*

DEAR MR. SPEAKER: Transmitted herewith is a copy of the certificate of ascertainment received today from the State of Hawaii, in conformity with the final clause of section 6, title 3, United States Code.

Sincerely yours,  
FRANKLIN FLOETE,  
*Administrator.*

STATE OF HAWAII.  
TO THE ADMINISTRATOR OF GENERAL  
SERVICES, PURSUANT TO THE  
LAWS OF THE UNITED STATES.

I, William F. Quinn, Governor of the State of Hawaii, do hereby certify that the returns of votes cast for electors of President and Vice President of the United States of America, for the State of Hawaii, at an election held therein for that purpose, on the Tuesday after the first Monday in November, in the year of our Lord 1960, agreeably to the provisions of the laws of the said State, and in conformity with the Constitution and laws of the United States, for the purpose of giving in their votes for President and Vice President of the United States, for the respective terms prescribed by the Constitution of the United States, to begin on the 20th day of January in the year of

15. 107 CONG. REC. 288, 87th Cong. 1st Sess.

16. Sam Rayburn (Tex.).

our Lord 1961, were, ascertained by judgment of the circuit court of the first judicial circuit, State of Hawaii, in proceedings entitled *Herman T. F. Lum et al., v. Gavien A. Bush et al.* (Civil No. 7029), entered on the 30th day of December A.D. 1960, and that the list of persons voted for and the number of votes cast for each, pursuant to said judgment, respectively, is as follows:

Republican Party: Gavien A. Bush, 92,295; J. Howard Worrall, 92,295; O. P. Soares, 92,295.

Democratic Party: William H. Heen, 92,410; Delbert E. Metzger, 92,410; Jennie Wilson, 92,410.

And I further certify that: William H. Heen, Delbert E. Metzger, and Jennie Wilson were appointed electors of President and Vice President of the United States of America, for the State of Hawaii, at said election.

Given under my hand and the seal of the State, this 4th day of January, in the year of our Lord 1961.

WILLIAM F. QUINN,  
*Governor of Hawaii.*

**§ 1.2 Where certificates of electoral votes had been received from different slates of electors from a state, and each slate purported to be the duly appointed electors from that state, the Vice President presented the certificates, with all attached papers, in the order in which they had been received.**

On Jan. 6, 1961,<sup>(17)</sup> during proceedings in the joint session of the two Houses incident to the open-

17. 107 CONG. REC. 288-91, 87th Cong. 1st Sess.

ing of the certificates and ascertaining and counting of the votes of the electors of the several states for President and Vice President, the presiding officer<sup>(18)</sup> handed to the tellers, in the order in which they had been received, certificates of electoral votes, with all attached papers thereto, from different slates of electors from the State of Hawaii. Without objection, the Chair instructed the tellers to count the votes of those electors named in the certificate of the Governor of Hawaii dated Jan. 4, 1961 (discussed more fully in § 3.5, *infra*).

## **§ 2. Joint Sessions to Count Electoral Votes**

### ***Concurrent Resolution Providing for Joint Session***

**§ 2.1 A concurrent resolution providing for a joint session to count the electoral votes for President and Vice President may be originated by the Senate.**

On Jan. 3, 1973,<sup>(19)</sup> Mr. Thomas P. O'Neill, Jr., of Massachusetts,

18. Richard M. Nixon (Calif.).

19. 119 CONG. REC. 30, 93d Cong. 1st Sess. For additional recent examples see 115 CONG. REC. 36, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG.

called up and asked for the immediate consideration of a Senate concurrent resolution:

S. CON. RES. 1

*Resolved by the Senate (the House of Representatives concurring),* That the two Houses of Congress shall meet in the Hall of the House of Representatives on Saturday, the 6th day of January 1973, at 1 o'clock postmeridian, pursuant to the requirements of the Constitution and laws relating to the election of President and Vice President of the United States, and the President of the Senate shall be their Presiding Officer; that two tellers shall be previously appointed by the President of the Senate on the part of the Senate and two by the Speaker on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter "A"; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules by law provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which an-

REC. 26, 89th Cong. 1st Sess., Jan. 4, 1965; and 107 CONG. REC. 26, 87th Cong. 1st Sess., Jan. 3, 1961.

nouncement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses.

The Senate concurrent resolution was agreed to.

### ***Recesses***

#### **§ 2.2 The Speaker may be authorized to declare a recess in connection with the convening of the two Houses in joint session to count the electoral vote for President and Vice President.**

On Jan. 3, 1973,<sup>(20)</sup> the House considered and agreed to a Senate concurrent resolution<sup>(1)</sup> providing for the convening on Jan. 6, 1973, of a joint session of the two Houses to count the electoral vote. Mr. Thomas P. O'Neill, Jr., of Massachusetts, then made a unanimous-consent request, as follows:

MR. O'NEILL: Mr. Speaker, I ask unanimous consent that on Saturday, January 6, 1973, it may be in order for the Speaker to declare a recess at any time subject to the call of the Chair.

20. 119 CONG. REC. 30, 93d Cong. 1st Sess. For further illustrations see 115 CONG. REC. 36, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG. REC. 26, 89th Cong. 1st Sess., Jan. 4, 1965; and 107 CONG. REC. 26, 87th Cong. 1st Sess., Jan. 3, 1961.

1. S. Con. Res. 1.

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

*Parliamentarian's Note:* The Speaker declares a recess of the House to enable the Members to reconvene in joint session with the Senate in the House Chamber.

**§ 2.3 On the day fixed by law and concurrent resolution for the convening of the joint session to count the electoral votes for President and Vice President, the Speaker declined to recognize for one-minute speeches or extensions of remarks before recessing the House subject to the call of the Chair.**

On Jan. 6, 1973,<sup>(3)</sup> the Speaker<sup>(4)</sup> made an announcement to the House:

THE SPEAKER: The Chair desires to make a statement.

The Chair desires deferment of unanimous-consent requests and also 1-minute speeches until after the formal ceremony of the day, which is the counting of the electoral votes for President and Vice President. Therefore, pursuant to the order adopted on

2. Carl Albert (Okla.).
3. 119 CONG. REC. 378, 93d Cong. 1st Sess. For an additional example see 115 CONG. REC. 145, 91st Cong. 1st Sess., Jan. 6, 1969.
4. Carl Albert (Okla.).

Wednesday, January 3, 1973,<sup>(5)</sup> the Chair declares the House in recess until approximately 12:45 o'clock p.m.

Accordingly (at 12 o'clock and 3 minutes p.m.), the House stood in recess subject to the call of the Chair.

***Convening of the Joint Session***

**§ 2.4 The two Houses convene in joint session to open the certificates and ascertain and count the votes cast by the electors of the several states for President and Vice President.**

On Jan. 6, 1973,<sup>(6)</sup> the President of the Senate<sup>(7)</sup> called to order a joint session of the Senate and the House of Representatives, convened pursuant to the provisions of a Senate concurrent resolution<sup>(8)</sup> to carry out Congress'

5. 119 CONG. REC. 30, 93d Cong. 1st Sess.
6. 119 CONG. REC. 378, 93d Cong. 1st Sess. For other examples of joint sessions convened to count the electoral vote cast in recent elections see 115 CONG. REC. 145, 91st Cong. 1st Sess., Jan. 6, 1969; 111 CONG. REC. 136, 89th Cong. 1st Sess., Jan. 6, 1965; and 107 CONG. REC. 288, 87th Cong. 1st Sess., Jan. 6, 1961.
7. Spiro T. Agnew (Md.).
8. S. Con. Res. 1, agreed to by the House at 119 CONG. REC. 30, 93d Cong. 1st Sess., Jan. 3, 1973. For additional examples of House agreement to concurrent resolutions providing for joint sessions to count

constitutional and statutory responsibilities relative to opening the certificates and ascertaining and counting the votes of the electors of the several states for President and Vice President.

### *Presiding Officer*

**§ 2.5 In the absence of the President of the Senate, the President pro tempore of the Senate presides over the joint session to count the electoral votes for President and Vice President.**

On Jan. 6, 1969,<sup>(9)</sup> in the absence of the President of the Senate,<sup>(10)</sup> the President pro tempore

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electoral votes, see 115 CONG. REC. 36, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG. REC. 26, 89th Cong. 1st Sess., Jan. 4, 1965; and 107 CONG. REC. 26, 87th Cong. 1st Sess., Jan. 3, 1961.

9. 115 CONG. REC. 145, 91st Cong. 1st Sess. See also 111 CONG. REC. 136, 89th Cong. 1st Sess., Jan. 6, 1965.
10. On Jan. 6, 1969, the President of the Senate, Hubert H. Humphrey, (Minn.), who was the incumbent Vice President and the losing candidate for President in the 1968 election, declined to preside over the joint session to count the electoral votes. On Jan. 6, 1965, the office of the President of the Senate was vacant, the former Vice President, Lyndon B. Johnson (Tex.), having ascended to the Presidency upon the death of his predecessor, Nov. 22, 1963.

of the Senate<sup>(11)</sup> presided over the joint session to count the electoral votes for President and Vice President of the United States.

### *Procedure*

**§ 2.6 Where the two Houses meet to count the electoral vote, a joint session is convened pursuant to a concurrent resolution of the two Houses which incorporates by reference the applicable provisions of the United States Code; and the procedures set forth in those provisions are in effect constituted as a joint rule of the two Houses for the occasion and govern the procedures in the joint session and in both Houses in the event they divide to consider an objection.**

On Jan. 6, 1969,<sup>(12)</sup> the two Houses convened in joint session to count the electoral vote. The joint session was convened pursuant to a Senate concurrent resolution<sup>(13)</sup> which incorporated the vote-counting procedures set forth in 3 USC §§ 15–18. A written objection was made to the count of

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11. Richard B. Russell (Ga.).

12. 115 CONG. REC. 145–47, 169–72, 91st Cong. 1st Sess.

13. 13. S. Con. Res. 1.

North Carolina's electoral vote. Thereupon, pursuant to the provisions of 3 USC §§15–18, the joint session divided, the Senate repairing to the Senate Chamber, and the objection was submitted to and considered in each House convened in separate sessions.

### **§ 3. Counting Votes; Objections to Count**

#### ***House Tellers***

#### **§ 3.1 Tellers on the part of the House to count the electoral vote are appointed by the Speaker.**

On Jan. 3, 1973,<sup>(14)</sup> the House had considered and agreed to a Senate concurrent resolution<sup>(15)</sup> providing for the convening of a joint session of the two Houses to count the electoral votes. The Speaker,<sup>(16)</sup> pursuant to the provisions of the concurrent resolution, appointed Mr. Wayne L. Hays, of Ohio, and Mr. Samuel L. Devine, of Ohio, as tellers on the part of

14. 119 CONG. REC. 30, 93d Cong. 1st Sess. For further illustrations see 115 CONG. REC. 36, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG. REC. 26, 89th Cong. 1st Sess., Jan. 4, 1965; and 107 CONG. REC. 27, 87th Cong. 1st Sess., Jan. 3, 1961.

15. S. Con. Res. 1.

16. Carl Albert (Okla.).

the House to count the electoral votes.

#### **§ 3.2 The Speaker has appointed the Chairman and ranking minority member of the Committee on House Administration as tellers on the part of the House to count the electoral votes.**

On Jan. 3, 1969,<sup>(17)</sup> the Speaker<sup>(18)</sup> appointed as tellers on the part of the House to count the electoral votes Mr. Samuel N. Friedel, of Maryland, and Mr. Glenard P. Lipscomb, of California, who were, respectively, the Chairman and ranking minority member of the Committee on House Administration.

#### **§ 3.3 Where a Member designated as a teller for counting the electoral ballots was unavoidably detained, the Speaker designated another Member to take his place.**

On Jan. 6, 1949,<sup>(19)</sup> prior to the announcement of the arrival of the Senate for the meeting of the joint session of the two Houses to count the electoral vote, the Speaker<sup>(20)</sup> made an announcement to the House:

17. 115 CONG. REC. 36, 91st Cong. 1st Sess.

18. John W. McCormack (Mass.).

19. 95 CONG. REC. 89, 81st Cong. 1st Sess.

20. Sam Rayburn (Tex.).

THE SPEAKER: The gentleman from New York [Mr. Ralph A. Gamble] is unavoidably detained and is unable to serve as teller.

The Chair designates the gentleman from Pennsylvania [Mr. Louis E. Graham] to act as teller in his stead.

### *Senate Tellers*

#### **§ 3.4 Tellers on the part of the Senate to count the electoral votes are appointed by the Vice President.**

On Jan. 3, 1973,<sup>(1)</sup> following the Senate's consideration of and agreement to a concurrent resolution<sup>(2)</sup> providing for the convening of a joint session of the two Houses to count the electoral votes, the Vice President,<sup>(3)</sup> in accordance with the provisions of the concurrent resolution, appointed the Senator from Kentucky, Marlow W. Cook, and the Senator from Nevada, Howard W. Cannon, as the tellers on the part of the Senate to count the electoral votes.

1. 119 CONG. REC. 8, 93d Cong. 1st Sess. For other recent examples see 115 CONG. REC. 8, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG. REC. 15, 89th Cong. 1st Sess., Jan. 4, 1965; and 107 CONG. REC. 72, 87th Cong. 1st Sess., Jan. 4, 1961.

2. S. Con. Res. 1.

3. Spiro T. Agnew (Md.).

### ***Conflicting Electoral Certificates***

#### **§ 3.5 The two Houses, meeting in joint session to count the electoral votes, may by unanimous consent decide which of two conflicting electoral certificates from a state is valid; and the tellers are then directed to count the electoral votes in the certificate deemed valid.**

On Jan. 6, 1961,<sup>(4)</sup> during proceedings in the joint session of the two Houses incident to the opening of the certificates and counting of the votes of the electors of the several states for President and Vice President, the President of the Senate<sup>(5)</sup> handed to the tellers, in the order in which they had been received, certificates of electoral votes, with all attached papers thereto, from different slates of electors from the State of Hawaii. The certificates were received and considered by the tellers, whereupon, the following proceedings occurred:

THE VICE PRESIDENT: . . . The Chair has knowledge, and is convinced that he is supported by the facts, that the certificate from the Honorable William F. Quinn, Governor of the State of Ha-

4. 107 CONG. REC. 288-91, 87th Cong. 1st Sess.

5. Richard M. Nixon (Calif.).

waii, dated January 4, 1961, received by the Administrator of General Services on January 6, 1961, and transmitted to the Senate and the House of Representatives on January 6, 1961, being Executive Communication Number 215 of the House of Representatives, properly and legally portrays the facts with respect to the electors chosen by the people of Hawaii at the election for President and Vice President held on November 8, 1960. As read from the certificates, William H. Heen, Delbert E. Metzger, and Jennie Wilson were appointed as electors of President and Vice President on November 8, 1960, and did on the first Monday after the second Wednesday of December, 1960, cast their votes for John F. Kennedy of Massachusetts for President and Lyndon B. Johnson of Texas for Vice President.

In order not to delay the further count of the electoral vote here, the Chair, without the intent of establishing a precedent, suggests that the electors named in the certificate of the Governor of Hawaii dated January 4, 1961, be considered as the lawful electors from the State of Hawaii.

If there be no objection in this joint convention, the Chair will instruct the tellers—and he now does—to count the votes of those electors named in the certificate of the Governor of Hawaii dated January 4, 1961—those votes having been cast for John F. Kennedy, of Massachusetts, for President and Lyndon B. Johnson, of Texas, for Vice President.

Without objection the tellers will accordingly count the votes of those electors named in the certificate of the Governor of Hawaii dated January 4, 1961.

There was no objection.

The tellers then proceeded to read, count and announce the electoral votes of the remaining States in alphabetical order.

*Parliamentarian's Note:* A recount of ballots in Hawaii, which was concluded after the Governor of that state had certified the election of the Republican slate of electors, threw that state into the Democratic column; the Governor then sent a second communication to the Administrator of General Services which certified that the Democratic slate of electors had been lawfully appointed. Both slates of electors met on the day prescribed by law, cast their votes, and submitted them to the President of the Senate pursuant to 3 USC §11. When the two Houses met in joint session to count the electoral votes, the votes of the electors were presented to the tellers by the Vice President, and, by unanimous consent, the Vice President directed the tellers to accept and count the lawfully appointed slate.

### ***Objections***

**§ 3.6 A formal objection was made to the counting of the electoral vote of a state, and the House and Senate divided to separately consider the objection before proceeding with the counting.**

On Jan. 6, 1969,<sup>(6)</sup> the President pro tempore of the Senate<sup>(7)</sup> called to order a joint session of the House and Senate for the purpose of counting the electoral votes for President and Vice President. When the tellers appointed on the part of the two Houses<sup>(8)</sup> had taken their places at the Clerk's desk, the President pro tempore handed them the certificates of the electors and the tellers then read, counted, and announced the electoral votes of the states in alphabetical order. The vote of North Carolina was stated to be 12 for Richard M. Nixon and Spiro T. Agnew for President and Vice President respectively and one for George C. Wallace and Curtis E. LeMay for President and Vice President respectively. Mr. James G. O'Hara, of Michigan, thereupon rose and sent to the Clerk's desk a written objection signed by himself and Edmund S. Muskie, the Senator from Maine, protesting the counting of

6. 115 CONG. REC. 145, 146, 91st Cong. 1st Sess. For further discussion and excerpts from the debate, see §§3.7, 3.8, *infra*.

7. Richard B. Russell (Ga.).

8. Senator Carl T. Curtis (Neb.) and Senator B. Everett Jordan (N.C.) on the part of the Senate; Mr. Samuel N. Friedel (Md.) and Mr. Glenard P. Lipscomb (Calif.) on the part of the House.

the vote of North Carolina as read. The President pro tempore directed the Clerk of the House to read the objection, which stated:<sup>(9)</sup>

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the ground that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and the State thereby appointed thirteen electors to vote for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.

JAMES G. O'HARA, M.C.

EDMUND S. MUSKIE, U.S.S.

Following the President pro tempore's finding that the objection complied with the law<sup>(10)</sup> and his subsequent inquiry as to whether there were any further objections to the certificates from the State of North Carolina, the two Houses separated to consider the objection, the Senate withdrawing to the Senate Chamber.

The legal basis for the objection was contained in 3 USC §15, which provided in relevant part:

9. 115 CONG. REC. 146, 91st Cong. 1st Sess., Jan. 6, 1969.

10. 3 USC §15.

. . . [A]nd no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.

Those supporting the objection in the House and Senate contended that the votes of one North Carolina elector had not been “regularly given” and should therefore be rejected.

The background of the objection was explained by Senator Muskie during his opening remarks in the Senate debate on the objection:<sup>(11)</sup>

In this case, a North Carolina elector was nominated as an elector by a district convention of the Republican Party in North Carolina. He did not reject that nomination. His name was not placed on the ballot because under North Carolina law, as in the case of 34 other States, only the names of the party’s presidential and vice-presidential candidates appear, and electors are elected for the presidential and vice-presidential candidates receiving the plurality of the vote in North Carolina.

Dr. Bailey and 12 other North Carolina Republican electors were so elected on November 5. The election was

certified. Dr. Bailey did not reject that election or that certification. So up to that moment, so far as the people from North Carolina understood, he was committed as an elector on the Republican slate, riding under the names of Richard M. Nixon and Spiro T. Agnew, to vote for that presidential and vice-presidential ticket.

On December 16, the electors of North Carolina met in Raleigh to cast their votes. . . . It was at that point that Dr. Bailey decided to cast his vote for the Wallace-LeMay ticket instead.

In the House, Mr. Roman C. Pucinski, of Illinois, made a similar presentation.<sup>(12)</sup>

During debate on the objection in both the House and the Senate, proponents of the objection focused on several key arguments in support thereof. It was argued that the elector had at least a moral commitment to vote for the Republican candidates—a commitment made more compelling in the light of custom and practice since the adoption of the Constitution,<sup>(13)</sup> and reliance by the voters on the elector’s conduct and apparent intentions.<sup>(14)</sup> Senator Muskie stated:<sup>(15)</sup>

12. *Id.* at pp. 159, 160.

13. See remarks of Mr. Edward P. Bolland (Mass.), *id.* at pp. 165, 166, and remarks of Mr. O’Hara, *id.* at p. 169.

14. See, for example, the remarks of Senator Frank Church (Idaho), *id.* at p. 214.

15. *Id.* at p. 212.

11. 115 CONG. REC. 211, 91st Cong. 1st Sess., Jan. 6, 1969.

[A]s I understand it, the Constitution, as interpreted by the debates in the Constitutional Convention, clearly makes an elector a free agent. However, from the beginning of the country's history, political parties developed, and the political parties arranged for slates of electors assigned to their presidential and vice-presidential candidates. That political party slate of candidates has always been regarded, with but five other exceptions, as binding upon those who are electors on that slate.

So I argue that in the light of that tradition, when an elector chooses to go on a party slate, he is indicating his choice for President.

I say, secondly, that in the case of North Carolina and this statute, which is found also in 34 other States, the fact that only the presidential and vice-presidential names appear on the ballot is confirmation of this tradition; that when an elector accepts a place on a slate under these circumstances, in the light of this tradition, he knows that to the public at large he is saying, by his action, "I am for Nixon for President." He is saying implicitly, in my judgment, "If I am elected an elector under these circumstances, I will vote for Richard Nixon for President."

I believe that is the tradition. I believe that this undergirds the responsibility of an elector; and once he has set that train of understanding in motion, he cannot, after election day, when it is too late for the voters to respond to any change of mind on his part, say, "I changed my mind, and I am going to vote for somebody else." It is in the nature of estoppel.

Those opposed to the objection argued that the electors were

"free agents"<sup>(16)</sup> under the Constitution,<sup>(17)</sup> permitted to vote for whomever they pleased. According to such view, Congress, under the Constitution and 3 USC §15, exercised only a ministerial function in counting the electoral ballots, and such ballots could be discounted only if the certificates were not in regular form or were not authentic.<sup>(18)</sup>

It was also noted that North Carolina had not adopted a law, as had a majority of states, requiring the electors to pledge to support their party's nominee;<sup>(1)</sup> this raised, in the view of some, an implication that North Carolina did not intend its electors to

16. See the remarks of Mr. William M. McCulloch (Ohio), *id.* at p. 148; Mr. Richard H. Poff (Va.), *id.* at p. 158; Senator Ralph W. Yarborough (Tex.), *id.* at p. 217; Senator Robert C. Byrd (W. Va.), *id.* at p. 245.

17. Relevant provisions are art. II, §1, clause 3; and the 12th amendment.

18. See remarks of Mr. John B. Anderson (Ill.), 115 CONG. REC. 151, 91st Cong. 1st Sess., Jan. 6, 1969; Mr. Bob Eckhardt (Tex.), *id.* at p. 164; Senator Curtis, *id.* at pp. 219, 220; Senator Herman E. Talmadge (Ga.), *id.* at p. 223.

1. See remarks of Mr. Alton A. Lennon (N.C.), *id.* at pp. 149, 150. The Supreme Court in *Ray v Blair*, 343 U.S. 214 (1952), upheld the constitutionality of state laws requiring an elector to pledge to support the nominee of his political party.

be bound to support particular party nominees. Senator Edward M. Brooke, of Massachusetts, made the following remarks:<sup>(2)</sup>

In a system of constitutional government matters of procedure often become vital issues of substance. I submit that such a case is now before us. There are strong constitutional grounds for the authority of a State to bind its electors to vote as they are pledged. If a State has so bound its electors, I would contend that the Congress can properly act to see that the State's legal requirements are fulfilled. This would be a reasonable construction of the 1887 statute which provides that Congress can reject an elector's vote which has not been regularly given.

But it is my considered opinion that, unless the State chooses to bind its electors, Congress cannot do so after the fact.

Among the many serious implications of this situation, one lesson in particular stands out:

No official should ever be granted discretionary authority unless the people clearly understand that, under some circumstances, he may actually use it. And if such authority, once granted, is deemed excessive or unwise, the people should explicitly and promptly rescind it.

As I understand the relevant constitutional guidelines, the power to remedy this particular problem lies with the people of North Carolina acting through their representative institutions at the State level. . . .

2. *Id.* at p. 213.

In addition, however, there is a national interest in removing so critical a loophole in our constitutional system. If the electoral college is to remain an element in our political life, surely we should move to design a constitutional amendment which, once and for all, binds electors to vote for the candidates to whom they are pledged. I hasten to add that this possible change in our electoral system will certainly not suffice. Indeed, one of the paramount tasks of this Congress will be to examine the full range of constitutional proposals to create a fair and secure procedure for presidential elections.

In addition to the views stated above by Senator Brooke, several of those speaking to the objection expressed support for a constitutional amendment to reform the electoral system, a remedy which, it was argued, would be preferable to "piecemeal" changes to be achieved under present law.<sup>(3)</sup>

3. See, for example, the remarks of Mr. Hamilton Fish, Jr. (N.Y.), *id.* at p. 168.

Among those Members and Senators who favored a constitutional amendment to revise the electoral system were Mr. Hale Boggs (La.), *id.* at p. 151; Mr. Emanuel Celler (N.Y.), *id.* at p. 149; Mr. Phillip Burton (Calif.), *id.* at p. 160; Mr. Charles A. Vanik (Ohio), *id.* at p. 168; Senator Karl E. Mundt (S.D.), *id.* at p. 216; Senator Birch Bayh (Ind.), *id.* at p. 218; Senator Harry F. Byrd, Jr. (Va.), *id.* at p. 221; and Senator Robert C. Byrd (W. Va.), *id.*

At the conclusion of debate in each House, the yeas and nays were ordered and the House and Senate respectively rejected the objection.<sup>(4)</sup> Thereupon, the Senate reassembled in the Chamber of the House in joint session.<sup>(5)</sup> The President pro tempore called the meeting to order and directed the Secretary of the Senate and the Clerk of the House to report the action taken by the two Houses. Following the report, the President pro tempore directed the tellers to record and announce the vote of the State of North Carolina, and the counting of the electoral votes proceeded.

**§ 3.7 Under the statute prescribing the procedure for consideration by the respective Houses of an objection to a state's electoral vote count, a motion to lay the objection on the table is not in order.**

On Jan. 6, 1969,<sup>(6)</sup> following the raising of an objection to the

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at pp. 244, 245. It was pointed out by Senator Muskie, however, that over 500 resolutions had been introduced to reform the electoral system by constitutional amendment during the history of the Republic. *Id.* at p. 220.

4. See § 3.7, *infra*.
5. 115 CONG. REC. 171, 91st Cong. 1st Sess., Jan. 6, 1969.
6. 115 CONG. REC. 145-47, 169-72, 91st Cong. 1st Sess.

count of North Carolina's electoral vote, the joint session of the two Houses divided (the Senate repairing to the Senate Chamber), so that the objection could be considered by each House meeting in separate session. The House was called to order by the Speaker<sup>(7)</sup> and debate on the objection ensued, at the conclusion of which a motion was made by Mr. Gerald R. Ford, of Michigan, to lay the objection on the table.

A point of order against the motion was made by Mr. James G. O'Hara, of Michigan, asserting that the motion to table such an objection was inconsistent with the requirement of 3 USC § 17, that after two hours of debate in each House on the objection to the count of a state's electoral vote, "it shall be the duty of the presiding officer of each House to put the main question without further debate."

After further debate, the Speaker sustained the point of order. He stated:

It seems to the Chair that the law [3 USC § 17] is very plain with respect to the 5-minute rule and time of debate. With respect to the problem, the section states, and I quote:

It shall be the duty of the presiding officer of each House to put the main question without further debate.

7. John W. McCormack (Mass.).

In the opinion of the Chair the main question is the objection filed by the gentleman from Michigan (Mr. O'Hara) and the Senator from Maine, Senator Muskie.

The Chair is of the opinion that the law plainly governs the situation; that the Chair must put the main question and that the motion to table is not in order.

Accordingly, the Chair sustains the point of order.

The question on agreeing to the objection was taken; the objection being rejected—yeas 170, nays 228, not voting 32, not sworn 4. A motion to reconsider was laid on the table.

A similar situation arose in the Senate, during proceedings relating to the objection to the North Carolina vote. The Senate had been called to order by President pro tempore Richard B. Russell, of Georgia, who then directed the Clerk to read the objection, as follows: <sup>(8)</sup>

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the ground that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and for Spiro T. Agnew for Vice President and the State thereby appointed 13 electors to vote for Richard M. Nixon

for President and for Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice-President.

Following a statement by the President pro tempore that this was an unusual parliamentary situation in that it was the first time an objection to an electoral vote had been filed,<sup>(9)</sup> and a reading by the Clerk of the provisions of 3 USC §17, the Senate agreed to a unanimous-consent request by Edmund S. Muskie,<sup>(10)</sup> the Senator from Maine, that the time be divided equally between proponents and opponents of the objection, with time for the proponents to be allotted under the direction of the Majority Leader, Michael J. Mansfield, of Montana, and time for the opponents to be allotted under the direction of Senator Dirksen. Debate on the objection then proceeded.

During the debate on the objection, Edward M. Kennedy, the Senator from Massachusetts, inquired as to whether a motion to lay the objection on the table would be in order: <sup>(11)</sup>

9. According to Minority Leader Everett McK. Dirksen (Ill.), this was also the first time the Senate had operated under the five-minute rule. *Id.* at p. 223.

10. *Id.* at p. 211.

11. *Id.* at p. 223.

8. 115 CONG. REC. 210, 91st Cong. 1st Sess.

MR. KENNEDY: Mr. President, may I propound a parliamentary inquiry whether the motion to table is in order or is not in order?

THE PRESIDENT PRO TEMPORE: The Chair would rule that it is not in order. The statute under which we are now proceeding states the main question shall be put. Let the Chair read the last clause of section 17 of title 3:

But after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

At the conclusion of the two hours of debate, the question on agreeing to the objection was taken; and the objection was rejected (yeas 33 and nays 58). A motion to reconsider was laid on the table.<sup>(12)</sup> Subsequently, at the resumption of the joint session, the Presiding Officer directed the tellers to announce and record the electoral votes of North Carolina as submitted.

**§ 3.8 During consideration of an objection to the electoral vote count of a state, unanimous consent was sought for purposes of modifying the procedures prescribed by statute for consideration of such objections; after discussion and rejection of such request, a subsequent unanimous-consent request was**

12. *Id.* at p. 246.

**agreed to which qualified the terms of the statute.**

During proceedings arising from an objection to the count of electoral votes of North Carolina,<sup>(13)</sup> the following statutory provision<sup>(14)</sup> was read in the Senate:<sup>(15)</sup>

When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Senator Edmund S. Muskie, of Maine, then made the following unanimous-consent request:

. . . I ask unanimous consent that debate on objections to the electoral vote of North Carolina for George C. Wallace and Curtis LeMay shall be limited to 2 hours, as provided by law in section 17, title 3, United States Code, and that the time be equally divided and controlled by the majority leader and the minority leader.

Discussion ensued as to the effect of the request and the appropriateness of adopting procedures that, in the view of some Sen-

13. See § 3.6, *supra*.

14. 3 USC § 17.

15. 115 CONG. REC. 210, 91st Cong. 1st Sess., Jan. 6, 1969.

ators, would constitute a departure from the terms of the statute.

As background to the discussion, it may, of course, be noted that, under the Constitution,<sup>(16)</sup> “Each House may determine the Rules of its Proceedings,” so that there was no absolute legal obstacle to the Senate’s adoption of whatever procedures seemed appropriate at the time. It may also be noted that the terms of the unanimous-consent request did not on their face necessarily contravene the statute. But it will be observed that the Chair declined to pass upon the effect or legality of the unanimous-consent request, and stated that a single objection to the request would preserve procedures under the statute.

The Chair did remark that unanimous-consent requests are entertained that are seemingly “in conflict with” both statutes and the Constitution. Citing the constitutional requirement of the quorum, he said:

. . . We see suggestions of the absence of a quorum made several times during the day and withdrawn by unanimous consent. . . .

It may perhaps be implied from the Chair’s remarks here and throughout the debate that a proposed departure from statutory

provisions such as those in question is in any event permissible if no point of order or objection is raised.

The proceedings relating to Senator Muskie’s unanimous-consent request were in part as follows:<sup>(17)</sup>

Mr. [CARL T.] CURTIS [of Nebraska]: Is a unanimous-consent request in order which, by its terms, is not in accord with a duly enacted statute?

THE PRESIDENT PRO TEMPORE:<sup>(18)</sup> The Chair will state that unanimous-consent requests can also be received and entertained here that are in conflict with the statutes. Sometimes they are in conflict with the Constitution.

We have three sets of rules in the Senate. Some of them are spelled out in the Constitution, others are spelled out in the Senate rule book, and the great majority of them are embraced in the precedents of the Senate.

For example, one of the constitutional rules had to do with ascertaining the presence of a quorum. We see suggestions of the absence of a quorum made several times during a day, and withdrawn by unanimous consent. That can be done only by unanimous consent. If the proposal of the Senator from Maine can be made only by unanimous consent, any single Senator who thinks it is improper, and that we should follow the statute in this particular case—has a right to destroy it completely by uttering two words—“I object,” and the proposal will fall.

17. 115 CONG. REC. 210, 211, 91st Cong. 1st Sess., Jan. 6, 1969.

18. Richard B. Russell (Ga.).

16. U.S. Const. art. I, §5.

MR. [EDWARD W.] BROOKE [of Massachusetts]: Mr. President, reserving the right to object, do I understand the only difference between the unanimous-consent request and the statute to be that the time would be controlled by the Chair and not by the majority and minority leaders, under the statute?

MR. MUSKIE: As the unanimous-consent request is worded, time would be under the control of the majority and minority leaders.

MR. BROOKE: That is the only thing that was intended to be achieved by the unanimous-consent agreement?

MR. MUSKIE: Plus liberalizing the 5-minute requirement. The statute requires that each Senator may speak for 5 minutes, and not more than once. This was discussed quite extensively, and it was felt that the ideal arrangement would be to have full and free debate, with the time controlled and free exchange between Senators. It was felt that this could be done, unless a Senator objected; so we decided to make the effort. . . .

MR. [FRANK] CHURCH [of Idaho]: Mr. President, I have no desire to object, but I do not understand how this can be a proper proceeding.

THE PRESIDENT PRO TEMPORE: The Chair is not permitted to enter any ruling that purports to pass upon the legality of a unanimous-consent request, any more than is any other Member of this body.

Is there objection?

MR. BROOKE: Mr. President, it seems to me that the intent of the statute is to give as many Senators as possible an opportunity to be heard on this important issue. As I understand the dis-

tinguished Senator from Maine, under the unanimous-consent request, conceivably the distinguished Senator might use 1 hour of the time, and one Senator from the minority side use 1 hour of the time, which in my opinion would certainly frustrate the intent of the statute. I feel so strongly about it, Mr. President, that as much as I dislike to do so, I hereby object.

THE PRESIDENT PRO TEMPORE: The Senator from Massachusetts objects. The Chair, having tolerated considerable discussion and parliamentary inquiries, now asks of the Senate unanimous consent that that time not be charged against the 2 hours. If there is no objection, it will not be charged; and that leaves the matter open for the Chair to recognize Senators who wish to speak on this subject.

The Chair recognizes the Senator from Maine for 5 minutes.

MR. MUSKIE: Mr. President, I anticipated that this might result, and I fully understand the reservations expressed by Senators. I have another unanimous-consent request to propose. I ask unanimous consent that debate be limited to 2 hours, as provided by statute, that the time be equally divided and controlled by the majority leader and the minority leader, and that the statutory limitation of 5 minutes per Senator be included, but that the 5 minutes available to any Senator may be used to ask or answer questions.

The purpose of this request, Mr. President, is to do two things: First, to insure that both sides of the debate shall have equal access to the attention of the Senate; second, that the use of the 5 minutes shall not be so rigid that

there cannot be the kind of exchange that would permit the answering of questions on the minds of Senators. The Parliamentarian has advised me that, in his judgment, this is consistent with the statute. It touches upon points not covered by the statute, and it embraces the limitations of the statute. . . .

THE PRESIDENT PRO TEMPORE: Is there objection to the unanimous-consent request? The Chair hears none, and the request is agreed to.

#### **§ 4. Presidential Nominations for Vice President**

##### *Transmittal Message*

**§ 4.1 When the President, pursuant to section 2 of the 25th amendment to the Constitution, nominates a Vice President to take office upon confirmation by a majority vote of both Houses, a message transmitting his nomination is laid before the House by the Speaker.**

On Oct. 13, 1973,<sup>(19)</sup> the Speaker<sup>(20)</sup> laid before the House the

19. 119 CONG. REC. 34032, 93d Cong. 1st Sess. For proceedings incident to the Senate's receipt of a similar message see 119 CONG. REC. 34111, 93d Cong. 1st Sess., Oct. 13, 1973.

See 120 CONG. REC. 29366, 93d Cong. 2d Sess., Aug. 20, 1974, for similar proceedings relating to the nomination of Nelson A. Rockefeller as Vice President.

20. Carl Albert (Okla.).

following message from the President of the United States:

*To the Congress of the United States:*

Pursuant to the provisions of Section 2 of the Twenty-fifth Amendment to the Constitution of the United States, I hereby nominate Gerald R. Ford, of Michigan, to be the Vice President of the United States.

RICHARD NIXON,  
THE WHITE HOUSE,  
October 13, 1973.

##### *Referral to Committee*

**§ 4.2 The Speaker referred the President's nomination of a Vice President to the Committee on the Judiciary, which has jurisdiction over matters relating to Presidential succession.**

On Oct. 13, 1973,<sup>(1)</sup> the Speaker<sup>(2)</sup> referred to the Committee on the Judiciary a message from the

1. 119 CONG. REC. 34032, 93d Cong. 1st Sess. See 119 CONG. REC. 34111, 93d Cong. 1st Sess., Oct. 13, 1973, where, in the Senate, the nomination was referred to the Senate Committee on Rules and Administration.

Similarly, on Aug. 20, 1974, the nomination by President Gerald R. Ford of Nelson A. Rockefeller as Vice President was referred in the House to the Committee on the Judiciary. See 120 CONG. REC. 29366, 93d Cong. 2d Sess.

2. Carl Albert (Okla.).

President of the United States nominating a Vice President.

### ***Confirmation***

#### **§ 4.3 The House agreed to a resolution confirming a Presidential nomination for Vice President of the United States and then received a message from the Senate announcing that body's confirmation of the nomination.**

On Dec. 6, 1973,<sup>(3)</sup> pursuant to a special order,<sup>(4)</sup> the House considered and agreed to a resolution (H. Res. 735) reported from the Committee of the Whole House on the state of the Union confirming a Presidential nomination for Vice President of the United States:

*Resolved*, That the House of Representatives confirm the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States.

A motion to reconsider was laid on the table.

3. 119 CONG. REC. 39899, 39900, 93d Cong. 1st Sess.
4. See 119 CONG. REC. 39807, 39812, 39813, 93d Cong. 1st Sess., Dec. 6, 1973, for proceedings incident to the House's agreement to a resolution, H. Res. 738, making in order consideration of the confirmation resolution.

Thereupon, the House received a message from the Senate announcing that body's confirmation<sup>(5)</sup> of the nomination.

Similarly, on Dec. 19, 1974,<sup>(6)</sup> pursuant to a special order, House Resolution 1519,<sup>(7)</sup> the House considered and agreed to a resolution (H. Res. 1511) reported from the Committee of the Whole House on the state of the Union confirming a Presidential nomination for Vice President of the United States:

*Resolved*, That the House of Representatives confirm the nomination of Nelson A. Rockefeller, of the State of New York, to be Vice President of the United States.

A motion to reconsider was laid on the table.

Thereupon, the House received a message from the Senate announcing that body's confirmation<sup>(8)</sup> of the nomination.

5. For proceedings incident to the Senate's confirmation of the nomination see 119 CONG. REC. 38224, 38225, 93d Cong. 1st Sess., Nov. 27, 1973.
6. 120 CONG. REC. 41516, 41517, 93d Cong. 2d Sess.
7. See *id.* at pp. 41419–516, for text of H. Res. 1519 and debate on H. Res. 1511.
8. For proceedings incident to the Senate's confirmation of the nomination, see 120 CONG. REC. 38918–36, 93d Cong. 2d Sess., Dec. 10, 1974.

## CHAPTER 11

# *Questions of Privilege*

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Commentary and editing by John R. Graham, Jr., J.D.

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- House employee, §16.16
- Members, §§15.1, 15.2
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- Capitol Architect, §16.6
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# *Questions of Privilege*

## A. INTRODUCTORY

### § 1. In General

The tradition of Anglo-American parliamentary procedure recognizes the privileged status of questions related to the honor and security of a deliberative body and its members. The House has accorded privileged status to such questions by Rule IX,<sup>(1)</sup> which provides:

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members, individually, in their representative capacity only; and shall have precedence of all other questions, except motions to adjourn.<sup>(2)</sup>

1. *House Rules and Manual* §661 (1973). For pre-1936 rulings on questions of privilege, see 3 Hinds' Precedents §§2521-2725, and 6 Cannon's Precedents §§553-622.
2. See 3 Hinds' Precedents §2521, noting that the object of Rule IX was to

Pursuant to the rule, questions of privilege are divided into two classes—the first pertaining to the House collectively, the second pertaining to the Members individually. Whenever a question of privilege is properly raised on the floor by a Member, the Speaker must entertain the question and rule on its admissibility. And the disposition of such questions must precede the consideration of any other question except the motion to adjourn.<sup>(3)</sup>

prevent the loss of time which had theretofore resulted from Members' obtaining the floor for a speech under the pretext of raising a question of privilege.

3. Precedence of the question, see §5, *infra*.

## B. PRIVILEGE OF THE HOUSE

### § 2. In General; Definition

Under Rule IX,<sup>(4)</sup> a question of the privilege of the House arises whenever its safety, dignity, or the integrity of its proceedings, is in issue. The question having been properly raised by the offering of a resolution, the Speaker initially decides whether the question presented constitutes a question of the privilege of the House. And, as the presiding officer of the House, it is customary for him to make a preliminary determination as to the validity of the question raised.<sup>(5)</sup> Appeal may be taken from the Chair's ruling, however, since the final determination regarding the validity of such a question of privilege rests with the House.<sup>(6)</sup>

Debate in the House on a question of privilege is limited to one hour<sup>(7)</sup> and may, like debate on other matters, be terminated by the adoption of a motion for the previous question.<sup>(8)</sup> Of course, the House may choose not to undertake consideration of a question of the privilege of the House, prefer-

4. *House Rules and Manual* §661 (1973).
5. See §§6.1, 6.2, *infra*.
6. See §6.3, *infra*.
7. See §7.1, *infra*.
8. See §7.3, *infra*.

ring instead to table or to commit the matter to a designated House committee for its study and recommendations before debate begins.<sup>(9)</sup>

### § 3. Effecting Changes in House Rules or Orders

#### *Change in House Rules*

#### § 3.1 A question of the privilege of the House may not be raised to effect a change in the rules of the House.

On May 24, 1972,<sup>(10)</sup> during proceedings incident to the receipt of a report from the Committee of the Whole House on the state of the Union, Ms. Bella S. Abzug, of New York, as a "question of privilege of rule IX" submitted the following resolution:

H. RES. 1003

*Resolved*, That on May 24, 1972, at the hour of three forty-five postmeridian the House shall stand in recess for fifteen minutes in order that it may hear and receive petition for redress of grievances relative to the war in Indochina to be presented by a cit-

9. See §7.4, *infra*.
10. 118 CONG. REC. 18675, 92d Cong. 2d Sess. For an additional example see 79 CONG. REC. 14667-69, 74th Cong. 1st Sess., Aug. 24, 1935.

izen of the United States and further resolved that in order to present such petition, the said citizen be permitted on the floor of the House during such recess.

Mr. Hale Boggs, of Louisiana, then made the point of order that the resolution was not a privileged resolution. Following debate on the point of order, the Speaker<sup>(11)</sup> in his ruling on the point of order said:

The gentlewoman is out of order. The Chair cannot permit the gentlewoman to speak out of order.

The Chair has been very lenient in permitting the gentlewoman to debate her point of order, but the point of order is obviously in order.

The gentlewoman undertakes to change the rules of the House or to make an exception without unanimous consent and without a special order of the House.

The point of order is sustained, and the gentlewoman is out of order.

***Change in House Orders***

**§ 3.2 It is not in order by way of a point of personal privilege or by raising a question of the privilege of the House to collaterally attack an order properly adopted by the House at a previous time, the proper method of reopening the matter being by motion to reconsider the vote**

11. Carl Albert (Okla.).

**whereby such action was taken.**

On Feb. 13, 1941,<sup>(12)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a question of the privilege of the House and submitted a resolution requesting the restoration to the Record of certain remarks made by him and Mr. Samuel Dickstein, of New York, during the previous day's proceedings. Such remarks had been deleted by the House pursuant to the adoption of a motion to expunge made by Mr. John E. Rankin, of Mississippi. Following debate, an inquiry was heard from Mr. Hoffman as to whether the Chair had ruled on the question of the privilege of the House. Responding to the inquiry, the Speaker<sup>(13)</sup> stated:

The House would have to decide that, and, in the opinion of the Chair, the House did decide the matter when it expunged the remarks from the Record. The Chair thinks, under the circumstances, that the proper way to reopen the question would be by a motion to reconsider the vote whereby the motion of the gentleman from Mississippi [Mr. Rankin] was adopted. The Chair is of the opinion that inasmuch as the question raised by the gentleman from Michigan was decided by a vote of the House on a proper motion, that he does not now present a question of privilege of the House or of personal privilege.

12. 87 CONG. REC. 979, 980, 77th Cong. 1st Sess.

13. Sam Rayburn (Tex.).

*Parliamentarian's Note:* On the legislative day of Oct. 8, 1968,<sup>(14)</sup> after repeated quorum calls and other delay pending approval of the Journal, a motion was adopted ordering a call of the House upon disclosure of the absence of a quorum. Thereupon another motion was adopted (before the quorum call commenced) directing that those Members who were not then present be returned to the Chamber and not permitted to leave until the pending business (approval of the Journal) be completed. No point of order was raised against that motion, although it was agreed to by less than a quorum, and no motion to reconsider was subsequently entered against the motion. Subsequently, during the continued reading of the Journal, Mr. Robert Taft, Jr., of Ohio, as a matter both of personal privilege and of the privileges of the House, moved that he and all other Members in the Chamber who had been there at the time of the last quorum call be permitted to leave the Chamber at their desire. While the Speaker<sup>(15)</sup> declined to entertain the motion as a question of privilege based upon Mr. Taft's conten-

14. 114 CONG. REC. 30214, 30215, 90th Cong. 2d Sess. (calendar day Oct. 9, 1968).

15. John W. McCormack (Mass.).

tion that under the Constitution and rules the freedom of Members who were present should not be restricted, the specific argument was not made that the order had been agreed to by less than a quorum or that it was directed only to the attendance of absentees and not to those present in the Chamber. This precedent does not, then, stand for the proposition that an improper order of the House or the manner of execution of an order of the House can never be collaterally attacked as a matter of the privilege of the House—it merely suggests that the proper contention was not made when the question of privilege was raised.

### *Change in Conference Procedure*

#### **§ 3.3 A question of the privilege of the House may not be raised to criticize or effect a change in conference procedure.**

On July 29, 1935,<sup>(16)</sup> Mr. George Huddleston, of Alabama, sub-

16. 79 CONG. REC. 12007-13, 74th Cong. 1st Sess. For further examples see 104 CONG. REC. 12690, 12691, 85th Cong. 2d Sess., June 30, 1958; 103 CONG. REC. 14737-39, 85th Cong. 1st Sess., Aug. 14, 1957; and 84 CONG. REC. 1367-70, 76th Cong. 1st Sess., Feb. 14, 1939.

mitted as a question of the privilege of the House, a resolution<sup>(17)</sup> instructing certain House conferees to insist upon the exclusion from subsequent conference committee meetings of several experts and counsel who were present during a previous committee meeting at the insistence of the Senate conferees. A point of order was then made by Mr. John E. Rankin, of Mississippi, that the resolution did not state a question of the privilege of the House and further said:

To say that the Senate committee, when it brings its experts to advise them and to assist them in working out the parliamentary or the legislative problems involved, is a matter that goes to the integrity of the proceedings of the House of Representatives I submit does not meet the requirement; and therefore the resolution is not privileged. If they want to come in and ask new instructions, and give the House the right to vote on the instructions or what those instructions are to be, that might be a different proposition, but that would not be a question of the privilege of the House.

Debate ensued, at the conclusion of which the Speaker<sup>(18)</sup> in sustaining the point of order, stated:<sup>(19)</sup>

The Chair does not wish to be understood as passing on the merits of the

17. H. Res. 311.

18. Joseph W. Byrns (Tenn.).

19. 79 CONG. REC. 12013, 74th Cong. 1st Sess.

question, because that is not within the province of the Chair, but the Chair thinks there is a distinction between an assault upon a member of a conference committee, as the gentleman from Alabama has suggested, and the attendance at a session of a conference committee of an employee of the Government upon the invitation of the conferees of one House. The Chair thinks that that is a matter of procedure that should be determined by the conferees. In the event that the conferees are unable to agree, it seems to the Chair that the remedy is provided in rule XXVIII. The Chair does not believe that under the facts stated a question of privilege is involved. The Chair, therefore, sustains the point of order.

#### § 4. Raising and Presenting the Question

##### *Prima Facie Showing*

**§ 4.1 The mere statement that the privilege of the House has been violated and transgressed, unsupported by a further showing of a prima facie violation or breach of the privilege of the House, does not properly present a question of privilege.**

On Feb. 18, 1936,<sup>(20)</sup> Mr. Marion A. Zioncheck, of Washington,

20. 80 CONG. REC. 2312, 2313, 74th Cong. 2d Sess. For further illustration see 88 CONG. REC. 2005, 77th Cong. 2d Sess., Mar. 6, 1942.

submitted as a question of privilege the following resolution:

*Resolved*, That the gentleman from New York, Mr. Taber, violated and transgressed the privileges of the House Monday, February 17, 1936.

A point of order was then made by Mr. Frederick R. Lehlbach, of New Jersey, asserting that the resolution did not raise a question of the privilege of the House. In his ruling, sustaining the point of order, the Speaker<sup>(21)</sup> stated:

The Chair thinks the point of order is well taken. The resolution does not set out a question of privilege.

### ***Raised by Resolution***

#### **§ 4.2 Questions of privilege of the House are raised by resolution.**

On Sept. 5, 1940,<sup>(22)</sup> Mr. Clare E. Hoffman, of Michigan, rising to

*Note:* The resolution quoted above was apparently in response to remarks by Mr. John Taber [N.Y.], made on the preceding day, in which he criticized an alleged abuse by Mr. Zioncheck of the privilege of extending remarks in the Record. See 80 CONG. REC. 2201, 74th Cong. 2d Sess., Feb. 17, 1936.

21. Joseph W. Byrns (Tenn.).  
 22. 86 CONG. REC. 11552, 11553, 76th Cong. 3d Sess. For further illustrations see 86 CONG. REC. 5111, 5112, 5114, 76th Cong. 3d Sess., Apr. 26, 1940; 80 CONG. REC. 2201, 74th Cong. 2d Sess., Feb. 17, 1936; 79

a question of the privilege of the House, sought recognition to make a statement. A point of order was made by Mr. John E. Rankin, of Mississippi, that in order to obtain recognition on a question of the privilege of the House a Member must first offer a resolution. Following the subsequent parliamentary inquiry by Mr. Hoffman inquiring whether in fact he was required to offer a resolution before stating his question, the Speaker<sup>(1)</sup> stated:

The gentleman must offer his resolution first, under the rule.

### ***In Committee of the Whole***

#### **§ 4.3 A question of the privilege of the House based upon proceedings in the House may not be raised in the Committee of the Whole.**

On May 24, 1972,<sup>(2)</sup> after the House had gone into the Committee of the Whole, the following proceedings occurred:

THE CHAIRMAN:<sup>(3)</sup> For what purpose does the gentlewoman from New York rise?

MRS. [BELLA S.] ABZUG: Mr. Chairman, I rise to make a resolution con-

CONG. REC. 5454, 5455, 74th Cong. 1st Sess., Apr. 11, 1935.

1. William B. Bankhead (Ala.).
2. 118 CONG. REC. 18675, 92d Cong. 2d Sess.
3. John M. Murphy (N.Y.).

cerning a question of privilege on rule IX.

THE CHAIRMAN: The gentlewoman is not in order.

MR. [JOHN J.] MCFALL [of California]: Mr. Chairman, I make a point of order against the resolution.

MRS. ABZUG: Mr. Chairman, a question of privilege under rule IX in my understanding is in order at any time and it takes precedence over any other.

THE CHAIRMAN: The Chair states the gentlewoman is not correct. Question[s] of privilege of the House may not be raised in the Committee of the Whole.

## § 5. Time for Consideration; Precedence of the Question

### *Precedence of Motions to Adjourn*

#### § 5.1 A question of privilege is not entertained pending a vote on a motion to adjourn.

On Apr. 15, 1970,<sup>(4)</sup> following a point of order objecting to a vote on a motion to adjourn based on the absence of a quorum, Mr. Louis C. Wyman, of New Hampshire, rose to a question of "privilege." The Speaker pro tempore<sup>(5)</sup> indicated that the pendency of the motion to adjourn precluded the entertainment of the question.<sup>(6)</sup>

4. 116 CONG. REC. 11940, 11941, 91st Cong. 2d Sess.

5. Charles M. Price (Ill.).

6. By explicit provision Rule IX, *House Rules and Manual* §661 (1973),

#### § 5.2 The House may adjourn pending a decision on a question of privilege of the House.

On June 5, 1940,<sup>(7)</sup> Mr. Hamilton Fish, Jr., of New York, offered a resolution<sup>(8)</sup> raising a question of the privilege of the House. A point of order that a quorum was not present was then made by Mr. William P. Cole, of Maryland. When the count of the House by the Speaker<sup>(9)</sup> disclosed the absence of a quorum, the House agreed to a motion offered by Mr. Sam Rayburn, of Texas, adjourning until the following day.

### *Precedence of Question of Privilege*

#### § 5.3 Parliamentarian's Note: A question of privilege has priority over all other questions except motions to adjourn,<sup>(10)</sup> and supercedes the consideration of the original question

mandates that questions of privilege "shall have precedence of all other questions, except motions to adjourn."

7. 86 CONG. REC. 7633, 76th Cong. 3d Sess.

8. H. Res. 510.

9. William B. Bankhead (Ala.).

10. Rule IX, *House Rules and Manual* §661 (1973), and 3 Hinds' Precedents §2521.

**and must be disposed of first.**<sup>(11)</sup>

***Precedence of Prior Question of Privilege***

**§ 5.4 At a time when a question of privilege is pending in the House, a Member will not be recognized to present another question of privilege.**

On May 28, 1936,<sup>(12)</sup> Mr. C. Jasper Bell, of Missouri, offered a privileged resolution<sup>(13)</sup> raising a question of the privileges of the House. Thereafter, Mr. Joseph P. Monaghan, of Montana, sought recognition to raise a point of personal privilege and of the privilege of the House. Declining to extend recognition, the Speaker<sup>(14)</sup> stated:<sup>(15)</sup>

The question now pending is a question of the privilege of the House, and that takes precedence over the question of privilege of the gentleman from Montana. There can be only one question of privilege before the House at a time, and one is now pending.

11. *House Rules and Manual*, Jefferson's Manual §458, and annotation to Rule IX, §664 (1973); and 3 Hinds' Precedents §2522.
12. 80 CONG. REC. 8222, 74th Cong. 2d Sess. For a similar example see 80 CONG. REC. 5704-06, 74th Cong. 2d Sess., Apr. 20, 1936.
13. H. Res. 532.
14. Joseph W. Byrns (Tenn.).
15. 80 CONG. REC. 8222, 74th Cong. 2d Sess., May 28, 1936.

***Question of Privilege as Unfinished Business***

**§ 5.5 A question of the privilege of the House pending at the time of adjournment becomes the unfinished business on the next day.**

On Aug. 27, 1940,<sup>(16)</sup> the House adjourned during debate on a resolution involving the question of the privilege of the House offered by Mr. Jacob Thorkelson, of Montana. At the commencement of the succeeding day's business the Speaker<sup>(17)</sup> stated:

The unfinished business before the House is the question of the privilege of the House raised by the gentleman from Montana. Does the gentleman from Montana desire to be recognized?

***Precedence as to the Journal***

**§ 5.6 The Speaker indicated that, unlike a question of personal privilege, a question of the privilege of the House could interrupt the reading of the Journal.**

On the legislative day of Oct. 8, 1968,<sup>(18)</sup> during the reading of the

16. 86 CONG. REC. 11046-49, 76th Cong. 3d Sess. For an additional example see 112 CONG. REC. 27641, 89th Cong. 2d Sess., Oct. 19, 1966.
17. William B. Bankhead (Ala.).
18. 114 CONG. REC. 30214-16, 90th Cong. 2d Sess., Oct. 9, 1968 (calendar day).

Journal the following proceedings occurred:

MR. [ROBERT] TAFT [Jr., of Ohio]: Mr. Speaker—

THE SPEAKER:<sup>(19)</sup> For what purpose does the gentleman from Ohio rise?

MR. TAFT: Mr. Speaker, I have a privileged motion.

MR. [SIDNEY R.] YATES [of Illinois]: A point of order, Mr. Speaker. That is not in order until the reading of the Journal has been completed.

THE SPEAKER: Will the gentleman from Ohio state his privileged motion?

MR. TAFT: Mr. Speaker, my motion is on a point of personal privilege.

THE SPEAKER: Will the gentleman from Ohio state whether it is a point of personal privilege or a privileged motion?

MR. TAFT: It is a privileged motion, and a motion of personal privilege.

Under rule IX questions of personal privilege are privileged motions, ahead of the reading of the Journal.

THE SPEAKER: The Chair will advise the gentleman that a question of personal privilege should be made later after the Journal has been disposed of.

If the gentleman has a matter of privilege of the House, that is an entirely different situation.

MR. TAFT: I believe, Mr. Speaker, this involves not only personal privilege as an individual, but also as a Member of the House and also the privileges of all Members of the House.

THE SPEAKER: The Chair does not recognize the gentleman at this time on a matter of personal privilege.

But the Chair will, after the pending matter, the reading of the Journal has

been disposed of, recognize the gentleman if the gentleman seeks recognition.

***Precedence Over Calendar Wednesday Business***

**§ 5.7 A matter involving the privilege of the House takes precedence over the continuation of the call of committees under the Calendar Wednesday rule.**

On Feb. 8, 1950,<sup>(20)</sup> during the call of committees pursuant to the Calendar Wednesday rule,<sup>(1)</sup> the following proceedings occurred:

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER.<sup>(2)</sup> The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, this is Calendar Wednesday, and I ask that the business of Calendar Wednesday proceed. I submit that the regular order is the continuation of the call of committees by the Clerk.

THE SPEAKER: The Chair at this time is going to lay before the House a matter of highest privilege.

The Speaker then laid before the House as a matter involving the privileges of the House a communication from the Clerk of the House reporting the receipt of a

20. 96 CONG. REC. 1695, 81st Cong. 2d Sess.

1. Rule XXIV clause 7, *House Rules and Manual* § 897 (1973).

2. Sam Rayburn (Tex.).

19. John W. McCormack (Mass.).

subpena duces tecum from a U.S. district court.

***Precedence Over District of Columbia Business***

**§ 5.8 A resolution involving a question of the privilege of the House takes precedence over District of Columbia business under Rule XXIV clause 8.**

On Dec. 14, 1970,<sup>(3)</sup> it being the day set aside by House rule<sup>(4)</sup> for consideration of District of Columbia business, the House nevertheless entertained a resolution<sup>(5)</sup> concerning the printing and publishing of a report of the Committee on Internal Security presented by Mr. Richard H. Ichord, of Missouri, as a matter involving the question of the privilege of the House. Mr. Ichord stated in part as follows:

I rise to a question of privilege in a matter affecting the rights of the House collectively, the integrity of its proceedings, and the rights of the Members in their respective capacity. See House rule XI. As you know, this question comes before us as a consequence of proceedings instituted on October 13, 1970, in the U.S. District

3. 116 CONG. REC. 41355, 41358, 91st Cong. 2d Sess.

4. Rule XXIV clause 8, *House Rules and Manual* § 899 (1973).

5. H. Res. 1306.

Court for the District of Columbia to enjoin the filing, printing, publishing, and dissemination of a report of the House Committee on Internal Security (No. 91-1607), titled "Limited Survey of Honoraria Given Guest Speakers for Engagements at Colleges and Universities," which I reported to the House on October 14. On October 28, 1970, a single judge of that court . . . entered a final order permanently enjoining the Public Printer and the Superintendent of Documents from printing and distributing any copy of the report, or any portion, restatement, or facsimile thereof, and declared that any publication of the report at public expense would be illegal. . . .

Never in the constitutional history of this Nation . . . has any court of the United States . . . sustained any such final restraint upon the printing and dissemination of a report of a committee of the Congress.

***Precedence Over Motion for the Previous Question***

**§ 5.9 A resolution properly asserting a question of the privilege of the House could take precedence over a motion for the previous question on a bill already reported from the Committee of the Whole.**

On May 24, 1972,<sup>(6)</sup> the Committee of the Whole House on the state of the Union rose and reported to the House a bill<sup>(7)</sup> con-

6. 118 CONG. REC. 18675, 92d Cong. 2d Sess.

7. H.R. 15097.

cerning certain appropriations for the Department of Transportation. Thereafter, prior to consideration of the motion for the previous question on the bill made by Mr. John J. McFall, of California, Ms. Bella S. Abzug, of New York, submitted a resolution<sup>(8)</sup> asserting as a question of privilege of the House that the House recess for the purpose of receiving a petition for the redress of certain grievances. After the resolution was read, the Speaker<sup>(9)</sup> sustained a point of order that the resolution did not state a question of the privileges of the House.<sup>(10)</sup>

***Application of Three-day Rule Regarding Committee Reports***

**§ 5.10 A committee report submitted as a matter involving the privileges of the House, as distinguished from a report merely privileged under the rules, may be considered on the same day reported notwithstanding the requirement by House rule that committee reports be available to Members at least three calendar days prior to their consideration.**

8. H. Res. 1003.  
 9. Carl Albert (Okla.).  
 10. See §3.1, supra.

On July 13, 1971,<sup>(11)</sup> Mr. Harley O. Staggers, of West Virginia, rising to a question of the privilege of the House, sought to submit and call up for immediate consideration a report<sup>(12)</sup> of the Committee on Interstate and Foreign Commerce on the contemptuous conduct of a witness in refusing to respond to a subpoena duces tecum issued by the committee. A point of order was then raised by Mr. Sam M. Gibbons, of Florida, that consideration of the matter violated a House rule<sup>(13)</sup> requiring committee reports to be available to Members for at least three calendar days prior to their consideration. Following some debate, the Speaker<sup>(14)</sup> in overruling the point of order stated:

The Chair has studied clause 27(d)(4) of rule XI and the legislative history in connection with its inclusion in the Legislative Reorganization Act of 1970. That clause provides that "a matter shall not be considered in the House unless the report has been available for at least 3 calendar days."

The Chair has also examined rule IX, which provides that:

Questions of privilege shall be, first, those affecting the rights of the

11. 117 CONG. REC. 24720-23, 92d Cong. 1st Sess.  
 12. H. REPT. NO. 92-349.  
 13. *House Rules and Manual* §735 (1973).  
 14. Carl Albert (Okla.).

House collectively, its safety, dignity, and the integrity of its proceedings . . . and shall have precedence of all other questions, except motions to adjourn.

Under the precedents, a resolution raising a question of the privileges of the House does not necessarily require a report from a committee. Immediate consideration of a question of privilege of the House is inherent in the whole concept of privilege. When a resolution is presented, the House may then make a determination regarding its disposition.

When a question is raised that a witness before a House committee has been contemptuous, it has always been recognized that the House has the implied power under the Constitution to deal directly with such conduct so far as is necessary to preserve and exercise its legislative authority. However, punishment for contemptuous conduct involving the refusal of a witness to testify or produce documents is now generally governed by law—Title II, United States Code, sections 192–194—which provides that whenever a witness fails or refuses to appear in response to a committee subpoena, or fails or refuses to testify or produce documents in response thereto, such fact may be reported to the House. Those reports are of high privilege.

When a resolution raising a question of privilege of the House is submitted by a Member and called up as privileged, that resolution is also subject to immediate disposition as the House shall determine.

The implied power under the Constitution for the House to deal directly with matters necessary to preserve and exercise its legislative authority; the

provision in rule IX that questions of privilege of the House shall have precedence of all other questions; and the fact that the report of the committee has been filed by the gentleman from West Virginia as privileged—all refute the argument that the 3-day layover requirement of clause 27(d)(4) applies in this situation.

The Chair holds 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.

Therefore, the Chair overrules the point of order.

## **§ 6. Recognition to Offer; Determinations as to Validity**

### ***Speaker's Power to Recognize Member***

#### **§ 6.1 Questions asserted to involve the privilege of the House are addressed to the Speaker; and he may refuse recognition if the resolution is not shown to be admissible as a question of privilege under the rule.**

On the legislative day of Oct. 8, 1968,<sup>(15)</sup> Mr. Robert Taft, Jr., of Ohio, presented a resolution pur-

15. 114 CONG. REC. 30214, 30215, 90th Cong. 2d Sess., Oct. 9, 1968 (calendar day).

portedly involving a question of the privilege of the House. However, the Speaker<sup>(16)</sup> ruled that the Member could not be recognized for the purpose of calling up such a resolution. (See §3.2, supra.)

A parliamentary inquiry was then raised by Mr. Gerald R. Ford, of Michigan, questioning whether in fact the gentleman from Ohio had been recognized for the purpose of offering the resolution. Answering in the negative, the Speaker stated:<sup>(17)</sup>

THE SPEAKER: The gentleman from Michigan is well aware of the fact that the question of recognition rests with the Chair. The gentleman did not make a motion which was in order by reason of the action heretofore taken by the House.

***Preliminary Determinations; Deferral of Recognition***

**§ 6.2 On one occasion, the Chair deferred ruling on the validity of a resolution presented as raising a question of the privilege of the House.**

On May 21, 1941,<sup>(18)</sup> Mr. Clare E. Hoffman, of Michigan, sub-

- 16. John W. McCormack (Mass.).
- 17. 114 CONG. REC. 30215, 90th Cong. 2d Sess., Oct. 8, 1968 (calendar day Oct. 9, 1968).
- 18. 87 CONG. REC. 4307, 4308, 77th Cong. 1st Sess.

mitted a resolution purportedly raising a question of the privilege of the House. Explaining his unwillingness to immediately entertain the resolution, the Speaker<sup>(19)</sup> said:<sup>20</sup>

. . . For the moment at least the Chair would hesitate to hold that the gentleman's resolution is privileged. The Chair assures the gentleman that he would like to look into it further. He would hesitate to hold at this time that the general criticism of Members of the House is a matter so involving the privileges of the House that a resolution of this kind would be in order.

The Chair desires to look into the matter and will talk with the gentleman personally or recognize him in the House later in the day.

No further action was taken on the floor or by the Speaker.

***Appeal From Speaker's Ruling***

**§ 6.3 On one occasion when an appeal was taken from the Speaker's decision that a resolution did not state a question of the privilege of the House, the House laid the appeal on the table, thereby sustaining the decision of the Chair.**

On the legislative day of Oct. 8, 1968,<sup>(21)</sup> Mr. Robert Taft, Jr., of

- 19. Sam Rayburn (Tex.).
- 20. 87 CONG. REC. 4308, 77th Cong. 1st Sess., May 21, 1941.
- 21. 114 CONG. REC. 30214, 30215, 90th Cong. 2d Sess., Oct. 9, 1968 (calendar day).

Ohio, presented a resolution which he asserted raised a question involving the privilege of the House. However, the Speaker<sup>(22)</sup> ruled that the Member could not be recognized for the purpose of presenting such a resolution. (See §3.2, supra.) Mr. Taft then appealed the ruling of the Chair. Immediately thereafter, Mr. Carl Albert, of Oklahoma, moved that the appeal be laid on the table. The question was taken and, by a vote of 136 yeas to 102 nays, the motion to lay the appeal on the table was agreed to.

## § 7. Consideration and Debate; Referral to Committee

### *Hour Rule on Debate*

#### § 7.1 The hour rule applies to debate on a question of the privilege of the House.

On Feb. 6, 1950,<sup>(1)</sup> Mr. Clare E. Hoffman, of Michigan, following

22. John W. McCormack (Mass.).

1. 96 CONG. REC. 1514, 81st Cong. 2d Sess. For further illustration, see 116 CONG. REC. 41358, 91st Cong. 2d Sess., Dec. 14, 1970; 113 CONG. REC. 6041, 90th Cong. 1st Sess., Mar. 9, 1967; 92 CONG. REC. 5001, 79th Cong. 3d Sess., May 14, 1946; and 86 CONG. REC. 5111, 5112, 5114, 76th Cong. 3d Sess., Apr. 26, 1940.

his submission of a resolution raising a question of the privileges of the House, inquired of the Speaker<sup>(2)</sup> as to whether he was entitled to one hour of debate. In response to the inquiry the Speaker stated, "If it is a question of the privilege of the House, the gentleman would be."

### *Scope of Debate or Argument*

#### § 7.2 A Member having been recognized on a question of the privilege of the House must confine himself to such question.

On Aug. 27, 1940,<sup>(3)</sup> Mr. Jacob Thorkelson, of Montana, presented a resolution raising the question of personal privilege and of the privilege of the House. At issue were remarks inserted in the *Congressional Record* by Mr. Adolph J. Sabath, of Illinois. Mr. Thorkelson, in presenting the resolution, stated:

It is of the utmost importance that the Congressional Record be a true record of the proceedings of the House. The integrity of the Record is destroyed by the insertion of remarks purporting to have been made on the floor of the House, but which were not so made, when no permission has been granted by the House to insert those remarks.

2. Sam Rayburn (Tex.).
3. 86 CONG. REC. 11046, 76th Cong. 3d Sess.

The remarks which have just been quoted as having been inserted in the Record by the gentleman from Illinois [Mr. Sabath] were not made on the floor of the House and violate the rules of the House in two particulars.

First, the remarks charge that the Member from Montana had inserted 210 pages of "scurrilous matter" in the Record. "Scurrilous," among other things, means "grossly offensive," "vulgar," "opprobrious."

Such remarks reflect upon the character, the reputation, of the Member from Montana; tend to hold him up to ridicule; reflect upon his ability, his reputation, and his character in his representative capacity.

They also charge him with having inserted in the Record a forged letter.

Subsequently, the Speaker<sup>(4)</sup> stated that Mr. Thorkelson's assertions did not "raise a question of veracity [but did] raise a question in reference to the Record itself, as to whether or not such permission was obtained by the gentleman from Illinois."<sup>(5)</sup>

Later in the proceedings, when Mr. Thorkelson sought to introduce matter relevant to the alleged imputation of untruthfulness, the following exchange took place:<sup>(6)</sup>

THE SPEAKER: On what phase is the gentleman addressing himself so far as

4. William B. Bankhead (Ala.).
5. 86 CONG. REC. 11049, 76th Cong. 3d Sess.
6. *Id.* at p. 11156.

the question of privilege is concerned? . . .

MR. THORKELSON: With regard to whether I have uttered truths or falsehoods. I believe that is part of my resolution.

THE SPEAKER: The Chair does not find any language in the gentleman's resolution where he is charged with an untruth or falsity. . . . The only question of privilege involved is whether or not the matter was put in without permission of the House. . . . The Chair does not desire to interrupt the continuity of the gentleman's argument, but the Chair is under some obligation to see that the gentleman conforms with the rules and discusses the matter of privilege about which he complains.

***Applicability of Previous Question***

**§ 7.3 The previous question applies to a question of the privilege of the House.**

On Apr. 26, 1940,<sup>(7)</sup> Mr. Clare E. Hoffman, of Michigan, presented a resolution raising a question of the privilege of the House. Debate on the resolution then ensued. Thereafter, the Member moved the previous question on his resolution, the previous question ultimately being rejected on a division—ayes 102, noes 139.

7. 86 CONG. REC. 5111-14, 76th Cong. 3d Sess.

***Referral of Question to Committee***

**§ 7.4** The House may refer to the Committee on Rules for consideration a question involving the privilege of the House.

On Jan. 23, 1940<sup>(8)</sup> Mr. Clare E. Hoffman, of Michigan, submitted a resolution<sup>(9)</sup> involving a question of the privilege of the House. Immediately thereafter, the House agreed to a motion which committed the resolution to the Committee on Rules for its consideration.

**§ 7.5** The House by resolution may refer a matter to a designated committee for its determination as to whether the matter involves a question of the privilege of the House.

On Mar. 26, 1953,<sup>(10)</sup> the House adopted a resolution<sup>(11)</sup> submitted by Mr. Charles A. Halleck, of Indiana, authorizing and directing the Committee on the Judiciary to determine whether the service of subpoenas upon certain Members, former Members, and employees of the House, relative to a civil suit, constituted a question involving the privilege of the House.

### C. BASIS OF QUESTIONS OF PRIVILEGE OF THE HOUSE

#### **§ 8. General Criticism of Legislative Activity**

##### ***Criticism of Congress***

**§ 8.1** A newspaper editorial making a general criticism of the Congress does not present a question of per-

sonal privilege or the privilege of the House.

On Sept. 22, 1941,<sup>(12)</sup> Mr. Clare E. Hoffman, of Michigan, sought to submit, as a matter presenting a question both of personal privilege and of the privilege of the House, the text of a newspaper editorial charging Congress with "inertia, cowardice, and political

**8.** 86 CONG. REC. 606, 76th Cong. 3d Sess.

**9.** H. Res. 366.

**10.** 99 CONG. REC. 2356-58, 83d Cong. 1st Sess. For additional illustration of the same point, see 87 CONG. REC.

8734-39, 77th Cong. 1st Sess., Nov. 10, 1941.

**11.** H. Res. 190.

**12.** 87 CONG. REC. 7500, 77th Cong. 1st Sess.

slickness," thereby detracting from the authority and respect bestowed by the Constitution. In his ruling declining recognition to the Member for the purpose of submitting the editorial in question, the Speaker<sup>(13)</sup> stated:

. . . The Chair does not think that an editorial in a paper making general criticism of Congress raises a question of the privileges of the House, and certainly no Member of the House in his individual capacity is attacked in this resolution, and, therefore, the Chair must hold that this is not a question of personal privilege or a question of the privilege of the House.

***Criticism of Members Generally***

**§ 8.2 A newspaper editorial charging Members of the House with demagoguery and willingness to punish the District of Columbia did not give rise to a question of the privilege of the House.**

On May 21, 1941,<sup>(14)</sup> Mr. Clare E. Hoffman, of Michigan, offered as a matter raising a question of the privilege of the House, a resolution requesting the appointment of a committee to investigate and report on a newspaper editorial which charged Members of the

13. Sam Rayburn (Tex.).  
 14. 87 CONG. REC. 4307, 4308, 77th Cong. 1st Sess.

House with demagoguery and willingness to punish the District of Columbia to win votes back home. In his ruling on the validity of the resolution as raising a question of the privilege of the House, the Speaker<sup>(15)</sup> stated:

. . . For the moment at least the Chair would hesitate to hold that the gentleman's resolution is privileged. The Chair assures the gentleman that he would like to look into it further. He would hesitate to hold at this time that the general criticism of Members of the House is a matter so involving the privileges of the House that a resolution of this kind would be in order.

No further floor action was taken by the Speaker with respect to this resolution.

***Resolutions Relating to Critical Publications***

**§ 8.3 A resolution providing for an investigation of newspaper charges, including allegations of criminal conduct by the Congress, was presented as a question of the privilege of the House.**

On Nov. 28, 1941,<sup>(16)</sup> Mr. Clare E. Hoffman, of Michigan, presented as a question of the privilege of the House a resolution<sup>(17)</sup>

15. Sam Rayburn (Tex.).  
 16. 87 CONG. REC. 9194, 9195, 77th Cong. 1st Sess.  
 17. H. Res. 349.

seeking the factual basis for a newspaper article charging Congress with lack of courage, with being “yellow,” with having “sold the country out for a few lousy jobs,” with “protecting Communists,” and with aiding in “the robbery, extortion, physical brutality and arrogant suppression of citizens’ plain rights by groups of thugs, thieves, and anti-American conspirators in the service of the Kremlin.”

Mr. Hoffman then received the consent of the House that consideration of this resolution be reserved until the next legislative day, Dec. 1.<sup>(18)</sup> At that time the resolution was referred to the Committee on the Judiciary.

**§ 8.4 A resolution calling for a committee investigation of newspaper charges that the House was being influenced by mobs was presented as a question of the privilege of the House.**

On Mar. 29, 1954,<sup>(19)</sup> Mr. Clare E. Hoffman, of Michigan, offered as a matter raising a question of the privilege of the House a resolution<sup>(20)</sup> requesting the appoint-

18. 87 CONG. REC. 9256–60, 77th Cong. 1st Sess.

19. 100 CONG. REC. 3968–71, 83d Cong. 2d sess.

20. H. Res. 482.

ment of a committee to ascertain the facts concerning and make recommendations for action in relation to a newspaper article charging that “mobs appear to have enough influence to reach into the House of Representatives to kill probes into labor racketeering.” Following some discussion of the resolution a motion was adopted referring the resolution to the Committee on the Judiciary.

**§ 9. Charges Involving Members**

*Charges by a Member*

**§ 9.1 A resolution providing for an investigation of charges by a Member that an executive officer improperly attempted to influence the Member’s vote presents a question involving the privilege of the House.**

On July 2, 1935,<sup>(1)</sup> Mr. Hamilton Fish, Jr., of New York, presented as a question of the privilege of the House a resolution<sup>(2)</sup> declaring that Mr. Ralph Brewster, of Maine, had stated that he had been approached by a federal officer and told that if he (Brewster) did not vote against a provi-

1. 79 CONG. REC. 10669–71, 74th Cong. 1st Sess.

2. H. Res. 285.

sion in the so-called "Federal Power Act," certain funds allocated for public works in his home district would be withheld.

A point of order was made by Mr. Thomas L. Blanton, of Texas, that the resolution was not privileged. The Speaker<sup>(3)</sup> in his ruling on the point of order, stated:

. . . The gentleman from Maine [Mr. Brewster] has made certain serious charges. It is not necessary, of course, for the Chair to pass on the charges. That is a matter for the House to determine. But the Chair does feel that in view of the statements made by the gentleman from Maine on his own responsibility as a Member of this House, as well as those contained in the pending resolution, that if such statements are found to be correct, then it seems to the Chair that the integrity of the proceedings of this House have been seriously interfered with. The Chair, therefore, thinks that the resolution presents a question of the privilege of the House, and overrules the point of order.

***Charges Concerning Member Generally***

**§ 9.2 A resolution for the investigation of charges by a Member concerning fellow Members, accusing them of giving away atomic secrets, raises a question of the privilege of the House.**

3. Joseph W. Byrns (Tenn.).

On May 5, 1952,<sup>(4)</sup> Mr. Clare E. Hoffman, of Michigan, submitted, as a question involving the privilege of the House, a resolution<sup>(5)</sup> providing that Mr. Edwin Arthur Hall, of New York, be given an opportunity to appear before the bar of the House to explain or that a committee be appointed to investigate the authenticity of statements appearing in the press that Mr. Hall declared he "resents Congressmen who get soused and who in all probability are giving away atomic secrets to the enemy while under the influence of liquor." Pursuant to a motion authorizing the Speaker to refer this resolution to "a committee," the Speaker<sup>(6)</sup> ordered it referred to the Committee on Rules.

***Charges Concerning a Fellow Member***

**§ 9.3 A resolution alleging that a Member without authority addressed questionnaires to school teachers requesting their opinion on communism does not present a question of the privilege of the House.**

On June 18, 1936,<sup>(7)</sup> Mr. Kent E. Keller, of Illinois, offered as a

4. 98 CONG. REC. 4787-97, 82d Cong. 2d Sess.

5. H. Res. 631.

6. Sam Rayburn (Tex.).

7. 80 CONG. REC. 9947, 74th Cong. 2d Sess.

matter involving the privilege of the House a resolution concerning the alleged unauthorized action of Mr. Thomas L. Blanton, of Texas, whereby he addressed questionnaires to school teachers in the District of Columbia requesting their opinions on communism. A point of order was then made by Mr. Claude A. Fuller, of Arkansas, that the offered resolution did not involve a question of the privilege of the House. In his ruling sustaining the point of order, the Speaker<sup>(8)</sup> said:

. . . The Chair is somewhat familiar with the precedents involved in matters of this sort. The question of privilege under rule IX under which this resolution is offered provides that questions of privilege shall be—

First, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings.

The matter set up in the resolution constitutes an allegation of certain conduct on the part of an individual Member of the House, who, it seems, wrote certain letters to school teachers or other persons in the District of Columbia. Whether or not the subject matter of the letter was proper or not, whether it was a matter of propriety or not, whether it was a matter of good judgment or not, is not one that involves under this rule the question of the privileges of the House and its proceedings, in the opinion of the Chair. The Chair, therefore, sustains the point of order.

8. William B. Bankhead (Ala.).

## § 10. Charges Involving House Officers or Employees

### *Criticism of Speaker*

**§ 10.1 A newspaper column alleging that the Speaker took care to insure that only Members amenable to a certain program were appointed to the House Ways and Means Committee was held not to give rise to a question of the privilege of the House.**

On May 2, 1956,<sup>(9)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of the privilege of the House, presented a resolution<sup>(10)</sup> requesting the appointment of a committee to investigate and make recommendations concerning a newspaper column which charged that "Speaker Sam Rayburn, of Texas, had carefully scrutinized the House Ways and Means Committee to make sure nobody was put on the committee who might vote against the 27½ percent oil depletion allowance." The Speaker pro tempore,<sup>(11)</sup> in ruling the claim of privilege invalid, said:

The Chair rules that the gentleman does not present a question of the privilege of the House.

9. 102 CONG. REC. 3838, 3839, 84th Cong. 2d Sess.

10. H. Res. 417.

11. John W. McCormack (Mass.).

It is perfectly all right for the Speaker or any Member to advocate a 27½ percent depletion. The resolution does not present a question which involves the privilege of the House.

***Criticism of Doorkeeper***

**§ 10.2 A resolution proposing to deny a newspaper report that the Doorkeeper of the House acted rudely in accomplishing the removal of a visitor from the gallery was held not to raise a question of the privilege of the House.**

On July 9, 1935,<sup>(12)</sup> Mr. Thomas L. Blanton, of Texas, offered as a matter raising a question of the privilege of the House a resolution proposing the denial of a newspaper report which charged that the Doorkeeper of the House rudely forced a mother who was breast-feeding her child to leave the gallery of the House. Mr. Earl C. Michener, of Michigan, interrupted the reading of the resolution to make the point of order that the resolution did not give rise to a question of the privilege of the House. In his ruling sustaining the point of order, the Speaker<sup>(13)</sup> stated: "The Chair suggests that the gentleman from Texas ask unanimous consent

12. 79 CONG. REC. 10905, 74th Cong. 1st Sess.

13. Joseph W. Byrns (Tenn.).

that the resolution be read. The Chair does not think the resolution is privileged."

By unanimous consent, the reading of the resolution continued. Mr. Blanton then asked unanimous consent for consideration of the resolution, but objection was heard.<sup>(14)</sup>

***Improper or Unauthorized Actions by Committee Employee***

**§ 10.3 A resolution alleging that a committee employee appeared in a court as special counsel for a committee of the House without the authorization of the House was presented as a question of the privilege of the House.**

On July 1, 1952,<sup>(15)</sup> Mr. Clare E. Hoffman, of Michigan, presented as a matter involving a question of the privilege of the House a resolution alleging that a committee employee appeared in the United States District Court for the Southern District of California as special counsel for a subcommittee of the Committee on Executive Expenditures without the authorization of the House. Debate on the resolution ensued, at the con-

14. 79 CONG. REC. 10906, 74th Cong. 1st Sess.

15. 98 CONG. REC. 8768, 8769, 82d Cong. 2d Sess.

clusion of which a motion to refer the resolution to the Committee on the Judiciary was agreed to.

### § 11. Correcting the Record; Expungement of Words Uttered in Debate

A resolution asking the Senate to expunge from the *Congressional Record* language used in debate in the Senate which is offensive or otherwise improper may give rise to a question of the privilege of the House since the remedy of demanding that words be taken down is not available.<sup>(16)</sup> However, neither a question of personal privilege nor a question of the privilege of the House arises during a debate in which offensive language is used, the remedy being a demand that the objectionable words be taken down when spoken. Thus, on one occasion,<sup>(17)</sup> a Member, having risen to a question of personal privilege and of the privilege of the House, submitted a resolution to strike from the *Congressional Record* remarks made by a Member in the course of floor debate reflecting on the integrity of both the House

16. §§ 11.1 et seq., infra.

17. 96 CONG. REC. 1514, 81st Cong. 2d Sess., Feb. 6, 1950. For further illustrations see Ch. 29, infra.

and a majority of the Members. Citing Rule XIV clause 5,<sup>(18)</sup> which provides for the taking down of objectionable words, the Speaker<sup>(19)</sup> ruled the Member out of order in raising a question of privilege under the circumstances.

#### *Senate Debate Reflecting on House Integrity*

##### § 11.1 A resolution to expunge from the Congressional Record Senate debate reflecting on the integrity of the House presents a question of the privilege of the House.

On July 12, 1956,<sup>(1)</sup> Mr. Clare E. Hoffman, of Michigan, presented as a matter giving rise to a question of the privilege of the House a resolution seeking the expurgation from the Record of Senate debate attributing improper motives and influence to House action on an education bill.

The resolution [H. Res. 588] provided:

*Resolved*, whereas in the Congressional Record of July 9, 1956, certain articles appear which reflect upon the integrity of the House as a whole in its

18. *House Rules and Manual* §761 (1973).

19. Sam Rayburn (Tex.).

1. 102 CONG. REC. 12522, 12523, 84th Cong. 2d Sess.

representative capacity, and upon individual Members of the House; and

Whereas such statements tend to disgrace, degrade, and render ineffective the actions of the Members of the House; and

Whereas the statements so made and carried in the Record adversely affect the rights of the House collectively, its safety, dignity, and the integrity of its proceedings: Now, therefore, be it

*Resolved*, That the House hereby by the adoption of this resolution most respectfully requests that the other body expunge from its records the rollcall votes and remarks appearing on pages 11016–11017 and the remarks appearing on page A5384 of the daily Congressional Record of July 9, 1956, under the caption “Ignoring the children”; and be it further

*Resolved*, That a copy of this resolution be transmitted to the Presiding Officer of the other body.

By vote of the House the resolution was referred to the Committee on Rules.

***House Debate Reflecting on the Senate***

**§ 11.2 A resolution to expunge from the Congressional Record House debate reflecting on the Senate presents a question of the privilege of the House.**

On May 24, 1950,<sup>(2)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a

2. 96 CONG. REC. 7635–37, 81st Cong. 2d Sess.

question of the privilege of the House:

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The gentleman will state the question of privilege.

MR. HOFFMAN of Michigan: Mr. Speaker, in the daily Congressional Record of Monday, May 22, 1950, on page A4071 under date of Thursday, May 18, 1950, under the caption “We will meet the test,” there appears an extension of remarks of the Honorable Andrew J. Biemiller, of Wisconsin, which is a violation of the rules of the House in that in those remarks and in the editorial accompanying those remarks a Member of the other body is mentioned in such manner as to reflect upon him in his representative capacity. Such remarks and editorial as inserted in the Congressional Record are made a part of this question of privilege, are a violation of the rules of the House which prohibit any reference in the Congressional Record by a Member of this body to a Member of the other body.

The resolution which I offer is that such remarks be stricken from the Appendix.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read as follows:

Whereas the remarks of the gentleman from Wisconsin, Mr. Biemiller, which appear on page A4071 of the daily Congressional Record of Monday, May 22, 1950, and which are captioned, “We will meet the test,” are a violation of the rules of the House: Therefore be it

*Resolved by the House*, That said remarks as so indicated be, and the

3. John W. McCormack (Mass.).

same hereby are, stricken from the Record.

Debate on the resolution ensued. Subsequently, on the House's agreement to a unanimous-consent request by Mr. Biemiller that his remarks be deleted from the permanent Record, the resolution was withdrawn.

### *House Debate Reflecting on Members*

#### **§ 11.3 On one occasion the House agreed to a resolution which had been presented as a question of privilege of the House, and which expunged from the Congressional Record House debate which had impugned the integrity of a Member.**

On Sept. 5, 1940,<sup>(4)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a question of the privilege of the House and offered a resolution<sup>(5)</sup> as follows:

Whereas the gentleman from the Second District of Kentucky [Mr. (Beverly M.) Vincent], referring to the gentleman from the Twentieth District of Ohio [Mr. (Martin L.) Sweeney], stated on the floor of the House on September 4, 1940, as appears in the [daily] Record on page 17450, "I said I did not want to sit by a traitor to my country;" and

4. 86 CONG. REC. 11552, 76th Cong. 3d Sess.

5. H. Res. 591.

Whereas such words were a violation of the rules of the House and, as reprinted in the Record, charge the Member from Ohio with a lack of patriotism, and with disloyalty to his country, reflect upon him in his representative capacity and upon the dignity of the House: Therefore, be it

*Resolved*, That the words, "I said I did not want to sit by a traitor to my country," be expunged from the Record.

Debate on the resolution ensued, at the conclusion of which the resolution was agreed to.

*Parliamentarian's Note:* No point of order was raised against the presentation of this resolution as a question of privilege of the House. The proper remedy in such a case is to have the offending words taken down. Detailed coverage of this procedure is found in chapter 29, *infra*.

### *Offensive or Unauthorized Material Inserted in the Record*

#### **§ 11.4 A resolution to expunge from the Congressional Record several articles and documents criticizing a House committee, inserted in the Record by a Member, was entertained as a question of the privilege of the House.**

On Mar. 10, 1948,<sup>(6)</sup> Mr. John E. Rankin, of Mississippi, pre-

6. 94 CONG. REC. 2476-81, 80th Cong. 2d Sess. For additional examples see

sented as a matter involving the privilege of the House a resolution requesting that several articles and documents alleging that “[the Committee on Un-American Activities] continue[s] the practice of Hitler and Himmler, which would lead America . . . down the road toward fascism” which had been inserted in the *Congressional Record* by Mr. Adolph J. Sabath, of Illinois, be stricken therefrom. Following some debate the resolution was agreed to. The Member’s entire speech, including the articles and documents, was stricken from the Record.

**§ 11.5 A resolution to expunge from the Congressional Record a speech inserted therein alleged to reflect on the integrity of the House and its Members is entertained as a question of privilege.**

On May 13, 1946,<sup>(7)</sup> Mr. Clare E. Hoffman, of Michigan, offered as a matter involving a question of the privilege of the House a resolution<sup>(8)</sup> concerning the text of a speech delivered by August Scholle, a Michigan labor union

93 CONG. REC. 2461–63, 80th Cong. 1st Sess., Mar. 24, 1947.

7. 92 CONG. REC. 4922–24, 79th Cong. 2d Sess.

8. H. Res. 616.

official, assailing the integrity of both the House and its Members. The resolution proposed that the speech, which had been inserted in the *Congressional Record* by Mr. Adolph J. Sabath, of Illinois, be stricken therefrom. The resolution was adopted on a roll call vote—yeas 247, nays 77, not voting 106.

**§ 11.6 A resolution to expunge from the Congressional Record unparliamentary language inserted under leave to extend is entertained as a question of the privilege of the House.**

On Apr. 20, 1936,<sup>(9)</sup> Mr. Thomas L. Blanton, of Texas, presented as a question of the privilege of the House a resolution<sup>(10)</sup> demanding the expurgation from the Record of certain unparliamentary remarks concerning the personal life of a Member. The material had been inserted on a preceding day under leave to extend that had been granted to Mr. Marion A. Zioncheck, of Washington. The resolution was agreed to on a roll call vote.

**§ 11.7 A resolution to expunge certain remarks inserted**

9. 80 CONG. REC. 5704–07, 74th Cong. 2d Sess.

10. H. Res. 490.

**through an abuse of the grant of leave to print in the Congressional Record gives rise to a question of the privilege of the House.**

On July 13, 1942,<sup>(11)</sup> Mr. John E. Rankin, of Mississippi, presented as a matter of the privilege of the House the following resolution:<sup>(12)</sup>

Whereas in the daily Congressional Record of July 9, 1942, on page A2877, A2878, and A2879 of the Appendix thereof, the remarks purporting to be made by the gentleman from New York, Mr. Sol Bloom, and containing a letter written by one Ralph Ingersoll attacking draft board No. 44 of New York for performing its official duties in refusing to exempt the said Ralph Ingersoll from the draft on the flimsy pretext set out in said letter; and

Whereas said letter was inserted under permission to insert an editorial and not a letter from the said Ralph Ingersoll; and

Whereas it is stated on page 6271 of the Congressional Record of July 9, 1942, that the printing of this insertion in the Congressional Record was estimated to cost the Government of the United States \$157.50; and

Whereas said letter so inserted in lieu of the editorial for which permission was given contains language and statements that are objectionable and unparliamentary; and

**11.** 88 CONG. REC. 6102, 77th Cong. 2d Sess. For a further example see 92 CONG. REC. 1274, 79th Cong. 2d Sess., Feb. 13, 1946.

**12.** H. Res. 518.

Whereas said statements were not made upon the floor of the House; and

Whereas said statements reflect upon Members of Congress, are false, improper, and out of order, and in violation of the privileges and rules of the House; and if they had been uttered upon the floor of the House they would have been subject to a point of order: Therefore be it

*Resolved*, That the said remarks be stricken from the Record and the Public Printer prohibited from issuing copies thereof from the columns of the Congressional Record.

Without debate, the resolution was adopted.

**§ 11.8 A resolution to expunge from the Congressional Record certain remarks inserted without proper authorization is entertained as a matter of the privilege of the House.**

On Aug. 27, 1940,<sup>(13)</sup> Mr. Jacob Thorkelson, of Montana, offered as a question of the privilege of the House a resolution demanding that certain remarks inserted into the *Congressional Record* by Mr. Adolph J. Sabath, of Illinois, without first having obtained the permission of the House, be expunged from the Record and declared not to constitute a legitimate part of

**13.** 86 CONG. REC. 11046, 76th Cong. 3d Sess. For an additional example see 80 CONG. REC. 7019, 74th Cong. 2d Sess., May 11, 1936.

the official Record of the House. After some debate the resolution was adopted.

***Inaccuracies in the Congressional Record***

**§ 11.9 A resolution to correct inaccuracies in the report of proceedings as printed in the Congressional Record is presented as a question of the privilege of the House.**

On Apr. 26, 1940,<sup>(14)</sup> Mr. Clare E. Hoffman, of Michigan, offered as a matter involving the question of the privilege of the House the following resolution:

Whereas the Congressional Record of April 25, 1940, is not, on pages 5046 to 5051, inclusive, a true and accurate record of the proceedings that took place on the floor of the House on yesterday, in that there is omitted therefrom a demand which was made on the floor of the House by the gentleman from the Twelfth Congressional District of Michigan that certain words uttered on the floor of the House by the gentleman from the Second District of Georgia be taken down, and, there is omitted therefrom, the ruling of the Speaker upon such demand, and there is omitted therefrom a motion which was made by the gentleman from the Twelfth District of Massachusetts, and there is omitted therefrom the vote taken on said motion, and there is omitted therefrom the result of said

14. 86 CONG. REC. 5111, 5112, 76th Cong. 3d Sess.

vote and the subsequent direction of the Speaker to the gentleman from Georgia to continue: Now, therefore, be it

*Resolved*, That the Record of the House be corrected and that the proceedings above referred to be printed therein.

Following agreement by unanimous consent to the request of Mr. Edward E. Cox, of Georgia, that the stricken matter in question be restored to the Record, the resolution was withdrawn.

***Restoration of Remarks Previously Deleted***

**§ 11.10 A resolution to restore to the Record remarks previously deleted by House adoption of a motion to expunge does not present a question of the privilege of the House; the proper method of reopening the matter being by motion to reconsider the vote whereby such action was taken.**

On Feb. 13, 1941,<sup>(15)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a question of the privilege of the House and submitted a resolution requesting the restoration to the Record of certain remarks made by him and Mr. Samuel Dickstein, of New York, during the previous

15. 87 CONG. REC. 979, 980, 77th Cong. 1st Sess.

day's proceedings. Such remarks had been deleted by the House pursuant to the adoption of a motion to expunge made by Mr. John E. Rankin, of Mississippi. Following debate, an inquiry was heard from Mr. Hoffman as to whether the Chair had ruled on the question of the privilege of the House. Responding to the inquiry, the Speaker<sup>(16)</sup> stated:

The House would have to decide that, and, in the opinion of the Chair, the House did decide the matter when it expunged the remarks from the Record. The Chair thinks, under the circumstances, that the proper way to reopen the question would be by a motion to reconsider the vote whereby the motion of the gentleman from Mississippi [Mr. Rankin] was adopted. The Chair is of the opinion that inasmuch as the question raised by the gentleman from Michigan was decided by a vote of the House on a proper motion, that he does not now present a question of privilege of the House or of personal privilege.

## § 12. Enforcement of Committee Orders and Subpenas

### *Warrants Detaining Committee Witnesses*

#### § 12.1 A resolution authorizing the Speaker to issue a war-

16. Sam Rayburn (Tex.).

**rant commanding the detention of a committee witness, based on allegations that attempts had been made by the Senate to deprive the committee of such witness' presence, gave rise to a question of the privilege of the House.**

On Aug. 15, 1935,<sup>(17)</sup> Mr. John J. O'Connor, of New York, rose to a question of the privilege of the House and offered a resolution<sup>(18)</sup> authorizing the Speaker to issue a warrant commanding the bodily detention of a committee witness, it being alleged that attempts had been made by the Senate to deprive the committee of such witness' presence. The resolution stated:

Whereas the House did on July 8, 1935, adopt a resolution, House Resolution 288, authorizing the Committee on Rules to investigate any and all charges of attempts or attempts to intimidate or influence Members of the House of Representatives with regard to the bill S. 2796 or any other bills affecting public-utility holding companies during the Seventy-fourth Congress by any person, partnership, trust, association, or corporation;

Whereas under the authority conferred upon said Committee on Rules by said House Resolution 288, the said committee had caused to be issued a subpoena directed to H.C. Hopson to ap-

17. 79 CONG. REC. 13289, 13290, 74th Cong. 1st Sess.

18. H. Res. 340.

pear before said committee and to testify concerning the matters committed to the said Committee on Rules for investigation. . . .

Whereas agents of another body have attempted to serve the said H.C. Hopson at 11:30 a.m. on August 14 with a subpoena in order to compel the said H.C. Hopson to appear before another body forthwith to give testimony.

. . . Whereas any interference with the proper proceeding of the Committee on Rules in the investigation committed to them by House Resolution 288 is an invasion of the prerogatives and privileges of the House of Representatives. . . .

. . . Therefore, be it

*Resolved*, That the Speaker of the House of Representatives issue his warrant commanding the Sergeant at Arms of the House of Representatives, or his deputy, to take into custody the body of H.C. Hopson wherever found; that the said Sergeant at Arms, or his deputy, shall keep in custody the said H.C. Hopson until such time as the Committee on Rules shall discharge him.

*Provided, however*, That the said witness may be available for examination by the Senate Committee at such times as his attendance is not required by the House Committee.

A point of order was raised by Mr. John E. Rankin, of Mississippi, asserting that the resolution did not give rise to a question of the privilege of the House. Following some debate, the point of order was overruled by the Chair, the Speaker<sup>(19)</sup> stating:

19. Joseph W. Byrns (Tenn.).

. . . As the Chair construes the resolution, it involves the dignity and authority of the House. The House has authority to protect its own agents and its own committees in the discharge of the duties vested in them. It seems to the Chair that this is distinctly a matter of privilege for the consideration of the House. . . .

The Chair repeats that the resolution is one which involves the dignity and authority of the House in protecting its committees, which in this instance happens to be the Committee on Rules, in the investigation which it has been authorized to make. The Chair overrules the point of order.

***Orders Relating to Refusal of Witness to Be Sworn***

**§ 12.2 A committee report relating the refusal of a witness to be sworn to testify before a House subcommittee involves a question of the privilege of the House.**

On Sept. 10, 1973,<sup>(20)</sup> Mr. Lucien N. Nedzi, of Michigan, rose to a question of the privilege of the House and offered a report<sup>(1)</sup> from the Committee on Armed Services informing the House of the refusal of George Gordon Liddy to be sworn or to testify before its duly authorized subcommittee. Following the presen-

20. 119 CONG. REC. 28951, 28952, 28959, 28960, 28962, 28963, 93d Cong. 1st Sess.

1. H. REPT. No. 93-453.

tation of the committee report, the House agreed to a privileged resolution<sup>(2)</sup> offered by Mr. Nedzi directing the Speaker<sup>(3)</sup> to certify to the appropriate United States attorney the refusal of the witness to be sworn to testify before a subcommittee of the Committee on Armed Services.

*Parliamentarian's Note:* Based upon the precedent in the 92d Congress, first session, July 13, 1971,<sup>(4)</sup> Representative Nedzi was advised that a committee report on the contempt of a witness could be brought to the floor on the same day as filed and that the requirement for a three-day layover under Rule XI clause 27(d)(4) did not apply.

***Enforcement of Subpena Duces Tecum***

**§ 12.3 A committee report relating the refusal of a witness to respond to a subpoena duces tecum issued by a House subcommittee gives rise to a question of the privilege of the House.**

On July 13, 1971,<sup>(5)</sup> Mr. Harley O. Staggers, of West Virginia, rose

2. H. Res. 536.

3. Carl Albert (Okla.).

4. 117 CONG. REC. 24720-23.

5. 117 CONG. REC. 24720-23, 92d Cong. 1st Sess. For additional examples

to a question of the privilege of the House and submitted a report<sup>(6)</sup> from the Committee on Interstate and Foreign Commerce informing the House of the refusal of Frank Stanton, president of CBS, to respond to a subpoena duces tecum issued by a subcommittee of the committee. Subsequent to the presentation of the committee report, a privileged resolution<sup>(7)</sup> was offered by Mr. Staggers directing the Speaker<sup>(8)</sup> to certify the report of the House committee on the contemptuous conduct of the witness to the appropriate United States attorney. Some debate on the resolution ensued, at the conclusion of which the previous question on the resolution was moved by Mr. Staggers. Thereupon, Mr. Hastings Keith, of Massachusetts, asserting his opposition to the resolution, offered a motion to recommit the resolution to the Committee on Interstate and Foreign Commerce. The motion to recommit was agreed to.

see 112 CONG. REC. 27439-513, 27641, 89th Cong. 2d Sess., Oct. 18 and 19, 1966; 80 CONG. REC. 8219-21, 74th Cong. 2d Sess., May 28, 1936.

6. H. REPT. No. 92-349.

7. H. Res. 534.

8. Carl Albert (Okla.).

**§ 13. Invasion of House Jurisdiction or Prerogatives**

***Senate Invasion of House Prerogatives***

**§ 13.1 Invasion of the House prerogative to originate revenue-raising legislation granted by article I, section 7 of the Constitution raises a question of the privilege of the House.**

On May 20, 1965,<sup>(9)</sup> Mr. Wilbur D. Mills, of Arkansas, offered as a matter involving the privilege of the House a resolution<sup>(10)</sup> providing for the return to the Senate of a messaged bill. The bill authorized the President to raise the duty on fishery products and was deemed to infringe on the revenue-raising prerogatives of the

9. 111 CONG. REC. 11149, 11150, 89th Cong. 1st Sess. For further instances where invasion of the House's revenue-raising prerogative gave rise to a question of the privilege of the House, see 111 CONG. REC. 23632, 89th Cong. 1st Sess., Sept. 14, 1965; 108 CONG. REC. 23014, 87th Cong. 2d Sess., Oct. 10, 1962; 106 CONG. REC. 15818, 15819, 86th Cong. 2d Sess., July 2, 1960; 99 CONG. REC. 1897, 1898, 83d Cong. 1st Sess., Mar. 12, 1953; 92 CONG. REC. 5001-12, 79th Cong. 2d Sess., May 14, 1946.

10. H. Res. 397.

House. The language of the Senate bill was as follows:

That when the Secretary of the Interior determines that the fishing vessels of a country are being used in the conduct of fishing operations in a manner or in such circumstances which diminish the effectiveness of domestic fishery conservation programs, the President . . . may increase the duty on any fishery product in any form from such country for such time as he deems necessary to a rate not more than 50 percent above the rate existing on July 1, 1934.

The House resolution was agreed to.

***Executive Invasion of House Prerogatives***

**§ 13.2 Alleged infringement by the executive branch, through its treatymaking power, on the constitutional right of Congress under article IV section 3 to exercise control over the territory and other property belonging to the United States, presents a question of the privilege of the House.**

On Feb. 17, 1944,<sup>(11)</sup> Mr. Carl Hinshaw, of California, presented as a question involving the privilege of the House a resolution<sup>(12)</sup>

11. 90 CONG. REC. 1836, 78th Cong. 2d Sess.

12. H. Res. 446.

instructing the Committee on the Judiciary to investigate the action of the President in sending to the Senate for ratification a treaty relating to the utilization by the United States and Mexico of certain southwestern rivers. The resolution declared that the Constitution (art. IV, §3) vests regulatory power over U.S. territory in the Congress, and that the action of the President constituted an invasion of the House's prerogatives relating to the control of United States' territory and property. Without debate, a motion to refer the resolution to the Committee on the Judiciary was agreed to.<sup>(13)</sup>

*Judicial Invasion of House Prerogatives*

**§ 13.3 A resolution declaring that the constitutional prerogatives of the House had been invaded by the issuance of a court order restraining the publication of a committee report presents a question of the privilege of the House.**

On Dec. 14, 1970,<sup>(14)</sup> Mr. Richard H. Ichord, of Missouri, offered as a matter involving the privilege

13. 90 CONG. REC. 1841, 78th Cong. 2d Sess.

14. 116 CONG. REC. 41355, 91st Cong. 2d Sess.

of the House a resolution (H. Res. 1306) ordering the Public Printer to publish a report of the Committee on Internal Security and enjoining all persons from interfering therewith, it being alleged, inter alia, that the prior issuance of a temporary order by a United States District Court restraining the publication of the committee report constituted an invasion of the House's prerogatives granted by the U.S. Constitution (art. I, §6, clause 3). After lengthy debate the resolution was agreed to on a roll call vote.<sup>(15)</sup>

**§ 14. Service of Process on Members**

The service of process on the House or those associated with it, or the exercise of authority over it by another coordinate and coequal branch of government, including any mandate of process which commands a Member's presence before another branch of government during sessions of the House, has historically been perceived by the House as a matter intimately related to its dignity and the integrity of its proceedings, and as constituting an occasion for the raising of the question of the privilege of the House.

15. Id. at P. 41374.

The rules and precedents of the House require that no Member, official, staff member, or employee of the House may, either voluntarily or in obedience to a subpoena, testify regarding official functions, documents, or activities of the House without the consent of the House being first obtained. Likewise, information on papers obtained by Members, officers, and staff employees of the House pursuant to their official duties may not be revealed in response to a subpoena without the consent of the House. Accordingly, when a House Member, officer, or employee is subpoenaed on a matter relating to House business, the privilege of the House arises; he or his supervisor therefore advises the Speaker, who lays the facts before the House for its consideration.<sup>(16)</sup>

***Service of Federal Court Summons***

**§ 14.1 The receipt of a summons naming a Member (who was also Majority Leader) of**

16. See 113 CONG. REC. 29374-76, 90th Cong. 1st Sess., Oct. 25, 1967. For instances where the receipt of judicial process by a House officer or Member has resulted in the presentation of a question of the privilege of the House, see §§ 15-17, *infra*.

**the House in his official capacity as a defendant in a civil action brought in a federal court raises a question of the privilege of the House and the matter is laid before the House for its consideration.**

On July 8, 1965,<sup>(17)</sup> the Chair recognized Mr. Carl Albert, of Oklahoma, who rose to a question of the privilege of the House:

MR. ALBERT: Mr. Speaker, I rise to a question of the privilege of the House. THE SPEAKER:<sup>(18)</sup> The gentleman will state the question of privilege.

MR. ALBERT: Mr. Speaker, in my official capacity as a Representative and as majority leader of this House, I have been served with a summons issued by the U.S. District Court for the District of Columbia to appear in connection with the case of the All-American Protectorate, Inc. against Lyndon B. Johnson, and others.

Under the precedents of the House, I am unable to comply with this summons without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send to the desk the summons.

THE SPEAKER: The Clerk will read the subpoena.

Thereupon the summons was read to the House.

17. 111 CONG. REC. 15978, 15979, 89th Cong. 1st Sess.

18. John W. McCormack (Mass.).

The Speaker and the Minority Leader, Gerald R. Ford, of Michigan, had been named in the summons, and both respectively submitted the matter to the House. The following proceedings then took place:

THE SPEAKER: The Chair has addressed a letter to the Attorney General of the United States. The Clerk will read the letter.

The Clerk read as follows:

*July 8, 1965.*

The Honorable the Attorney General,  
*Department of Justice.*

DEAR SIR: I did on July 6, 1965, accept service of a summons in the case of *The All-American Protectorate, Incorporated v. Lyndon B. Johnson et al.*, civil action file No. 1583-65, pending in the U.S. District Court for the District of Columbia. The complaint filed in this action names me, individually and as Speaker of the House of Representatives, as a defendant in this proceeding.

The majority leader of the House of Representatives, the Honorable Carl Albert, and the minority leader, the Honorable Gerald R. Ford, both of whom are named as defendants in this same proceeding, accepted service of summons on July 7, 1965.

I am including herewith the summons served upon me, and those served upon Representatives Albert and Ford, individually and in their official capacities as majority and minority leaders, respectively, in order that you may proceed in accordance with the law.

Sincerely,

JOHN W. MCCORMACK,  
*Speaker of the House  
of Representatives.*

### ***Service of Federal Court Subpena***

**§ 14.2 Where a Member receives a subpoena to appear as a witness in a federal court during a session of the House, a question of the privilege of the House arises and the matter is laid before the House for its consideration.**

On Nov. 17, 1969,<sup>(19)</sup> Mr. Henry B. Gonzalez, of Texas, rose to a question of the privilege of the House:

MR. GONZALEZ: . . . Mr. Speaker, I have been subpoenaed to appear before the U.S. District Court for the Western District of Texas to testify on Wednesday, November 19, 1969, in San Antonio, Tex., in the criminal case of the United States of America against Albert Fuentes, Jr., and Edward J. Montez.

Under the precedents of the House, I am unable to comply with this subpoena without the consent of the House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

19. 115 CONG. REC. 34301, 34302, 91st Cong. 1st Sess. For additional examples see 107 CONG. REC. 5844, 87th Cong. 1st Sess., Apr. 13, 1961; 107 CONG. REC. 2481, 87th Cong. 1st Sess., Feb. 21, 1961; 107 CONG. REC. 2480, 2481, 87th Cong. 1st Sess., Feb. 21, 1961; 107 CONG. REC. 2000, 87th Cong. 1st Sess., Feb. 9, 1961; and 106 CONG. REC. 6131, 86th Cong. 2d Sess., Mar. 21, 1960.

Mr. Speaker, I send the subpoena to the desk.

THE SPEAKER:<sup>(20)</sup> The Clerk will read the subpoena.

There followed a reading of the subpoena to the House.

*Parliamentarian's Note:* Mr. Gonzalez had no information relevant to the case and the House did not authorize his appearance.

***Service of Modified Federal Court Subpena***

**§ 14.3 Where a federal court subpoena directed to a Member was modified after service by court order, the Member informed the House of the modification when he presented the subpoena to the House.**

On Feb. 9, 1961,<sup>(1)</sup> Mr. Francis E. Walter, of Pennsylvania, rose to a question of the privilege of the House and addressed the following remarks to the Chair:

MR. WALTER: Mr. Speaker, I have been subpoenaed to appear before the U.S. District Court for the District of Columbia, to testify on February 20, 1961, in the case of the United States of America against Martin Popper.

The subpoena, as originally served upon me, required that I appear and testify and bring with me certain docu-

ments. A motion to quash that portion of the subpoena duces tecum requiring the presentation of documents was granted by Mr. Justice Edward M. Curran on February 3, 1961.

Under the precedents of the House, I am unable to appear and testify without the consent of the House, the privileges of the House being involved. I therefore submit the matter to the House for its consideration.

The subpoena was sent to the desk and the Speaker<sup>(2)</sup> instructed the Clerk to read it to the House. At the conclusion of the Clerk's reading, the House agreed to a privileged resolution<sup>(3)</sup> offered by Mr. John W. McCormack, of Massachusetts, authorizing the Member to appear in response to the subpoena as modified.

***Service of State Court Subpena***

**§ 14.4 Where a Member receives a subpoena from a state court, he lays the matter before the House for action.**

On Oct. 18, 1971,<sup>(4)</sup> Mr. Don H. Clausen, of California, rising to a

2. 2. Sam Rayburn (Tex.).
3. H. Res. 155.
4. 117 CONG. REC. 36494, 92d Cong. 1st Sess. For further illustrations, including some instances where the House adopted resolutions, see 116 CONG. REC. 11863, 91st Cong. 2d Sess., Apr. 15, 1970; 113 CONG. REC. 35129, 90th Cong. 1st Sess., Dec. 6, 1967; 113 CONG. REC. 28406, 90th

20. John W. McCormack (Mass.).

1. 107 CONG. REC. 2000, 87th Cong. 1st Sess.

question of the privilege of the House, informed the House that he had been served with a subpoena from the Superior Court of the State of California. Upon the delivery of the subpoena to the desk, the Speaker<sup>(5)</sup> instructed the Clerk to read the subpoena to the House. The House took no further action in the matter.

**§ 14.5 A Member having been subpoenaed to testify at a preliminary hearing in an action pending in the state court rose to a question of the privilege of the House.**

On Sept. 23, 1971,<sup>(6)</sup> Mr. Joshua Eilberg, of Pennsylvania, rose to a question of the privilege of the House and addressed the following remarks to the Chair:

MR. EILBERG: Mr. Speaker, yesterday afternoon, after the House had adjourned, I was subpoenaed to appear before the Court of Common Pleas of Philadelphia, Commonwealth of Pennsylvania, to testify this morning, September 23, 1971, at 9 a.m., at a preliminary hearing in an action designated as Commonwealth against Patrick McLaughlin.

Under the precedents of the House, I was unable to comply with this sub-

Cong. 1st Sess., Oct. 10, 1967; and 111 CONG. REC. 17002, 89th Cong. 1st Sess., July 15, 1965.

5. Carl Albert (Okla.).

6. 117 CONG. REC. 33114, 92d Cong. 1st Sess.

pena, without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

The subpoena was sent to the desk, and the Speaker<sup>(7)</sup> instructed the Clerk to read it to the House. The House did not adopt a resolution permitting him to attend.

***Service of Subpena Issued by District of Columbia Court***

**§ 14.6 The receipt by a Member of a subpoena to appear before a court of the District of Columbia gave rise to a question of the privilege of the House.**

On Jan. 19, 1972,<sup>(8)</sup> the Chair recognized Mr. George P. Miller, of California, on a question of the privilege of the House:

MR. MILLER of California: Mr. Speaker, I rise to a question of the privileges of the House.

Mr. Speaker, I have been subpoenaed to appear before the criminal assignment branch of the District of Columbia Court of General Sessions on January 28, 1972, in the case of the United States of America against Ernest Long.

7. Carl Albert (Okla.).

8. 118 CONG. REC. 318, 92d Cong. 2d Sess. Additional illustrations may be found at 115 CONG. REC. 26008, 91st Cong. 1st Sess., Sept. 18, 1969, and 110 CONG. REC. 1510, 88th Cong. 2d Sess., Jan. 31, 1964.

Under the precedents of the House, I am unable to comply with the subpoena without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send the subpoena to the desk.

THE SPEAKER:<sup>(9)</sup> The Clerk will report the subpoena.

After the reading of the subpoena, a privileged resolution<sup>(10)</sup> was offered by Mr. Hale Boggs, of Louisiana, authorizing the Member to appear in response to the subpoena. The resolution was agreed to.

***Service of Municipal Court Subpena***

**§ 14.7 A Member having received a summons to appear before a municipal court rose to a question of the privilege of the House.**

On June 9, 1964,<sup>(11)</sup> Mr. John E. Moss, Jr., of California, rose to a question of the privilege of the House and informed the House that he had been summoned to appear and testify before the Juvenile and Domestic Relations Court of the city of Alexandria,

9. Carl Albert (Okla.).

10. H. Res. 767.

11. 110 CONG. REC. 13017, 13018, 88th Cong. 2d Sess. For an additional example see 99 CONG. REC. 3013, 3014, 83d Cong. 1st Sess., Apr. 13, 1953.

Virginia. The summons was sent to the desk, whereupon the Speaker<sup>(12)</sup> instructed the Clerk to read it to the House. At the conclusion of the Clerk's reading, a resolution<sup>(13)</sup> was offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the summons. The resolution was agreed to.

***Service of Executive Agency, Subpena***

**§ 14.8 The receipt by a Member of a subpoena to appear and testify before a federal executive agency gives rise to a question of the privilege of the House.**

On Mar. 18, 1963,<sup>(14)</sup> after the Chair's recognition of Mr. Alvin E. O'Konski, of Wisconsin, on a question of privilege, the following proceedings occurred:

MR. O'KONSKI: Mr. Speaker, I rise to a question of privilege of the House.

. . .

Mr. Speaker, I have been subpoenaed to appear before the Federal Communications Commission or Charles J. Frederick, hearing examiner, at the new Post Office Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C., to testify on March 20,

12. John W. McCormack (Mass.).

13. H. Res. 743.

14. 109 CONG. REC. 4392, 88th Cong. 1st Sess.

1963, at 10 a.m., in the matter of Central Wisconsin Television, Inc., Federal Communications Commission docket No. 14933-14934. Under the precedents of the House, I am unable to comply with this subpoena without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

THE SPEAKER:<sup>(15)</sup> The Clerk will report the subpoena.

The House then heard the report of the Clerk.

The House took no further action in the matter.

***Service of Court Orders To Appear and Show Cause***

**§ 14.9 A Member, having been served by a state court with an order to appear and show cause, rose to a question of the privilege of the House.**

On May 19, 1970,<sup>(16)</sup> Mr. Sam Steiger, of Arizona, rose to a question of the privilege of the House and informed the House that he had been served with an order to appear and to show cause issued by the Superior Court of the State of Arizona. The order was sent to the desk, whereupon the Speaker<sup>(17)</sup> instructed the Clerk to read it to the House.

15. John W. McCormack (Mass.).

16. 116 CONG. REC. 16165, 91st Cong. 2d Sess.

17. John W. McCormack (Mass.).

*Parliamentarian's Note:* The Member had been served with a subpoena duces tecum by a state court to appear as a witness for the plaintiff and to bring with him certain documents in his possession. He appeared in response to the subpoena, but refused to bring the requested documents and refused to answer oral interrogatories propounded by counsel for plaintiff. He was then served with an order to show cause why he should not be compelled to answer the interrogatories which had been propounded to him. Because the court order requested him to appear while Congress was in session, he raised the question of the privilege of the House. He did not request the House to authorize his appearance, and no further action was taken in the matter.

***Service of Order To Appear and Answer Interrogatories***

**§ 14.10 A Member, having been served by a state court with an order to appear and answer oral interrogatories, rose to a question of the privileges of the House.**

On July 22, 1970,<sup>(18)</sup> Mr. Sam Steiger, of Arizona, rising to a question of the privilege of the

18. 116 CONG. REC. 25333, 25334, 91st Cong. 2d Sess.

House, informed the House that he had been served with an order to appear and answer oral interrogatories issued by the Superior Court of the State of Arizona. The order was sent to the desk whereupon the Speaker<sup>(19)</sup> instructed the Clerk to read it to the House. At the conclusion of the reading, the House agreed to a privileged resolution<sup>(20)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the order at any time when the House had adjourned to a day certain for a period in excess of three days.

**§ 15. Service of Grand Jury Subpena**

***Federal Grand Jury Subpena***

**§ 15.1 The receipt by a Member of a subpoena to appear before a federal grand jury gives rise to a question of the privilege of the House.**

On July 15, 1963,<sup>(1)</sup> the Chair recognized Mr. Edmond

19. John W. McCormack (Mass.).

20. H. Res. 1155.

1. 109 CONG. REC. 12488, 88th Cong. 1st Sess. For additional examples see 95 CONG. REC. 5544, 5545, 81st Cong. 1st Sess., May 3, 1949; and 88 CONG. REC. 1267, 77th Cong. 2d Sess., Feb. 16, 1942.

Edmondson, of Oklahoma, on a question of the privilege of the House:

MR. EDMONDSON: Mr. Speaker, I rise to a question of the privilege of the House.

THE SPEAKER:<sup>(2)</sup> The gentleman will state it.

MR. EDMONDSON: Mr. Speaker, I have received a summons to appear before the grand jury of the U.S. District Court for the District of Columbia on Tuesday, July 16, 1963, at 9 o'clock a.m., to testify in the case of the United States against Jessie Lee Bell.

Under the precedents of the House, I am unable to comply with this summons without the consent of the House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

Mr. Speaker, I send to the desk the summons.

THE SPEAKER: The Clerk will report the summons.

At the conclusion of the Clerk's report, a resolution<sup>(3)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the summons, was agreed to.

***State Grand Jury Subpoena***

**§ 15.2 A subpoena to a Member requiring his appearance before a state grand jury gives rise to a question of the privilege of the House.**

2. John W. McCormack (Mass.).

3. H. Res. 436.

On May 9, 1962,<sup>(4)</sup> Mr. Frank W. Boykin, of Alabama, rising to a question of the privilege of the House, informed the House that he had been subpoenaed to appear before the grand jury of the Circuit Court for Montgomery County, Maryland. The subpoena was sent to the desk whereupon, the Speaker<sup>(5)</sup> instructed the Clerk to read it to the House. At the conclusion of the Clerk's reading, the House agreed to a privileged resolution<sup>(6)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Member to appear in response to the subpoena.

## § 16. Service of Process on House, Its Officers, or Employees

### *Service of Process Naming the House*

#### § 16.1 The receipt of a summons and complaint naming the House of Representatives

4. 108 CONG. REC. 8006, 87th Cong. 2d Sess. For further illustrations see 108 CONG. REC. 7945, 87th Cong. 2d Sess., May 8, 1962; 108 CONG. REC. 7816, 7817, 87th Cong. 2d Sess., May 7, 1962; and 105 CONG. REC. 1623, 86th Cong. 1st Sess., Feb. 2, 1959.
5. John W. McCormack (Mass.).
6. H. Res. 630.

#### **as the defendant in a civil action pending in a federal court raises a question of the privilege of the House.**

On Dec. 13, 1973,<sup>(7)</sup> the Speaker<sup>(8)</sup> laid before the House as a matter giving rise to a question of the privilege of the House the following summons:

#### SUMMONS IN A CIVIL ACTION

[In the U.S. District Court for the Northern District of California, civil action file No. C 73 2092GBH]

Earle Ray Esgate, Plaintiff, v. Donald E. Johnson, Board of Veterans Appeals, the United States House of Representatives, the United States Senate, the President of the United States, as Commander in Chief of the Armed Forces of the United States, and as Co-Defendant United States Army and United States Army Medical Corps.

To the above named Defendant: You are hereby summoned and required to serve upon The plaintiff; acting as his own attorney and whose address is below: plaintiff's attorney, whose address Earle Ray Esgate, 1099 Topaz Ave. Apt. 6, San Jose, California, 95117, Phone 296-8182 an answer to the complaint which is herewith served upon you within 60 days after service of this summons upon you, exclusive of

7. 119 CONG. REC. 41258, 93d Cong. 1st Sess. For additional examples see 118 CONG. REC. 29136, 92d Cong. 2d Sess., Aug. 18, 1972; 118 CONG. REC. 17398, 92d Cong. 2d Sess., May 16, 1972; and 117 CONG. REC. 1503, 92d Cong. 1st Sess., Feb. 3, 1971.
8. Carl Albert (Okla.).

the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: December 5, 1973.

F. R. PETTIGREW,  
*Clerk of Court.*  
C. COWNE,  
*Deputy Clerk.*

[Seal of Court.]

Along with the summons, the Speaker presented two letters written by the Clerk, W. Pat Jennings, relating to the summons:

WASHINGTON, D. C.,  
*December 12, 1973.*

Hon. CARL ALBERT,  
The Speaker,  
House of Representatives.

DEAR MR. SPEAKER: On December 11, 1973 I have been served a summons and copy of the complaint in a Civil Action through the United States Marshal by certified mail number 197884 that was issued by the U.S. District Court for the Northern District of California.

The Summons requires the Congress of the United States to answer the complaint within sixty days after service.

The Summons and complaint in question are attached, and the matter is presented for such action as the House in its wisdom may see fit to take.

With kind regards, I am,  
W. PAT JENNINGS,  
*Clerk, House of Representatives.*

WASHINGTON, D.C.,  
*December 12, 1973.*

Hon. ROBERT H. BORK,  
*Acting Attorney General of the United States, U.S. Department of Justice, Washington, D.C.*

DEAR MR. BORK: I am sending you a certified copy of a summons and

complaint in Civil Action No. C 73 2092GBH filed against the United States House of Representatives and others in the United States District Court for the Northern District of California, and served upon me through the U.S. Marshal by certified mail No. 197884 on December 11, 1973.

In accordance with 2 U.S.C. 118 I have sent a certified copy of the Summons and Complaint in this action to the U.S. Attorney for the Northern District of California requesting that he take appropriate action under the supervision and direction of the Attorney General. I am also sending you a copy of the letter I forwarded this date to the U.S. Attorney.

With kind regards, I am,  
Sincerely,

W. PAT JENNINGS,  
*Clerk, House of Representatives.*

Under the provisions of 2 USC § 118, the United States Attorney is obliged to appear and defend, upon request of an officer of either House of Congress, actions brought against such officer on account of anything done in discharge of official duties. Thereafter, the defense of the case is under the supervision and direction of the Attorney General.

***Service of Process on House Officers***

**§ 16.2 The receipt of a summons and complaint naming the Speaker in his official capacity as a defendant in a civil action brought in a federal court raises a question**

**of the privilege of the House, and the matter is laid before the House for its consideration.**

On Feb. 5, 1973,<sup>(9)</sup> the Speaker<sup>(10)</sup> laid before the House as a matter giving rise to a question of the privilege of the House the following summons:

SUMMONS

The Regent Cecil J. Williams Plaintiff v. Carl Albert, M.C. Speaker, et al. Defendants.

To the above named Defendant: Carl Albert, M.C., Speaker.

You are hereby summoned and required to serve upon the Regent Cecil J. Williams, P.P., whose address is 1417 N Street, N.W., Washington, D. C. 20005, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY,  
*Clerk of Court.*  
RUBIN CUELLAR,  
*Deputy Clerk.*

- 9.** 119 CONG. REC. 3207, 93d Cong. 1st Sess. For additional illustrations see 119 CONG. REC. 29, 93d Cong. 1st Sess., Jan. 3, 1973; 118 CONG. REC. 17398, 92d Cong. 2d Sess., May 16, 1972; 115 CONG. REC. 24002 91st Con. 1st Sess., Sept. 3, 1969; and 111 CONG. REC. 2645, 89th Cong. 1st Sess., Feb. 11, 1965.
- 10.** Carl Albert (Okla.).

Date: January 5, 1973.

Following the presentation of the summons, the Speaker advised the House that he had, pursuant to 2 USC §118, requested the U.S. Attorney to represent him in the action.<sup>(11)</sup>

**§ 16.3 The receipt of a summons and complaint naming the Clerk of the House of Representatives in his official capacity as a defendant in a civil action brought in a federal court gives rise to a question of the privilege of the House, and the matter is laid before the House for its consideration.**

On Mar. 26, 1973,<sup>(12)</sup> the Speaker<sup>(13)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Clerk of the House advising that he had been served with a summons and com-

- 11.** Civil Action File No. 27-73 (U.S.D.C. D. D.C.).
- 12.** 119 CONG. REC. 9452, 93d Cong. 1st Sess. For further examples see 119 CONG. REC. 29, 93d Cong. 1st Sess., Jan. 3, 1973; 118 CONG. REC. 34040, 92d Cong. 2d Sess., Oct. 5, 1972; 118 CONG. REC. 15311, 92d Cong. 2d Sess., May 2, 1972; 118 CONG. REC. 5025, 92d Cong. 2d Sess., Feb. 22, 1972; and 116 CONG. REC. 31182, 91st Cong. 2d Sess., Sept. 10, 1970.
- 13.** Carl Albert (Okla.).

plaint as a defendant in a civil action<sup>(14)</sup> brought in the Federal District Court for the District of Columbia and further advising that he had pursuant to 2 USC § 118, requested the U.S. Attorney for the District of Columbia to represent him in the action.

**§ 16.4 The receipt of a summons and complaint naming the Sergeant at Arms of the House of Representatives in his official capacity as a defendant in a civil action brought in a federal court raises a question of the privilege of the House, and the matter is laid before the House for its consideration.**

On July 16, 1973,<sup>(15)</sup> the Speaker<sup>(16)</sup> laid before the House as a question of the privilege of the House a communication from the Sergeant at Arms advising that he had been served with a summons and complaint as a defendant in a civil action<sup>(17)</sup> brought in the U.S.

14. *Mauro v Jennings et al.*, Civil Action File No. 447-73 (U.S.D.C. D. D.C.).
15. 119 CONG. REC. 23961, 23962, 93d Cong. 1st Sess. For additional examples see 116 CONG. REC. 28502, 91st Cong. 2d Sess., Aug. 12, 1970; and 109 CONG. REC. 10359, 88th Cong. 1st Sess., June 6, 1963.
16. Carl Albert (Okla.).
17. *Consumers Union of the United States, Inc. v Kenneth R. Harding*,

District Court for the District of Columbia and further advising that he had, pursuant to 2 USC § 118, requested the U.S. Attorney to represent him in the action.

***Service of Supplemental Petition on House Officers***

**§ 16.5 The receipt of a supplemental petition naming House officers as individual defendants in a civil action already pending in federal court against the House and other of its officers and Members raises a question of the privilege of the House, and the matter is submitted to the House for its consideration.**

On Oct. 10, 1972,<sup>(18)</sup> the Speaker<sup>(19)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the clerk advising that he had received an amending and supplemental petition in connection with a case<sup>(20)</sup> pending before the U.S. District Court for the

- Sergeant at Arms of the House of Representatives et al.*, Civil Action File No. 1328-73 (U.S.D.C. D. D.C.).
18. 118 CONG. REC. 34583, 92d Cong. 2d Sess.
19. Carl Albert (Okla.).
20. *Hillary v U.S. House of Representatives, Albert, Colmer, et al.*, Civil Action File No. 72-1126.

Eastern Division of Louisiana naming the Clerk and Sergeant at Arms of the House of Representatives as additional defendants in the action and further advising that he had, pursuant to 2 USC §118, requested the U.S. Attorney for the Eastern Division of Louisiana to represent them in the action.

*Service on Capitol Architect*

**§ 16.6 The receipt of a summons and complaint naming the Acting Architect of the Capitol in his official capacity as a defendant in a civil action brought in a federal court gives rise to a question of the privilege of the House and the matter is laid before the House for its consideration.**

On Aug. 12, 1970,<sup>(1)</sup> the Speaker<sup>(2)</sup> laid before the House a communication from the Acting Architect of the Capitol informing the House that he had been served with a summons and complaint as a defendant in a civil action<sup>(3)</sup> brought in the Federal District Court for the District of Columbia

1. 116 CONG. REC. 28502, 91st Cong. 2d Sess.
2. John W. McCormack (Mass.).
3. Civil Action File No. 2296-70 (U.S.D.C. D. D.C.).

and advising the House that he had, pursuant to 28 USC §516, requested the Department of Justice to represent him in the action.

*Service of Process on the Clerk*

**§ 16.7 The Clerk having been served with process, including a subpoena duces tecum issued by a federal court in a civil action, informed the Speaker who laid the matter before the House.**

On Nov. 15, 1973,<sup>(4)</sup> the Speaker<sup>(5)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Clerk of the House advising that he had been served with a subpoena and a notice of the taking of a deposition issued by the U.S. District Court for the District of Columbia commanding his appearance for the purpose of testifying and producing certain House documents and records in connection with the case of *Nader et al. v Butz et al.*<sup>(6)</sup>

4. 119 CONG. REC. 37136, 37137, 93d Cong. 1st Sess. For additional examples see 118 CONG. REC. 6326, 92d Cong. 2d Sess., Mar. 1, 1972; 117 CONG. REC. 47667, 92d Cong. 1st Sess., Dec. 17, 1971; 117 CONG. REC. 47185, 92d Cong. 1st Sess., Dec. 15, 1971; and 117 CONG. REC. 39512, 92d Cong. 1st Sess., Nov. 5, 1971.
5. Carl Albert (Okla.).
6. Civil Action File No. 148-72 (U.S.D.C. D. D.C.).

Following the presentation of the communication, the House agreed to a privileged resolution<sup>(7)</sup> offered by Mr. Thomas P. O'Neill, Jr., of Massachusetts, authorizing the Clerk or his designated agent to appear in response to the subpoena but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and relevant.

**§ 16.8 The Clerk of the House of Representatives, having received a subpoena duces tecum from a state court, reported the matter to the Speaker who laid it before the House.**

On Apr. 24, 1958,<sup>(8)</sup> the Speaker<sup>(9)</sup> laid before the House as a matter involving the question of the privilege of the House the following communication from the Clerk of the House:

APRIL 17, 1958.

The Honorable the SPEAKER,  
*House of Representatives.*

SIR: From the Superior Court of the 26th Judicial District of North Carolina I have received a subpoena duces tecum, directed to me as Clerk of the

7. H. Res. 705.

8. 104 CONG. REC. 7262, 7263, 85th Cong. 2d Sess.

9. Sam Rayburn (Tex.).

House of Representatives, to appear before said court as a witness in the case of *Anna Mae Allen et al. v. Southern Railway Company et al.*, and to bring with me certain and sundry papers therein described in the files of the House of Representatives.

The rules and practice of the House of Representatives indicates that the Clerk may not, either voluntarily or in obedience to a subpoena duces tecum, produce such papers without the consent of the House being first obtained. It is further indicated that he may not supply copies of certain of the documents and papers requested without such consent.

The subpoena in question is herewith attached, and the matter is presented for such action as the House in its wisdom may see fit to take.

Very truly yours,  
RALPH R. ROBERTS,  
*Clerk, United States  
House of Representatives.*

Following the presentation of the communication and the reading of the subpoena to the House, a resolution<sup>(10)</sup> was offered by Mr. John W. McCormack, of Massachusetts, authorizing the Clerk to appear in response to the subpoena but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and relevant.

**§ 16.9 The Clerk of the House of Representatives, having**

10. H. Res. 547.

**received a subpoena to appear and testify before a court of the District of Columbia in a criminal case, informed the Speaker who laid the matter before the House.**

On July 13, 1965,<sup>(11)</sup> the Speaker<sup>(12)</sup> laid before the House as a matter raising the question of the privilege of the House, a communication from the Clerk of the House advising that he had received a subpoena commanding his appearance for the purpose of testifying before the criminal bench of the District of Columbia Court of General Sessions in connection with *U.S. v Washington*.<sup>(13)</sup> Following the presentation of the communication and the reading of the subpoena, the House agreed to a resolution<sup>(14)</sup> offered by Mr. John E. Moss, Jr., of California, authorizing the Clerk to appear and testify.

***Service of Subpoena on the Doorkeeper***

**§ 16.10 When the Doorkeeper of the House of Representatives receives a subpoena duces tecum from a federal**

11. 111 CONG. REC. 16592, 89th Cong. 1st Sess.
12. John W. McCormack (Mass.).
13. Criminal Case No. U.S. 5379-65, U.S. 5380-65.
14. H. Res. 469.

**district court he reports the facts to the Speaker who lays the matter before the House.**

On Apr. 13, 1961,<sup>(15)</sup> the Speaker<sup>(16)</sup> rose to a question of the privilege of the House and laid before the House a communication from the Doorkeeper of the House advising that he had received a subpoena directing his appearance as a witness and the production of certain described papers before the U.S. District Court for the District of Columbia in connection with *U.S. v Taylor*.<sup>(17)</sup> Following the presentation of the communication, the House agreed to a privileged resolution<sup>(18)</sup> offered by Mr. John W. McCormack, of Massachusetts, authorizing the Doorkeeper to appear in response to the subpoena, but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and relevant.

***Service of Subpoena on the Sergeant at Arms***

**§ 16.11 The Sergeant at Arms of the House of Representa-**

15. 107 CONG. REC. 5851, 5852, 87th Cong. 1st Sess.
16. Sam Rayburn (Tex.).
17. Criminal Case No. 965-60.
18. H. Res. 256.

**tives, having received a subpoena from a federal court, reported the facts to the Speaker who laid the matter before the House.**

On Mar. 3, 1960,<sup>(19)</sup> the Speaker pro tempore<sup>(20)</sup> laid before the House as a matter raising the question of the privilege of the House a communication from the Sergeant at Arms, as follows:

MARCH 3, 1960.

The Honorable SAM RAYBURN,  
*Speaker of the House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: From the District Court of the United States for the Southern District of New York, I have received a subpoena directing the Sergeant at Arms to appear before said court as a witness in the case of the *United States v Adam Clayton Powell, Jr.* (No. 35-208).

The subpoena in question is herewith attached, and the matter is presented for such action as the House in its wisdom may see fit to take.

Respectfully,  
ZEAKE W. JOHNSON, Jr.,  
*Sergeant at Arms.*

The Speaker pro tempore then instructed the Clerk to read the subpoena to the House. At the conclusion of the reading, a privileged

resolution<sup>(1)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Sergeant at Arms to appear in response to the subpoena was agreed to.

**§ 16.12 The Sergeant at Arms of the House of Representatives, having received a subpoena to appear and testify before a criminal court of the District of Columbia, informed the Speaker who laid the matter before the House.**

On July 13, 1965,<sup>(2)</sup> the Speaker<sup>(3)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Sergeant at Arms advising that he had received a subpoena directing his appearance to testify before the criminal branch of the District of Columbia Court of General Sessions in connection with *U.S. v Washington*.<sup>(4)</sup> After the reading of the subpoena by the Clerk, a resolution<sup>(5)</sup> was offered by Mr. Hale Boggs, of Louisiana, authorizing the Sergeant at Arms to appear and testify. The resolution was

19. 106 CONG. REC. 4393, 86th Cong. 2d Sess. An additional example supporting this point may be found at 100 CONG. REC. 1162, 83d Cong. 2d Sess., Feb. 2, 1954.  
20. John W. McCormack (Mass.).

1. H. Res. 465.  
2. 111 CONG. REC. 16529, 89th Cong. 1st Sess.  
3. John W. McCormack (Mass.).  
4. Criminal Case No. U.S. 5379-65, U.S. 5380-65.  
5. H. Res. 456.

agreed to, and a motion to reconsider was laid on the table.

***Service of Subpenas on House Employees***

**§ 16.13 An employee of the House having received a subpoena duces tecum in a federal civil action seeking his testimony and the production of House records in his possession, his superior informed the Speaker who laid the matter before the House.**

On Apr. 25, 1966,<sup>(6)</sup> the Speaker<sup>(7)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Clerk of the House advising that an employee under his authority had been served with a subpoena duces tecum commanding his appearance for the purpose of testifying and producing certain House records before the U.S. District Court for the District of Columbia in connection with *Siamis v Chizzo*.<sup>(8)</sup> Following the presen-

6. 112 CONG. REC. 8786, 89th Cong. 2d Sess. For further illustrations see 102 CONG. REC. 7588, 84th Cong. 2d Sess., May 7, 1956; and 101 CONG. REC. 1215, 84th Cong. 1st Sess., Feb. 7, 1955.

7. John W. McCormack (Mass.).

8. Civil Action File No. 1471-63 (U.S.D.C. D. D.C.)

tation of the communication, the House agreed to a resolution<sup>(9)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the employee to appear in response to the subpoena but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and I relevant.

***Service of Grand Jury Subpenas on House Officers***

**§ 16.14 The Clerk of the House of Representatives having received a subpoena duces tecum from a federal grand jury, informed the Speaker who laid the matter before the House.**

On Feb. 20, 1973,<sup>(10)</sup> the Speaker<sup>(11)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Clerk of the House advising that he had been served with a subpoena duces tecum commanding his appear-

9. H. Res. 825.

10. 119 CONG. REC. 4490, 93d Cong. 1st Sess. For further illustrations see 118 CONG. REC. 28285, 92d Cong. 2d Sess., Aug. 15, 1972; 115 CONG. REC. 32005, 91st Cong. 1st Sess., Oct. 29, 1969; and 113 CONG. REC. 29374-76, 90th Cong. 1st Sess., Oct. 19, 1967.

11. Carl Albert (Okla.).

ance and the production of certain House records before the grand jury of the U.S. District Court for the Western District of Texas. Following the Speaker's insertion of the subpoena in the Record, the House agreed to a privileged resolution<sup>(12)</sup> offered by Mr. Thomas P. O'Neill, Jr., of Massachusetts, authorizing the Clerk to appear in response to the subpoena but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and relevant.

**§ 16.15 The Sergeant at Arms of the House of Representatives having been served with a subpoena duces tecum from a federal grand jury, informed the Speaker who laid the matter before the House.**

On Jan. 16, 1968,<sup>(13)</sup> the Speaker<sup>(14)</sup> laid before the House as a question of the privilege of the House a communication from the Sergeant at Arms of the House

12. H. Res. 221.

13. 114 CONG. REC. 80, 81, 90th Cong. 2d Sess. For additional examples see 113 CONG. REC. 17561, 90th Cong. 1st Sess., June 27, 1967; 111 CONG. REC. 5338, 89th Cong. 1st Sess., Mar. 18, 1965; and 99 CONG. REC. 5523, 83d Cong. 1st Sess., May 25, 1953.

14. John W. McCormack (Mass.).

advising that he had received a subpoena duces tecum directing his appearance and the production of certain original records before the grand jury of the U.S. District Court for the District of Columbia. After the reading of the subpoena by the Clerk, a privileged resolution<sup>(15)</sup> was offered by Mr. Carl Albert, of Oklahoma, authorizing the Sergeant at Arms to appear and deliver the requested papers and documents in response to the subpoena. The resolution was agreed to, and a motion to reconsider was laid on the table.

***Service of Grand Jury Subpoenas on House Employees***

**§ 16.16 Where an employee of the House received a subpoena duces tecum issued by a federal grand jury, his superior informed the Speaker who laid the matter before the House.**

On Oct. 19, 1967,<sup>(16)</sup> the Speaker<sup>(17)</sup> laid before the House as a question of the privilege of the House a communication from the Clerk advising that an employee under his jurisdiction had been served with a subpoena duces

15. H. Res. 1022.

16. 113 CONG. REC. 29375, 29376, 90th Cong. 1st Sess.

17. John W. McCormack (Mass.).

tecum commanding his appearance for the purpose of testifying before the grand jury of the U.S. District Court for the District of Columbia. The House then agreed to a privileged resolution<sup>(18)</sup> offered by Mr. Carl Albert, of Oklahoma, authorizing the Speaker to permit the employee to appear in response to the subpoena.

***Service of Court-martial Subpena***

**§ 16.17 The Clerk of the House of Representatives, having received a subpoena duces tecum from a general court-martial, informed the Speaker who laid the matter before the House.**

On Nov. 17, 1970,<sup>(19)</sup> the Speaker<sup>(20)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Clerk advising that he was in receipt of a subpoena duces tecum commanding his appearance as a witness and the production of certain House subcommittee executive session transcripts before a general court-martial of the United States convened at Ft. Benning, Georgia. At

18. H. Res. 950.

19. 116 CONG. REC. 37652-54, 91st Cong. 2d Sess.

20. John W. McCormack (Mass.).

the Speaker's instruction the subpoena was then read by the Clerk to the House.

*Parliamentarian's Note:* The Clerk's office was advised (1) that the Committee on Armed Services, and not the Clerk, was the proper custodian of executive session testimony taken before its subcommittee and that an employee of that committee should have been the recipient of the subpoenas; and (2) that the requested executive session testimony could not, under the provisions of House Resolution 15 (91st Congress) be released by any officer or employee of the House during an adjournment; but that (3) the Committee on Armed Services could meet and, pursuant to the House rules, order the testimony to be made public.

The House took no further action on the subpoenas.

***Service of Notice of Taking of Deposition***

**§ 16.18 The Clerk of the House, having been served with a notice of taking of a deposition in a civil action in which he had been named as a defendant in his official capacity, informed the Speaker who laid the matter before the House.**

On Mar. 15, 1973,<sup>(1)</sup> the Speaker<sup>(2)</sup> laid before the House as a matter involving the question of the privilege of the House a communication from the Clerk advising that he had been served with a notice of the taking of a deposition in connection with a civil action<sup>(3)</sup> pending in the U.S. District Court for the District of Columbia. Subsequently, on Mar. 19, 1973,<sup>(4)</sup> the House agreed to a privileged resolution<sup>(5)</sup> offered by Mr. John J. McFall, of California, authorizing the Clerk to respond to the notice.

**§ 17. Service of Process on Committee Chairmen and Employees**

***Service of Summons and Complaint on Committee Chairman***

**§ 17.1 The receipt of a summons and complaint naming the chairman of a House committee as a defendant in**

1. 119 CONG. REC. 7955, 7956, 93d Cong. 1st Sess.
2. Carl Albert (Okla.).
3. *Common Cause v W. Patrick Jennings et al.*, Civil Action File No. 2379-72 (U.S.D.C. D. D.C.).
4. 119 CONG. REC. 8485, 93d Cong. 1st Sess.
5. H. Res. 313.

**a civil action brought in a federal court raises a question of the privilege of the House, and the matter is laid before the House for its consideration.**

On May 16, 1972,<sup>(6)</sup> the Speaker<sup>(7)</sup> laid before the House as a matter involving a question of the privilege of the House a communication from the Chairman of the Committee on Rules advising that he had been served with a summons and complaint as a defendant in a civil action<sup>(8)</sup> brought in the U.S. District Court for the Eastern District of Louisiana. At the same time, the Speaker, who stated that he and the Clerk of the House had received summons and complaint in the same action, inserted copies of the following letters in the Record:

MAY 16, 1972.

Hon. RICHARD G. KLEINDIENST,  
*Acting Attorney General, Department of Justice, Washington, D.C.*

DEAR MR. KLEINDIENST: On May 15, 1972, I received by certified mail a Summons and complaint in Civil Action No. 72-1126 in the United States District Court for the Eastern District of Louisiana. A copy of the Summons and complaint is enclosed herewith.

6. 118 CONG. REC. 17398, 92d Cong. 2d Sess.
7. Carl Albert (Okla.).
8. Civil Action File No. 72-1126 (§H, U.S.D.C. E.D. La.).

Representative William M. Colmer, Chairman of the Committee on Rules of the House of Representatives, and the Clerk of the House of Representatives, Hon. W. Pat Jennings, have also received Summons and complaint in the action.

In accordance with the provisions of 2 U.S.C. 118, I have sent a copy of the Summons and complaint in this action to the U.S. Attorney for the Eastern District of Louisiana requesting that he take appropriate action under the supervision and direction of the Acting Attorney General. I am also sending you a copy of the letter I forwarded this date to the U.S. Attorney.

Sincerely,

CARL ALBERT,  
*Speaker of the House  
of Representatives.*

MAY 16, 1972.

Hon. GERALD J. GALLINGHOUSE,  
*U.S. Attorney for the Eastern District  
of Louisiana, New Orleans, La.*

DEAR MR. GALLINGHOUSE: I am sending you a copy of a Summons and complaint in Civil Action No. 72-1126 in the United States District Court for the Eastern District of Louisiana, against me in my official capacity as Speaker of the House of Representatives, received by certified mail on May 15, 1972.

Representative William M. Colmer, Chairman of the Committee on Rules of the House of Representatives, and the Clerk of the House of Representatives, Hon. W. Pat Jennings, have also received by certified mail copies of the Summons and complaint.

In accordance with the provisions of 2 U.S.C. 118, I respectfully request that you take appropriate action, as

deemed necessary, under the supervision and direction of the Acting Attorney General, in defense of this suit against the Speaker, the Chairman of the Committee on Rules of the House of Representatives, and the House of Representatives. I am also sending you a copy of the letter that I forwarded this date to the Acting Attorney General of the United States.

Sincerely,

CARL ALBERT,  
*Speaker of the House  
of Representatives.*

### ***Subpenas Served on Committee Chairmen***

**§ 17.2 The chairman of a House committee, having received a subpoena duces tecum from a federal court, reported the facts to the speaker who laid the matter before the House.**

On Feb. 21, 1961,<sup>(9)</sup> the Chairman of the Committee on Un-American Activities, Francis E. Walter, of Pennsylvania, rose to a question of the privilege of the House and informed the House that he had been subpoenaed to appear and testify in connection with a case<sup>(10)</sup> pending before the U.S. District Court for the Southern District of New York. Following the presentation of the

9. 107 CONG. REC. 2481, 87th Cong. 1st Sess.

10. *U.S. v Seeger*, Criminal Case No. C 152-240, Cr. 800 (U.S.D.C. S.D. N.Y.).

subpena to the House, a resolution,<sup>(11)</sup> authorizing the chairman to appear and testify, offered by Mr. John W. McCormack, of Massachusetts, was agreed to.

**§ 17.3 When the chairman of a House committee receives a subpena duces tecum from the Tax Court of the United States, a question of the privilege of the House arises.**

On Aug. 12, 1969,<sup>(12)</sup> the Chairman of the Committee on Banking and Currency, Wright Patman, of Texas, rose to a question of the privilege of the House and informed the House that he had been served with a subpena duces tecum requesting the production of certain documents before the Tax Court of the United States. The subpena was sent to the desk, and the Speaker<sup>(13)</sup> instructed the Clerk to read it to the House.

*Parliamentarian's Note:* Chairman Patman stated that the documents called for in the subpena were not in his possession or control, and the House took no action thereon.

**§ 17.4 The chairman of a House committee, having been sub-**

11. H. Res. 178.

12. 115 CONG. REC. 23354, 91st Cong. 1st Sess.

13. John W. McCormack (Mass.).

**penaed to appear and testify before a state court, rose to a question of the privilege of the House.**

On July 7, 1971,<sup>(14)</sup> the Chairman of the Committee on Internal Security, Richard H. Ichord, of Missouri, rose to a question of the privilege of the House and addressed the Chair:

MR. ICHORD: Mr. Speaker . . . I have been subpoenaed to appear before the Superior Court of the District of Columbia on the 7th day of July 1971 at 2 p.m. in the case of United States v. Margaret Butterfield (docket No. 27078-71) and to bring with me certain papers under the control of the Committee on Internal Security.

Under the precedents of the House, I am unable to comply with this subpena duces tecum without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send the subpena duces tecum to the desk.

The subpena was sent to the desk, and the Speaker pro tempore<sup>(15)</sup> instructed the Clerk to read it to the House.

14. 117 CONG. REC. 23813, 92d Cong. 1st Sess. On the same day a similar subpena served on the Chairman of the Committee on Ways and Means, Wilbur D. Mills (Ark.), by the same court in connection with the same case was also presented to the House.

15. Hale Boggs (La.).

***Service of Subpenas on Committee Employees***

**§ 17.5 Where a House committee employee had been subpoenaed by a federal court, in a matter related to committee business, the chairman of the committee advised the Speaker of this fact by letter and the Speaker then laid the matter before the House for its consideration.**

On Feb. 21, 1961,<sup>(16)</sup> the Speaker<sup>(17)</sup> laid before the House as a matter giving rise to a question of the privilege of the House a communication from the Chairman of the Committee on Un-American Activities:

FEBRUARY 20, 1961.

Hon. SAM RAYBURN,  
*Speaker, House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: Mr. Frank S. Tavenner, Jr., an employee of the House, while serving at my direction as counsel for the Committee on Un-American Activities, received a subpoena duces tecum directing him to appear as a witness before the U.S. District Court for the District of Columbia, in the case of the *United States of America v. Martin Popper* (No. 1053-59). The return date of the subpoena has been extended to April 15, 1961.

16. 107 CONG. REC. 2482, 87th Cong. 1st Sess.

17. Sam Rayburn (Tex.).

The portion of the subpoena duces tecum requiring the production of documents was, on the 3d day of February 1961, quashed by Mr. Justice Edward M. Curran.

The subpoena in question is transmitted herewith and the matter is presented for such action as the House, in its wisdom, may see fit to take.

Sincerely yours,

FRANCIS E. WALTER,  
*Chairman.*

After the Clerk's reading of the subpoena, the House agreed to a resolution<sup>(18)</sup> offered by Mr. John W. McCormack, of Massachusetts, authorizing the committee employee to appear in response to the subpoena duces tecum as modified.

**§ 17.6 When an employee of a House committee had been served with a subpoena from a state court, in a matter related to committee business, the chairman of the committee informed the Speaker who laid the matter before the House.**

On May 21, 1962,<sup>(19)</sup> the Speaker pro tempore,<sup>(20)</sup> rising to a question of the privilege of the House, laid before the House the

18. H. Res. 181.

19. 108 CONG. REC. 8823, 8824, 87th Cong. 2d Sess. For a further illustration see 105 CONG. REC. 5858, 86th Cong. 1st Sess., Apr. 14, 1959.

20. Carl Albert (Okla.).

following communication from the Chairman of the Committee on Un-American Activities:

MAY 21, 1962.

Hon. JOHN McCORMACK,  
*Speaker, House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: Mr. Donald Appell, an employee of the House, while serving at my direction as an investigator on the Committee on Un-American Activities, received a subpoena directing him to appear as a witness in the Supreme Court of the State of New York, New York County, on the 23d day of May 1962, in the case of *John Henry Faulk, plaintiff v. Aware, Inc., Laurence A. Johnson and Vincent Hartnett, defendants.*

The subpoena in question is transmitted herewith and the matter is presented for such action as the House, in its wisdom, may see fit to take.

Sincerely yours,  
FRANCIS E. WALTER,  
*Chairman.*

After a reading of the subpoena by the Clerk, a resolution<sup>(1)</sup> was offered by Mr. Francis E. Walter, of Pennsylvania, authorizing the employee's appearance to testify to any matter determined by the court to be material and relevant to the identification of any publicly disclosed document, but prohibiting his testimony as to any matter that may be based on knowledge acquired by him in his official capacity as committee in-

1. H. Res. 650.

vestigator. The resolution was agreed to.

***Service of Grand Jury Subpena on Committee Chairman***

**§ 17.7 The chairman of a House committee, having received a subpoena duces tecum from a federal grand jury, rose to a question of the privilege of the House.**

On Aug. 15, 1972,<sup>(2)</sup> the Chair recognized Mr. Charles M. Price, of Illinois:

MR. PRICE of Illinois: Mr. Speaker, I rise to a question of the privileges of the House.

THE SPEAKER:<sup>(3)</sup> The gentleman will state the question of privilege of the House.

MR. PRICE of Illinois: Mr. Speaker, in my capacity as chairman of the Committee on Standards of Official Conduct, I have been subpoenaed to appear before the grand jury of the U.S. District Court for the Western District of Pennsylvania, on August 22, 1972, and to bring with me certain records of the Committee on Standards of Official Conduct. Under the rules and precedents of the House, I am unable to comply with the subpoena duces tecum without the permission of the House [the privileges of the House] being involved.

I therefore submit the matter for the consideration of the House.

2. 118 CONG. REC. 28286, 92d Cong. 2d Sess.

3. Carl Albert (Okla.).

THE SPEAKER: The Clerk will read the subpoena.

After the reading of the subpoena, a privileged resolution<sup>(4)</sup> was offered by Mr. Hale Boggs, of Louisiana, authorizing the chairman to appear in response to the subpoena but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and relevant.

***Service of Grand Jury Subpoenas on Committee Employees***

**§ 17.8 A House committee employee, having received a subpoena duces tecum from a federal grand jury, informed the Speaker who laid the matter before the House.**

On Jan. 16, 1968,<sup>(5)</sup> the Speaker<sup>(6)</sup> laid before the House as a matter involving the privilege of the House a communication from the clerk of the Committee on House Administration advising that he was in receipt of a sub-

4. H. Res. 1092.

5. 114 CONG. REC. 81, 90th Cong. 2d Sess. For further examples see 113 CONG. REC. 29374-76, 90th Cong. 1st Sess., Oct. 19, 1967; and 113 CONG. REC. 17562, 90th Cong. 1st Sess., June 27, 1967.

6. John W. McCormack (Mass.).

pena duces tecum commanding his appearance for the purpose of testifying and producing certain original records before the grand jury of the U.S. District Court for the District of Columbia. Following the presentation of the communication and the reading of the subpoena to the House, a privileged resolution<sup>(7)</sup> was offered by Mr. Carl Albert, of Oklahoma, authorizing the committee clerk to appear and produce the requested original papers and documents in response to the subpoena. The resolution was agreed to.

***Service of Discovery Orders***

**§ 17.9 Where a federal district court, pursuant to the Federal Rules of Criminal Procedure, issued a discovery order for the inspection and copying of certain original papers and documents in the possession and under the control of a House committee, a question of the privilege of the House arose.**

On July 1, 1969,<sup>(8)</sup> the Chairman of the Committee on Internal Security, Richard H. Ichord, of Missouri, rose to a question of the privilege of the House and offered

7. H. Res. 1023.

8. 115 CONG. REC. 17948, 91st Cong. 1st Sess.

a resolution<sup>(9)</sup> for the consideration of the House. The resolution authorized him to make available to the U.S. attorney, in response to a discovery order issued by a federal district court pursuant to Rule 16 of the Federal Rules of Criminal Procedure, for the purpose of inspection and copying by parties in a pending criminal action,<sup>(10)</sup> certain enumerated committee papers and documents. The resolution was agreed to.

**§ 17.10 Where certain employees and former employees of a House committee were named parties defendant in a federal civil action and had received discovery orders and interrogatories, a question of the privilege of the House was invoked.**

On Mar. 2, 1971,<sup>(11)</sup> Mr. Richard H. Ichord, of Missouri, rising to a question of the privilege of the House, offered a resolution<sup>(12)</sup> for the consideration of the House. The resolution authorized specified employees and former employees of the Committee on In-

ternal Security to testify and produce certain documents in response to discovery orders and written and oral interrogatories served on them as parties defendant in a civil action<sup>(13)</sup> pending before the U.S. District Court for the Northern District of Illinois. The previous question was immediately moved on the resolution. Mr. Abner Mikva, of Illinois, objected to the vote because a quorum was not present. On a call of the roll pursuant to Rule XV, the resolution was agreed to.

**§ 18. Authorization to Respond to Process**

When the Clerk or other officer of the House is served with a subpoena duces tecum when the House is in session, the House ordinarily deals with each subpoena by resolution on an individual basis. During periods of adjournment, however, the current practice is to authorize the officer in receipt of such a court order to appear (but not to take original documents of the House) pursuant to a resolution providing continuing authority to respond during that period. The court may be provided with copies of House documents except

- 9. H. Res. 459.
- 10. *U.S. v Stamler, Hall, and Cohen*, Criminal Action No. 67 CR 393, 67 CR 394, 67 CR 395 (U.S.D.C. No. 1). Ill).
- 11. 117 CONG. REC. 4584-93, 92D Cong. 1st Sess.
- 12. H. Res. 264.

- 13. Civil Action File No. 65 C 800, 65 C 2050 (U.S.D.C. No. D. Ill.).

those taken in executive session, upon the court's determination of their relevancy.

Prior to the 80th Congress, it was not the custom for the House to agree to resolutions providing continuing authority for the Clerk or other House officers to respond to subpoenas duces tecum during periods of adjournment. From the 80th through the 83d Congresses, resolutions were adopted providing for continuing authority to respond to subpoenas duces tecum where the court issuing the subpoena required the documents for use in cases relating to the refusal of witnesses to testify before congressional committees. These resolutions pertained only to subpoenas issued by courts of the United States.

For example, the 80th Congress approved a resolution which provided that when, during that Congress, a subpoena duces tecum was directed to the Clerk or any officer or employee of the House from any court of the United States considering a case based on the refusal of a witness to appear or testify before a congressional committee, the Clerk or other officer was authorized to appear but not with any documents. The courts were, however, given permission to make copies of relevant documents.<sup>(14)</sup> In the second session of

14. H. Res. 584, 94 CONG. REC. 5433, 80th Cong. 2d Sess., May 6, 1948.

the 83d Congress, the House adopted a similar resolution which could be invoked during any period of adjournment of that Congress.<sup>(15)</sup>

In the 84th and subsequent Congresses, the House approved of resolutions that provided that when documentary evidence under the control of the House was needed in any court of justice during any recess or adjournment of that Congress, the Clerk or other House officer was authorized to appear in answer to a subpoena duces tecum but not to take documents. The courts were given permission to make copies of documents (except for executive session materials) upon the issuance of a court order declaring their relevancy.<sup>(16)</sup>

See also H. Res. 864, 96 CONG. REC. 15636, 81st Cong. 2d Sess., Sept. 22, 1950; H. Res. 481, 97 CONG. REC. 13777, 82d Cong. 1st Sess., Oct. 20, 1951; and H. Res. 391, 99 CONG. REC. 11132, 83d Cong. 1st Sess., Aug. 3, 1953.

15. H. Res. 711, 100 CONG. REC. 15547, 83d Cong. 2d Sess., Aug. 20, 1954.

16. H. Res. 341, 101 CONG. REC. 13063, 84th Cong. 1st Sess., Aug. 2, 1955. See also H. Res. 416, 103 CONG. REC. 16759, 16760, 85th Cong. 1st Sess., Aug. 30, 1957; and H. Res. 224, 105 CONG. REC. 5260, 86th Cong. 1st Sess., Mar. 25, 1959.

***Speaker's Power to Authorize Response to Process***

**§ 18.1 On one occasion, the House by resolution authorized the Speaker to permit House officers and employees to appear in response to subpoenas issued by a U.S. District Court in connection with an investigation being conducted by a grand jury.**

On Oct. 19, 1967,<sup>(17)</sup> communications from the Clerk of the House and the chairman of a House committee were presented to the House advising that they were in receipt of subpoenas issued by the U.S. District Court for the District of Columbia. Mr. Carl Albert, of Oklahoma, offered a resolution<sup>(18)</sup> giving the Speaker authorization to permit certain officers and employees to respond to the subpoenas. The resolution provided:

Whereas in the investigation of possible violations of Title 18, United States Code, Sections 201, 287, 371, 641, 1001 and 1505, a subpoena ad testificandum was issued by the United States District Court for the District of Columbia and addressed to W. Pat Jennings, Clerk of the House of Representatives, directing him to appear before the grand jury of said court

17. 113 CONG. REC. 29374-76, 90th Cong. 1st Sess.

18. H. Res. 950.

on October 23, 1967, to testify in connection with matters under investigation by the grand jury; and

Whereas other officers and staff employees of the House of Representatives have received, or may receive, subpoenas ad testificandum to appear before the said grand jury in connection with the before-mentioned investigation; and

Whereas information secured by officers and staff employees of the House of Representatives pursuant to their official duties as such officers or employees may not be revealed without the consent of the House: Therefore be it

*Resolved*, That W. Pat Jennings, Clerk of the House of Representatives, is authorized to appear in response to the subpoena before-mentioned as a witness before the grand jury; and be it further

*Resolved*, That the Speaker of the House of Representatives is authorized to permit any other officer or employee of the House who is in receipt of or shall receive a subpoena ad testificandum in connection with the proceedings conducted by the grand jury before-mentioned to appear in response thereto; and be it further

*Resolved*, That a copy of these resolutions be transmitted to the said court.

The resolution was agreed to.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* The U.S. attorney had advised the Speaker that several officers and employees of the House might be subpoenaed to appear and testify

before the federal grand jury in connection with its investigation into possible violations of the Criminal Code. Rather than have each officer and employee authorized by separate resolution, the Speaker was given the authority to authorize such appearances. Each officer and employee who thereafter received a subpoena in connection with the grand jury proceedings informed the Speaker who then responded with a written authorization.

### *Duration of Authorization*

**§ 18.2 Where one Congress has, by resolution, authorized a Member to appear in response to a subpoena issued by a federal court, and the court's proceedings extend into the next Congress, the Member must again obtain permission of the House if he still wishes to respond to the subpoena.**

On Apr. 13, 1961,<sup>(19)</sup> the Chair recognized Mr. James Roosevelt, of California, on a question of privilege:

MR. ROOSEVELT: Mr. Speaker, I rise to a question of the privilege of the House.

19. 107 CONG. REC. 5844, 87th Cong. 1st Sess. See also 107 CONG. REC. 2480, 87th Cong. 1st Sess., Feb. 21, 1961.

THE SPEAKER:<sup>(20)</sup> The gentleman will state it.

MR. ROOSEVELT: Mr. Speaker, during the 86th Congress, the House authorized me to appear in response to a subpoena issued by the U.S. District Court for the District of Columbia, directing me to appear in Washington, D.C., to testify in the case of the United States of America against Martin Popper.

The case was originally scheduled for trial on June 21, 1960, but was adjourned and is now scheduled to begin on April 25, 1961.

Under the precedents of the House, I am unable to comply with this subpoena without the consent of this House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

Mr. Speaker, I send to the desk the subpoena.

THE SPEAKER: The Clerk will read the subpoena.

After the Clerk read the subpoena, the House agreed to a resolution<sup>(21)</sup> offered by Mr. John W. McCormack, of Massachusetts, authorizing the Member to appear in response to the subpoena.

**§ 18.3 The Clerk having notified the House that he had been authorized by the preceding Congress to appear as a witness and to produce specified documents in a certain case and that the case**

20. Sam Rayburn (Tex.).

21. H. Res. 254.

**was still in progress, the House passed a resolution permitting his further appearance as a witness.**

On Mar. 27, 1961,<sup>(22)</sup> the Speaker<sup>(1)</sup> laid before the House as a matter involving a question of the privilege of the House the following communication from the Clerk:

MARCH 24, 1961.

*The Honorable the SPEAKER,  
House of Representatives.*

SIR: As the Clerk of the House of the 86th Congress I received, from the U.S. District Court for the Southern District of New York, two subpoenas duces tecum, one in the case of Peter Seeger (criminal No. C-152-240), and the other in the case of Elliott Sullivan (criminal No. C-152-238). Both subpoenas directed me to appear before said court as a witness in these cases and to bring with me certain and sundry papers therein described in the files of the House of Representatives.

This matter was brought to the attention of the last House, as a result of which House Resolutions 476 and 477 were adopted on March 15, 1960.

Since the development of these cases has extended into the 87th Congress and it is well recognized that each House controls its own papers, this matter is presented for such action as the House, in its wisdom, may see fit to take.

22. 107 CONG. REC. 4917-19, 87th Cong. 1st Sess.

1. Sam Rayburn (Tex.).

Respectfully yours,

RALPH R. ROBERTS,  
*Clerk, U.S. House of Representatives.*

After a reading of the subpoena to the House, Mr. John W. McCormack, of Massachusetts, offered a resolution<sup>(2)</sup> authorizing the Clerk to appear in response to the subpoena but permitting the production of certified copies of only those subpoena House papers and documents subsequently determined by the court to be material and relevant.

***Authorization During Recesses and Adjournments***

**§ 18.4 The House may, by resolution, authorize court appearances while prohibiting the disclosure of minutes or transcripts of committee executive sessions in response to subpoenas served upon Members, officers, or employees during recesses and adjournments.**

On Jan. 13, 1973,<sup>(3)</sup> Mr. Thomas P. O'Neill, Jr., of Massachusetts, offered for immediate consideration the following resolution:<sup>(4)</sup>

2. H. Res. 234.
3. 119 CONG. REC. 30, 31, 93d Cong. 1st Sess. For similar authorizing resolutions adopted by recent Congresses see 117 CONG. REC. 16, 92d Cong. 1st Sess., Jan. 21, 1971; 115 CONG. REC. 37, 91st Cong. 1st Sess., Jan. 3, 1969; and 113 CONG. REC. 35, 90th Cong. 1st Sess., Jan. 10, 1967.
4. H. Res. 12.

Whereas, 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 except by its permission: Therefore be it

*Resolved*, That when it appears by the order of any court in the United States or a 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 during any recess or adjournment of its Ninety-third Congress, when a subpoena or other order for the production or disclosure of information is by the due process of any court in the United States served upon any Member, officer, or employee of the House of Representatives, directing appearance as a witness before the said court at any time and the production of certain and sundry papers in the possession and under the control of the House of Representatives, that any such Member, officer, or employee of the House, be authorized to appear before said court at the place and time named in any such subpoena or order, but no papers or documents in the possession or under the control of the House of Representatives shall be produced in response thereto; and be it further

*Resolved*, That when any said court determines upon the materiality and the relevancy of the papers or documents called for in the subpoena or other order, then said court, through any of its officers or agents, shall have full permission to attend with all proper parties to the proceedings before said court and at a place under the orders and control of the House of Representatives and take copies of the said documents or papers and the Clerk of the House is authorized to supply certified copies of such documents 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, nor shall the possession of said documents and papers by any Member, officer, or employee of the House be disturbed or removed from their place of file or custody under said Member, officer, or employee; and be it further

*Resolved*, That a copy of these resolutions be transmitted by the Clerk of the House to any of said courts whenever such writs of subpoena or other orders are issued and served as aforesaid.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## § 19. Providing for Legal Counsel

Legal counsel, through the Department of Justice, is made available to the officers—but not

the Members—of the House pursuant to 2 USC §118, which provides in part:

In any action brought against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the district attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer . . . and the defense of such action shall thenceforth be conducted under the supervision and direction of the Attorney General.

However, the Attorney General has recommended that the House retain other legal counsel in cases where he had determined that a conflict may have existed between the legislative and executive interests.

***Appointment of Special Counsel by the Speaker***

**§ 19.1 On one occasion the House, by resolution, authorized the Speaker to appoint and fix the compensation for a special counsel to represent the House and those Members named as defendants in a suit brought by a former Member.**

On Mar. 9, 1967,<sup>(5)</sup> the Speaker<sup>(6)</sup> announced as a matter involving a question of the privilege of the House, that he and certain other Members and officers of the House had been served with a summons issued by the U.S. District Court for the District of Columbia in connection with an action<sup>(7)</sup> brought by Adam Clayton Powell, Jr. Following the reading of the summons by the Clerk, Mr. Hale Boggs, of Louisiana, rose to a question of the privilege of the House and offered a resolution (H. Res. 376) as follows:

Whereas Adam Clayton Powell, Jr., et al., on March 8, 1967, filed a suit in the United States District Court for the District of Columbia, naming as defendants certain Members, and officers of the House of Representatives, and contesting certain actions of the House of Representatives; and

Whereas this suit raises questions concerning the rights and privileges of the House of Representatives, the separation of powers between the legislative and judicial branches of the Government and fundamental constitutional issues: Now, therefore, be it

*Resolved*, That the Speaker of the House of Representatives of the United States is hereby authorized to appoint and fix the compensation of such spe-

5. 113 CONG. REC. 6035-48, 90th Cong. 1st Sess.
6. John W. McCormack (Mass.).
7. Civil Action File No. 559-61 (U.S.D.C.D. D.C.).

cial counsel as he may deem necessary to represent the House of Representatives, its Members and officers named as defendants, in the suit filed by Adam Clayton Powell, Jr., et al. in the United States District Court for the District of Columbia, as well as in any similar or related proceeding brought in any court of the United States; and be it further

*Resolved*, That any expenses incurred pursuant to these resolutions, including the compensation of such special counsel and any costs incurred thereby, shall be paid from the contingent fund of the House on vouchers authorized and signed by the Speaker of the House of Representatives and approved by the Committee on House Administration; and be it further

*Resolved*, That the Clerk of the House of Representatives transmit a copy of these resolutions to the aforementioned court and to any other court in which related legal proceedings may be brought.

Debate on the resolution ensued, after which the resolution was agreed to.<sup>(8)</sup>

8. *Parliamentarian's Note*: On Mar. 14, 1967, the Speaker announced the appointment of special counsel pursuant to H. Res. 376. 113 CONG. REC. 6603, 90th Cong. 1st Sess. The House, on Feb. 17, 1969, by simple resolution (H. Res. 243) continued the authority granted the Speaker by the provisions of H. Res. 376, 90th Congress, to retain special counsel, 115 CONG. REC. 3359, 91st Cong. 1st Sess.

### ***Appointment of Special Counsel for Members and Employees***

**§ 19.2 The House may, by resolution, authorize a committee to arrange for the legal defense of certain committee members and employees who are named in their official capacities as defendants in a civil action.**

On Aug. 1, 1953,<sup>(9)</sup> Mr. Charles A. Halleck, of Indiana, offered a resolution<sup>(10)</sup> authorizing the Committee on the Judiciary to file appearances, to provide counsel and to provide for the defense of certain members and employees of the Committee on Un-American Activities who had been named as parties defendant in a civil action<sup>(11)</sup> brought in the Superior Court for the State of California. The resolution stated:

Whereas Harold H. Velde, of Illinois, Donald L. Jackson, of California, Morgan M. Moulder, of Missouri, Clyde Doyle, of California, and James B. Frazier, Jr., of Tennessee, all Representatives in the Congress of the United States; and Louis J. Russell, and William Wheeler, employees of the House of Representatives, were by sub-

9. 99 CONG. REC. 10949, 10950, 83d Cong. 1st Sess.

10. H. Res. 386.

11. *Michael Wilson et al. v Loew's Inc., et al.*

poenas commanded to appear on Monday and Tuesday, March 30 and 31, 1953 in the city of Los Angeles, Calif., and to testify and give their depositions in the case of *Michael Wilson, et al. v. Loew's, Incorporated, et al.*, an action pending in the Supreme Court of California in and for the County of Los Angeles; and . . .

Whereas Harold H. Velde, Donald L. Jackson, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Jr., Louis J. Russell, and William Wheeler appeared specially in the case of *Michael Wilson, et al. versus Loew's Incorporated, et al.*, for the purpose of moving to set aside the service of summonses and to quash the subpoenas with which they had been served; and

Whereas on July 20, 1953, the Superior Court of the State of California in and for the County of Los Angeles ruled that the aforesaid summonses served upon Harold H. Velde, Morgan M. Moulder, James B. Frazier, Jr., and Louis J. Russell should be set aside for the reason that it was the public policy of the State of California "that nonresident members and attachés of a congressional committee who enter the territorial jurisdiction of its courts for the controlling purpose of conducting legislative hearings pursuant to law should be privileged from the service of process in civil litigation"; and . . . Whereas on July 20, 1953, the Superior Court of the State of California in and for the County of Los Angeles further ruled that the subpoenas served on Clyde Doyle and Donald Jackson should be recalled and quashed because such service was invalid under the aforementioned article I, section 6, of the Constitution of the United States; and

Whereas the case of *Michael Wilson, et al. v. Loew's Incorporated, et al.* in which the aforementioned Members, former Members, and employees of the House of Representatives are named parties defendant is still pending; and

Whereas the summonses with respect to Donald L. Jackson, Clyde Doyle, and William Wheeler and the subpoena with respect to William Wheeler in the case of *Michael Wilson, et al. v. Loew's Incorporated, et al.* have not been quashed:

*Resolved*, That the House of Representatives hereby approves of the special appearances of Harold H. Velde, Donald L. Jackson, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Jr., Louis J. Russell, and William Wheeler heretofore entered in the case of *Michael Wilson, et al. v. Loew's Incorporated, et al.*; and be it further

*Resolved*, That the Committee on the Judiciary, acting as a whole or by subcommittee, is hereby authorized to direct the filing in the case of *Michael Wilson, et al. v. Loew's Incorporated, et al.* of such special or general appearances on behalf of any of the Members, former Members, or employees of the House of Representatives named as defendants therein, and to direct such other or further action with respect to the aforementioned defendants in such manner as will, in the judgment of the Committee on the Judiciary, be consistent with the rights and privileges of the House of Representatives; and be it further

*Resolved*, That the Committee on the Judiciary is also authorized and directed to arrange for the defense of the Members, former Members, and employees of the Committee on Un-Amer-

ican Activities in any suit hereafter brought against such Members, former Members, and employees, or any one or more of them, growing out of the actions of such Members, former Members, and employees while performing such duties and obligations imposed upon them by the laws of the Congress and the rules and resolutions of the House of Representatives. The Committee on the Judiciary is authorized to incur all expenses necessary for the purposes hereof. . . .

The resolution was agreed to, and a motion to reconsider was laid on the table.<sup>(12)</sup>

***Authorizing the Clerk to Appoint Special Counsel***

**§ 19.3 On one occasion the House, by resolution, authorized the Clerk to appoint and fix compensation for counsel to represent him in any suit brought against him as supervisory officer under the Corrupt Practices Act of 1925 or the Federal Election Campaign Act of 1971.**

12. *Parliamentarian's Note*: On Sept. 6, 1961, the House, by resolution (H. Res. 417), continued the authority of the Committee on the Judiciary granted by the provisions of H. Res. 386, 83d Cong., to arrange for the legal defense of members, former members and employees of the Committee on Un-American Activities. 107 CONG. REC. 18240, 87th Cong. 1st Sess.

On Feb. 22, 1972,<sup>(13)</sup> the Speaker<sup>(14)</sup> laid before the House a communication from the Clerk advising that a civil action<sup>(15)</sup> had been filed in the U.S. District Court for the District of Columbia naming, among others, the Clerk of the House as a party defendant. The Clerk in his communication also advised that pursuant to 2 USC §118 he had on Feb. 18, 1972, written to the Acting Attorney General of the United States and to the U.S. Attorney for the District of Columbia requesting that they carry out their assigned statutory responsibilities in defending the Clerk in this matter.

On Mar. 15, 1972,<sup>(16)</sup> the Speaker laid before the House a communication from the Clerk advising that in response to his request of Feb. 18, 1972, he was in receipt of replies from the Department of Justice and the U.S. Attorney for the District of Columbia in which they agreed, pursuant to 2 USC §118, to furnish representation for the Clerk in the civil action unless a "divergence of interest" developed between the positions of

13. 118 CONG. REC. 5024, 92d Cong. 2d Sess.

14. Carl Albert (Okla.).

15. *Nader et al. v Jennings et al.*, Civil Action File No. 243-72 (U.S.D.C. D. D.C.).

16. 118 CONG. REC. 8470, 92d Cong. 2d Sess.

the Clerk and the Justice Department.

On May 3, 1972, the Clerk received a letter from the Attorney General stating that a “divergence of interest” had developed between the positions of the Clerk and the Justice Department and requesting the Clerk to obtain other counsel. The letter was not communicated to the Speaker or laid before the House. Pursuant to the authority granted the Clerk in House Resolution 955 the Clerk obtained other counsel.

On May 3, 1972,<sup>(17)</sup> Mr. Wayne L. Hays, of Ohio, offered the resolution below (H. Res. 955) as a matter involving the question of the privilege of the House:

*Resolved*, That the Clerk of the House of Representatives is hereby authorized to appoint and fix the compensation of such special counsel as he may deem necessary to represent the Clerk and the interests of the House in any suit now pending or hereafter brought against the Clerk arising out of his actions while performing duties or obligations imposed upon him by the Federal Corrupt Practices Act, 1925, or the Federal Election Campaign Act of 1971; and be it further

*Resolved*, That any expenses incurred pursuant to these resolutions, including the compensation of such special counsel and any costs incurred thereby, shall be paid from the contin-

gent fund of the House on vouchers approved by the Committee on House Administration.

The House agreed to the resolution.

On Jan. 6, 1973,<sup>(18)</sup> the House, by unanimous consent, agreed to a resolution<sup>(19)</sup> continuing the authority of the Clerk to appoint and fix compensation for legal counsel in suits brought against him under the Corrupt Practices Act of 1925 or the Federal Election Campaign Act of 1971.

*Parliamentarian’s Note:* The provision for payment of such expenses is now permanent law [see 87 Stat. 527 at p. 537, Pub. L. No. 93-145 (Nov. 1, 1973)], but the statute authorizes compensation only for attorneys who represent the Clerk in suits brought against him in the performance of his official duties as mandated by either the Federal Corrupt Practices Act of 1925 or the Federal Election Campaign Act of 1971. There is no comparable provision of law which authorizes the payment by the House of attorneys’ fees for Members indicted, sued, or subpoenaed as witnesses either in their official or individual capacities.

17. 118 CONG. REC. 15627, 15628, 92d Cong. 2d Sess.

18. 119 CONG. REC. 379, 93d Cong. 1st Sess.

19. H. Res. 92.

## D. PERSONAL PRIVILEGE OF MEMBER

**§ 20. In General; Definition**

Under Rule IX,<sup>(20)</sup> the House is deemed to be presented with a question of personal privilege whenever a question arises as to the rights, reputation, and conduct of a Member, individually, in his representative capacity.<sup>(1)</sup>

While a question of personal privilege need not be raised in the form of a resolution, a Member raising such a question must in the first instance state to the Chair the grounds upon which the question is based.<sup>(2)</sup> Once a Member is recognized for the purpose of raising a question of personal privilege, the scope of his argument is limited to the question raised.<sup>(3)</sup> Accepted practice also precludes the question being raised either during the time of another Member's control of the floor<sup>(4)</sup> or while another question of privilege is pending before the House.<sup>(5)</sup>

**20.** *House Rules and Manual* §661 (1973).

1. Basis of questions of personal privilege, see §§ 24 et seq., *infra*.
2. See § 21.1, *infra*.
3. See §§ 22.5, 22.6, *infra*.
4. See §§ 23.2, 23.3, *infra*.
5. 80 CONG. REC. 8222, 74th Cong. 2d Sess. See § 5.4, *supra*, for a detailed discussion of this precedent.

**§ 21. Raising the Question; Procedure***Statement of Grounds*

**§ 21.1 In raising a question of personal privilege a Member in the first instance must state to the Chair for his decision the grounds upon which he bases his question.**

On Apr. 11, 1935,<sup>(6)</sup> Mr. Joseph P. Monaghan, of Montana, rose to a question of personal privilege and stated, with reference to Rule IX, "under the question of personal privilege I cite the integrity of the proceedings of the House. I cannot see that this rule adequately protects this House so far as giving it and the public adequate information as to the rule."

A point of order was then made by Mr. John J. O'Connor, of New York, that the gentleman had not stated a question of personal privilege.

In his ruling sustaining the point of order, the Speaker<sup>(7)</sup> stated:

6. 79 CONG. REC. 5454, 5455, 74th Cong. 1st Sess. For additional illustrations see 118 CONG. REC. 13491-97, 92d Cong. 2d Sess., Apr. 19, 1972; and 84 CONG. REC. 5033-35, 76th Cong. 1st Sess., May 2, 1939.
7. Joseph W. Byrns (Tenn.).

It is necessary for the gentleman first to state his question of personal privilege as a basis for any argument that he may desire to submit. The Chair has no desire other than to see that the gentleman and every Member of the House is protected under the rules. The rules provide that a gentleman who raises a question of personal privilege must first state his question before he proceeds to argue with reference to it.

***Submission of Material Containing Objectionable Remarks***

**§ 21.2 When a Member raises a question of personal privilege based on the alleged insertion in the Record of unparliamentary language, he must submit the transcript of the Record to the Chair.**

On Apr. 7, 1943,<sup>(8)</sup> Mr. Emanuel Celler, of New York, rose to a question of personal privilege, stating that certain remarks of a Member not made on the floor but inserted in the Record for Apr. 2, 1943, reflected upon his integrity. The following exchange then ensued:

THE SPEAKER:<sup>(9)</sup> Will the gentleman send that Record up to the chair? Does the gentleman from New York have the transcript and know that that was inserted?

MR. CELLER: I have not the transcript with me, but I remember what

was stated by the gentleman and it is not reflected accurately in the Record.

Furthermore, the gentleman made the statement that I was the Jewish gentleman from New York; and on that score I rise to a question of personal privilege.

THE SPEAKER: The Chair wants to see the original transcript of the remarks of the gentleman from Mississippi.

MR. CELLER: I can read more; there is more in that Record, Mr. Speaker, which was not uttered on the floor of the House. I shall be very brief, Mr. Speaker.

THE SPEAKER: The Chair is not going to rule on this question without seeing the original transcript and it is not here. If there is no objection, the gentleman may proceed for 10 minutes.

**§ 21.3 On one occasion a Member was recognized to raise a question of personal privilege, based on comments appearing in a local newspaper, although the Record does not show that the material was first submitted to the Chair for examination.**

On June 22, 1966,<sup>(10)</sup> the Chair recognized Mr. Charles E. Chamberlain, of Michigan, on a question of privilege:

MR. CHAMBERLAIN: Mr. Speaker, I rise as a matter of personal privilege.

THE SPEAKER:<sup>(11)</sup> The gentleman will state his matter of personal privilege.

8. 89 CONG. REC. 3065, 78th Cong. 1st Sess.

9. Sam Rayburn (Tex.).

10. 112 CONG. REC. 13907, 89th Cong. 2d Sess.

11. John W. McCormack (Mass.).

MR. CHAMBERLAIN: Mr. Speaker, I rise with respect to an article which appeared in the Washington Post this morning entitled "Question: Do Congressmen Steal," by the columnists Drew Pearson and Jack Anderson.

THE SPEAKER: The gentleman from Michigan is recognized under the question of personal privilege.

Debate on the question then ensued.

*In the Committee of the Whole*

**§ 21.4 Under the modern practice, a question of personal privilege may not be raised in the Committee of the Whole.**

On Dec. 13, 1973,<sup>(12)</sup> during consideration by the Committee of the Whole of amendments to H. R. 11450, the Energy Emergency Act, Mr. John D. Dingell, of Michigan, rose to a question of personal privilege. In refusing to grant recognition to the Member for that purpose, the Chairman pro tempore<sup>(13)</sup> stated that a question of personal privilege could not be entertained in the Committee of the Whole.<sup>(14)</sup>

12. 119 CONG. REC. 41271, 93d Cong. 1st Sess. For further illustrations see 115 CONG. REC. 24372, 91st Cong. 1st Sess., Sept. 4, 1969; 105 CONG. REC. 11289, 86th Cong. 1st Sess., June 18, 1959; and 95 CONG. REC. 2652, 81st Cong. 1st Sess., Mar. 16, 1949.

13. John J. McFall (Calif.).

14. *Parliamentarian's Note*: Although pursuant to the modern practice a

**§ 22. Debate on the Question; Speeches**

*Applicability of Hour Rule*

**§ 22.1 The hour rule applies to debate on a question of personal privilege of a Member.**

On Apr. 19, 1972,<sup>(15)</sup> Mr. Cornelius E. Gallagher, of New Jersey, rose to a question of personal privilege. After hearing Mr. Gallagher's statement of the question, the Speaker<sup>(16)</sup> recognized him for one hour.

*Response to Member Raising Question*

**§ 22.2 On one occasion, a Member asked for a special order which he used to respond to a question of personal privilege raised by another Member, in order to deny any intention to impugn the motives or veracity of that Member.**

question of personal privilege may not be raised in the Committee of the Whole, early precedent suggests that such a question could be raised if the matter in issue arose during the Committee proceedings. See 3 Hinds' Precedents § 2540.

15. 118 CONG. REC. 13491, 92d Cong. 2d Sess.

16. Carl Albert (Okla.).

On July 29, 1970,<sup>(17)</sup> the Speaker pro tempore<sup>(18)</sup> announced that, under a previous order of the House, Mr. Philip M. Crane, of Illinois, was recognized for 45 minutes. Mr. Crane then took the floor to respond to a question of personal privilege raised by Mr. Augustus F. Hawkins, of California, and denied any intention to impugn the motives or veracity of that Member.<sup>(1)</sup>

***Special-order Speech as Alternative to Raising the Question***

**§ 22.3 Rather than raising the question of personal privilege, a Member obtained unanimous consent to proceed for five minutes—to refute a newspaper’s criticism—during that part of the day when he would normally have been recognized for only a one-minute speech.**

On June 29, 1962,<sup>(2)</sup> during proceedings when Members were being recognized for one-minute speeches, the Speaker<sup>(3)</sup> recog-

17. 116 CONG. REC. 26436–39, 91st Cong. 2d Sess.

18. Harley O. Staggers (W. Va.).

1. See 116 CONG. REC. 26002, 91st Cong. 2d Sess., July 28, 1970.

2. 108 CONG. REC. 12297, 87th Cong. 2d Sess.

3. John W. McCormack (Mass.).

nized Mr. H. Carl Andersen, of Minnesota, for the purpose of seeking unanimous consent that he be permitted to proceed for five minutes to revise and extend his remarks. There being no objection to the request, the Member proceeded to refute a newspaper charge of improper conduct which had been made against him.<sup>(4)</sup>

**§ 22.4 On one occasion, in lieu of raising a question of personal privilege, a Member took the floor for a one-minute speech to respond to a newspaper article which included an unfavorable reference to his congressional service.**

On Nov. 22, 1967,<sup>(5)</sup> Mr. Paul A. Fino, of New York, asked and was given permission to address the House. He then delivered a one-minute speech responding to a newspaper article which included derogatory comments on his congressional service.<sup>(6)</sup>

4. *Parliamentarian’s Note:* Mr. Andersen had requested, before the opening of the session, that he be recognized on the point of personal privilege. Since the House had a busy schedule, the Speaker suggested that the business of the House could be expedited if Mr. Andersen would simply ask to proceed for five minutes rather than take an hour under a point of personal privilege.

5. 113 CONG. REC. 33693, 90th Cong. 1st Sess.

6. *Parliamentarian’s Note:* Mr. Fino had asked the Speaker to recognize

**§ 22.5 Although in stating a question of personal privilege a Member is required to confine his remarks to the question involved, he is entitled to discuss related matters necessary to challenge the charge against him.**

On Feb. 28, 1956,<sup>(7)</sup> during his statement of a question of personal privilege based on a newspaper article assailing his integrity, Mr. Craig Hosmer, of California, made reference to certain extraneous matters, including informational tables. A point of order against the statement of the question was raised by Mr. Byron G. Rogers, of Colorado, as follows:

. . . For the last 5 minutes the gentleman has made no reference to the truth or falsity of the charge that he raised under his question of personal privilege. On the contrary, he has placed before the Members of the House a chart, and from that he now proceeds to discuss the bill. It has no relation to the truth or falsity of the charge. The gentleman has refused to permit anyone to ask him any questions and proceeds to discuss this bill,

him on a point of personal privilege, but it was suggested that a one-minute speech would serve his purpose equally well, since there was no business scheduled for the day, and he could be recognized following the reading of the Journal.

7. 102 CONG. REC. 3477, 3479, 3480, 84th Cong. 2d Sess.

so that it does not come within the definition of personal privilege, on which grounds he sought the floor.

In his decision overruling the point of order the Speaker pro tempore<sup>(8)</sup> said:

The Chair might state that he feels that the gentleman from California is very close to the line where the Chair may sustain a point of order. As the Chair understands it, the gentleman has the right to discuss the facts involved in the pending bill insofar as that is necessary in order for the gentleman to express his views with reference to the charge of falsehood contained in the editorial, and to answer that charge, and make his record in that respect. The Chair again suggests to the gentleman from California, having in mind the observations of the Chair, particularly those just made, that he proceed in order and confine his discussion of the bill at this time only to that which is necessary to challenge the charge of falsehood contained in the editorial.

**§ 23. Precedence of the Question; Interrupting Other Business**

*Precedence as to the Journal*

**§ 23.1 A Member rising to a question of personal privilege may not interrupt the reading of the Journal.**

8. John W. McCormack (Mass.).

On the legislative day of Oct. 8, 1968,<sup>(9)</sup> Mr. Robert Taft, Jr., of Ohio, rose to obtain recognition during the reading of the Journal:

MR. TAFT: Mr. Speaker—

THE SPEAKER:<sup>(10)</sup> For what purpose does the gentleman from Ohio rise?

MR. TAFT: Mr. Speaker, I have a privileged motion.

MR. [SIDNEY R.] YATES [of Illinois]: A point of order, Mr. Speaker. That is not in order until the reading of the Journal has been completed.

THE SPEAKER: Will the gentleman from Ohio state his privileged motion?

MR. TAFT: Mr. Speaker, my motion is on a point of personal privilege.

THE SPEAKER: Will the gentleman from Ohio state whether it is a point of personal privilege or a privileged motion?

MR. TAFT: It is a privileged motion, and a motion of personal privilege.

Under rule IX questions of personal privilege are privileged motions, ahead of the reading of the Journal.

THE SPEAKER: The Chair will advise the gentleman that a question of personal privilege should be made later after the Journal has been disposed of.

If the gentleman has a matter of privilege of the House, that is an entirely different situation.

MR. TAFT: I believe, Mr. Speaker, this involves not only personal privilege as an individual, but also as a Member of the House and also the privileges of all Members of the House.

9. 114 CONG. REC. 30214-16, 90th Cong. 2d Sess., Oct. 9, 1968 (calendar day).

10. John W. McCormack (Mass.).

THE SPEAKER: The Chair does not recognize the gentleman at this time on a matter of personal privilege.

But the Chair will, after the pending matter, the reading of the Journal has been disposed of, recognize the gentleman if the gentleman seeks recognition.

Subsequently, the gentleman was recognized to raise a question of the privilege of the House.

***Interruption of Member Holding the Floor***

**§ 23.2 A Member may not be deprived of the floor by another Member raising a question of personal privilege.**

On May 17, 1946,<sup>(11)</sup> during the consideration of House Resolution 624, concerning further expenses for the House Committee on Un-American Activities, Mr. Sol Bloom, of New York, sought recognition for a question of personal privilege. In his response declining recognition to the Member for that purpose, the Speaker<sup>(12)</sup> stated:

The gentleman from South Dakota has the floor. Unless he yields the Chair cannot recognize the gentleman.

11. 92 CONG. REC. 5216, 79th Cong. 2d Sess. For additional examples see 91 CONG. REC. 7221-25, 79th Cong. 1st Sess., July 5, 1945; 84 CONG. REC. 8467, 8468, 76th Cong. 1st Sess., June 30, 1939; and 80 CONG. REC. 3720, 74th Cong. 2d Sess., Mar. 13, 1936.

12. Sam Rayburn (Tex.).

**§ 23.3 A Member may not rise to a question of personal privilege while another Member controls the time for debate even though the Member in control of the time may yield him time for debate on the merits of the proposition then pending.**

On Apr. 8, 1937,<sup>(13)</sup> during House debate on House Resolution 162, concerning an investigation of sitdown strikes, the following proceedings transpired:

MR. [EDWARD E.] COX [of Georgia]: . . . Mr. Speaker, I yield 30 seconds to the gentleman from Michigan [Mr. (Frank E.) Hook].

MR. HOOK: Mr. Speaker, I rise to a question of personal privilege based on

the remarks of the last speaker, and ask for 1 hour.

MR. COX: Mr. Speaker, I did not yield to the gentleman for that purpose.

MR. HOOK: Then, Mr. Speaker, I ask unanimous consent that I be allowed to proceed for 5 minutes.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> Is there objection to the request of the gentleman from Michigan?

MR. [CHARLES A.] PLUMLEY [of Vermont]: Mr. Speaker, I object.

MR. HOOK: Mr. Speaker, I then insist upon my right to rise to a question of personal privilege. The gentleman threatened us.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan cannot take the gentleman from Georgia off the floor by raising a question of personal privilege.

## E. BASIS OF QUESTIONS OF PERSONAL PRIVILEGE

**§ 24. Introductory; General Opinion or Criticism**

Rule IX defines questions of personal privilege as those that affect the "rights, reputation, and conduct" of individual Members in their representative capacity.<sup>(15)</sup> To give rise to a question of per-

sonal privilege, a criticism must reflect directly on the Member's integrity or reputation.<sup>(16)</sup> Mere statements of opinion about or general criticism of his voting record or views do not constitute adequate grounds for a question of personal privilege.<sup>(17)</sup>

It is not in order by way of a point of personal privilege or by raising a question of the privilege

13. 81 CONG. REC. 3295, 75th Cong. 1st Sess.

14. Fred M. Vinson (Ky.).

15. *House Rules and Manual* §661 (1973).

16. § 24.1, *infra*.

17. § 24.2, *infra*.

of the House to collaterally attack an order previously adopted by the House.<sup>(18)</sup> Similarly, the refusal of Members in charge of time for general debate on a bill to allot time therefor to a Member does not give such Member grounds for a question of personal privilege. Thus, in one instance,<sup>(19)</sup> a Member claimed the floor for a question of personal privilege and proceeded to discuss the fact that the Member in charge of time for general debate on a bill had refused to assign him any time for that purpose. However, the Speaker<sup>(20)</sup> ruled that the Member's request for time could not be brought up by way of a question of personal privilege. Said the Speaker:

The rules provide that a Member may rise to a question of personal privilege where his rights, reputation, and conduct individually, in his representative capacity, is assailed or reflected upon. The Chair fails to see where the gentleman has presented a question of personal privilege which will bring himself within that rule. The rules provide for the conduct of the business of the House. . . .

. . . They provide the method of procedure. If this rule is adopted the gen-

- 18. 114 CONG. REC. 30214, 30215, 90th Cong. 2d Sess. See §3.2, supra, for a detailed discussion of this precedent.
- 19. 79 CONG. REC. 5454, 5455, 74th Cong. 1st Sess., Apr. 11, 1935.
- 20. Joseph W. Byrns (Tenn.).

tleman may, of course, appeal to those who have charge of the time for time, but there are 435 Members of the House, and the gentleman must appreciate, as the Chair does, that it is impossible for those gentlemen to yield to everyone. However, the Chair is very sure that opportunity will be afforded the gentleman sometime during the discussion of the bill to express his views.

The Chair fails to see where the gentleman has been denied any right that has not been denied to every Member of this House. The gentleman has his right of appeal to get time, as the Chair stated, if this rule is adopted. If the rule is not adopted and the bill is taken up, then the gentleman may proceed under the rules of the House. The Chair fails to see where the gentleman has raised a question of personal privilege.

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***Criticism of Member's Legislative Activity or Position***

**§ 24.1 Ordinarily, a Member may not rise to a question of personal privilege merely because there has been some criticism of his legislative activity. A question of personal privilege ordinarily involves a reflection on a Member's integrity or reputation. Thus, it was ruled that a Member could not rise to a question of personal privilege where he had been criticized merely for certain questionnaires he had distributed.**

On June 18, 1936,<sup>(1)</sup> Mr. Kent E. Keller, of Illinois, offered as a matter involving a question of the privilege of the House a resolution deploring the allegedly unauthorized action taken by Mr. Thomas L. Blanton, of Texas, whereby he addressed questionnaires to school teachers in the District of Columbia requesting their opinions on communism. A point of order was raised by Mr. Claude A. Fuller, of Arkansas, asserting that the offered resolution did not involve a question of the privilege of the House. When the Chair sustained the point of order, Mr. Blanton sought to address the House on the ground that the resolution gave rise to a point of personal privilege:

MR. BLANTON: Mr. Speaker, since this ridiculous resolution has been read into the Record and will go in the press, and every fair-minded man in the House knows that votes for it here would be negligible and it could not be passed, I think it is only fair that the House should give me 5 minutes, and I ask unanimous consent to proceed for 5 minutes.

THE SPEAKER: Is there objection?

Mr. [Martin J.] Kennedy of New York: I object.

1. 80 CONG. REC. 9947, 9948, 74th Cong. 2d Sess. See also 86 CONG. REC. 11046-49, 11150-58, 76th Cong. 3d Sess., Aug. 27, 1940; and 79 CONG. REC. 494, 495, 74th Cong. 1st Sess., Jan. 16, 1935.

MR. BLANTON: Mr. Speaker, of course, one objection can prevent it, so I rise to a question of personal privilege.

THE SPEAKER:<sup>(2)</sup> The gentleman will state it.

MR. BLANTON: I submit the last four clauses of the resolution just read, which was filed here by the gentleman from Illinois [Mr. Keller], without any notice whatever to me, at a time when I was in a Senate conference, working for this House, and did get an agreement with the Senate conferees on an important appropriation bill, will be used by "red" newspapers as a reflection upon me, although, as a matter of fact, it cannot hurt me or my good name in any way. I had no notice that this resolution was to be offered, and I was called out of that conference with Senate managers after the resolution had been sent to the Clerk's desk for consideration. While under a strict interpretation of the rules I realize full well that because the resolution does not reflect upon me, and will not hurt me, it does not constitute privilege, but I feel that I should raise the question to show what a great injustice was done me by it being presented. I submit that, as a matter of personal privilege, I should have a right to be heard.

THE SPEAKER: The Chair stated that in his opinion the subject matter stated in the resolution was not of such nature as reflected upon the gentleman from Texas.

The Chair is of the opinion that the matter stated by the gentleman from Texas does not constitute a question of personal privilege.

## § 24.2 The mere statement of opinion by a group of news-

2. William B. Bankhead (Ala.).

**paper correspondents with reference to a Member's record or position in the House does not present a question of personal privilege.**

On Mar. 27, 1939,<sup>(3)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, called the attention of the House to a magazine article in which it was stated that a poll of newsmen revealed their opinion that Mr. Hoffman was among the least useful Members of the House. In ruling on the question of personal privilege, the Speaker<sup>(4)</sup> made the following statement:

The gentleman from Michigan rises to a question of personal privilege, which question is based upon the language he has just read from a paper he held in his hand. It seems that the gravamen of the matter relates to a newspaper poll that was purported to have been made with reference to the usefulness, standing, and so forth, of Members of the House of Representatives.

Of course, there are sometimes border-line cases in which it is rather difficult for the Chair to reach, for himself, a definite conclusion on the question of personal privilege, but the Chair thinks the rule should again be stated because this question is frequently stated.

3. 84 CONG. REC. 3361, 3362, 76th Cong. 1st Sess.

4. William B. Bankhead (Ala.).

Rule IX provides:

QUESTIONS OF PRIVILEGE

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members, individually, in their representative capacity only; and shall have precedence of all other questions except motions to adjourn.

The gentleman from Michigan takes the position that this newspaper criticism, if the Chair may call it that, states a question of personal privilege. While the Chair is inclined to give the greatest elasticity and liberality to questions of personal privilege when raised, the Chair is of the opinion that in this particular instance the mere statement of opinion by a group of newspaper correspondents with reference to a Member's record or position in the House of Representatives does not present in fact, or under the rules of the House, a matter of personal privilege.

Therefore, the Chair is constrained to rule that the gentleman has not presented a question of personal privilege.

**§ 24.3 A newspaper statement asserting that all House Members from a specific delegation support a certain bill was held not to give rise to a question of personal privilege to a Member of such delegation opposed to the bill.**

On Mar. 31, 1938,<sup>(5)</sup> Mr. Michael J. Stack, of Pennsylvania,

5. 83 CONG. REC. 4473, 75th Cong. 3d Sess.

rising to a question of personal privilege, read a newspaper statement which asserted that it was understood that all members of the Philadelphia delegation favored an effective reorganization bill. In fact, the Member was uncommitted regarding such a bill. At the conclusion of the Member's statement of the question, the Speaker<sup>(6)</sup> said:

The gentleman has very cleverly gained recognition to make a statement stating his attitude on the bill which is to come before the House, but the Chair is of the opinion the gentleman does not state a matter of personal privilege.

**§ 24.4 A newspaper article alleging that a minority report filed by a Member had been written by employees of a political party was held not to involve a question of personal privilege.**

On Mar. 30, 1939,<sup>(7)</sup> Mr. Wallace E. Pierce, of New York, submitted as a question of personal privilege a statement from a newspaper article alleging that a minority report which Mr. Pierce had filed as a member of the Committee on the Judiciary had been written by several employees of the Republican National Com-

6. William B. Bankhead (Ala.).

7. 84 CONG. REC. 3552-54, 76th Cong. 1st Sess.

mittee. In his decision on the question, the Speaker<sup>(8)</sup> stated:

. . . The Chair, of course, can well understand the indignation of any Member of the House at a newspaper article that appears to be absolutely unfair or critical of his conduct as a Member of the House, but on this question of personal privilege the Chair is of course compelled to follow the precedents of the House, very few of which were established by the present occupant of the Chair.

The Chair has read the newspaper article which the gentleman from New York has read, to see if under the precedents and under the philosophy of the rule, the gentleman would be entitled to present this matter as a question of personal privilege. The Chair, within the past few days, has upon several occasions read into the Record the rule affecting this question of personal privilege. There are several precedents upon this particular question of newspaper criticism. One of them is found in section 2712 of Hinds' Precedents, volume 3:

A newspaper article in the nature of criticism of a Member's acts in the House does not present a question of personal privilege.

That is the syllabus of the decision.

Another decision holds that a newspaper article criticizing Members generally involves no question of privilege.

Having recourse again to the precedents the Chair finds the following: "The fact that a Member is misrepresented in his acts or speech does not constitute a matter of personal privi-

8. William B. Bankhead (Ala.).

lege, nor does misrepresenting a Member's vote."

The Chair personally would be delighted to have the gentleman from New York given the opportunity to address himself to the membership of the House on the question presented by him. The Chair, however, is constrained to rule in this instance as well as all others according to the precedents of the House and therefore rules that the matter complained of does not, in the opinion of the Chair, constitute a matter of personal privilege.

**§ 24.5 A newspaper article asserting that a Congressman's staff greeted a labor union delegation with copies of a pamphlet critical of the union and questioning the use of a Congressman's office as a distribution center for such material was held not to give rise to a question of personal privilege.**

On Mar. 23, 1945,<sup>(9)</sup> Mr. Clare E. Hoffman, of Michigan, presented as involving a question of personal privilege a newspaper article asserting that his office staff had greeted a CIO delegation with copies of "Join the CIO and help build a Soviet America," and questioning the use of a Congressman's office as a distribution center for such material. After the Member's presentation of the ob-

9. 91 CONG. REC. 2665, 79th Cong. 1st Sess.

jectionable article the Speaker<sup>(10)</sup> in his ruling on the question stated:

What the gentleman has read so far is hardly sufficient to entitle the gentleman to recognition on a question of personal privilege.

**§ 24.6 Language in a newspaper stating that a Member was "very generous with government money," and that he had introduced bills which would cost the government \$125 billion, was held not to give rise to a question of personal privilege.**

On Jan. 30, 1950,<sup>(11)</sup> Mr. John E. Rankin, of Mississippi, submitted as involving the question of personal privilege a newspaper article which stated in part that "Representative Rankin is very generous—with Government money," and declaring that he had introduced bills which would cost the government \$125 billion. The Speaker<sup>(12)</sup> ruled that the remarks referred to did not involve a question of personal privilege. However, the Member was granted recognition for one minute to answer the allegations.

10. Sam Rayburn (Tex.).

11. 96 CONG. REC. 1093, 81st Cong. 2d Sess.

12. Sam Rayburn (Tex.).

## § 25. Charges Before a Governmental Agency or Committee

### *Communist Party Affiliation*

#### § 25.1 Testimony by a government witness before a government agency charging a Member of the House as being a Communist gave rise to a question of personal privilege.

On Oct. 18, 1951,<sup>(13)</sup> Mr. Franck R. Havenner, of California, rising to a question of personal privilege, read, from the transcript of deportation hearing proceedings, certain testimony by a government witness in which he [Havenner] was identified as a former member of the Communist Party. Upon hearing the objectionable matter, the Speaker<sup>(14)</sup> ruled that the transcript gave rise to a question of personal privilege.

### *Alteration of Official Transcript*

#### § 25.2 A statement before a Senate committee which challenged the integrity of an official transcript of a hearing before a committee

13. 97 CONG. REC. 13483, 82d Cong. 1st Sess.

14. Sam Rayburn (Tex.).

of the House, thus impugning the integrity of those Members responsible for its preparation, gave rise to a question of personal privilege.

On May 21, 1959,<sup>(15)</sup> Mr. Clarence Cannon, of Missouri, presented as involving a question of personal privilege a statement made before a Senate committee inferring that he had provided the committee with an altered transcript of a hearing held before a committee of the House. Thereupon, the Speaker<sup>(16)</sup>, recognized Mr. Cannon on a question of personal privilege.

## § 26. Charges by Fellow Member

### *Charges Involving Unnamed Members*

#### § 26.1 A statement on the floor by the Majority Leader "there is nothing to stop a man from making a damn fool of himself if he wants to" which was carried in the press as referring to a particular Member, gave rise to

15. 105 CONG. REC. 8868, 86th Cong. 1st Sess. See also 105 CONG. REC. 11587, 11588, 86th Cong. 1st Sess., June 23, 1959.

16. Sam Rayburn (Tex.).

**a question of personal privilege.**

On Mar. 19, 1945,<sup>(17)</sup> Mr. Earl Wilson, of Indiana, rose to a question of privilege:

THE SPEAKER:<sup>(18)</sup> For what purpose does the gentleman from Indiana rise?

MR. WILSON: Mr. Speaker, I rise to a point of personal privilege.

THE SPEAKER: The gentleman will state the ground for the question of personal privilege.

MR. WILSON: Mr. Speaker, the ground on which I make my request is the report which has gone all over the land through the press, leaving the inference that the distinguished majority leader referred to me in his remarks that there is nothing to stop a man making a damn fool of himself if he wants to.

Also, Mr. Speaker, the concluding sentence in which the majority leader is quoted as saying, now that it has served its purpose, he agrees to erase his remarks from the Record.

THE SPEAKER: If the gentleman from Indiana is certain that the gentleman from Massachusetts was referring to him, the Chair thinks he has a right to proceed on the question of personal privilege.

The Chair recognizes the gentleman from Indiana.

**§ 26.2 Statements in the press that a Member had said other Members were giving**

17. 91 CONG. REC. 2415, 2416, 79th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

**atomic secrets to the enemy while under the influence of liquor, which the Member denied having made, gave rise to a question of personal privilege.**

On May 5, 1952,<sup>(19)</sup> Mr. Edwin Arthur Hall, of New York, presented as involving a question of personal privilege several newspaper articles in which he was attributed as a source of the statement that other Members “were in all probability giving away atomic secrets to the enemy while under the influence of liquor.” There ensued some discussion as to the validity of the question of personal privilege, during the course of which Mr. Hall denied having made the statement. The Speaker<sup>(20)</sup> then recognized him to debate the question of personal privilege.

***Improper Political Influence***

**§ 26.3 A newspaper article which stated that one Member had involved the name of another Member as secretary of a corporation, reported to be a party to a government contract in relation to which “gross political interference**

19. 98 CONG. REC. 4787, 4788, 82d Cong. 2d Sess.

20. Sam Rayburn (Tex.).

**and influence” were alleged, gave rise to a question of personal privilege.**

On July 16, 1958,<sup>(1)</sup> Mr. Perkins Bass, of New Hampshire, rose to a question of personal privilege and was recognized to reply to a newspaper article which stated that Mr. Oren Harris, of Arkansas, had involved the name of Mr. Bass as secretary of a corporation reported to be a party to a government contract in relation to which “gross political interference and influence were alleged.”

#### *Abuse of Power*

**§ 26.4 A Member’s press release charging another Member with an abuse of personal power and of sponsoring a political smear was held to give rise to a question of personal privilege.**

On Mar. 30, 1953,<sup>(2)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, called the attention of the House to a press release distributed by another Member in which he [Mr. Hoffman] was charged with a disgraceful abuse of personal power and accused of sponsoring a polit-

1. 104 CONG. REC. 13989, 85th Cong. 2d Sess.
2. 99 CONG. REC. 2468, 2469, 83d Cong. 1st Sess.

ical smear show. In ruling on the question of personal privilege, the Speaker<sup>(3)</sup> stated:

The Chair has read the statement of the gentleman from Michigan [Mr. Hoffman], and upon examination the Chair feels that the words “disgraceful abuse of personal power,” and also where it is stated that “political smear show” justify the establishment of the point made by the gentleman.

The Chair recognizes the gentleman for one hour.

#### *Traitorous Acts*

**§ 26.5 A Member was recognized on a question of personal privilege to answer a newspaper article which purportedly quoted him as implying that three Members of the House may have been guilty of traitorous acts.**

On Jan. 28, 1944,<sup>(4)</sup> Mr. Samuel A. Weiss, of Pennsylvania, rose and presented as a matter of personal privilege a newspaper article in which he was quoted as saying “if the grand jury that indicted thirty for traitorous acts recently had gone another step they would have indicted three Members of Congress.” At the conclusion of the Member’s statement of the question, the Speaker pro tempore<sup>(5)</sup> stated:

3. Joseph W. Martin, Jr. (Mass.).
4. 90 CONG. REC. 876, 877, 78th Cong. 2d Sess.
5. John W. McCormack (Mass.).

The Chair has read the news item referred to by the gentleman from Pennsylvania [Mr. Weiss]. The Chair feels it raises a matter of personal privilege.

The gentleman from Pennsylvania is recognized.

**§ 26.6 A newspaper statement quoting a Member of the House as saying that a colleague was a “pimp of Joe Stalin” gave rise to a question of personal privilege.**

On Jan. 13, 1949,<sup>(6)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a question of personal privilege to call attention to a newspaper that purported to quote another Member of the House as saying that Mr. Hoffman was a “pimp of Joe Stalin.” At the conclusion of Mr. Hoffman’s preliminary statement, the Speaker <sup>(7)</sup> said:

The Chair believes the gentleman from Michigan has stated grounds for addressing the House on a question of personal privilege. The gentleman from Michigan is recognized.

***Impugning Veracity***

**§ 26.7 An article in a newspaper quoting a Member of the House as “issuing the direct lie charge” to another Member was held to present**

6. 95 CONG. REC. 266, 81st Cong. 1st Sess.

7. Sam Rayburn (Tex.).

**a question of personal privilege.**

On Mar. 4, 1942,<sup>(8)</sup> Mr. Martin Dies, Jr., of Texas, rising to a question of personal privilege, read from a newspaper article which quoted Mr. Thomas H. Eliot, of Massachusetts, as “issuing the direct lie charge” to Mr. Dies. The Speaker <sup>(9)</sup> granted Mr. Dies recognition on a question of personal privilege

**§ 26.8 A press release issued by a Member containing allegations impugning the motives and veracity of another Member gave rise to a question of personal privilege.**

On July 28, 1970,<sup>(10)</sup> Mr. Augustus F. Hawkins, of California, rose to a question of personal privilege:

MR. HAWKINS: Mr. Speaker, I rise to a question of personal privilege.

THE SPEAKER: <sup>(11)</sup> The gentleman will state his question of personal privilege.

Mr. HAWKINS: Mr. Speaker, the gentleman from Illinois (Mr. Crane), in a recent press release which I send to the desk, has made certain allegations with respect to the additional views which I filed to accompany the report of the Select Committee To Investigate

8. 88 CONG. REC. 1920, 77th Cong. 2d Sess.

9. Sam Rayburn (Tex.).

10. 116 CONG. REC. 26002, 91st Cong. 2d Sess.

11. John W. McCormack (Mass.).

U.S. Military Involvement in South-east Asia. His allegations include charges which directly impugn my motives and veracity in submitting those additional views. I therefore rise to a question of personal privilege to respond to the statement of the gentleman from Illinois.

THE SPEAKER: The Chair has examined the press release sent to the desk by the gentleman from California (Mr. Hawkins), and the Chair is of the opinion that the gentleman from California has stated a question of personal privilege under rule IX of the rules of the House.

The gentleman from California (Mr. Hawkins) is recognized.

## § 27. Words Uttered in Debate; Charges Inserted in the Record

### *Floor Debate as Basis for Privilege*

**§ 27.1 A question of personal privilege may not be based upon language uttered upon the floor of the House in debate, the remedy being the demand that the objectionable words be taken down when spoken.**

This precedent was occasioned during certain House proceedings on Feb. 6, 1950.<sup>(12)</sup>

12. 96 CONG. REC. 1514, 81st Cong. 2d Sess. See §11, supra, for a discussion of this precedent.

### ***Remarks Made Under Leave to Revise and Extend***

**§ 27.2 Although a question of personal privilege may not be raised to words uttered in debate at the time, such a question may be based on objectionable remarks inserted by a Member in his speech under leave to revise and extend his remarks.**

On June 24, 1937,<sup>(13)</sup> Mr. Clare E. Hoffman, of Michigan, rose to question of personal privilege, stating as the grounds for his action not only certain statements made by a Member during House debate, but also a statement inserted in the Record of the same day by another Member under leave to revise and extend his remarks. In his ruling granting recognition to Mr. Hoffman, the Speaker<sup>(14)</sup> made the following clarifying statement:

THE SPEAKER: The gentleman from Michigan [Mr. Hoffman] has presented a question of personal privilege, based upon two propositions. The first is to language inserted in the Record purported to have been uttered by the gentleman from Texas [Mr. Maverick], which language appears on page 6162

13. 81 CONG. REC. 6309, 6310, 75th Cong. 1st Sess. For an additional illustration see 92 CONG. REC. 5000, 79th Cong. 2d Sess., May 14, 1946.

14. William B. Bankhead (Ala.).

of the Record of June 22, which the gentleman from Michigan [Mr. Hoffman] has quoted.

The rule is—and it has been sustained and supported by the practice and precedents for many years—when offensive language is uttered upon the floor by a Member reflecting in anywise on a fellow Member, or language is uttered to which the offending Member desires to take exception, it is the duty of such Member instantly to exercise his privilege and demand that the offending words be taken down. This would give the House an opportunity to pass judgment upon whether the language should be retained in the Record, expunged, or other action taken.

By confession, the gentleman from Michigan did not avail himself of that opportunity, explaining he did not do so probably because he was temporarily absent from the floor when the gentleman from Texas used said language. Under such circumstances, of course, the absence of the Member from the floor would be no justification for him to be made an exception to the rule. It is to be assumed that he is on the floor of the House at all times during the session of the House.

The Chair is therefore of the opinion that on that point of personal privilege the gentleman from Michigan [Mr. Hoffman] is not entitled to the floor on a question of personal privilege under the rules and practices of the House.

. . .

The Chair stated there are two grounds upon which the gentleman from Michigan [Mr. Hoffman] bases his question of personal privilege. The second ground is that on page 6161 of the

Record of the same date the gentleman from Illinois [Mr. Sabath] made certain statements, as published in the Record, of which the gentleman from Michigan [Mr. Hoffman] complains.

If, as a matter of fact, the gentleman from Illinois inserted in the Record matters not actually stated by him upon the floor at the time which gave offense to the gentleman from Michigan, it was then the privilege of the gentleman from Michigan to raise that question, as he has now raised it, as a matter of personal privilege when his attention was called to the offending language.

***Strike-breaking Activities***

**§ 27.3 A letter inserted in the Congressional Record by a Senator alleging that a Member was gathering arms and assembling a private army to march against workers on strike was held to give rise to a question of personal privilege.**

On Apr. 11, 1938,<sup>(15)</sup> Mr. Clare E. Hoffman, of Michigan, presented as involving a question of personal privilege a letter inserted in the *Congressional Record* by Senator Alben W. Barkley, of Kentucky, which contained the following statement:

When men like Congressman Clare E. Hoffman, of Michigan, openly boast

15. 83 CONG. REC. 5235, 75th Cong. 3d Sess.

that they will assemble a strike-breaking private arsenal and private army to march against workers in this country, it seems to me that lovers of democracy and friends of workingmen must no longer remain silent.

In his ruling granting recognition to the Member, the Speaker<sup>(16)</sup> said:

The gentleman from Michigan rises to a question of personal privilege based upon language he has already quoted and which will appear in the Record, as taken from the Appendix of the Congressional Record, page 1256.

Of course, the question of whether or not a matter constitutes a basis for rising to address the House on a question of personal privilege under the rules is in many instances in what may be called the twilight zone of parliamentary discretion on the part of the Speaker, but the Chair has read the quotation to which the gentleman from Michigan refers, and the Chair is of the opinion that, at least by liberal construction of the rights of Members, which the Chair is always disposed to grant, the gentleman from Michigan is within his rights in rising to a question of personal privilege, because the alleged language might bring into question the rights, reputation, and conduct of a Member of the House.

Therefore, the Chair recognizes the gentleman from Michigan on a question of privilege.

### ***Placing "Scurrilous" Matter in the Record***

#### **§ 27.4 A statement by a Member in his extension of re-**

16. William B. Bankhead (Ala.).

**marks that another Member had placed in the Record "scurrilous" matter was held to give grounds for a question of personal privilege.**

On Aug. 27, 1940,<sup>(17)</sup> Mr. Jacob Thorkelson, of Montana, rising to a question of personal privilege, read a statement inserted in the *Congressional Record* by Mr. Adolph J. Sabath, of Illinois, under an extension of remarks, which accused him of "placing 210 full pages of scurrilous matter" in the Record. Protracted debate on the question ensued, at the conclusion of which the Speaker,<sup>(18)</sup> on hearing objection to a unanimous-consent request of Mr. Sabath that the remarks be expunged from the Record, recognized Mr. Thorkelson on a question of personal privilege.

### ***Promoting Religious Strife***

**§ 27.5 An insertion in the Record in an extension of remarks of a charge that a Member seeks to promote religious strife, gave rise to a question of personal privilege.**

On Apr. 7, 1943,<sup>(19)</sup> Mr. John E. Rankin, of Mississippi, rose and

17. 86 CONG. REC. 11046-49, 11150-58, 76th Cong. 3d Sess.

18. William B. Bankhead (Ala.).

19. 89 CONG. REC. 3062, 78th Cong. 1st Sess.

proposed as a question of personal privilege to call attention to certain language inserted in the *Congressional Record* by Mr. Emanuel Celler, of New York, in an extension of remarks charging him (Mr. Rankin) with promoting religious strife, demonstrating thereby his contempt for the spirit and traditions of America. Upon hearing the objectionable remarks the Speaker<sup>(20)</sup> said:

. . . The Chair believes that the language not being spoken on the floor and no recourse being had at that time, is a reflection on the gentleman from Mississippi [Mr. Rankin] and the Chair recognizes the gentleman for 1 hour.

***Criticism of House Members by a Senator***

**§ 27.6 Insertion in the Record of Senate remarks charging a chairman of a House committee with making a “disgraceful effort to cram down on a number of ‘pork barrel’ provisions” by insisting on a meritorious provision in an omnibus bill to get votes for the other items, gave rise to a question of personal privilege.**

On Mar. 3, 1942,<sup>(1)</sup> Mr. Joseph J. Mansfield, of Texas, on a ques-

20. Sam Rayburn (Tex.).

1. 88 CONG. REC. 1880, 77th Cong. 2d Sess.

tion of personal privilege, called the attention of the House to Senate remarks appearing in the *Congressional Record* implying that as Chairman of the Committee on Naval Affairs he had engaged in a “disgraceful effort to cram down a number of ‘pork barrel’ provisions” in a pending river and harbor bill by including in it a meritorious proposal, for purposes of obtaining votes for the other items. In ruling on the question of personal privilege, the Speaker<sup>(2)</sup> stated:

The Chair is convinced that the question is a very close one, but the Chair is going to hear the gentleman from Texas.

**§ 27.7 A Senator’s action in inserting in the Record certain roll call votes of the House together with critical comment and an editorial critical of the House gave rise to a question of personal privilege, where the inserted material identified individual Members and their votes.**

On July 12, 1956,<sup>(3)</sup> the Speaker<sup>(4)</sup> recognized Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege to call the attention of the House to a news-

2. Sam Rayburn (Tex.).

3. 102 CONG. REC. 12522, 12523, 84th Cong. 2d Sess.

4. Sam Rayburn (Tex.).

paper editorial and certain remarks by Senator Hubert Humphrey, of Minnesota, in the *Congressional Record*, which described House action on a particular bill as “cynical politicking” and which alleged that the House was guilty of “shabby conduct.” The material also gave rise to a question of the privilege of the House.

**§ 27.8 A newspaper column in which a bill to exempt a Member’s educational foundation from tax laws was described as coming “as near to making suckers out of all the rest of us as any piece of tax legislation Congress ever enacted,” reprinted in the Appendix of the Record at the request of a Senator, gave rise to a question of personal privilege in the House.**

On Jan. 28, 1958,<sup>(5)</sup> Mr. Clarence Cannon, of Missouri, presented as involving a question of personal privilege a newspaper column inserted in the *Congressional Record* by Senator Albert A. Gore, of Tennessee. The column referred to a bill to exempt Mr. Cannon’s educational foundation from the tax laws in the following language:

. . . “It came as near to making suckers out of all the rest of us as any

5. 104 CONG. REC. 1202, 85th Cong. 2d Sess.

piece of tax legislation Congress ever enacted.”

In his decision granting recognition to the Member, the Speaker<sup>(6)</sup> said:

The Chair feels that under the circumstances the charges and allusions made in the article just read by the gentleman from Missouri are a reflection on him to such an extent that he may claim the right of personal privilege.

**§ 27.9 A Senator’s accusation, reported in the Record, charging that a Member of the House inserted in the Record an intemperate, vituperative, and libelous attack on an individual, was held to give rise to a question of personal privilege.**

On June 30, 1939,<sup>(7)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a question of personal privilege to call attention to a statement made in the Senate by Senator Joel Bennett Clark, of Missouri, charging Mr. Hoffman with having inserted in the Record an intemperate, vituperative, and libelous attack on an individual. The Speaker<sup>(8)</sup> then recognized Mr.

6. Sam Rayburn (Tex.).

7. 84 CONG. REC. 8468, 8469, 76th Cong. 1st Sess.

8. William B. Bankhead (Ala.).

Hoffman on a question of personal privilege.

***Charges Impugning Veracity***

**§ 27.10 A statement in an extension of remarks of a Member asserting that another Member had brought dishonor and discredit on his office by his use of scurrilous language and alleging that he had distorted the words of the President was held to present a question of personal privilege.**

On June 19, 1940,<sup>(9)</sup> Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege, called the attention of the House to certain language (set out below) inserted in the *Congressional Record* by Mr. Donald L. O'Toole, of New York, under permission to extend his remarks:

It is not enough that the Member from Michigan should bring dishonor and discredit upon the high position that he occupies by his scurrilous language in regard to the highest office in the land, but he also feels compelled to distort the words of the President.

Upon hearing the objectionable remarks, the Speaker<sup>(10)</sup> recog-

9. 86 CONG. REC. 8642, 76th Cong. 3d Sess.

10. William B. Bankhead (Ala.).

nized the Member on a question of personal privilege.

**§ 27.11 A Member's insertion in the Record of a statement charging that another Member echoed in the House a "typical fascist lie," was held to give rise to a question of personal privilege.**

On Apr. 25, 1944,<sup>(11)</sup> Mr. Clare E. Hoffman, of Michigan, presented as involving a question of personal privilege a statement inserted in the *Congressional Record* by Mr. Herman P. Eberharter, of Pennsylvania, alleging that Mr. Hoffman had echoed in the House a "typical fascist lie." In his ruling granting recognition to Mr. Hoffman, the Speaker<sup>(12)</sup> observed:

The Chair thinks the statement in the Record which makes charges against the gentleman from Michigan amounts to a question of personal privilege.

**§ 27.12 A letter printed in the Congressional Record Appendix, in which certain statements made by a Member were said to be untruthful, gave rise to a question of personal privilege.**

11. 90 CONG. REC. 3696, 78th Cong. 2d Sess.

12. Sam Rayburn (Tex.).

On June 18, 1958,<sup>(13)</sup> the Speaker<sup>(14)</sup> recognized Mr. Clarence Cannon, of Missouri, on a question of personal privilege after Mr. Cannon directed attention to a letter appearing in the Appendix to the *Congressional Record* which described certain material attributed to him as a “lie.”

## § 28. Published Charges of Impropriety

### “Vote Selling”

#### § 28.1 A newspaper article accusing a Member of selling his vote gave rise to a question of personal privilege.

On July 24, 1957,<sup>(15)</sup> Mr. H. Carl Andersen, of Minnesota, on a question of personal privilege, called the attention of the House to a newspaper article which included allegations of his involvement in a conflict-of-interest case. After receipt of the objectionable articles, the Speaker<sup>(16)</sup> stated:

The Chair has read the headline, to which the gentleman refers, and it does, in effect, accuse a Member of

13. 104 CONG. REC. 11609, 85th Cong. 2d Sess.

14. Sam Rayburn (Tex.).1

15. 103 CONG. REC. 12583, 85th Cong. 1st Sess.

16. Sam Rayburn (Tex.).

Congress of selling his vote, and this is carried forward in the second paragraph.

The Chair thinks the gentleman has stated a question of personal privilege and therefore, recognizes the gentleman from Minnesota [Mr. H. Carl Andersen].

### *Implying Reprehensibility*

#### § 28.2 A newspaper article referring to a Member as “reprehensible” or “punk” gave rise to a question of personal privilege.

On Jan. 25, 1944,<sup>(17)</sup> Mr. John E. Rankin, of Mississippi, rose to a question of personal privilege and was recognized to reply to a newspaper article in which he was referred to as “reprehensible” Rankin and “punk” Rankin.

### *Questionable Business Associations*

#### § 28.3 Newspaper articles accusing a Member of promoting and participating in an organization being investigated by a Senate investigating committee gave rise to a question of personal privilege.

On July 8, 1946,<sup>(18)</sup> Mr. Andrew J. May, of Kentucky, presented as

17. 90 CONG. REC. 751, 78th Cong. 2d Sess.

18. 92 CONG. REC. 8391, 79th Cong. 2d Sess.

involving a question of personal privilege certain newspaper articles which were submitted to the Speaker's desk. Thereupon, the Speaker<sup>(19)</sup> stated as follows:

THE SPEAKER: The Chair has looked over these papers and headlines, as well as the body of the articles. One headline states "Documents show May had financial stake in Garsson's empire."

The article further states:

Documentary evidence that Representative May, Democrat, of Kentucky, chairman of the House Military Committee, had a financial interest in the Illinois munitions empire he is said to have promoted at the War Department and his vehement denial featured explosive development yesterday before the Senate War Investigation Committee.

The Chair thinks that these entitle the gentleman to the question of personal privilege in his Representative capacity, therefore, it recognizes the gentleman from Kentucky [Mr. May].

*Ethnic Slur*

**§ 28.4 On one occasion, a Member took the floor for a one-minute speech to respond to a newspaper article which included a reference to him as "one of the few Italian American undesirables in Congress."**

19. Sam Rayburn (Tex.).

This precedent was occasioned by certain House proceedings on Nov. 22, 1967.<sup>(20)</sup>

**§ 29. Published Charges of Illegality**

*Unspecified Illegal Acts*

**§ 29.1 A newspaper article charging that a Member did something illegal in his representative capacity gave rise to a question of personal privilege.**

On Jan. 18, 1954,<sup>(1)</sup> the Chair recognized Mr. Clare E. Hoffman, of Michigan:

MR. HOFFMAN of Michigan: Mr. Speaker, I rise to a question of personal privilege. I have previously submitted the question to the Speaker.

THE SPEAKER:<sup>(2)</sup> The Chair may say that the gentleman from Michigan [Mr. Hoffman] has very kindly given him the opportunity of looking over the question of personal privilege. In one instance it is stated that the gentleman did something illegal in his representative capacity, so therefore the gentleman qualifies to present his question of personal privilege.

20. 113 CONG. REC. 33693, 90th Cong. 1st Sess. See §22.4, supra, for a detailed discussion of this precedent.

1. 100 CONG. REC. 388, 83d Cong. 2d Sess.
2. Joseph W. Martin, Jr. (Mass.).

*Forgery***§ 29.2 A statement in a newspaper accusing a Member of forgery constituted sufficient grounds for raising a question of personal privilege.**

On June 8, 1950,<sup>(3)</sup> Mr. Clare E. Hoffman, of Michigan, offered as a question of personal privilege a statement appearing in a newspaper alleging that the Member had "stooped to using outright forgery in a strikebreaking attempt." In his ruling granting recognition, the Speaker<sup>(4)</sup> stated that sufficient grounds to constitute a question of personal privilege had been stated.

*Receipt of Illegal Fees***§ 29.3 A newspaper article charging that a Member of the House received an illegal fee in a matter connected with his work as a Member was held to give rise to a question of personal privilege.**

On June 15, 1950,<sup>(5)</sup> Mr. John S. Wood, of Georgia, rose to a question of privilege to call atten-

3. 96 CONG. REC. 8331, 81st Cong. 2d Sess.

4. Sam Rayburn (Tex.).

5. 96 CONG. REC. 8653, 81st Cong. 2d Sess.

tion to a newspaper article charging that he had received an illegal fee in a matter connected with his work as a Member. After examining the article, the Speaker<sup>(6)</sup> recognized Mr. Wood to proceed on a question of personal privilege.

*Tax Irregularities***§ 29.4 A newspaper article charging a Member with involvement in a tax scandal gave rise to a question of personal privilege.**

On Feb. 4, 1954,<sup>(7)</sup> Mr. Emanuel Celler, of New York, sought the floor on a question of personal privilege, and read to the Chair headlines from several newspaper articles charging him (Mr. Celler) with involvement in a tax scandal. After the presentation of the objectionable articles to the Chair, the Speaker pro tempore<sup>(8)</sup> stated:

The Chair has examined the headlines and the newspaper articles and believes the gentleman has stated a question of personal privilege. The gentleman is recognized.

*Criminal Conspiracy, Perjury, and Tax Evasion***§ 29.5 Newspaper accounts of a grand jury indictment of a**

6. Sam Rayburn (Tex.).

7. 100 CONG. REC. 1353, 1354, 83d Cong. 2d Sess.

8. Charles A. Halleck (Ind.).

**Member for alleged criminal conspiracy, perjury, and tax evasion gave rise to a question of personal privilege.**

On Apr. 19, 1972,<sup>(9)</sup> Mr. Cornelius E. Gallagher, of New Jersey, rising to a question of personal privilege, stated that he wished to answer charges stemming from published accounts of a grand jury indictment brought against him for alleged criminal conspiracy, perjury, and tax evasion. At the conclusion of his statement, the Speaker<sup>(10)</sup> granted Mr. Gallagher recognition for one hour on a question of personal privilege.

***Sedition***

**§ 29.6 Any pamphlet, newspaper, or document which accuses a Member of being seditious presents a question of personal privilege.**

On Mar. 26, 1946,<sup>(11)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a

- 9. 118 CONG. REC. 13491-97, 92d Cong. 2d Sess.
- 10. Carl Albert (Okla.).
- 11. 92 CONG. REC. 2624, 79th Cong. 2d Sess. For additional illustrations involving accusations of sedition, see 91 CONG. REC. 12456, 79th Cong. 1st Sess., Dec. 20, 1945; 90 CONG. REC. 2908, 78th Cong. 2d Sess., Mar. 22, 1944; 90 CONG. REC. 2519, 78th Cong. 2d Sess., Mar. 13, 1944; and

question of personal privilege and presented a publication in which he was accused of sedition. In ruling on the question, the Speaker<sup>(12)</sup> said:

THE SPEAKER: . . . [T]he Chair states that any pamphlet or newspaper or document that accuses the gentleman from Michigan [Mr. Hoffman] of being seditious certainly presents a question of personal privilege.

The gentleman is recognized.

**§ 30. Published Charges Involving Legislative Conduct**

***Misuse of Public Funds***

**§ 30.1 A newspaper article to the effect that certain union delegates "left for home determined to raise hell about the misuse of government funds" by a Member gave rise to a question of personal privilege.**

On Feb. 22, 1945,<sup>(13)</sup> Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege, called the attention of the House to a newspaper article which stated that certain union delegates

- 90 CONG. REC. 816, 78th Cong. 2d Sess., Jan. 27, 1944.
- 12. Sam Rayburn (Tex.).
- 13. 91 CONG. REC. 1368, 79th Cong. 1st Sess.

from Mr. Hoffman's district left for home "determined to raise hell about [his] misuse of government funds." The Speaker pro tempore<sup>(14)</sup> stated his belief that Mr. Hoffman had presented a question of personal privilege and recognized him for that purpose.

### *Deceptive Conduct*

#### **§ 30.2 An advertisement in a newspaper charging that a Member "sneaked" a permanent committee through the House gave rise to a question of personal privilege.**

On Mar. 15, 1946,<sup>(15)</sup> Mr. John E. Rankin, of Mississippi, claiming the floor on a question of personal privilege, read a newspaper advertisement charging that, "In the confusion of the first day of the 1945 Congress, Rankin sneaked over a permanent House Committee on Un-American Activities." In his ruling recognizing the Member on the question, the Speaker<sup>(16)</sup> stated:

The Chair thinks that the gentleman states a question of personal privilege in that the paper charges that he sneaked something over on the House. The gentleman is recognized.

14. John W. McCormack (Mass.).

15. 92 CONG. REC. 2328, 79th Cong. 2d Sess.

16. Sam Rayburn (Tex.).

### *Dereliction of Duties*

#### **§ 30.3 A newspaper editorial implying nonperformance by a Member of his representative duties in relation to the poor people of his constituency gave rise to a question of personal privilege.**

On June 14, 1938,<sup>(17)</sup> Mr. John J. Boylan, of New York, presented as involving a question of personal privilege a newspaper editorial which stated "Isn't it about time for the poor people of the 15th district of New York to ask themselves just whom Mr. Boylan represents. He surely doesn't represent them." After the editorial had been submitted to the Speaker<sup>(18)</sup> for his inspection, he ruled:

The Chair finds in one of the marked paragraphs of the editorial an implication which the Chair thinks involves the gentleman's dignity, standing, and reputation as a Member of the House. The Chair recognizes the gentleman from New York on a question of personal privilege.

### *Confiscation of Evidence*

#### **§ 30.4 Newspaper headlines circulated through the mails indicating that a Member had confiscated evidence**

17. 83 CONG. REC. 9234, 75th Cong. 3d Sess.

18. William B. Bankhead (Ala.).

**needed to prosecute certain individuals was held to involve a question of personal privilege.**

On Sept. 29, 1941,<sup>(19)</sup> Mr. Hamilton Fish, Jr., of New York, rose to a question of personal privilege and sent to the desk extracts from certain newspapers. The following exchange then occurred:

THE SPEAKER:<sup>(20)</sup> The Chair sees here what seems to be the front page of some newspaper, but it is not identified here.

MR. FISH: It is PM, a newspaper in New York. The Chair can see it on the front of the page.

THE SPEAKER: Does this paper circulate through the mails?

MR. FISH: It does circulate through the mails, Mr. Speaker.

THE SPEAKER: In large headlines covering more than half of the front page appear these words:

Ham Fish snatches evidence wanted in U.S. Nazi hunt.

The Chair thinks the gentleman states a question of personal privilege.

***Crippling War Controls***

**§ 30.5 During World War II, a newspaper article charging a Member with actions which could leave certain administrators helpless and which could cripple war controls**

19. 87 CONG. REC. 7576, 77th Cong. 1st Sess.

20. Sam Rayburn (Tex.).

**was held to give rise to a question of personal privilege.**

On June 7, 1944,<sup>(1)</sup> Mr. Howard W. Smith, of Virginia, rose to a question of personal privilege and read from a newspaper article charging him with leading a "raid" in the House which could leave price stabilization administrators helpless to combat rising prices and which could cripple war controls. In his ruling on Mr. Smith's question of personal privilege, the Speaker<sup>(2)</sup> stated:

The Chair is of the opinion that the language read is a sufficient reflection on the gentleman to raise the question of personal privilege, and the Chair will recognize the gentleman.

***Conflicts of Interest***

**§ 30.6 A newspaper article alleging improper lobbying activities by a Member to preserve his financial interests in a relative's estate gave rise to a question of personal privilege.**

On June 6, 1962,<sup>(3)</sup> Mr. H. Carl Andersen, of Minnesota, rose to a question of privilege regarding a

1. 90 CONG. REC. 5460, 78th Cong. 2d Sess.

2. Sam Rayburn (Tex.).

3. 108 CONG. REC. 9792-97, 87th Cong. 2d Sess.

newspaper article which alleged improper lobbying activities on his part to preserve his own financial interests in his brother's estate. The Speaker<sup>(4)</sup> then recognized Mr. Andersen on a question of personal privilege.

**§ 30.7 A Member was recognized on a question of personal privilege following publication of a newspaper column implying that he had introduced legislation to repeal excise taxes on cars and trucks at a time when the clients of his law firm included a trucking firm.**

On June 22, 1966,<sup>(5)</sup> Mr. Charles E. Chamberlain, of Michigan, rose to a question of privilege to call attention to a newspaper column in which it was alleged that he had introduced legislation to repeal excise taxes on cars and trucks but failed to list the name of his law firm or its clients, including a trucking firm, in the Congressional Directory. After the Member's statement of the question, the Speaker<sup>(6)</sup> recognized him on a question of personal privilege.

4. John W. McCormack (Mass.).

5. 112 CONG. REC. 13907, 13908, 89th Cong. 2d Sess.

6. John W. McCormack (Mass.).

### ***Abuse of Powers or Rank***

**§ 30.8 A newspaper story to the effect that a Member sullied congressional honor and held a congressional hearing for the political purpose of influencing a local election gave rise to a question of personal privilege.**

On July 20, 1953,<sup>(7)</sup> Mr. Clare E. Hoffman, of Michigan, as a question of personal privilege, offered a newspaper editorial captioned "Representative Hoffman Sullies Congressional Honor," and which stated in part:

The immorality of holding a congressional hearing for the political purpose of influencing a local election gave off such a stench that the full committee apparently wanted no part of it.

The Speaker<sup>(8)</sup> then ruled on the question, observing:

The gentleman does not have to proceed any further. He has stated a question of personal privilege and is recognized for 1 hour.

**§ 30.9 A newspaper article to the effect that a committee chairman used a subcommittee for an improper purpose was held to give rise to a question of personal privilege.**

7. 99 CONG. REC. 9242, 9243, 83d Cong. 1st Sess.

8. Joseph W. Martin, Jr. (Mass.).

On July 21, 1953,<sup>(9)</sup> Mr. Clare E. Hoffman, of Michigan, rose on a question of personal privilege to call attention to a newspaper article which asserted that he had used a subcommittee which he had chaired to investigate the Air Force for refusing to award a contract to certain constituents. The Speaker<sup>(10)</sup> was of the opinion that Mr. Hoffman had stated a question of personal privilege and recognized him for one hour.

**§ 30.10 A newspaper editorial charging a Member with having no scruples about using the power which seniority had brought him for personal reprisals, and that he seemed unfit to govern, gave rise to a question of personal privilege.**

On July 12, 1955,<sup>(11)</sup> Mr. Francis E. Walter, of Pennsylvania, claiming the floor on a question of personal privilege, read from a newspaper editorial which referred to him in the following language:

He seems to have no scruples about using the power which seniority has brought him as a member of the Judi-

- 9. 99 CONG. REC. 9412-14, 83d Cong. 1st Sess.
- 10. Joseph W. Martin, Jr. (Mass.).
- 11. 101 CONG. REC. 10304, 84th Cong. 1st Sess.

ciary Committee to attempt personal reprisals against those whom he dislikes. . . .

A man with so little capacity for government himself seems scarcely fit for the governing of his countrymen.

After hearing the objectionable words, the Speaker<sup>(12)</sup> stated that a question of personal privilege had been stated.

***Improprieties as Committee Chairman***

**§ 30.11 A newspaper article charging that the chairman of a committee had “rammed through” a resolution pending before his committee gave rise to a question of personal privilege.**

On July 16, 1962,<sup>(13)</sup> Mr. Clarence Cannon, of Missouri, sought the floor for a question of personal privilege and proceeded to discuss a newspaper article charging that, as Chairman of the Committee on Appropriations, he had “rammed through” a resolution pending before his committee, without allowing debate and without explanation. After the submission of the article to the Chair, the Speaker<sup>(14)</sup> recognized Mr. Can-

- 12. Sam Rayburn (Tex.).
- 13. 108 CONG. REC. 13681, 13682, 87th Cong. 2d Sess.
- 14. John W. McCormack (Mass.).

non on a question of personal privilege.

**§ 30.12 A newspaper editorial to the effect that a chairman of a committee so discredited himself by irresponsible actions that his committee voted to strip him of power to name subcommittees gave rise to a question of personal privilege.**

On July 29, 1953,<sup>(15)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, read from a newspaper editorial which asserted that he, as Chairman of the Committee on Government Operations, had so discredited himself by irresponsible actions that the committee voted to strip him of power to name subcommittees. In his ruling granting the Member recognition on his question of personal privilege, the Speaker<sup>(16)</sup> stated:

The Chair believes that the gentleman is justified in rising to a question of personal privilege on the ground that the matter to which he has referred is a reflection on him in his representative capacity.

**§ 30.13 A statement in a magazine article asserting that a committee report contained**

15. 99 CONG. REC. 10351, 83d Cong. 1st Sess.

16. Joseph W. Martin, Jr. (Mass.).

**“stale lies and shabby calumnies” and inferring that the chairman of the committee failed to give minority members an opportunity to file minority views was held to present a question of personal privilege.**

On Jan. 16, 1941,<sup>(17)</sup> Mr. Howard W. Smith, of Virginia, presented as involving a question of privilege a magazine article which stated, “We do not have the space at this time to disentangle and answer all the stale lies and shabby calumnies rehashed in the final report of the Smith committee” and which alleged that the chairman of the committee had failed to give minority Members an opportunity to file minority views with the majority report. The Speaker<sup>(18)</sup> then granted recognition to Mr. Smith on the question of personal privilege.

***Avoidance of Committee Responsibilities***

**§ 30.14 A newspaper article to the effect that certain named Members of the House, who originally accused an individual of communistic affiliations, had ducked the com-**

17. 87 CONG. REC. 158, 77th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

**mittee session in which the individual was cleared of such charges, was held to involve a question of personal privilege.**

On Dec. 17, 1941,<sup>(19)</sup> Mr. Everett M. Dirksen, of Illinois, rose and proposed as a question of personal privilege to call attention to a newspaper article which asserted that Mr. Dirksen and two other Members, who had originally accused David Lasser of communistic affiliations, had failed to attend the committee session when Lasser was cleared of the charges. In his ruling granting recognition to the Member, the Speaker<sup>(20)</sup> stated:

The rule covering this matter states:

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of Members individually in their representative capacity only.

The Chair thinks the gentleman states a question of personal privilege.

***“Disgraceful” Conduct Reflecting on the House***

**§ 30.15 An insertion in a newspaper editorial that the conduct of a Member had been**

19. 87 CONG. REC. 9913, 77th Cong. 1st Sess.

20. Sam Rayburn (Tex.).

**so disgraceful as to reflect upon the membership of the House was held to be sufficient grounds for a question of personal privilege.**

On Feb. 18, 1936,<sup>(1)</sup> Mr. Thomas L. Blanton, of Texas, on a question of personal privilege, called the attention of the House to a newspaper editorial which read in part:

The case of the people of Washington against Thomas L. Blanton is clearly posed. It is one of ignorant and prejudiced domination over local appropriations by a Congressman whose chief reliance in an argument seems to be epithets and fists. It is an important case for Congress as well as for the voteless Capital City. . . .

Indeed, the disgrace that such tactics bring upon the National Legislature—aside from their deplorable effects upon Washington—should result in a speedy transfer of Mr. Blanton.

The Speaker<sup>(2)</sup> ruled that the editorial gave rise to a question of personal privilege, observing:

. . . Without entering into a discussion of the language which has been read by the gentleman from Texas, the Chair clearly thinks that the publication which charges that his conduct has been so disgraceful as to reflect upon the Members of the House entitles the gentleman to be heard on the question of privilege, and the Chair

1. 80 CONG. REC. 2320, 74th Cong. 2d Sess.

2. Joseph W. Byrns (Tenn.).

therefore recognizes the gentleman from Texas for 1 hour.

**§ 30.16 A newspaper article charging that a Member of Congress had long disgraced himself by being “anti-United Nations, anti-Semitic, anti-Negro, [and] antilabor” was held to involve a question of personal privilege.**

On Jan. 8, 1945,<sup>(3)</sup> Mr. John E. Rankin, of Mississippi, on a question of personal privilege, called the attention of the House to a newspaper article which repeated charges as described above. The Speaker<sup>(4)</sup> then ruled:

The Chair believes that the gentleman from Mississippi has stated a question that involves the privileges of the House, it being an attack on his integrity as a Member of the House.

***Improper Conduct in Agency Dealings***

**§ 30.17 A notation on the margin of a letter sent to the press to the effect that a Member had visited the office of the director of an agency while intoxicated and had “cussed out” the director’s clerks in such a manner that the director refused to**

3. 91 CONG. REC. 107, 108, 79th Cong. 1st Sess.

4. Sam Rayburn (Tex.).

**see him, was held to give rise to a question of personal privilege.**

On Apr. 16, 1943,<sup>(5)</sup> Mr. Paul Stewart, of Oklahoma, claimed the floor for a question of personal privilege and proceeded to discuss the contents of a notation on the margin of a letter sent to two newspapers which asserted that the Member had visited the office of the director of the Office of Price Administration “half drunk” and had “cussed out” the clerks there in such a manner that the director refused to see him. The Speaker<sup>(6)</sup> then ruled that a question of personal privilege had been stated.

***Abuse of Franking Privilege***

**§ 30.18 A newspaper article quoting a book containing an accusation that a Member permitted the use of his frank by one of questionable character gave rise to a question of personal privilege.**

On Jan. 28, 1944,<sup>(7)</sup> Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege, called the attention of the House

5. 89 CONG. REC. 3471, 78th Cong. 1st Sess.

6. Sam Rayburn (Tex.).

7. 90 CONG. REC. 879, 78th Cong. 2d Sess.

to a newspaper article quoting a book which asserted that the Member had permitted the use of his frank by a man of questionable character. The Speaker pro tempore<sup>(8)</sup> then recognized the Member on the question of personal privilege.

**§ 31. Published Charges Involving Patriotism**

*Generalized Allegations and Innuendos*

**§ 31.1 A letter addressed to several newspapers and to Members of the House to the effect that in Russia a certain Congressman would have been liquidated long ago as an enemy of his country, gave rise to a question of personal privilege.**

On July 3, 1947,<sup>(9)</sup> Mr. Clare E. Hoffman, of Michigan, offered as involving a question of personal privilege a letter addressed to several newspapers and Members of the House which stated that, "In Russia, Congressman Hoffman would have been liquidated long ago as an enemy of his country." Upon hearing Mr. Hoffman's

8. John W. McCormack (Mass.).

9. 93 CONG. REC. 8260, 80th Cong. 1st Sess.

statement, the Speaker<sup>(10)</sup> recognized him for one hour.

**§ 31.2 An article in a newspaper charging a Member of the House as being "the most un-American politician" was held to present a question of personal privilege.**

On Jan. 29, 1941,<sup>(11)</sup> Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege, called the attention of the House to a newspaper article in which he was identified as being "about the most un-American politician that ever went to Congress." The Speaker<sup>(12)</sup> granted the Member recognition, saying:

The Chair thinks that the gentleman has stated a question of personal privilege. . . .

The Chair bases his opinion upon the words that the gentleman from Michigan refers to in this article, which refer to his un-Americanism. The Chair thinks those words present a charge which entitles the gentleman to rise to a question of personal privilege.

**§ 31.3 Language in a newspaper asserting that a Member was among those who would divide the Nation and that he was a spokesman for**

10. Joseph W. Martin, Jr. (Mass.).

11. 87 CONG. REC. 348, 77th Cong. 1st Sess.

12. Sam Rayburn (Tex.).

**the forces of betrayal was held to involve a question of personal privilege.**

On June 3, 1943,<sup>(13)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, called the attention of the House to a newspaper article which stated:

Because labor recognizes this for what it is, the fatal policy of defeat and disaster, labor too has been the target of the slander of those who would divide our Nation in its hour of crisis and peril. The Hoffmans, the Dieses, the Rickenbackers, and the forces of betrayal for whom they speak, have conspired against and viciously attacked the millions of men and women who are today providing the weapons needed by the armed forces of democracy.

In his ruling on the question of personal privilege, the Speaker<sup>14</sup> stated:

The Chair must assume some latitude. It is only by implication, the Chair may say, that this impugns the honor and integrity of the gentleman from Michigan [Mr. Hoffman]. It is a very close question. The Chair will recognize the gentleman, but he wants it understood that it is a very close question.

### ***Fascist Sympathies***

#### **§ 31.4 Language in a publication accusing a Member of**

13. 89 CONG. REC. 5294, 78th Cong. 1st Sess.

14. Sam Rayburn (Tex.).

**being one of the most influential spokesmen for America's fascists, isolationists and labor baiters gave rise to a question of personal privilege.**

On Jan. 13, 1948,<sup>(15)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, read the statement below from a news paper:

All during the war and since its end, Hoffman's record has been one of constant support for the crackpot fringe of native fascism. A report on his activities by the Friends of Democracy (vol. 3, No. 20) says:

America's Fascists, pro-Fascists, isolationists, and labor-baiters have long recognized Representative Hoffman as one of their most influential spokesmen. The sharp-tongued Congressman first gained attention from Fascist circles in 1937 when he had served in Congress 3 years. From that time on, Hoffman, whose arch enemies have been Roosevelt, Stalin, Britain, world cooperation, labor, and aliens, has steadily risen to top prominence with the Nazi lovers.  
. . .

Today, this same Congressman is embarked on the boldest campaign of intimidation of newspapermen yet undertaken by any individual or group in the Congress, including the Committee on Un-American Activities. With few exceptions, the press whose freedom he would curb maintains a monumental silence.

After hearing the objectionable remarks, the Speaker pro tem-

15. 94 CONG. REC. 121, 80th Cong. 2d Sess.

pore<sup>(16)</sup> granted the Member recognition.

**§ 31.5 A Member having been charged in a newspaper article with seeking to pave the way for fascism rose to a question of personal privilege.**

On Mar. 9, 1944,<sup>(17)</sup> Mr. Martin Dies, Jr., of Texas, claiming the floor on a question of personal privilege, read from a newspaper article in which he was accused of seeking to pave the way for fascism in the United States. Interrupting the Member's recitation of the article, the Speaker<sup>(18)</sup> interjected, "The Chair thinks the gentleman has gone far enough to establish a question of privilege."

**§ 31.6 A statement in a newspaper article to the effect that a Member had repeated an "insinuation of Fascist propaganda concerning liberated Poland" and that he "spoke like Goebbels" was held to give rise to a question of personal privilege.**

On Feb. 21, 1945,<sup>(19)</sup> Mr. Alvin E. O'Konski, of Wisconsin, pre-

16. Charles A. Halleck (Ind.).  
 17. 90 CONG. REC. 2434, 78th Cong. 2d Sess.  
 18. Sam Rayburn (Tex.).  
 19. 91 CONG. REC. 1323, 79th Cong. 1st Sess.

sented as involving a question of personal privilege a newspaper article which contained statements to the effect that he "had repeated a dirty insinuation of Fascist propaganda concerning liberated Poland" and that "from the tribune of the House of Representatives he spoke like Goebbels." The Speaker<sup>(20)</sup> granted the Member recognition, saying, "The Chair thinks the gentleman is entitled to speak on the question of personal privilege under the statement made by him."

**§ 31.7 Language in a pamphlet charging a Member of the House with being a fascist was held to give rise to a question of personal privilege.**

On Apr. 30, 1949,<sup>(1)</sup> the Speaker<sup>(2)</sup> recognized Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege following the Member's presentation, as the basis for raising the question, of a pamphlet identifying him as a fascist.

**§ 31.8 A newspaper article charging a Member with being a fascist and asserting**

20. Sam Rayburn (Tex.).  
 1. 91 CONG. REC. 3955, 79th Cong. 1st Sess.  
 2. Sam Rayburn (Tex.).

**that he stands for the violent overthrow of the government by force was held grounds for a question of personal privilege.**

On Jan. 27, 1944,<sup>(3)</sup> Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege, called the attention of the House to a newspaper article which referred to him as a fascist and asserted that he stands for the violent overthrow of the government by force. The Speaker<sup>(4)</sup> then recognized him on a question of personal privilege.

**§ 31.9 A newspaper article asserting that a Member was wanted for questioning by a federal grand jury that already had indicted several Nazi sympathizers was held to give rise to a question of personal privilege.**

On Apr. 13, 1942,<sup>(5)</sup> Mr. Clare E. Hoffman, of Michigan, on a question of personal privilege, called the attention of the House to a newspaper article which stated:

Hoffman is wanted for questioning by the Federal grand jury that already

3. 90 CONG. REC. 816, 78th Cong. 2d Sess.
4. Sam Rayburn (Tex.).
5. 88 CONG. REC. 3449, 77th Cong. 2d Sess.

has indicted George Sylvester Vierick, Nazi propagandist; George Hill, Fish's former secretary-clerk; and several others for helping spread the gospel according to Hitler in the United States of America.

The Speaker,<sup>(6)</sup> observing that the statement as read presented a question of personal privilege, recognized Mr. Hoffman for one hour.

**§ 31.10 Newspaper remarks that a Congressman by his actions in Congress was rendering a service to nazism was held to challenge the Member's patriotism and to raise a question of personal privilege.**

On May 28, 1942,<sup>(7)</sup> Mr. Clare E. Hoffman, of Michigan, rose to a question of personal privilege to call attention to a newspaper article which stated "Congressman Hoffman, by his present actions in Congress, is rendering a service to nazi-ism." On hearing the objectionable language, the Speaker<sup>(8)</sup> stated:

The Chair holds that the language printed in the Michigan paper, which contains the words "Congressman Hoffman, by his present actions in Congress, is rendering a service to nazi-ism," challenges the patriotism of the

6. Sam Rayburn (Tex.).
7. 88 CONG. REC. 4724, 77th Cong. 2d Sess.
8. Sam Rayburn (Tex.).

gentleman from Michigan and raises a question of personal privilege.

**§ 31.11 A pamphlet charging that for four years a Member and his committee have obscured activities of the Nazi network, that their tactics have been the tactics of Goebbels and that they jeopardized national unity, gave rise to a question of personal privilege.**

On Sept. 24, 1942,<sup>(9)</sup> Mr. Martin Dies, Jr., of Texas, claiming the floor as a question of personal privilege, read from a pamphlet which asserted that for four years Mr. Dies and his committee had obscured activities of the Nazi network, that their tactics had been the tactics of Goebbels and of seditionists, jeopardizing national unity. Upon concluding his statement, the Member was recognized by the Speaker<sup>(10)</sup> on a question of personal privilege.

***Conduct Inimical to National Security***

**§ 31.12 A newspaper story to the effect that a Member was barred as a security risk from all naval districts and from witnessing nuclear tests**

9. 88 CONG. REC. 7441, 77th Cong. 2d Sess.

10. Sam Rayburn (Tex.).

**gave rise to a question of personal privilege.**

On July 14, 1953,<sup>(11)</sup> Mr. Robert L. Condon, of California, on a question of personal privilege, called the attention of the House to two newspaper articles which asserted that not only was he barred from witnessing an atom bomb test as a security risk but also that the Navy notified the commandants of all naval districts that he was to be considered persona non grata. The Speaker,<sup>(12)</sup> after ruling that Mr. Condon had presented a question of personal privilege, recognized him for one hour.

**§ 31.13 Newspaper editorials charging that a Member was playing low-grade politics and that he had participated in wrecking the country's defense gave rise to a question of personal privilege.**

On July 1, 1955,<sup>(13)</sup> Mr. Adam C. Powell, of New York, rose to a question of personal privilege and presented two newspaper editorials charging that he was playing lowgrade politics and that he clearly had a part in wrecking the

11. 99 CONG. REC. 8790, 83d Cong. 1st Sess.

12. Joseph W. Martin, Jr. (Mass.).

13. 101 CONG. REC. 9741, 84th Cong. 1st Sess.

country's defense. In his ruling granting the Member recognition, the Speaker<sup>(14)</sup> stated:

The Chair thinks that the editorials indicate that the gentleman from New York [Mr. Powell] is trying to wreck the defense program and entitles him to the floor on the question of personal privilege.

***Collaboration With a Foreign Enemy***

**§ 31.14 A statement in a newspaper implying that a Member collaborated with convicted Nazi agents and indicted fifth columnists gave rise to a question of personal privilege.**

On Mar. 27, 1944,<sup>(15)</sup> Mr. Clare E. Hoffman, of Michigan, rose and proposed as a question of personal privilege to call attention to a newspaper article in which it was implied that he had collaborated with convicted Nazi agents and indicted fifth columnists. Having presented a matter of personal privilege, the Member was recognized by the Speaker pro tempore<sup>(16)</sup> to address the House on the question.

**§ 31.15 A publication stating among other things that a**

14. Sam Rayburn (Tex.).

15. 90 CONG. REC. 3128, 78th Cong. 2d Sess.

16. John W. McCormack (Mass.).

**Member was "working with Hitler and his agents in this country" was held to give rise to a question of personal privilege.**

On Jan. 22, 1945,<sup>(17)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, read from a publication which stated that he "was working with Hitler and his agents in this country to defeat the President's policy of preparing America in the time of dangerous world conditions." In ruling on the question, the Speaker<sup>(18)</sup> gave his opinion that Mr. Hoffman had stated a matter upon which he deserved recognition on a question of personal privilege.

**§ 31.16 A newspaper article containing the statement that a labor union required no defense against a Congressman "who would cover up for a gang of conspirators against our Nation" was held to give rise to a question of personal privilege.**

On Mar. 23, 1945,<sup>(19)</sup> Mr. Clare E. Hoffman, of Michigan, claiming the floor as a question of personal

17. 91 CONG. REC. 417, 79th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

19. 91 CONG. REC. 2665, 79th Cong. 1st Sess.

privilege, read from a newspaper article a statement which in reference to him said: "The C.I.O. requires no defense against a Congressman who would cover up for a gang of conspirators against our Nation." On hearing the objectionable words, the Speaker<sup>(20)</sup> recognized the Member on a question of personal privilege.

**§ 31.17 A pamphlet identifying a Member and his committee as "the secret weapon with which Adolf Hitler hopes to soften up our Nation" gave rise to a question of personal privilege.**

On Feb. 1, 1943,<sup>(1)</sup> Mr. Martin Dies, Jr., of Texas, presented as involving a question of personal privilege a pamphlet which described the Member and his committee as "the secret weapon with which Adolf Hitler hopes to soften up our Nation for military conquest." Upon his presentation of the objectionable material, the Member was recognized by the Speaker<sup>(2)</sup> for one hour.

**§ 31.18 A newspaper editorial referring to a Member as one who cooperated with the**

20. Sam Rayburn (Tex.).

1. 89 CONG. REC. 474, 78th Cong. 1st Sess.
2. Sam Rayburn (Tex.).

**Nazi propaganda ring was held to give rise to a question of personal privilege.**

On Mar. 2, 1943,<sup>(3)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, read from a newspaper editorial the following statement:

Representative Clare Hoffman, of Michigan . . . who cooperated with the Nazi propaganda ring before Pearl Harbor, wants to investigate us.

In his ruling granting recognition to the Member, the Speaker<sup>(4)</sup> declared, "The Chair thinks the gentleman states a point of personal privilege and he may proceed."

**§ 32. Published Charges Impugning Veracity**

*Presenting Falsehoods*

**§ 32.1 A newspaper editorial charging a Member with falsehoods gave rise to a question of personal privilege.**

On Feb. 28, 1956,<sup>(5)</sup> Mr. Craig Hosmer, of California, claiming the floor on a question of personal

3. 89 CONG. REC. 1490, 78th Cong. 1st Sess.
4. Sam Rayburn (Tex.).
5. 102 CONG. REC. 3477, 84th Cong. 2d Sess.

privilege, read from a newspaper editorial charging him with falsehoods during House consideration of a certain bill. Following the submission of the editorial to the Chair, the Speaker pro tempore<sup>(6)</sup> stated:

The Chair thinks the gentleman raises a question of personal privilege. The gentleman from California is recognized.

### *Stating Lies*

**§ 32.2 A newspaper article in which a statement of a Member was characterized as “an outright lie,” gave rise to a question of personal privilege.**

On Mar. 11, 1957,<sup>(7)</sup> Mr. Frank T. Bow, of Ohio, submitted as involving a question of personal privilege a newspaper article in which a statement he had made was characterized as “an outright lie.” The Speaker<sup>(8)</sup> said:

In the opinion of the Chair the gentleman has stated a question of personal privilege.

The gentleman is recognized.

6. John W. McCormack (Mass.).

7. 103 CONG. REC. 3395, 85th Cong. 1st Sess.

8. Sam Rayburn (Tex.).

## **§ 33. Criticism of Members Collectively**

### *Criticism of Unnamed Members*

**§ 33.1 A statement in a radio address by a cabinet officer that persons advocating a certain measure were deliberately misleading the public was held not to give grounds for a question of personal privilege to a Member who had advocated the measure, but who had not been named in the address.**

On Apr. 17, 1935,<sup>(9)</sup> Mrs. Edith Nourse Rogers, of Massachusetts, as an advocate of the repeal of a certain textile processing tax, presented as involving a question of personal privilege the statement made during a radio address by a cabinet officer that persons advocating the repeal of the tax were deliberately misleading the public. A point of order was made by Mr. Hampton P. Fulmer, of South Carolina, that she had not stated a question of personal privilege. In his ruling sustaining the point of order, the Speaker<sup>(10)</sup> stated:<sup>(11)</sup>

9. 79 CONG. REC. 5854, 5855, 74th Cong. 1st Sess.

10. Joseph W. Byrns (Tenn.).

11. 79 CONG. REC. 5855, 74th Cong. 1st Sess.

The Chair will state that the rule provides that a Member may rise to a question of personal privilege where the rights, reputation, and conduct of Members in their individual capacity only are assailed.

The name of the gentlewoman from Massachusetts was not mentioned, in the first place, and the Chair fails to see where there is a question of personal privilege involved in the statement referred to by the gentlewoman from Massachusetts, and therefore must, of course, rule that she has not raised a question of personal privilege.

**§ 33.2 A newspaper article charging Members of the House with demagoguery and willingness to punish the District of Columbia was held a criticism of the House and not to constitute a question of personal privilege.**

On May 21, 1941,<sup>(12)</sup> Mr. Clare E. Hoffman; of Michigan, rose to a question of personal privilege and read from a newspaper article which charged the Members of the House with demagoguery and with a willingness to punish the District of Columbia to win votes at home. After the submission of the article for the Chair's inspection, the following exchange occurred:

THE SPEAKER:<sup>(13)</sup> Where does the article refer to the gentleman from Michigan personally?

12. 87 CONG. REC. 4307, 4308, 77th Cong. 1st Sess.

13. Sam Rayburn (Tex.).

MR. HOFFMAN: It does not so refer, but it refers to all those Members of the House who voted in opposition to that bill. . . .

THE SPEAKER: The Chair will read that part of the rule which affects Members, so far as personal privilege is concerned:

Second, the rights, reputation, and conduct of Members individually in their representative capacity only.

There is nothing in this matter that refers to the gentleman from Michigan [Mr. Hoffman] either individually or in his official capacity. The Chair would hesitate to hold a question of personal privilege of Members of the House lies in a general criticism of the action of the House. Therefore, the Chair is inclined to hold that the gentleman has not stated a question of personal privilege.

**§ 33.3 A newspaper article incorporating the statement that anyone who charged the CIO with communistic control was "a knave, a liar, and a poltroon," was held not to give rise to a question of personal privilege.**

On Mar. 27, 1939,<sup>(14)</sup> Mr. Clare E. Hoffman, of Michigan, rising to a question of personal privilege, called the attention of the House to a newspaper article quoting labor union leader John L. Lewis as saying that anyone who charged the CIO with com-

14. 84 CONG. REC. 3362, 76th Cong. 1st Sess.

munistic control was “a knave, a liar, and a poltroon,” it being acknowledged that the Member had made such charges in debate on June 1, 1937. After the Member’s presentation of the question, the Speaker<sup>(15)</sup> made the following statement:

The Chair is ready to rule on this question of personal privilege presented by the gentleman from Michigan.

The question now raised is the following language that was purported to have been quoted in the March 23, 1939, issue of the New York Times as coming from John L. Lewis, chairman of the Congress of Industrial Organizations:

Maintaining that the C.I.O. was an American institution, Mr. Lewis denied that it was controlled by

Communists, saying that anyone who charged such communistic control was a knave, a liar, and a poltroon.

The gentleman from Michigan takes the position that because of something that he may have said heretofore on the floor of the House, brings him within the purview of the definition given by Mr. Lewis. But in the language quoted there is certainly no reference to any particular individual. The gentleman is not named, and for aught appearing in this statement that has been made, the gentleman who is quoted may have been referring entirely to some other individual or some other group of individuals rather than the gentleman from Michigan.

The Chair is clearly of the opinion that it would be stretching the rule too far to construe the general statement here made as giving the gentleman from Michigan a question of privilege.

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15. William B. Bankhead (Ala.).

## CHAPTER 12

# ***Conduct or Discipline of Members, Officers, or Employees***

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- § 1. In General; Codes of Conduct
- § 2. Committee Functions
- § 3. Violations of Statutes
- § 4. Violations of House Rules
- § 5. Abuse of Mailing or Franking Privileges
- § 6. Absences From the House; Indebtedness
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- § 8. Financial Matters; Disclosure Requirements
- § 9. Abuses in Hiring, Employment, and Travel
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### **B. Nature and Forms of Disciplinary Measures**

- § 12. In General; Penalties
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- § 16. Censure; Reprimand
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Commentary and editing by Robert L. Tienken, LL.B.

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# ***Conduct or Discipline of Members, Officers, or Employees***

## **A. INTRODUCTORY; PARTICULAR KINDS OF MISCONDUCT**

### **§ 1. In General; Codes of Conduct**

Prior to the 90th Congress,<sup>(1)</sup> there was no rule setting forth a formal code of conduct for Congressmen. However, in 1967 and 1968 the rules of the House were amended to (1) make the Committee on Standards of Official Conduct a standing committee of the House; (2) establish, as a new Rule XLIII, a Code of Official Conduct for Members, officers, and employees of the House; (3) require Members, officers, and certain key aides to disclose financial interests pursuant to procedures outlined in new Rule XLIV.<sup>(2)</sup>

1. Pre-1936 precedents on the punishment and expulsion of Members may be found at 2 Hinds' Precedents §§ 1236–1289 and 6 Cannon's Precedents §§ 236–239.

This chapter includes precedents through the 94th Congress, 2d Session.

2. 114 CONG. REC. 8802, 90th Cong. 2d Sess., Apr. 1, 1968 [H. Res. 1099, amending H. Res. 418]; Rule XLIII, Rule XLIV, *House Rules and Manual* §§ 939, 940 (1973).

The Code of Official Conduct requires that each Member, officer, or employee conduct himself so as to reflect creditably on the House and to adhere to the spirit and letter of the rules of the House and the rules of its committees. The code also contains provisions governing the receipt of compensation, gifts, and honorariums, as well as the use of campaign funds.<sup>(3)</sup>

The 85th Congress adopted by concurrent resolution a Code of Ethics to be adhered to by all government employees, including officeholders.<sup>(4)</sup>

#### CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

3. As used in the Code of Official Conduct, the term "Member" includes the Resident Commissioner from Puerto Rico and each Delegate to the House; and the term "officer or employee of the House of Representatives" means any individual whose compensation is disbursed by the Clerk of the House of Representatives. Rule XLIII, *House Rules and Manual* § 939 (1973).
4. 72 Stat. Pt. 2, B12, July 11, 1958. This Code of Ethics is a guideline for those in government.

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration, or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding on the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that a public office is a public trust.

In House Report No. 94-1364, 94th Congress second session,

House Committee on Standards of Official Conduct, "In the matter of a Complaint against Representative Robert L. F. Sikes," July 23, 1976, the committee indicated that the Code of Ethics was an expression of traditional standards of conduct which continued to be applicable even though the code was enacted in the form of a concurrent resolution in 1958 (pp. 7-8):

The Committee believes that these standards of conduct traditionally applicable to Members of the House are perhaps best expressed in the Code of Ethics for Government Service embodied in House Concurrent Resolution 175, which was approved on July 11, 1958. Although the Code was adopted as a concurrent resolution, and, as such, may have no legally binding effect, the Committee believes the Code of Ethics for Government Service nonetheless remains an expression of the traditional standards of conduct applicable to Members of the House prior both to its adoption and the adoption of the Code of Official Conduct in 1968. As is explained in House Report No. 1208, 85th Congress, 1st Session, August 21, 1957:

House Concurrent Resolution 175 is essentially a declaration of fundamental principles of conduct that should be observed by all persons in the public service. It spells out in clear and straight forward language *long-recognized* concepts of the high obligations and responsibilities, as well as the rights and privileges, attendant upon services for our Government. It reaffirms the *traditional standard*—that those holding public

office are not owners of authority but agents of public purpose—concerning which there can be no disagreement and to which all Federal employees unquestionably should adhere. It is not a mandate. It creates no new crime or penalty. Nor does it impose any positive legal requirement for specific acts or omissions. (Emphasis added.)

Thus, even assuming that House Concurrent Resolution 175 may have “died” with the adjournment of the particular Congress in which it was adopted, as one commentator seems to suggest, the traditional standards of ethical conduct which were expressed therein did not.

## § 2. Committee Functions

Prior to the 90th Congress, there was no standing or permanent committee in the House to investigate and report on improper conduct of Members, officers, and employees. Prior to that time, select temporary committees were ordinarily created to consider allegations of improper conduct against Members, although in some instances such questions were considered by standing committees.<sup>(5)</sup>

5. For example, House Committee on Military Affairs, 2 Hinds' Precedents §1274, 41st Cong. (1870); House Committee on the Judiciary, 3 Hinds' Precedents §2652, 37th Cong. I (1861); House Committee on Elections, 3 Hinds' Precedents §2653,

The rules of the House were amended in the 90th Congress to make the Committee on Standards of Official Conduct a standing committee of the House.<sup>(6)</sup> In that Congress, the House adopted a resolution<sup>(7)</sup> which provided that measures relating to the Code of Official Conduct or to financial disclosure be referred to the committee. It also authorized the committee to recommend to the House appropriate legislative and administrative actions to establish or enforce standards of official conduct for Members, officers, and employees; to investigate alleged violations of the Code of Official Conduct, or of any applicable law, rule, regulation, or

39th Cong. (1865); Committee on House Administration (misuse of contingency funds), 112 CONG. REC. 27711, 89th Cong. 2d Sess., Oct. 19, 1966 [H. Res. 1047], and (congressional conflict of interest), 109 CONG. REC. 4940, 88th Cong. 1st Sess., Mar. 28, 1963.

6. The House Committee on Standards of Official Conduct was created in the 90th Congress, 113 CONG. REC. 9448, 90th Cong. 1st Sess., Apr. 13, 1967 [H. Res. 418]; jurisdiction redefined, 114 CONG. REC. 8802, 90th Cong. 2d Sess., Apr. 3, 1968 [H. Res. 1099, amending H. Res. 418]. Rule X clause 1(s) and Rule XI clause 19, *House Rules and Manual* (1973).

7. 114 CONG. REC. 8777 et seq., 90th Cong. 2d Sess., Apr. 3, 1968 [H. Res. 1099, amending H. Res. 418].

other standard of conduct, and, after a notice and hearing, recommend to the House, by resolution or otherwise, appropriate action; to report to the appropriate federal or state authorities, with approval of the House, any substantial evidence of a violation of any applicable law disclosed in a committee investigation. The committee was also authorized to give advisory opinions respecting current or proposed conduct. Thus, in the 91st Congress, second session [116 CONG. REC. 1077, Jan. 26, 1970] the Committee on Standards of Official Conduct published Advisory Opinion No. 1, on the role of a Member of the House of Representatives in communicating with executives and independent federal agencies either directly or through the Member's authorized employee. See § 10, *infra*.

Resolutions recommending action by the House as a result of an investigation by the committee relating to the official conduct of a Member, officer, or employee, were made privileged. For a discussion of sanctions which may be invoked against a Member, see §§ 12–18, *infra*.

In 1970, Rule XI was amended to confer upon the Committee on Standards of Official Conduct jurisdiction over measures relating to (1) lobbying activities affecting

the House, and (2) raising, reporting, and use of campaign contributions for candidates for the House; and the committee was given authority to investigate those matters and report its findings to the House.<sup>(8)</sup>

The Committee on Standards of Official Conduct is authorized, under Rule XI clause 19, to issue and publish advisory opinions with respect to the general propriety of any current or proposed conduct of a Member, officer, or employee of the House, upon request of any such person.<sup>(9)</sup>

The Senate, in 1964, created a permanent committee designated as the Select Committee on Standards and Conduct to receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, and violations of rules and regulations of the Senate.<sup>(10)</sup> In 1968 the Senate amended its rules to preclude certain business activities of its officers and employees, to regulate certain aspects of campaign financing, and to require the disclosure of Senators' financial interests.<sup>(11)</sup>

8. 116 CONG. REC. 23136–41, 91st Cong. 2d Sess., July 8, 1970 [H. Res. 1031].

9. See, for example, the advisory opinion in § 10, *infra*.

10. 110 CONG. REC. 16938, 88th Cong. 2d Sess., July 24, 1964 [S. Res. 338, amended].

11. 114 CONG. REC. 7406, 90th Cong. 2d Sess., Mar. 22, 1968 [S. Res. 266, to

### § 3. Violations of Statutes

The Constitution provides that a Member is to be privileged from arrest during sessions except for “Treason, Felony, and Breach of the Peace.”<sup>(12)</sup> However, with respect to the application of criminal statutes, the Members of Congress, unless immunized by the Speech or Debate Clause of the Constitution,<sup>(13)</sup> are subject to the same penalties under the criminal laws as are all citizens.<sup>(14)</sup> Indeed, the Members are specifically or impliedly referred to in a number

provide standards of conduct for Members, officers, and employees of the Senate].

*Parliamentarian’s Note:* In 1967 (90th Cong. 1st Sess.) the Senate select committee investigated allegations of misuse for personal purposes of campaign and testimonial funds by Senator Thomas J. Dodd (Conn.). It reported a resolution of censure against the Senator which was adopted. See § 16.3, *infra*.

12. U.S. Const. art. I, §6. Generally see Ch. 7, *supra*.
13. U.S. Const. art. I, §6, clause 1. See *U.S. v Brewster*, 408 U.S. 501 (1972); *Gravel v U.S.*, 408 U.S. 606 (1972); *Powell v McCormack*, 395 U.S. 486 (1969); *U.S. v Johnson*, 383 U.S. 169 (1966); *Doe v McMillan*, 412 U.S. 306 (1973). See Ch. 7, *supra*, for immunities generally.
14. See *U.S. v Johnson*, 337 F2d 180 (C.A. Md., 1964), affirmed 383 U.S. 169, certiorari denied, 385 U.S. 846.

of penal statutes, the enforcement of which rests in the executive and judicial branches. The statutes below are cited by way of example:

2 USC §441—Failure to file federal campaign financing reports.

18 USC §201(c)—Soliciting or receiving a bribe.

18 USC §201(g)—Soliciting or receiving anything of value for or because of any official act performed or to be performed.

18 USC §203(a)—Soliciting or receiving any outside compensation for particular services.

18 USC §204—Practice in the Court of Claims.

18 USC §211—Acceptance or solicitation of anything of value for promising to obtain appointive public office for any person.

18 USC §287—False, fictitious, or fraudulent claims against the United States.

18 USC §371—Conspiracy to commit an offense against the United States.

18 USC §§431, 433—Prohibits contracts with the government by Members of Congress, with certain exceptions.

18 USC §599—Promise of appointment to office by a candidate.

18 USC §600—Promise of employment or other benefit for political activity.

18 USC §601—Deprivation of employment or other benefit for political activity.

18 USC §602—Solicitation of political contributions from U.S. officers or employees, or persons receiving salary

or compensation for services from money derived from the U.S. Treasury.

18 USC §612—Publication or distribution of political statements without names of persons and organizations responsible for same.

18 USC §613—Solicitation of political contributions from foreign nationals.

18 USC §1001—False or fraudulent statements or entries in any matter within the jurisdiction of any department or agency of the U.S.

31 USC §231—Liability of persons making false claims against the government.

The statutes cited above are also expressly or by implication applicable in many instances to the officers and employees of the House. Again, the enforcement thereof is not left to internal means in either House (although each House could impose internal sanctions), but rests in the executive and judicial branches.

The House rules authorize the Committee on Standards of Official Conduct to report to the appropriate federal or state authorities, with approval of the House, any substantial evidence of a violation of an applicable law by a Member, officer, or employee of the House, which may have been disclosed in a committee investigation.<sup>(15)</sup>

15. Rule XI clause 19(e), *House Rules and Manual* §720 (1973).

### ***Criminal Conduct; Privilege From Arrest***

#### **§ 3.1 The privilege of the Member from arrest does not apply to situations where the Member himself is charged with a crime referred to in the Constitution.**

The United States Supreme Court,<sup>(16)</sup> in construing article I, section 6, clause 1, “they [the Senators and Representatives] shall in all cases except treason, felony, and breach of the peace, be privileged from arrest . . .” has declared that the terms of the provision exclude from the operation of the privilege all criminal offenses. Thus, it may be concluded that the privilege only applies in the case of civil arrest.<sup>(17)</sup>

See also the proceedings on Nov. 17, 1941,<sup>(18)</sup> wherein Mr. Hatton W. Sumners, of Texas, in discussing a resolution granting permission of the House to a Member to appear before a grand jury in response to a summons, referred to the power of the House to refuse to yield to a court summons “except as the Constitution

16. See *Williamson v United States*, 207 U.S. 425 (1908).

17. See *Long v Ansell*, 293 U.S. 76 (1934).

18. 87 CONG. REC. 8956, 77th Cong. 1st Sess.

provided with reference to crimes.”

Similarly, in earlier remarks, Mr. Sumners had stated:

It is important that the House of Representatives control the matter of the attendance of Members of the House upon the business of the House. It ought not to control, of course, when the Member commits a crime, and it has no power to control.<sup>(19)</sup>

**19.** *Id.* at p. 8954.

See also H. REPT. NO. 30, 45th Cong. 2d Sess., 1878 (House Committee on the Judiciary), and 3 Hinds' Precedents §2673, as to whether there had been any invasion of the rights and privileges of the House in the alleged arrest and imprisonment of Representative Robert Smalls (S.C.). The report concluded:

“Upon principle, therefore, as well as in view of the precedents, your committee are clearly of the opinion that the arrest of Mr. Smalls, upon the charge (of having accepted a bribe while a state officer of South Carolina) and under the circumstances hereinbefore set forth, was in no sense an invasion of any of the rights or privileges of the House of Representatives; and that, so far as any supposed breach of privilege is concerned, his detention by the authorities of South Carolina for an alleged violation of the criminal law of that State was legal and justifiable; and having arrived at that conclusion they have deemed it not only unnecessary but improper for them to make any suggestion here as to what course the House should have pursued had the arrest been a violation of its privileges.”

## § 4. Violations of House Rules

As shown in the summary below, many of the rules of the House contain provisions under which a Member may be disciplined or penalized for certain acts or conduct:

### HOUSE RULES

Rule I clause 2—Speaker shall preserve order and decorum.

Rule VIII clause 1—Disqualification from voting on floor on question where Member has a direct personal and pecuniary interest.

Rule XIV clause 1—Obtaining the floor, and method of address (“confine himself to the question under debate, avoiding personality”).

Rule XIV clause 4—Call to order of Member on his transgressing the rules during sessions.

Rule XIV clause 5—Words taken down if Member is called to order.

Rule XIV clause 7—Prohibition on exiting while Speaker is putting the question; prohibition on passing between a Member who has the floor, and the Chair, while the Member is speaking; prohibition against wearing a hat or smoking while on the floor.

Rule XIV clause 8—Prohibition against introducing persons in the galleries to the House or calling the attention of the House, during a session, to people in the galleries.

Requiring a Member to withdraw where he has persisted despite re-

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See Ch. 7, *supra*, on arrest and immunity of Members.

peated calls to order (Jefferson's Manual, see *House Rules and Manual* § 366 [1973]).

No criticism of the Senate (Jefferson's Manual, see *House Rules and Manual* § 372 [1973]), nor personal abuse, innuendo or ridicule of the President (Jefferson's Manual, see *House Rules and Manual* § 370 [1973]).

Punishment by House of a Member for things of which the House has cognizance (Jefferson's Manual, see *House Rules and Manual* §§ 303 et seq. [1973]).

### § 5. Abuse of Mailing or Franking Privileges

The House Commission on Congressional Mailing Standards provides guidance and assistance on the use of franking privileges by Members. The commission is authorized to prescribe regulations governing the proper use of the franking privilege.<sup>(1)</sup>

Complaints respecting alleged misuse of the franking provisions in title 39 of the United States Code<sup>(2)</sup> are considered by the commission for the Members, and its

1. 2 USC §§ 501 et seq., Pub. L. No. 93-191, 87 Stat. 742 (1973), Pub. L. No. 93-255, 88 Stat. 52 (1974).

The Select Committee on Standards and Conduct of the Senate performs the same function for the Senate (2 USC § 502).

2. 39 USC §§ 3210-3213(2), 3215, 3218, 3219.

decisions on facts are final. If the commission finds that a serious and willful violation has occurred or is about to occur, it refers the matter to the House Committee on Standards of Official Conduct.<sup>(3)</sup>

### § 6. Absences From the House; Indebtedness

Congress has enacted statutes (a) directing the Sergeant at Arms of the House to deduct from the monthly payment to a Member the amount of his salary for each day that he has been absent from the House unless such Member assigns as the reason for such absence the illness of himself or of some member of his family;<sup>(4)</sup> (b) directing the deduction from the salary of a Member for each day that he withdraws without leave from his seat;<sup>(5)</sup> (c) directing the deduction by the Sergeant at Arms from any salary or expense money due a Member for his delinquent indebtedness to the House.<sup>(6)</sup>

If an employee of the House becomes indebted to the House or to the trust fund account in the of-

3. 2 USC § 501(e).

4. 2 USC § 39 (1856).

5. 2 USC § 40 (1862).

6. 2 USC § 40a (1934).

office of the Sergeant at Arms, and fails to pay such indebtedness, the chairman of the committee or the elected officer of the House having jurisdiction of the activity under which indebtedness arose, is authorized to certify to the Clerk the amount of the indebtedness, and the Clerk is authorized to withhold the amount from any funds which are disbursed by him to or on behalf of such employee.<sup>(7)</sup>

### § 7. Misconduct in Elections or Campaigns

Elections and election contests are treated comprehensively elsewhere in this work.<sup>(8)</sup> However, it should be pointed out here that disputes involving alleged misconduct of a Member may be initiated in the House by the defeated candidate pursuant to the Federal Contested Elections Act.<sup>(9)</sup> Such contests may also be instituted by means of (a) a protest or memorial filed in the House by an elector of the district involved, (b) a protest or memorial filed by any other person, or (c) a motion made by a Member of the House.<sup>(10)</sup>

7. 2 USC §89a (1958).

8. See Chs. 8, 9, *supra*.

9. 2 USC §§318 et seq., Pub. L. No. 91-138, 83 Stat. 284 (1969). See also Chs. 8, 9, *supra*.

10. H. REPT. NO. 91-569, 91st Cong. 1st Sess., Oct. 14, 1969, "Federal Contested Elections Act," p. 2.

Allegations in election contests pertaining to violations of federal and state corrupt practices acts are considered by the Committee on House Administration.<sup>(11)</sup>

Prior to the Supreme Court decision in *Powell v McCormack*, 395 U.S. 486 (1969) in which the Court held that qualifications of a Member-elect other than age, citizenship, and inhabitancy may not be judged by the House in connection with the initial or final right to a seat of such person, both Houses had adopted the premise that violation of a Corrupt Practices Act, federal or state, constituted grounds for exclusion of a Member-elect (see Frank L. Smith, of Illinois, "Senate Election, Expulsion and Censure Cases from 1793 to 1972," p. 133; *Farr v McLane*, 6 Cannon's Precedents 75; *Gill v Catlin*, 6 Cannon's Precedents §79). Although such violations are not grounds for disqualification, evidence thereof may still be given to appropriate prosecuting attorneys for use in an investigation of fraud, misconduct, or irregularities affecting election results.

11. Rule XI, House Rules and Manual §693 (1973). Prior to the adoption of the Legislative Reorganization Act of 1946, 60 Stat. 812, ch. 455, contests were considered by several House elections committees.

### ***Negligence in Preparing Financial Records***

**§ 7.1 An elections committee ruled that mere negligence in preparing expenditure accounts to be filed with the Clerk should not, absent fraud, deprive one of his seat in the House when he has received a substantial majority of votes.**

In a report on an election contest in the 78th Congress, the Committee on Elections No. 3 ruled that the negligence of the contestee, Howard J. McMurray, and his counsel, in preparing expenditure accounts to be filed with the Clerk should not, absent fraud, deprive the contestee of his seat in the House when he has received a substantial majority of votes.<sup>(12)</sup> The contestant had charged that the contestee had received contributions and made expenditures in violation of the Federal Corrupt Practices Act.<sup>(13)</sup>

The statement filed by the contestee with the Clerk had been prepared by an attorney and the figures contained therein reflected

**12.** 90 CONG. REC. 962, 78th Cong. 2d Sess., Jan. 31, 1944. H. REPT. No. 1032 [H. Res. 426] (contested election case of Lewis D. Thill against Howard J. McMurray, Fifth Congressional District of Wisconsin).

**13.** H. REPT. No. 1032.

contributions and expenditures by two independent campaign committees for the contestee. The committees were not required to file the accounts under the federal act, and the funds handled by them unbeknownst to the contestee were not subject to expenditure limitations in the federal act. The contestee actually should have filed a federal statement showing no receipts or disbursements.<sup>(14)</sup>

The report stated, "There is no evidence to show that any effort was made to conceal any receipts or expenditures" made on behalf of the candidacy of Mr. McMurray. "Under these circumstances," the report continued, ". . . contestee should not be denied his seat in the House of Representatives on account of this error made in the statement filed by [contestee] with the Clerk of the House of Representatives." The committee, ". . . did not find any evidence of fraud."<sup>(15)</sup>

A resolution dismissing the contest was agreed to by the House.<sup>(16)</sup>

### ***Unauthorized Distribution of Campaign Literature***

**§ 7.2 A pre-election irregularity such as unauthorized**

**14.** *Id.*

**15.** *Id.*

**16.** 90 CONG. REC. 933, 78th Cong. 2d Sess., Jan. 31, 1944 [H. Res. 426].

**distribution of campaign literature will not be attributed to a particular candidate where he did not participate therein.**

In House Report No. 1172, on the right of Dale Alford, of Arkansas, to a seat in the 86th Congress, the Committee on House Administration determined that a pre-election irregularity such as unauthorized distribution of campaign literature should not be attributed to a particular candidate where he did not participate therein. The committee report stated:<sup>(17)</sup>

UNSIGNED CIRCULAR

The subcommittee conducted an intensive investigation of the unsigned pre-election circular used in the campaign. This circular was used in violation of both Arkansas and Federal law. The person responsible for this circular admitted that he used it without the knowledge of either the write-in candidate or his campaign manager. This person was interrogated by the Federal grand jury then sitting at Little Rock and no indictment was brought in.

The distribution of unsigned campaign material is strongly condemned, but there is no evidence showing that the write-in candidate was even aware of the existence of such material. This is one of the several instances wherein the write-in candidate is sought to be held responsible for an irregularity

17. H. REPT. No. 1172, p. 19, 86th Cong. 1st Sess.

which occurred, but over which he had no control and in which he did not participate. The investigation revealed many irregularities which could erroneously be attributed to either candidate, but the mere existence of an irregularity in any campaign should not be attributed to a particular candidate where he did not participate therein. The subcommittee felt this to be a sound and equitable rule, and it was followed throughout the investigation with respect to both candidates.

A resolution holding that Mr. Alford was duly elected was agreed to by the House on Sept. 8, 1959.<sup>(18)</sup>

***Violation of Corrupt Practices Act***

**§ 7.3 An elections committee ruled that contestant had not established by a fair preponderance of the evidence that contestee had violated the California Corrupt Practices Act or the Federal Corrupt Practices Act.**

In a report in the 76th Congress, the Committee on Elections No. 2, with reference to a contest for a seat from California,<sup>(19)</sup> stat-

18. 105 CONG. REC. 18610, 86th Cong. 1st Sess. [H. Res. 380].

19. H. REPT. No. 1783, 76th Cong. 3d Sess., Mar. 14, 1940, on the contested election case of Byron N. Scott, contestant, versus Thomas M. Eaton, contestee, from the 18th District of California.

ed that the pleadings presented several main issues, namely:

Did the Contestee [Thomas M. Eaton] violate the Corrupt Practices Act of the State of California?

Did the Contestee violate the Federal Corrupt Practices Act? Did the violation of either or both acts directly or indirectly deprive the contestant from receiving a majority of the votes cast at [the] election?<sup>(20)</sup>

The committee summarily ruled that the contestant had failed to meet the burden of proof and to establish by a fair preponderance of the evidence the issues raised.<sup>(1)</sup>

A resolution declaring that the contestee was elected was reported to the House but was not acted upon.<sup>(2)</sup> Mr. Eaton had been sworn in at the convening of the Congress.<sup>(3)</sup>

**§ 7.4 An elections committee admonished a contestee who signed under oath an expenditure statement to be filed with the Clerk when the contestee did not know its contents or the irregularities therein.**

In the 78th Congress, the Committee on Elections No. 3 in a re-

<sup>20</sup> H. Rept. No. 1783.

<sup>1</sup> *Id.*

<sup>2</sup> 86 CONG. REC. 2885, 76th Cong. 3d Sess., Mar. 14, 1940.

<sup>3</sup> 84 CONG. REC. 12, 76th Cong. 1st Sess., Jan. 3, 1939.

port admonished a contestee who signed under oath an expenditure statement to be filed with the Clerk of the House when he was not familiar with its contents or the irregularities therein.<sup>(4)</sup> Said the committee:

Neither does it (Committee on Elections No. 3) attempt to condone the action of the contestee, Mr. McMurray, in signing under oath the statement filed with the Clerk of the House of Representatives, without being familiar with the contents of the statement or the irregularities which it contained.<sup>(5)</sup>

**§ 8. Financial Matters; Disclosure Requirements**

The House rules (Rule XLIV) require the disclosure, each year, of certain financial interests by Members, officers, and principal assistants. They must file a report disclosing the identity of certain business entities in which they have an interest, as well as certain professional organizations from which they derive an income.<sup>(6)</sup>

<sup>4</sup> 90 CONG. REC. 962, 78th Cong. 2d Sess., Jan. 31, 1944. H. REPT. No. 1032 [H. Res. 426]; (contested election case of Lewis D. Thill against Howard J. McMurray, Fifth Congressional District of Wisconsin). See also §7.1, *supra*.

<sup>5</sup> H. REPT. No. 1032.

<sup>6</sup> Rule XLIV, *House Rules and Manual* §940 (1973)

Rule XLIV of the rules of the House was amended to require disclosure of: (1) honorariums received from a single source totaling \$300 or more, and (2) each creditor to whom was owed any unsecured loan or other indebtedness of \$10,000 or more which was outstanding for a, least 90 days in the preceding calendar year.<sup>(7)</sup>

The financial statements required by Rule XLIV must be filed annually by Apr. 30.<sup>(8)</sup>

### ***Improper Fee***

#### **§ 8.1 Charges that a Senator had used his position as a**

7. 116 CONG. REC. 17012, 91st Cong. 2d Sess., May 26, 1970 [H. Res. 796].

A resolution reported by the Committee on Standards of Official Conduct, amending Rule XLIV to revise the financial disclosure requirements of that rule, is not a privileged resolution under Rule XI clause 22. 116 CONG. REC. 17012, 91st Cong. 2d Sess., May 26, 1970 [H. Res. 971, providing for consideration of H. Res. 796].

The loans disclosure provision was included following allegations in 1969 that a member of the House Committee on Banking and Currency had owed banks more than \$75,000. See H. REPT. No. 91-938, 91st Cong. 2d Sess., and "Congress and the Nation" vol. III, 1969-1972, p. 426, Congressional Quarterly, Inc.

8. Rule XLIV, *House Rules and Manual* §940 (1973).

**subcommittee chairman to attempt to aid a labor leader in avoiding a prison sentence and had received fees for his efforts were investigated in the 90th Congress by a Senate select committee; the committee determined that the payments that had been made were not related to the labor leader or his union.**

In the 90th Congress, the Senate Select Committee on Standards and Conduct investigated charges that a Senator—Edward V. Long, of Missouri—had used his position as a subcommittee chairman to attempt to aid a labor leader in staying out of prison and had accepted fees for his efforts from one of the labor leader's lawyers.<sup>(9)</sup> Statements appeared in several magazines and newspapers that the payments made to the Senator by Morris Shenker, a practicing attorney in St. Louis, Missouri, were made to influence the hearings on invasions of privacy conducted by the Senate Judiciary Subcommittee on Administrative Practice and Procedure, of which the Senator was Chairman, for the purpose of assisting James Hoffa of the International Teamsters Union.<sup>(10)</sup>

9. 113 CONG. REC. 30096-98, 90th Cong. 1st Sess., Oct. 25, 1967.

10. *Id.* at p. 30096.

The select committee conducted an investigation and concluded that the payments made to the Senator by Mr. Shenker between 1961 and 1967 were for professional legal services, and that they had no relationship to Mr. Hoffa or to the Teamsters Union. The committee also concluded that the payments had no connection with the Senator's "duties or activities as Chairman of the Subcommittee on Administrative Practice and Procedure, the Subcommittee hearings or Senator Long's duties or activities as a Member of the Senate."<sup>(11)</sup>

***Abuses in Introducing Immigration Bills***

**§ 8.2 Charges that bribes were paid to Senate employees for the introduction of private immigration bills to help Chinese seamen avoid deportation were investigated by a Senate select committee in the 91st Congress; the committee found no evidence of misconduct by any Senator or Senate employee.**

In the 91st Congress,<sup>(12)</sup> the Chairman<sup>(13)</sup> of the Senate Select

11. *Id.* at p. 30098.

12 116 CONG. REC. 17361, 17362, 91st Cong. 2d Sess., May 28, 1970.

13. 13. John Stennis (Miss.).

Committee on Standards and Conduct discussed on the Senate floor a report of the committee which had been submitted that day dealing with an investigation of the introduction of private immigration bills in the Senate for the relief of Chinese crewmen during the 90th and 91st Congresses.<sup>(14)</sup> Statements had been made in the media that some Senators or their aides received gifts and campaign contributions for introducing bills to enable Chinese ship-jumpers to escape deportation as the result of illegal stays in this country.

The chairman stated that more than 600 such bills had been introduced during the two Congresses, a great increase over the average number that had been introduced in prior Congresses. He pointed out that when the matter had first come to the committee's attention in September 1969, he communicated with the majority and minority leadership about strict enforcement of procedures for the introduction of bills. ". . . [T]he leadership responded immediately," he said, "by invoking the practice that for future bills to be introduced, they had to have the actual signature and the presence of a sponsoring Senator."<sup>(15)</sup>

14. 116 CONG. REC 17360, 91st Cong. 2d Sess., S. REPT. No. 91-911.

15. *Id.* at p. 17362.

The committee and its staff investigated the more than 600 bills to ascertain if any abuses had taken place. The chairman concluded: “. . . I can safely summarize . . . by saying that we found no evidence of any misconduct by any Senator or any Senate employee, nor did we believe from the information we obtained that there was any reason for further proceedings.”<sup>(16)</sup>

### *Auto-leasing Agreements*

#### **§ 8.3 A Senate select committee determined that it was improper for a company to make an agreement with a Senate committee for the leasing of cars for the private use of Senators.**

On Aug. 24, 1970, the Chairman<sup>(17)</sup> of the Senate Select Committee on Standards and Conduct reported to the Senate the results of the committee's investigation and recommendations respecting the leasing by certain Senators of automobiles from an automobile manufacturing company under specially favorable terms. The chairman declared that one company had made an agreement directly with a Senate committee for the leasing of cars for the private

use of Senators. A Senator receiving a car paid the amount of the lease at a price less than that offered the general public. Appropriated funds were not used.<sup>(18)</sup> The chairman said that the leasing arrangements were made for promotional purposes by the company, without intent to exercise improper influence. He added that the committee had concluded that the leasing arrangements with Senators violated no law nor any Senate rule,<sup>(19)</sup> but declared:

. . . [T]he practice of the one company of making an agreement directly with a Senate committee for the leasing of cars for the private use of Senators clearly is improper. A Senate committee by itself does not have the authority to make such a contract, which in our opinion is void and unenforcible. Although these lease agreements do not bind the Senate or any of its committees, we believe this practice by the committees should be terminated at once.

After carefully considering the benefits and the implications of the leasing of cars to Senators, our committee makes the following advisory recommendation for the guidance of the various Senators involved: Existing private leases of automobiles to Senators at favorable rates should be terminated at or before the end of the current model year. These leases should not be renewed. In making pri-

16. *Id.*

17. John Stennis (Miss.).

18. 116 CONG. REC. 29880, 91st Cong. 2d Sess.

19. *Id.*

vate agreements in the future for the leasing of automobiles, Senators should not accept any favorable terms and conditions that are available to them only as Senators.<sup>(20)</sup>

### ***Investments***

**§ 8.4 The House reprimanded a Member for certain conduct occurring during prior Congresses involving conflicts of interest (in violation of a generally accepted standard of ethical conduct applicable to all government officials but not enacted into permanent law at the time of the violation), as well as failure to make proper financial disclosures in accordance with a House rule then in effect, but declined to punish the Member for other prior conduct under the circumstances of the case.**

On July 29, 1976,<sup>(21)</sup> the House agreed to a resolution adopting the report (H. Rept. No. 94-1364) of the Committee on Standards of Official Conduct which reprimanded a Member (1) for failing to disclose, in violation of Rule XLIV (requiring financial disclosure of Members) his ownership of certain stock; and (2) for his in-

20. *Id.*

21. See the proceedings relating to H. Res. 1421, 94th Cong. 2d Sess.

vestment in a Navy bank while actively promoting its establishment, in violation of the Code of Ethics for Government Service. The report also declined to punish the Member for his sponsorship of legislation in 1961 in which he had a direct financial interest, since an extended period of time had elapsed, and the Member had been continually re-elected by constituents with apparent knowledge of the circumstances.

### **§ 9. Abuses in Hiring, Employment, and Travel**

The Code of Official Conduct provides that a Member may not retain anyone on his clerk-hire allowance who does not perform duties commensurate with the compensation he receives.<sup>(1)</sup>

By statute, employees of the House may not divide any portion of their salaries or compensation with another,<sup>(2)</sup> nor may they sublet part of their duties to another.<sup>(3)</sup> Violation of these provisions is deemed cause for removal from office.<sup>(4)</sup>

1. Rule XLIII clause 8, *House Rules and Manual* §939 (1973).

2. 2 USC §86.

3. 2 USC §87.

4. 2 USC §90.

No employee of either House of Congress shall sublet to or hire an-

Professional staff members of standing committees may not engage in any work other than committee business, and may not be assigned duties other than those pertaining to committee business.<sup>(5)</sup>

A statute prohibits the employment, appointment, or advancement by a public official of a relative to a civilian position in the agency in which the official is serving or over which he exercises jurisdiction or control.<sup>(6)</sup> This statute, sometimes called the antinepotism law, became effective on Dec. 16, 1967; it has no retroactive effect and is inapplicable to those appointed prior thereto.<sup>(7)</sup>

other to do or perform any part of the duties or work attached to the position to which he was appointed. 2 USC § 101.

5. Rule XI clause 29 (a)(3)(B), *House Rules and Manual* § 737(a) (1973).
6. 5 USC § 3110, Pub. L. No. 90-206, 81 Stat. 640 (1967).

“Public official” includes a Member of Congress. “Relative” means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister. 5 USC § 3110(a).

7. Pub. L. No. 90-206 § 221(c), 81 Stat. 640 (1967).

### ***Campaign Activities and Clerk-hire Guidelines***

#### **§ 9.1 Guidelines have been issued relative to the use of clerical personnel in the campaign activities of Members.**

In 1973, the Committee on Standards of Official Conduct promulgated an advisory opinion establishing clerk-hire guidelines. It stated in part:<sup>(8)</sup>

This Committee is of the opinion that the funds appropriated for Members' clerk-hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations. . . .

The opinion clearly would prohibit any Member from retaining any person from his clerk-hire allowance under ei-

8. 119 CONG. REC. 23691, 23692, 93d Cong. 1st Sess., July 12, 1973.

ther an express or tacit agreement that the salary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to . . . campaign obligations, or any other nonrepresentational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk-hire rolls of the House, it should be noted that, due to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

### *Misusing Travel Funds*

**§ 9.2 A party caucus removed a Member from his office as chairman of a committee based on a report disclosing certain improprieties concerning his travel expenses as well as an abuse of clerk-hiring practices.**

In 1967, a party caucus removed a Member<sup>(9)</sup> from his position as Chairman of the Committee on Education and Labor after a subcommittee of the Committee on House Administration had reported improprieties in certain of his travel expenses during the 89th Congress, and in the clerk-hire status of his wife.<sup>(10)</sup> Subsequent to the report of the subcommittee and prior to the organization of the 90th Congress, the Democratic Party Members-elect, meeting in caucus, voted to remove him from his office as Chairman of the House Committee on Education and Labor.<sup>(11)</sup>

**§ 9.3 In an attempt to curb the misuse of travel funds, the cancellation of all airline credit cards which had been issued to a committee was ordered by the Committee on House Administration.**

In September 1966, as the result of protests made by certain Members on the Committee on Education and Labor, the Committee on House Administration, acting through its Chairman, directed the cancellation of all air-

9. Adam Clayton Powell (N.Y.).

10. H. REPT. NO. 2349, 89th Cong. 2d Sess.

11. H. REPT. NO. 27, 90th Cong. 1st Sess.

line credit cards which had been issued to the Committee on Education and Labor and notified its Chairman<sup>(12)</sup> that all future travel must be specifically approved by the Committee on House Administration prior to undertaking the travel.<sup>(13)</sup>

The reason for the action was set forth in a report prepared by a select committee in the 90th Congress:<sup>(14)</sup>

During the 89th Congress open and widespread criticism developed with respect to the conduct of Representative Adam Clayton Powell, of New York. This criticism emanated both from within the House of Representatives and the public, and related primarily to Representative Powell's alleged contumacious conduct toward the courts of the State of New York and his alleged official misconduct in the management of his congressional office and his office as chairman of the Committee on Education and Labor. There were charges Representative Powell was misusing travel funds and was continuing to employ his wife on his clerk-hire payroll while she was living in San Juan, P.R., in violation of Public Law 89-90, and apparently performing few if any official duties.

## § 10. Communications With Federal Agencies

Guidelines relative to communications that may properly be

12. Adam Clayton Powell (N.Y.).

13. H. REPT. No. 27, 90th Cong. 1st Sess.

14. *Id.* at p. 1.

made by a Member to a federal agency on behalf of a constituent have been issued by the Committee on Standards of Official Conduct:<sup>(15)</sup>

### REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

Request information or a status report;

Urge prompt consideration;

Arrange for interviews or appointments;

Express judgment;

Call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;

Perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

### PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual mat-

15. The Chairman (Melvin Price [Ill.]) of the Committee on Standards of Official Conduct inserted in the *Congressional Record* an advisory opinion, promulgated by that committee pursuant to Rule XI clause 19(e)(4), establishing guidelines for Members and employees in communicating with departments and agencies of the executive branch on constituent matters. 116 CONG. REC. 1077, 1078, 91st Cong. 2d Sess., Jan. 26, 1970 [H. Res. 796].

ter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

#### CLEAR LIMITATIONS

Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress . . . or

(2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . . in relation to any proceedings, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to *any compensation, directly, or indirectly, for services by himself or another*. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

In 1970, Martin Sweig, who had served as administrative assistant to Speaker John W. McCormack, of Massachusetts, until October 1969, was acquitted in federal district court in New York of conspiracy in connection with certain activities conducted from the Speaker's office. Mr. Sweig and Nathan Voloshen had allegedly been engaged in a practice whereby Mr. Voloshen, in exchange for the receipt of fees from persons with matters before government agencies, promised to exert the influence of the Speaker's office in respect to such agencies.<sup>(16)</sup>

16. *U.S. v Sweig*, 316 F Supp 1148 (D.C. S.N.Y. 1969).

## § 11. Acceptance of Foreign Gifts and Awards

The Constitution prohibits any person holding federal office from accepting a gift from a foreign state without the consent of the Congress.<sup>(17)</sup> However, Congress has provided by statute for employees of the federal government

to accept or retain such a gift if of minimal value.<sup>(18)</sup> In addition, an employee may accept a gift of more than minimal value when refusal would cause offense or embarrassment to the foreign relations of the United States; in that case, the gift is deemed to be property of the United States and not of the donee.<sup>(19)</sup>

## B. NATURE AND FORMS OF DISCIPLINARY MEASURES

### § 12. In General; Penalties

The authority of the House of Representatives over the internal discipline of its Members flows from the Constitution, and the enforcement of disciplinary proceedings by the House against a

Member is carried out under its rulemaking power.<sup>(20)</sup>

There are several different kinds of disciplinary measures that have been invoked by the House against one of its Members. These include (1) expulsion, (2) exclusion,<sup>(21)</sup> (3) censure, (4) sus-

17. U.S. Const. art. I, § 9, clause 8.

18. 5 USC § 7342(c)(1). See also § 515 of Pub. L. No. 95-105 for revision of this statute. The Select Committee on Ethics [See CONG. REC. (daily ed.), 95th Cong. 1st Sess., May 18, 1977] and the Committee on Standards of Official Conduct have promulgated regulations and advisory opinions applicable to the acceptance of foreign gifts and decorations.

19. 5 USC § 7342(c)(2). "Employee" is defined for the purpose of this section to include a Member of Congress and members of his family and household [5 USC 7342(a)(1) (E) and (F)].

20. U.S. Const. art. I, § 5, clause 1 states: "Each House shall be the

Judge of the Elections, Returns, and Qualifications of its own Members. . . ."

U.S. Const. art. I, § 5, clause 2 provides: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member."

21. Exclusion is apparently no longer a disciplinary procedure to be invoked in cases involving the misconduct of Members but is invoked only for failure to meet qualifications of Members as defined by the Constitution. The United States Supreme Court in

pension of voting rights and other privileges, (5) imposition of a fine, (6) deprivation of seniority status, and (7) requiring an apology.<sup>(1)</sup>

Imprisonment is a form of punishment that is theoretically within the power of the House to impose, but such action has never been taken by the House against a Member.<sup>(2)</sup>

Jurisdiction over alleged misconduct rests with the Committee on Standards of Official Conduct. The committee is charged with the responsibility of investigating alleged violations of the Code of Official Conduct by a Member, officer, or employee of the House, or violations by such person of any

law, rule, regulation, or other standard of conduct applicable in the performance of his duties or the discharge of his responsibilities. The committee in such cases, after notice and hearing, is directed to recommend to the House by resolution or otherwise such action as the committee may deem appropriate in the circumstances.<sup>(3)</sup>

Each elected officer of the House (who is not a Member) with supervisory responsibilities is authorized to remove or otherwise discipline any employee under his supervision.<sup>(4)</sup> Clerks to Members are subject to removal at any time with or without cause.<sup>(5)</sup>

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1963, in *Powell v McCormack*, 395 U.S. 486, held that the power of the House to judge the qualifications of its Members (art. I, §5, clause 1) was limited to the constitutional qualifications of age, citizenship, and inhabitancy (art. I, §2, clause 2). For further discussion of exclusion, see §14, *infra*.

1. See §§13 et seq., *infra*.
2. The U.S. Supreme Court has stated, “[T]he Constitution expressly empowers each House to punish its own Members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be [for] refusal to obey some rule on that subject made by the House for the preservation of order.” *Kilbourn v Thompson*, 103 U.S. 168, 189, 190 (1880).

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### ***Multiple Penalties***

#### **§ 12.1 A House committee recommended a resolution pro-**

3. Rule XI clause 19, *House Rules and Manual* §720 (1973).

The Senate created a Select Committee on Standards and Conduct, 110 CONG. REC. 16938, 88th Cong. 2d Sess., July 24, 1964 [S. Res. 338, amended], and adopted a Code of Conduct, 114 CONG. REC. 7406, 90th Cong. 2d Sess., Mar. 22, 1968 [S. Res. 266], Rules XLI, XLII, XLIII, XLIV, *Senate Manual*. 93d Cong. 1st Sess. (1973).

4. 2 USC §60-1, 84 Stat. 1190, Pub. L. No. 91-510 (1970). See also 2 USC §85.
5. 2 USC §92.

viding for the imposition of multiple forms of punishment on a Member-elect, including censure, fine, and loss of seniority; subsequently the House adopted a resolution providing for a fine and loss of seniority.

At the commencement of the 91st Congress, the House agreed to a resolution (1) authorizing the Speaker to administer the oath to Representative-elect Adam Clayton Powell, of New York, but (2) providing for a fine of \$25,000 to be deducted on a monthly basis from his salary, (3) reducing his seniority to that of a first-term Congressman (thus eliminating consideration of any prior service in the computation of seniority), and (4) specifying that Mr. Powell must take the oath before Jan. 15, 1969, or his seat would be declared vacant.<sup>(6)</sup>

6. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2].

Similar recommendations plus a recommendation of censure had been considered and rejected in the previous Congress. See H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967, for the resolution embodying the recommendations of the select committee pursuant to H. Res. 1. The motion for the previous question on this resolution was defeated (113 CONG. REC. 5020), and a substitute amendment excluding the

### *Disciplinary Actions Against Committee Chairmen*

§ 12.2 The authority of the chairman of a committee of the House was curtailed by the House through adoption of a resolution that restricted the power of the chairman to provide for funds for investigations by subcommittees of that committee.

In the 88th Congress, the Chairman<sup>(7)</sup> of the House Committee on Education and Labor was disciplined by the House through adoption of a resolution providing that funds for sub-

Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038).

With respect to the committee's recommendation, the committee Chairman, Emanuel Celler (N.Y.), stated: "You will note that we went beyond censure. Never before has a committee devised such punishment short of exclusion which went beyond censure." (113 CONG. REC. 4998).

In opposing the multiple punishment, Representative John Conyers, Jr. (Mich.) stated: "A fine and a loss of seniority is a completely unprecedented procedure for the House to use in punishing a Member. There is simply no precedent whatsoever for the House to punish its Members other than by censuring or expelling." (113 CONG. REC. 5007).

7. Adam Clayton Powell (N.Y.).

committee investigations be made directly available to the subcommittees.<sup>(8)</sup>

The chairman of the committee had requested authorization to withdraw \$697,000 from the contingent fund of the House for expenses of committee investigations. However, the authorizing resolution, as amended, provided only \$200,000, of which \$150,000 was made available to each of the committee's six subcommittees (at \$25,000 each).<sup>(9)</sup> The amendment (offered by the Committee on House Administration) read:

. . . Page 1, line 5, strike out "\$697,000" and insert "\$200,000".

Page 1, line 11, after "House" insert a period and strike out all that follows down through and including the period on page 2, line 1 and insert in lieu thereof the following: "Of such amount \$25,000 shall be available for each of six subcommittees of the Committee on Education and Labor, and not to exceed \$50,000 shall be available to the Committee on Education and Labor. All amounts authorized to be paid out of the contingent fund by this resolution shall, in the case of each subcommittee, be paid on vouchers authorized and signed by the chairman of the subcommittee, cosigned by the chairman of the committee and approved by the Committee on House Administra-

8. 109 CONG. REC. 3525-31, 88th Cong. 1st Sess., Mar. 6, 1963, H. REPT. NO. 61 [H. Res. 254].

9. 109 CONG. REC. 3525, 88th Cong. 1st Sess.

tion; in the case of the committee, such amount shall be paid on vouchers authorized and signed by the chairman of the committee and approved by the Committee on House Administration."

There had been alleged abuses in the hiring of committee staff, and one of the members of the committee reported to the House that, "we (the members of the Committee on Education and Labor) had a bipartisan front in the House Administration Committee to try to control the expenditure of these funds."<sup>(10)</sup>

Mr. John M. Ashbrook, of Ohio, a member of the Committee on Education and Labor, explained the reason for the action:<sup>(11)</sup>

MR. ASHBROOK: Mr. Speaker, I wish to commend the Committee on House Administration for this action in which it has vindicated the entire membership of this House. Because of the manner in which the affairs of the Committee on Education and Labor have been conducted during the past 2 years, I feel that each Member of this body was in the position of deciding whether or not we should condone and continue the policies which will now be held in close check due to the timely action of this watchdog committee.

Some will say that the cuts are too deep. I think not. As the gentleman from Georgia [Mr. Landrum] so well put it, it will very definitely mean cutting back on some of the employees whom we never saw, rarely heard of,

10. *Id.* at p. 3526.

11. *Id.* at p. 3530.

and little benefited by. It will mean fewer opportunities for lavish spending, fewer trips, and without doubt, less waste of taxpayers' money. The basic work of our committee will be accomplished on the fourth floor suite of the Old House Office Building. It will be accomplished by Members of Congress whose pay is not charged against this committee. If we buckle down and proceed expeditiously, we can do as much or more with less costly expenditure. The effort of the committee members and not the dollars expended will be the true test of accomplishment.

Mr. Joe D. Waggoner, Jr., of Louisiana, gave further reasons for the action taken:<sup>(12)</sup>

MR. WAGGONER: Mr. Speaker, as a member of the House Administration Committee and a member of the Subcommittee on Accounts of that committee, I have consistently opposed the granting of Chairman Powell's budget request for \$697,000. I have maintained that his budget should be cut to the bare essential needed for his committee to function because of the unacceptable manner in which he has served in his capacity as chairman. I would advocate even greater cuts in his budget except for the fact that I do not want to cripple the good men who are members of his committee and who have consistently done a good job. With the addition of further restrictions as to how and by whom this money is spent and for what purpose it is spent, I hope we can by this action, restore the faith of the people in this committee and in the Congress. Certainly that is my desire.

12. *Id.*

**§ 12.3 The membership of a House committee, in a move to discipline its chairman, amended the rules of the committee so as to transfer authority from the chairman to the membership and the subcommittee chairmen.**

On Sept. 22, 1966, the membership of the House Committee on Education and Labor, in a move to discipline Chairman Adam Clayton Powell, of New York, amended the rules of the committee so as to transfer authority from the chairman to the membership and the subcommittee chairmen. A copy of the newly adopted rules was printed in the *Congressional Record*.<sup>(13)</sup>

Mr. Glenn Andrews, of Alabama, described the occasion to the House:<sup>(14)</sup>

. . . [A]s a member of the House Education and Labor Committee of this body, I was present at this morning's historic meeting [which was instrumental] in the action which was taken to limit the powers of the chairman of the Education and Labor Committee.

Mr. John M. Ashbrook, of Ohio, stated to the House reasons set forth for the action:<sup>(15)</sup>

13. 112 CONG. REC. 23797, 23798, 89th Cong. 2d Sess., Sept. 26, 1966.

14. 112 CONG. REC. 23722, 89th Cong. 2d Sess., Sept. 22, 1966.

15. 112 CONG. REC. 23308, 89th Cong. 2d Sess., Sept. 20, 1966.

. . . I for one will vote to strip him [Mr. Powell] of all powers or for any partial limitations on his powers because, on the merits, he has exercised them in such a manner as to bring discredit on the entire House of Representatives. . . .

. . . [O]ur chairman has been openly accused of 3 number of violations of House Rules. . . . It is rumored that Mr. Powell's wife gave him a power of attorney to sign [her House of Representatives salary] checks. A House rule apparently makes it illegal for Mrs. Powell to be paid for work in Puerto Rico.

**§ 12.4 The members of a House committee took action against the chairman of that committee by restricting his authority to appoint special subcommittees.**

In the 83d Congress, first session,<sup>(16)</sup> during debate on a resolution<sup>(17)</sup> relating to expenditures by the House Committee on Government Operations, mention was made of the fact that the committee had recently disciplined its chairman<sup>(18)</sup> by withdrawing from him authority to appoint special subcommittees, a blanket authority which it had granted to him at the beginning of the session.<sup>(19)</sup>

16. 99 CONG. REC. 10360-63, July 29, 1953.

17. H. Res. 339, amending H. Res. 150, 83d Cong. 1st Sess. [H. REPT. NO. 1020].

18. Clare Hoffman, of Michigan.

19. 99 CONG. REC. 10362, remarks of Mr. Charles Halleck, of Indiana.

The chairman had created some 12 or 13 special subcommittees, and it was alleged that "these subcommittees were undertaking to operate outside the jurisdiction of the committee and there was a suggestion made that they were infringing on the jurisdiction of the regularly established subcommittees."<sup>(20)</sup> It was also alleged that the chairman had not consulted with the ranking minority member or the committee membership in creating the subcommittees, and that he appointed some minority members to the special subcommittees without consulting the Democratic (minority) members of the committee.<sup>(21)</sup>

The committee membership, in July 1953, reacquired the power to authorize special subcommittees. The committee rules were changed to provide that subcommittees could be created upon motion of the chairman but subject to the approval of the committee.<sup>(22)</sup>

In addition, the Committee on House Administration reported out a resolution (H. Res. 339),

20. *Id.*

21. 99 CONG. REC. 10362, remarks of Mr. John McCormack, of Massachusetts.

22. 99 CONG. REC. 10362, remarks of Mr. Charles Halleck, of Indiana.

after a hearing on July 22, 1953, at which all members of the Committee on Government Operations were invited to be present. The resolution was declared to be “. . . a solution of a situation which was described as intolerable by a considerable number of the members of the Committee on Government Operations.”<sup>(23)</sup>

The resolution allotted specific funds to all but one of the regular subcommittees, to be drawn on the voucher of the subcommittee chairman, and allotted the remainder for committee expenses, expenses of special subcommittees and the expenses of one regular subcommittee.<sup>(24)</sup> (Note: Under H. Res. 150, which was amended by H. Res. 339, provision had been made for having all vouchers signed by the committee chairman.)<sup>(25)</sup>

### § 13. Expulsion

The House has the power to expel a Member under article I, section 5, clause 2 of the U.S.

23. 99 CONG. REC. 10360, remarks of Mr. Karl M. LeCompte, of Iowa.

24. 99 CONG. REC. 10360, H. Res. 339.

25. Mr. Hoffman had raised a question of personal privilege and had addressed the matter prior to House consideration of H. Res. 339. See 99 CONG. REC. 10351–59, July 29, 1953.

Constitution. It provides that each House may “with the concurrence of two thirds, expel a Member.”<sup>(26)</sup>

Expulsion is the most severe sanction that can be invoked against a Member. The Constitution provides no explicit grounds for expulsion, but the courts have set forth certain guidelines that may be applied in such cases. Thus, the U.S. Supreme Court has remarked: “The right to expel extends to all cases where the offense is such as [to be] inconsistent with the trust and duty of a Member.”<sup>(27)</sup>

One judge of the United States Court of Appeals for the District of Columbia said in describing the elements of an analogous proceeding: “That action was rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government.”<sup>(28)</sup>

26. See *House Rules and Manual* §§62 et seq. (1973). See also *Powell v McCormack*, 395 U.S. 486, 507, footnote 27 (1969).

27. *In re Chapman*, 166 U.S. 661, 669 (1897).

28. *Powell v McCormack*, 395 F2d 577, concurring opinion of Judge McGovan, p. 607 (C.A., D.C. 1968), reversed on other grounds, 395 U.S. 486.

Expulsion is described by Cushing as “. . . in its very nature discretionary, that is, it is impossible to specify beforehand all the causes for which a member ought to be expelled and, therefore, in the exercise of this power, in each

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“[A Member might be expelled] for that behavior which renders him unfit to do his duties as a Member of the House or that present conditions of mind or body which makes it unsafe or improper for the House to have him in it.” 2 Hinds' Precedents §1286.

In the 63d Congress (1913) the House Committee on Elections No. 1 stated in its report (H. REPT. NO. 185; 6 Cannon's Precedents §78) that the power of the House to expel one of its Members is unlimited—a matter purely of discretion to be exercised by a two-thirds vote from which there is no appeal. However, in 1900, the majority report of the House special committee in the exclusion case of Brigham H. Roberts, Member-elect from Utah, 56th Cong., H. REPT. NO. 85, Pt. II, 1 Hinds' Precedents §476 stated: “1. Neither House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such. 2. Both Houses have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or Senate, as the case might be, had no right to expel for an act unrelated to the Member as such, or because it was committed prior to his election.”

particular case, a legislative body should be governed by the strictest justice; for if the violence of party should be let loose upon an obnoxious member, and a representative of the people discharged of the trust conferred on him by his constituent, without good cause, a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election.”<sup>(29)</sup>

Expulsion is generally administered only against Members, i.e., those who have been sworn in.<sup>(30)</sup> However, in one case, at the beginning of the Civil War, a Member-elect to the House who did not appear and who had taken up arms against the United States, was “expelled,” no one having raised the point that he had not been sworn in.<sup>(1)</sup>

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29. Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, 2d ed., 1866, §625.

30. See *Powell v McCormack*, 395 U.S. 486, 507 (1969) in which the court said: “Powell was ‘excluded’ from the 90th Congress, i.e., he was not administered the oath of office and was prevented from taking his seat. If he had been allowed to take the oath and subsequently had been required to surrender his seat, the House’s action would have constituted an ‘expulsion.’”

1. 2 Hinds' Precedents §1262. For a discussion of the power to expel a

The House has expelled only two Members and one Member-elect. All instances occurred during the Civil War and in each the person was in rebellion against the United States or had taken up arms against it.<sup>(2)</sup>

The constitutional power of expulsion has been applied to the conduct of Members during their terms of office and not to action taken by them prior to their election.<sup>(3)</sup>

Where a Member of Congress has been convicted of a crime, neither the House nor the Senate will normally act to consider expulsion until the judicial processes have been exhausted.<sup>(4)</sup>

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Member-elect, see 1 Hinds' Precedents §476.

2. 2 Hinds' Precedents §§1261, 1262.

The Senate has expelled 15 Senators, most of them for activities related to the Civil War.

Senator William Blount (Tenn.) was expelled in 1797 on charges of conspiracy. 2 Hinds' Precedents §1263. For the Civil War cases, see 2 Hinds' Precedents §§1266–1270.

In 1877, the Senate annulled its action in expelling a Senator during the Civil War. 2 Hinds' Precedents §1243.

3. 6 Cannon's Precedents §§56, 238; 2 Hinds' Precedents §§1284–1286, 1288; 1 Hinds' Precedents §481. See also *Powell v McCormack*, 395 U.S. 486, 508, 509 (1969).
4. *Burton v U.S.*, 202 U.S. 344 (1906); 2 Hinds' Precedents §1282; 6 Cannon's Precedents §258.

Expulsion proceedings are initiated by the introduction of a resolution containing explicit charges<sup>(5)</sup> and which may provide for a committee to investigate and report on the matter.<sup>(6)</sup> While referral has been to the Committee on the Judiciary or to a select committee,<sup>(7)</sup> such a resolution now would be referred to the Committee on Standards of Official Conduct [see Rule XI clause 19, *House Rules and Manual* (1973)].

In proceedings for expulsion, the House, having declined to permit a trial at the bar, may allow a Member to be heard on his own defense by unanimous consent, or through time yielded by the Member calling up the resolution, and to present a written defense, but not to appoint another Member to speak on his behalf.<sup>(8)</sup>

A resolution of expulsion should be limited in its application to one

5. 2 Hinds' Precedents §§1261, 1262.
  6. 2 Hinds' Precedents §§1649, 1650; 3 Hinds' Precedents §2653; 6 Cannon's Precedents §400.
  7. 2 Hinds' Precedents §§1621, 1656; 3 Hinds' Precedents §§1831, 1844.
- In one recent Congress, however, a resolution to expel was referred to the Committee on the Judiciary, 115 CONG. REC. 41011, 91st Cong. 1st Sess., Dec. 23, 1969 [H. Res. 772].
8. 2 Hinds' Precedents §§1273, 1275, 1286.

Member only, though several may be involved. Separate resolutions (and separate reports) should be prepared on each Member.<sup>(9)</sup>

The expulsion of a Member gives rise to a question of privilege.<sup>(10)</sup> Floor debate is under the hour rule.<sup>(11)</sup>

Where a Member resigns while expulsion proceedings against him are being considered, the committee may be discharged from further action thereon, the proceedings discontinued,<sup>(12)</sup> or the House may adopt a resolution censuring the resigned Member.<sup>(13)</sup>

The penalty for conviction under certain statutes applicable to Members sometimes includes a prohibition against holding any office of honor, trust, or profit under the United States.<sup>(14)</sup> Conviction

9. 2 Hinds' Precedents § 1275.

10. 3 Hinds' Precedents § 2648; 6 Cannon's Precedents § 236.

11. 8 Cannon's Precedents § 2448.

12. 6 Cannon's Precedents § 238; 2 Hinds' Precedents § 1275.

13. 2 Hinds' Precedents §§ 1239, 1273.

14. See, for example, the statutes listed below:

18 USC § 201—Soliciting or receiving a bribe or anything of value for or because of any official act performed or to be performed.

18 USC § 203—Soliciting or receiving any outside compensation for particular services.

18 USC § 204—Prohibition against practice in Court of Claims by Member.

does not automatically result in loss of office for a Member, however; he must be expelled by the House or Senate, as the case may be.<sup>(15)</sup>

### *In re Hinshaw*

**§ 13.1 A resolution (H. Res. 1392) calling for the expulsion of a Member was reported adversely by the Committee on Standards of Official Conduct where the Member had been convicted of bribery under California law for acts occurring while he served as a county tax assessor and before his election to the House, and where his appeal from the conviction was still pending; the committee found that although the conviction related to Mr. Hinshaw's moral turpitude, it did not relate to his official**

18 USC § 2381—Treason.

18 USC § 2385—Advocating overthrow of government.

18 USC § 2387—Activities adversely affecting armed forces.

15. U.S. Const. art. I, § 5, clause 2; see *Burton v U.S.*, 202 U.S. 344 (1906). It is questionable under the doctrine of *Powell v McCormack*, 395 U.S. 486 (1969), that such conviction could prevent a person from running for the House or Senate, subsequently.

**conduct while a Member of Congress.**

On Sept. 7, 1976, the Committee on Standards of Official Conduct submitted its report (H. Rept. 94-1477), *In the Matter of Representative Andrew J. Hinshaw*. The report was referred to the House Calendar and ordered printed. Excerpts from the report are set out below:

The Committee on Standards of Official Conduct, to which was referred the resolution (H. Res. 1392), resolving that Representative Andrew J. Hinshaw be expelled from the House of Representatives, having considered the same, reports adversely, thereupon, and recommends that the resolution be not agreed to.

PART I.—SUMMARY OF REPORT

House Resolution 1392 seeks the expulsion of Representative Andrew J. Hinshaw of California from the U.S. House of Representatives pursuant to article I, section 5, clause 2 of the Constitution. Representative Hinshaw has been convicted of bribery under California law for acts occurring while he served as assessor of Orange County, such acts having been committed prior to his election to Congress. An appeal of the conviction is currently pending before the Fourth Appellate District, Court of Appeal, State of California.

Since his conviction, Representative Hinshaw has complied with House Rule XLIII, paragraph 10 and has not participated in voting either in committee or on the floor of the House.

\* \* \* \* \*

The committee believes that the House of Representatives, when considering action against a Member who is currently involved in an active, non-dilatory, criminal proceeding against him, such as the Hinshaw case, ordinarily should follow a policy of taking no legislative branch action until the conviction is finally resolved. The committee wishes to express clearly, however, that in this case its conclusion is based entirely on the instant set of facts and in no way implies that different circumstances may not call for a different conclusion.

Having considered the facts of this particular case and recognizing that Representative Hinshaw has been convicted under a State law that, while reflecting on his moral turpitude, does not relate to his official conduct while a Member of Congress, it is the recommendation of the Committee on Standards of Official Conduct that House Resolution 1392 be not agreed to.

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PART III.—COMMITTEE ACTION

On September 1, 1976, the committee met in executive session to consider House Resolution 1392. This report was adopted on that date by a vote of 10 to 2, a quorum being present.

PART IV.—STATEMENT OF FACTS

Andrew J. Hinshaw is a Member of the House of Representatives representing the 40th District of California. He was first elected to Congress on November 7, 1972, and was sworn in as a Member of the 93d Congress in January 1973. He was reelected in No-

vember 1974 to the 94th Congress and assumed the seat he now occupies on January 14, 1975. Prior to his first election to Congress, Representative Hinshaw served for 8 years as the elected assessor of Orange County, Calif.

Public accusations that Representative Hinshaw had taken bribes while assessor of Orange County first appeared in local newspapers in May 1974. However, it was not until May 6, 1975, that a California State grand jury returned an 11-count indictment against Representative Hinshaw charging him with various felonies, all relating to his official conduct as assessor for Orange County. Eight of the eleven counts were dismissed upon motion prior to trial. A jury trial was had on Representative Hinshaw's "not guilty" plea to the three remaining counts.

On January 26, 1976, a jury found Representative Hinshaw guilty of two of the remaining counts and not guilty of the third. The jury found as true that on May 18, 1972, Representative Hinshaw, then the duly elected assessor for Orange County, Calif., and a candidate for Congress in a primary election, solicited and received a campaign contribution of \$1,000 for the purpose of influencing his official conduct as assessor of Orange County; and that on December 13, 1972, after Representative Hinshaw's election to Congress but prior to being seated as a Member thereof, he solicited and received certain stereo equipment as consideration for official action theretofore taken by him as assessor of Orange County. The two acts proved constitute the crime of bribery under California law.

On February 25, 1976, Representative Hinshaw was sentenced to the term provided by law on each count, the terms to run concurrently. California law provides that the crime of bribery is punishable by imprisonment in the State prison for a term of 1 to 14 years and, if an elected official be convicted of bribery, the additional penalty of forfeiture of office and permanent disqualification from holding other elective office in California may be imposed. The trial judge refused to impose the forfeiture and disqualification penalty in Representative Hinshaw's case, holding that it applied only to State officials.

Representative Hinshaw has appealed his conviction, and the appeal is now pending before the Fourth Appellate District, Court of Appeal of California. The time for filing of appellant's brief has been extended until September 12, 1976. No date has yet been set for oral argument. After his conviction, Representative Hinshaw filed for reelection to Congress. In the primary election held on June 8, 1976, Representative Hinshaw was defeated.

#### PART V.—ANALYSIS OF PRECEDENTS AND POLICIES

The right to expel may be invoked whenever in the judgment of the body a Member's conduct is inconsistent with the public trust and duty of a Member. But, the broad power of the House to expel a Member has been invoked only three times in the history of Congress, all three cases involving treason.

Historically, when a criminal proceeding is begun against a Member, it has been the custom of the House to

defer action until the judicial proceeding is final. The committee recognized the soundness of this course of action when it reported House Resolution 46 (94th Cong. 1st Sess., H. Rept. No. 94-76) adopting rule XLIII, paragraph 10.

In its report, the committee stated it would act "where an allegation is that one has abused his direct representational or legislative position—or his 'official conduct' has been questioned"—but where the allegation involves a violation of statutory law, and the charges are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course.

A "crime," as defined by statutory law, can cover a broad spectrum of behavior, for which the sanction may vary. Due to the divergence between criminal codes, and the judgmental classification of crimes into misdemeanors and felonies, no clear-cut rule can be stated that conviction for a particular crime is a breach of "official conduct." Therefore, rather than specify certain crimes as rendering a Member unfit to serve in the House, the committee believes it necessary to consider each case on facts alone.

Due process demands that an accused be afforded recognized safeguards which influence the judicial proceedings from its inception through final appeal. Although the presumption of innocence is lost upon conviction, the House could find itself in an extremely untenable position of having punished a Member for an act which legally did not occur if the conviction is reversed or remanded upon appeal.

Such is the case of Representative Hinshaw. The charges against him

stem from acts taken while county assessor, and allege bribery as defined by California statute. The committee, while not taking a position on the merits of this case, concludes that no action should be taken at this time. We cannot recommend that the House risk placing itself in a constitutional dilemma for which there is no apparent solution.

We further realize that resolution of the appeal may extend beyond the adjournment sine die of the 94th Congress. In fact, no future action may be required since Representative Hinshaw's electorate chose not to renominate him and he has stated, in writing, that he will resign if the appeal goes against him.

This committee cannot be indifferent to the presence of a convicted person in the House of Representatives; it will not be so. The course of action we recommend will uphold the integrity of the House while affording respect to the rights of the Member accused. We recognize that under another set of circumstances other courses of action may be in order; but, in the matter of Representative Andrew Hinshaw, we believe we have met the challenge and our recommendation is well founded.

When House Resolution 1392 was called up as privileged on Oct. 1, 1976, by its sponsor, Mr. Charles E. Wiggins, of California, it was laid on the table without debate.

## § 14. Exclusion

The power of the House to exclude a Member rests upon Article

I, section 5, clause 1 of the Constitution, which provides: "Each House shall be the judge of the elections, returns, and qualifications of its own Members. . . ." The qualifications referred to are those set forth in Article I, section 2, clause 2, of the Constitution, "No person shall be a Representative who shall not have attained to the age of twenty-five years, and have been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen."<sup>(16)</sup> Neither the Congress nor the House can add to these qualifications, nor can a state.<sup>(17)</sup>

A Member-elect may be excluded from the House pending an investigation as to his initial and final right to the seat.<sup>(18)</sup> And al-

16. *Powell v McCormack*, 395 U.S. 486 (1969). See also §12, *supra*.

17. See *Powell v McCormack*, 395 U.S. 486 (1969); *Hellman v Collier*, 217 Md. 93, 141 A.2d 908 (1958); *Richardson v Hare*, 381 Mich. 304, 160 N.W. 2d 883 (1968); *State ex rel. Chavez v Evans*, 29 N. M. 578, 446 P.2d 445 (1968). And see H. REPT. No. 90-27, 90th Cong. 1st Sess., "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1" (1967) p. 30.

18. 113 CONG. REC. 24-26, 90th Cong. 1st Sess., Jan. 10, 1967 [H. Res. 1, relating to the right of Adam Clayton Powell to take the oath].

though a two-thirds vote is required to expel a Member, only a majority is required to exclude a Member who has been permitted to take the oath of office pending a final determination by the House of his right to the seat.<sup>(19)</sup> The vote necessary to exclude on the ground of failure to meet one of the constitutional qualifications is a majority of those voting, a quorum being present, regardless of whether a final determination by the House of a Member's right to a seat has been made.<sup>(20)</sup> A vote on an amendment in the nature of a substitute proposing exclusion is not a vote to expel, and therefore does not require a two-thirds vote of the Members present.<sup>(1)</sup>

A resolution proposing the exclusion of a Member-elect presents

19. 113 CONG. REC. 17, 90th Cong. 1st Sess., Jan. 10, 1967.

20. See the ruling by Speaker John W. McCormack (Mass.), 113 CONG. REC. 17, 90th Cong. 1st Sess., Jan. 10, 1967; see also 1 Hinds' Precedents §§420, 429, 434.

1. See 113 CONG. REC. 5020 90th Cong. 1st Sess., Mar. 1, 1967.

*Parliamentarian's Note:* In the *Powell* case the Speaker responded to a parliamentary inquiry as to the vote required on an amendment in the nature of a substitute proposing exclusion, stating that only a majority vote was required to adopt the amendment, but the Speaker was not called upon to rule whether the resolution as so amended would likewise require only a majority vote.

a question of privilege.<sup>(2)</sup> Debate thereon is under the hour rule.<sup>(3)</sup> A Member-elect has been permitted by unanimous consent to address the House during the debate on the question of whether he should be sworn in.<sup>(4)</sup>

The House has authorized its committee to take testimony in a case where the qualifications of a Member were in issue.<sup>(5)</sup> Beginning in the 94th Congress, the Committee on House Administration was granted general subpoena authority in all matters within its jurisdiction. Furthermore, a committee investigating the qualifications of a Member-elect may allow his presence and permit suggestions from him during the discussion of the plan and scope of the inquiry.<sup>(6)</sup> It may also give him the opportunity to testify in his own behalf and to be present and to cross-examine witnesses.<sup>(7)</sup>

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***Exclusion of Adam Clayton Powell***

**§ 14.1 The House adopted a resolution referring to a se-**

2. See 3 Hinds' Precedents § 2594.
3. See 113 CONG. REC. 15, 90th Cong. 1st Sess., Jan. 10, 1967.
4. 113 CONG. REC. 15, 90th Cong. 1st Sess., Jan. 10, 1967. See also 1 Hinds' Precedents § 474.
5. 1 Hinds' Precedents § 427.
6. 1 Hinds' Precedents § 420.
7. 1 Hinds' Precedents §§ 420, 475.

**lect committee questions as to the right of a Member-elect to be sworn and to take his seat, permitting him the pay and allowances of the office pending a final determination by the House and requiring the committee to report back to the House within a prescribed time.<sup>(8)</sup> Subsequently, the House agreed to a resolution excluding him from membership on the ground, among others, that he had wrongfully diverted House funds to his own use. However, the U.S. Supreme Court ruled that a Member-elect can be excluded from the House only for a failure to meet the constitutional qualifications of age, citizenship, and inhabitancy.**

On Mar. 1, 1967, the House agreed to a resolution excluding Member-elect Adam Clayton Powell, from the House, on the ground, among others, that he had wrongfully diverted House funds to his own use.<sup>(9)</sup>

8. 113 CONG. REC. 24-26, 90th Cong. 1st Sess., Jan. 10, 1967 [H. Res. 1, relating to the right of Adam Clayton Powell (N.Y.) to take his seat].
9. See H. REPT. NO. 90-27, 90th Cong. 1st Sess. (1967), "In Re Adam Clayton Powell, Report of Select Com-

On Mar. 9, 1967, Mr. Powell filed suit in the U.S. District Court, District of Columbia, asking (*inter alia*) that the Speaker and other defendants be enjoined from enforcing the resolution by which he was excluded from the House, and seeking a writ of mandamus directing the Speaker to administer him the oath of office as a Member of the 90th Congress.<sup>(10)</sup>

mittee Pursuant to H. Res. 1," p. 33; see also H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967. The motion for the previous question on this resolution containing the select committee recommendation was defeated (113 CONG. REC. 5020), and an amendment in the nature of a substitute excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038).

10. 113 CONG. REC. 6035-42, 6048, 90th Cong. 1st Sess., Mar. 9, 1967. Mr. Powell had been requested to stand aside on the opening day of the Congress. He was not sworn in, but instead a resolution was adopted referring the question of his prima facie and his final right to a seat to a select committee [H. Res. 1, 90th Cong. 1st Sess., Jan. 10, 1967, 113 CONG. REC. 26, 27]. The House, on Mar. 1, 1967, defeated a motion for the previous question relating to the select committee resolution [H. Res. 278] which would have admitted the Member-elect as having met the constitutional qualifications of age, citizenship, and inhabitancy, but would

The action was dismissed by the district court for want of jurisdiction and by the court of appeals for lack of justiciability.<sup>(11)</sup> The Supreme Court reviewed the two lower court opinions, holding that the courts had jurisdiction, that the issue was justiciable, and that

have provided that (1) Mr. Powell be censured, (2) that he be fined \$1,000 a month from his salary until \$40,000 of misused funds had been paid back, and (3) that his seniority would commence as from the day he took the oath as a Member of the 90th Congress. 113 CONG. REC. 4998 et seq.

A point of order that a substitute amendment providing for the exclusion by the House of Member-elect Adam Clayton Powell would forbid the Member-elect from serving in the Senate during the 90th Congress, a power said to be beyond that of the House, and that it would forbid a later voting of the Member-elect if he were elected to fill the vacancy caused by his own exclusion, another power beyond the House, was overruled by the Chair as having been made too late in the proceedings. 113 CONG. REC. 5037, 90th Cong. 1st Sess., Mar. 1, 1967.

11. In the suit, *Powell v McCormack*, 266 F Supp 354 (D.C., D.C. 1967), the district court granted a motion to dismiss for want of jurisdiction. On appeal to the United States Court of Appeals for the District of Columbia, the judgment was affirmed on grounds of lack of justiciability, *Powell v McCormack*, 395 F2d 577 (C.A.D.C. 1968).

the power of the House under the U.S. Constitution in judging the qualifications of its Members was limited to the qualifications of age, citizenship, and inhabitancy, as set forth in article I, section 2, clause 2.<sup>(12)</sup>

On May 1, 1967, the Speaker laid before the House a letter from the Clerk advising receipt of a certificate showing the election of Mr. Powell to fill the vacancy created when the House excluded Mr. Powell from membership and declared his seat vacant. Mr. Powell did not appear to claim the seat.<sup>(13)</sup>

### ***Effect of Felony Conviction***

#### **§ 14.2 The Speaker was authorized to administer the oath of office to a Member-elect whose right to a seat in the House was challenged on the ground that he had forfeited his rights as a citizen by reason of conviction of a felony.**

On Mar. 9, 1933, at the convening of the 73d Congress, the

12. *Powell v McCormack*, 395 U.S. 486 (1969).

13. In response to a parliamentary inquiry, the Speaker indicated that if Mr. Powell appeared to take the oath and was again challenged, the House would have to determine at that time what action it should take. 113 CONG. REC. 11298, 90th Cong. 1st Sess., May 1, 1967.

Speaker<sup>(14)</sup> was authorized, by resolution,<sup>(15)</sup> to administer the oath of office to a Member-elect whose right to a seat in the House was questioned by a Member who asserted that the Member-elect had forfeited his rights as a citizen by reason of conviction of a felony.

Member-elect Francis H. Shoemaker, of Minnesota, was asked to stand aside during the swearing in after a resolution was offered by Mr. Albert E. Carter, of California, providing that the prima facie and final right to a seat for Mr. Shoemaker be referred to the Committee on Elections No. 1.<sup>(16)</sup>

Mr. Shoemaker had been convicted in a federal district court in Minnesota in 1930 of an offense involving the mailing of defamatory literature, and had been put on probation for five years. After a verbal altercation with the judge, he was sentenced to imprisonment for a year and a day. He served the sentence in the federal penitentiary in Leavenworth, Kansas, prior to his election to the House in 1932.<sup>(17)</sup>

14. Henry T. Rainey (Ill.).

15. 77 CONG. REC. 139, 73d Cong. 1st Sess. [H. Res. 6].

16. 77 CONG. REC. 71, 73, 73d Cong. 1st Sess.

17. *Id.* at pp. 74, 132, 133, 135.

It was alleged that under the constitution of Minnesota, Mr. Shoemaker, after the felony conviction, had become ineligible to vote or hold any office. Nevertheless, it was pointed out that he had voted in the 1932 election, had run for federal office, and that the state could not disqualify him in the latter capacity.<sup>(18)</sup>

On Mar. 10, 1933, Mr. Paul J. Kvale, of Minnesota, offered an amendment in the nature of a substitute providing that the Speaker be authorized and directed to administer the oath to Mr. Shoemaker and that the question of his final right to a seat be referred to the Committee on Elections No. 2. Debate ensued as to the responsibility of the House to bar the Member-elect at the door before giving him a hearing, as some precedents of the House suggested, or to follow other precedents and administer the oath initially and then, at a later date, consider his final right to a seat.

At the conclusion of debate the amendment was adopted on a division vote, 230 to 75.<sup>(19)</sup> The resolution as amended was agreed to, and its preamble, which referred to charges against Mr. Shoemaker, was stricken by unanimous consent.<sup>(20)</sup>

18. *Id.* at p. 74.

19. *Id.* at pp. 132-139.

20. *Id.* at p. 139.

## § 15. Suspension of Privileges

At one time, the view was expressed by a select committee that the House may impose a punishment upon a Member, when appropriate, other than censure or expulsion. The select committee in the case of Adam Clayton Powell, of New York, stated:<sup>(21)</sup>

Although rarely exercised, the power of a House to impose upon a Member punishment other than censure but short of expulsion seems established. There is little reason to believe that the framers of the Constitution, in empowering the Houses of Congress to "punish" Members for disorderly behavior and to "expel" (art. I, sec. 5, clause 2), intended to limit punishment to censure. Among the other types of punishment for disorderly behavior mentioned in the authorities are fine and suspension.

In the case of Senators Tillman and McLaurin in 1902, during the 57th Congress, the Senate specifically considered the question of punishment other than expulsion or censure. The case arose on February 22, 1903, and involved a heated altercation on the floor of the Senate in which the two men came to blows. The Senate went immediately into executive session and adopted an order declaring both Senators to be in contempt of the Senate

21. H. REPT. NO. 90-27, 90th Cong. 1st Sess., 1967, "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1," pp. 28, 29.

and referring the matter to a committee. The President pro tempore ruled that neither Senator could be recognized while in contempt and subsequently directed the clerk to omit the names of McLaurin and Tillman from a rollcall vote on a pending bill. On February 28, the committee to which the matter had been referred recommended a resolution of censure, which the Senate adopted, stating that Tillman and McLaurin are "censured for the breach of the privileges and dignity of this body, and from and after the adoption of this resolution the order adjudging them in contempt of the Senate shall be no longer in force and effect" (2 Hinds, sec. 1665). "The penalty," according to "Senate Election, Expulsion and Censure Cases" (p. 96), "thus, was censure and suspension for 6 days—which had already elapsed since the assault."

In the committee report on the Tillman-McLaurin case, three of the 10 member majority submitted their views on the issue of suspension (2 Hinds, pp. 1141-1142):

. . . The Senate has not like power with Parliament in punishing citizens for contempt, but it has like power with Parliament in punishing Senators for contempt or for any disorderly behavior or for certain like offenses. Like Parliament, it may imprison or expel a member for offenses. "The suspension of members from the service of the House is another form of punishment." (May's Parliamentary Practice, 53.) This author gives instances of suspension in the seventeenth century and shows the frequent suspension of members under a standing order of the House of Commons, passed February 23, 1880.

\* \* \* \* \*

The Senate may punish the Senators from South Carolina by fine, by reprimand, by imprisonment, by suspension by a majority vote, or by expulsion with the concurrence of two-thirds of its members.

The offense is well stated in the majority report. It is not grave enough to require expulsion. A reprimand would be too slight a punishment. The Senate by a yea and-nay vote has unanimously resolved that the said Senators are in contempt. A reprimand is in effect only a more formal reiteration of that vote. It is not sufficiently severe upon consideration of the facts.

A minority of four committee members, however, dissented "from so much of the report of the committee as asserts the power of the Senate to suspend a Senator and thus deprive a State- of its vote . . ." (p. 1141).

However, by its adoption of Rule XLIII clause 10<sup>(22)</sup> in the 94th Congress, relating to the voluntary abstention from voting and from participating in other legislative business by Members who have been convicted of certain crimes, the House indicated its more recent view that a Member could not be deprived involuntarily of his right to vote in the House. The constitutional impediments to such deprivation were discussed in the debate on the proposed change in the rule.<sup>(23)</sup>

22. See House Rules and Manual §939 (1977) .

23. 23. For discussion of the debate and adoption of the rule, see § 15.1, *infra*.

***Grounds; Duration of Suspension***

**§ 15.1 In the 94th Congress, Rule XLIII was amended to provide that a Member convicted of certain crimes “should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House. . . .” The conviction must be by a court of record and the crime must be one for which a sentence of two or more years’ imprisonment may be imposed. The period of abstention continues until the Member is subsequently re-elected or until juridical or executive proceedings result in the “reinstatement of the presumption of his innocence.”<sup>(1)</sup>**

It is clear from the debate on House Resolution 46,<sup>(2)</sup> which added clause 10, to Rule XLIII that the amendment was drafted to safeguard the reputation of the House and at the same time pre-

1. Rule XLIII clause 10, *House Rules and Manual* §939 (1977).

2. H. Res. 46, 94th Cong. 1st Sess. (1975).

serve the right to representation of the constituents of the Member’s district.<sup>(3)</sup> Several of the proponents of the resolution emphasized the voluntary nature of compliance with the rule:

MR. [JOHN J.] FLYNT [Jr., of Georgia]: . . . Let me emphasize that there is nothing mandatory or compulsory in this resolution, nor is there any specific enforcement authority. However, a Member who ignored the stated policy of the House would do so at the risk of subjecting himself to disciplinary procedures provided under House rules. . . .

MR. [MELVIN] PRICE [of Illinois]: . . . Let me point out that there is nothing mandatory about the procedure recommended, but it would be expected that any Member affected would abide by the spirit of the policy. The policy could be waived by the House in specific cases if it deemed such a waiver would be in the public interest.

The reason for the voluntary nature of the Member’s abstention was also made clear:

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Speaker, it would seem to me that to deprive a person mandatorily of his right to vote and participate on the committee would be tantamount to making him stand aside altogether in his function as a Congressman and would go to the question of his qualifications to serve. As I understand, the Powell case said that may only be for one of three reasons:

3. 121 CONG. REC. 10339–45, 94th Cong. 1st Sess., Apr. 16, 1975.

The question of age, the question of citizenship, and the question of residency within the State from which a man comes.

So the only way that there could be a mandatory exclusion from the exercise of the right of any Congressman to represent his district, it would seem to me, would be on a two-thirds vote on expulsion. Would the gentleman agree?

MR. FLYNT: Mr. Speaker, the gentleman from Texas is correct.

The committee felt—and I believe that the committee was unanimous—that to have attempted to make this mandatory would have been unconstitutional. It would have deprived the district, which the Member was elected to represent, of representation, as well as invoking a sanction upon the Member himself. . . .

MR. ECKHARDT: Mr. Speaker, I may say, to a certain extent practically, one may be depriving his district of representation when one tells him that he shall only participate at his peril on grounds of certain further action, which I suppose might include expulsion.

The constitutionality of depriving a Member's constituents of their representative vote troubled several Members:

MR. [DON] EDWARDS [of California]: . . . The measure before us punishes a Member of the House by attempting to deprive that person of the right to vote and participate in the legislative process. However, in our effort to so discipline a Member of Congress, we would effectively disenfranchise the nearly one-half million Americans who elected that person to represent them.

Such an action undermines the basic interest of a constituency in their representative government. Any constituency has a legitimate interest in being represented by its preferred choice who possesses all the constitutional eligibility requirements, even though objected to on other grounds, such as his unwillingness to support existing laws.

A resolution such as this could put the House in the position of encouraging the loss of representation to a constituency whose representative may have committed an act of civil disobedience as a matter of conscience, perhaps even with the approval of that constituency.

The Constitution has already provided this body with the remedy of expelling a Member for misconduct. Under that clause, the expelled Member may be immediately replaced by another person to represent the constituency. However, under the provisions of the measure before us, there can be no replacement for the punished Member. By the terms of the resolution a constituency would be left without a voice in the House of Representatives for the duration of the Congress or until the disciplined Member was acquitted.

I feel that the problems raised by this measure go to the heart of our form of government. One of the most fundamental principles of this representative democracy is, in the words of Alexander Hamilton, "that the people should choose whom they please to govern them."

The argument was also advanced that the amendment exceeded the powers of the House:

MR. [ROBERT F.] DRINAN [of Massachusetts]: Mr. Speaker, on November

14, 1973, this House debated and passed a resolution nearly identical to the one now before us. It expressed the sense of this body that Members convicted of a crime punishable by more than 2 years in prison should refrain from participating in committee business and from voting on the floor.

On that occasion, I strongly opposed the resolution because, in my judgment, it exceeded the powers of the House. The Constitution is quite plain on the matter of disciplining Members. Article I, section 5, clause 2 provides:

Each House may . . . punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

That provision marks the limits of permissible action; no other sanction against an elected Representative is allowed. The resolution we debate today intrudes into the prohibited sphere.

Under the Constitution, the House may discipline its Members only for disorderly behavior. The sanction of expulsion, while authorized, is reserved for outrageous conduct which effectively disrupts the orderly workings of the legislative process, in short, a serious violation of the Member's oath of office.

It seems to me that an elected Representative is entitled to the full privileges of the House, unless suspended or expelled. There is no middle ground. We cannot have two classes of Members: one with all the rights, and the other with only partial powers. Such bifurcation in our body is at variance with the constitutional scheme which guides our actions. Yet that is what this resolution, if passed, would accomplish.

Several other issues were raised during the debate. In response to a question concerning the omission of the effect of guilty pleas, Mr. Flynt, who had introduced the resolution, stated that a guilty plea was identical to a conviction, which was the term employed in the resolution. Similarly, Mr. Philip Burton, of California, expressed concern as to whether an indeterminate sentence might result in House sanctions. Again, Mr. Flynt responded that it was a purpose of the Committee on Standards of Official Conduct to have these sanctions "triggered by a conviction on a count in an indictment which amounted to a felony."

Mr. Flynt further clarified several anticipated consequences of the adoption of the amendment:

During the period of nonvoting, the Member would not be barred from attending sessions of the House or from carrying on normal representational activities, other than voting. His salary and other benefits would continue. . . .

As the report points out, the committee does not intend to deprive a Member of his right to attend sessions of the House or committees or to preclude him from recording himself "present" on a yea-and-nay vote or from responding to a quorum call. A Member thus could protect his attendance record without affecting the outcome of the vote.

However, I do feel that a Member affected by the rule should not be a

party to a live pair, since such a pair could affect the outcome by offsetting the vote of the individual with whom he is paired.

The House could at any time waive application of the resolution as to specific legislation or issues, thereby restoring the Member's full voting rights in such instances without violating the spirit of the rule.

**§ 15.2 The House, in the 93d Congress, adopted a resolution expressing the sense of the House that Members convicted of certain crimes should refrain from participation in committee business and from voting in the House until the presumption of innocence is reinstated or until re-elected to the House.**

On Nov. 14, 1973,<sup>(4)</sup> the House agreed to the following resolution:

4. 119 CONG. REC. 36946, 93d Cong. 1st Sess. [H. Res. 700, providing for consideration of H. Res. 128], H. REPT. NO. 93-616, Committee on Standards of Official Conduct.

*Parliamentarian's Note:* A similar resolution (H. Res. 933, 92d Cong.) had been reported in the preceding Congress but had not been called up by the House. That resolution had been prompted by the conviction of former Representative Dowdy for receiving a bribe, but when he voluntarily agreed not to participate in House or committee proceedings, the resolution was not called up in the House. Such resolutions are not privileged under Rule XI clause 22, as

*Resolved,* That it is the sense of the House of Representatives that any Member of, Delegate to, or Resident Commissioner in, the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is then a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is re-elected to the House after the date of such conviction. This resolution shall not affect any other authority of the House with respect to the behavior and conduct of its Members.

In its report on the resolution, the Committee on Standards of Official Conduct, stated, in part, at page 2:<sup>(5)</sup>

- they do not recommend action by the House with respect to an individual Member.
5. H. REPT. NO. 93-616, 93d Cong. 1st Sess., Oct. 31, 1973.

*Parliamentarian's Note:* In the debate on the resolution the question was raised that even though it was a sense-of-the-House resolution, would it, if followed in a specific case, deprive the voters in the Member's district of a constitutional right to be fully represented? ( See the remarks of Representative Robert F. Drinan [Mass.], 119 CONG. REC. 36945, 93d Cong. 1st Sess.) For an opposite point of view see, Luther Stearns

To the question of when to act, the committee adopted a policy which essentially is: where an allegation is that one has abused his direct representational or legislative position—or his “official conduct”—the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters—rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.

The implementation of this policy has shown, through experience, only one need for revision. For the House to withhold any action whatever until ultimate disposition of a judicial proceeding, could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period greater than the 2-year term of the Member.

Since Members of Congress are not subject to recall and in the absence of

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Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, 2d ed. (1866) §626. Cushing conceded that during suspension, the voters would be deprived of the service of their Representative, but contended that the rights of the voters would be no more infringed by this proceeding than by an exercise of the power to imprison.

any other means of dealing with such cases short of reprimand, or censure, or expulsion (which would be totally inappropriate until final judicial resolution of the case), public opinion could well interpret inaction as indifference on the part of the House.

The committee recognizes a very distinguishable link in the chain of due process—that is the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon conviction by judge or jury. It is to this condition and only to this condition that the proposed resolution reaches.

The committee reasons that the preservation of public confidence in the legislative process demands that notice be taken of situations of this type.

### ***Voluntary Withdrawal***

#### **§ 15.3 Following a conviction for bribery and related offenses, a Member refrained from voting on the floor or in committee and from participating in committee business.**

*Parliamentarian's Note:* Representative John Dowdy, of Texas, was convicted under federal statutes of bribery, perjury, and conspiracy on Dec. 31, 1971, in a federal district court in Baltimore, Maryland. On Jan. 23, 1972, the court sentenced Mr. Dowdy to 18 months in prison and a fine of \$25,000.

On June 21, 1972, Mr. Dowdy filed a letter with Speaker Carl

Albert, of Oklahoma, promising to refrain from voting on the floor or in committee and from participating in committee business pending an appeal of his conviction.<sup>(6)</sup>

### § 16. Censure; Reprimand

In the House, the underlying concept governing the censure of a Member for misconduct is that of breach of the rights and privileges of the House.<sup>(7)</sup> As indicated in a report of a select committee of the House,<sup>(8)</sup> the power of each House to censure its Members “for disorderly behavior” is found in article I section 5 clause 2 of the U.S. Constitution. It is discretionary in character, and upon a resolution for censure of a Member for misconduct each individual Member

considering the matter is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience.

The conduct for which censure may be imposed is not limited to acts relating to the Member’s official duties. See *In re Chapman* (166 U.S. 661 [1897]). The committee considering censure of Senator Joseph McCarthy stated (S. Rept. No. 2508, 83d Cong., p. 22): “It seems clear that if a Senator should be guilty of reprehensible conduct unconnected with his official duties and position, but which conduct brings the Senate into disrepute, the Senate has the power to censure.”

During its history, through the 94th Congress, the House of Representatives has censured 17 Members and one Delegate and has reprimanded one Member in the 94th Congress. All but one of the instances of censure occurred during the 19th century, 13 Members being censured between 1864 and 1875. The last censure in the House was imposed in 1921. In the Senate, there are four instances of censure, including the censure of Senator Joseph McCarthy in 1954.

Most cases of censure have involved the use of unparliamentary language, assaults upon a Mem-

6. See Congressional Quarterly Weekly Report, July 8, 1972, p. 1167.

See also 6 Cannon’s Precedents §§ 402, 403, wherein a select committee assumed that a Member indicted under federal law would take no part whatever in any of the business of the House or its committees until final disposition of the case was made.

7. 2 Hinds’ Precedents § 1644.

8. H. REPT. NO. 90-27, 90th Cong. 1st Sess., Feb. 23, 1967, “In Re Adam Clayton Powell, Report of the Select Committee Pursuant to H. Res. 1,” pp. 24-30.

ber or insults to the House by introduction of offensive resolutions,<sup>(9)</sup> but in five cases in the House and one in the Senate censure was based on corrupt acts by a Member, and in another Senate case censure was based upon non-cooperation with and abuse of Senate committees.<sup>(10)</sup>

9. See 2 Hinds' Precedents §§1246–1249, 1251, 1256, 1305, 1621, 1656; 6 Cannon's Precedents §236.

10. See 2 Hinds' Precedents §§1239, 1273, 1274, 1286; 6 Cannon's Precedents §239; "Senate Election, Expulsion and Censure Cases," S. Doc. No. 71, 87th Cong., pp. 125–27, 152–54.

In 1870, during the 41st Congress, the House censured John T. DeWeese, B. F. Whittemore, and Roderick R. Butler for the sale of appointments to the U. S. Military and Naval Academies. In Butler's case, the Member had appointed to the Military Academy a person not a resident of his district and subsequently received a political contribution from the cadet's father. Censure of DeWeese and Whittemore was voted notwithstanding that each had previously resigned. A resolution to expel Butler was defeated upon failure to obtain a two-thirds vote, whereupon a resolution of censure was voted in which the House "declare[d] its condemnation" of his conduct, which it characterized as "an unauthorized and dangerous practice" (2 Hinds' Precedents §§1239, 1273, 1274).

In 1929 Senator Hiram Bingham (Conn.) was censured for having

In 1873, during the 42d Congress, a special investigating committee was appointed to inquire into charges that Representatives Oakes Ames and James Brooks had been bribed in connection with the Credit Mobilier Co. and the Union Pacific Railroad.<sup>(11)</sup> Al-

placed on the Senate payroll, and used as a consultant on a pending tariff bill, one Charles L. Eyanson, who was simultaneously in the employ of the Manufacturers Association of Connecticut. The Senate adopted a resolution of censure providing that Senator Bingham's conduct regarding Eyanson "while not the result of corrupt motives on the part of the Senator from Connecticut, is contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute, and such conduct is hereby condemned." 6 Cannon's Precedents §239.

11. The committee reported that Representative Oakes Ames "has been guilty of selling to Members of Congress shares of stock in the Credit Mobilier of America for prices much below the true value of such stock, with intent thereby to influence the votes and decisions of such Members in matters to be brought before Congress for action." With regard to Representative James Brooks, the committee found that he "did procure the Credit Mobilier Co. to issue and deliver to Charles H. Neilson, for the use and benefit of said Brooks, 50 shares of the stock of said company at a price much below its real value, well knowing that the

though the committee recommended that both Members be expelled, the House adopted substitute censure resolutions in which it “absolutely condemn[ed]” the conduct of Ames and Brooks (2 Hinds’ Precedents § 1286).

Although there has been a divergence of views concerning the power of a House to expel a Member for acts committed during a preceding Congress, the right of a House to censure a Member for such prior acts is supported by clear precedent in both Houses of Congress—namely, the case of Ames and Brooks in the House of Representatives and the case of Senator McCarthy in the Senate. In Ames and Brooks the acts for which censure was voted occurred more than five years prior to censure and two congressional elections had intervened.

Thus, the broad power of the House to censure Members extends to acts occurring during a prior Congress. Whether such powers should be invoked in such circumstances is a matter committed to the discretion and judgment of the House upon consideration of the nature of the prior acts, whether they were known to

same was so issued and delivered with intent to influence the votes and decisions of said Brooks as a Member of the House.”

the electorate at the previous election and to the prior House, and the extent to which they directly involve the authority, integrity, dignity, or reputation of the House.<sup>(12)</sup>

Censure, like other forms of discipline except expulsion, is by a majority of those voting, a quorum being present. (6 Cannon’s Precedents § 236.) The House itself must order the censure. The Speaker cannot, of his own authority, censure a Member.<sup>(13)</sup>

A censure resolution may call for direct and immediate action by the House;<sup>(14)</sup> or it may recommend that a committee be appointed to investigate and report to the House.<sup>15</sup> A House select committee may recommend censure of a Member along with other forms of punishment in response to a resolution to investigate and recommend as to the initial and final right to a seat.<sup>(16)</sup>

12. H. REPT. No. 90–27, 90th Cong. 1st Sess., Feb. 23, 1967. See also § 8.4, *supra*.

13. 2 Hinds’ Precedents §§ 1344, 1345; 6 Cannon’s Precedents § 237.

14. 2 Hinds’ Precedents §§ 1246–1251, 1254–1258; 6 Cannon’s Precedents §§ 236, 239.

15. 2 Hinds’ Precedents §§ 1649–1651, 1655 1656.

16. 113 CONG. REC. 4997, 90th Cong. 1st Sess., Mar. 1, 1967; see 113 CONG. REC. 24, 26, 27, 90th Cong. 1st Sess., Jan. 10, 1967.

Floor debate on a resolution of censure is under the hour rule.<sup>(17)</sup> The House has permitted the Member to be heard in debate as a matter of course without permission being asked or given,<sup>(18)</sup> or by unanimous consent.<sup>(19)</sup> And the Member controlling debate under the hour rule can yield time to the Member being censured. In one instance, after a Member had explained, the House reconsidered its vote of censure and reversed it.<sup>(20)</sup> In some situations where Members have apologized following the initiation of censure proceedings, the House has accepted the apology and terminated the proceedings.<sup>(21)</sup>

After the House has ordered censure, it is normally administered by the Speaker to the Member at the bar of the House.<sup>(22)</sup>

The House has on occasion made a distinction between censure and reprimand, the latter being a somewhat lesser punitive measure than censure. A censure is administered by the Speaker to the Member at the bar of the

House, whereas a reprimand is administered to the Member "standing in his place"<sup>(23)</sup> or merely by way of the adoption of a committee report. Thus in 1976,<sup>(24)</sup> the House administered a reprimand to Mr. Robert L. F. Sikes, of Florida, by adopting by a vote of 381 yeas to 3 nays a resolution (H. Res. 1421) which provided that the House adopt the report of the Committee on Standards of Official Conduct on the investigation of a complaint against Mr. Sikes. The Speaker administered no oral reprimand. The report<sup>(1)</sup> declared that (a) failure of Mr. Sikes to report certain stockholdings as required by House Rule XLIV was deserving of a reprimand, and (b) that the investment by him in the stock of a bank at a naval base in Florida and activities in promoting its establishment was deserving of a reprimand. The report provided that in each instance, "the adoption of this report by the House shall constitute such reprimand."<sup>(2)</sup>

17. See 5 Hinds' Precedents § 4990.

18. 2 Hinds' Precedents §§ 1246, 1253.

19. 2 Hinds' Precedents § 1656.

20. 2 Hinds' Precedents § 1653.

21. See, for instance, 2 Hinds' Precedents §§ 1250, 1257, 1258, 1652; 6 Cannon's Precedents § 7006.

22. See 2 Hinds' Precedents §§ 1251, 1259; 6 Cannon's Precedents § 236.

23. Luther Sterns Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, 2d ed. (1866), § 682.

24. CONG. REC. (daily ed.), 94th Cong. 2d Sess., July 29, 1976.

1. H. REPT. NO. 94-1364, 94th Cong. 2d Sess., July 23, 1976.

2. *Id.* at p. 4.

***Censure of Adam Clayton Powell***

**§ 16.1 A House select committee recommended censure, along with other penalties, against a Member-elect.**

On Mar. 1, 1967,<sup>(3)</sup> the House considered a resolution censuring Adam Clayton Powell, of New York, for, INTER ALIA, ignoring the processes and authority of the New York state courts and for improper use of government funds. The resolution provided:

Whereas,

The Select Committee appointed pursuant to H. Res. 1 (90th Congress) has reached the following conclusions:

First, Adam Clayton Powell possesses the requisite qualifications of age, citizenship and inhabitancy for membership in the House of Representatives and holds a Certificate of Election from the State of New York.

Second, Adam Clayton Powell has repeatedly ignored the processes and authority of the courts in the State of New York in legal proceedings pending therein to which he is a party, and his contumacious conduct towards the court of that State has caused him on several occasions to be adjudicated in contempt thereof, thereby reflecting discredit upon and bringing into disrepute the House of Representatives and its Members.

Third, as a Member of this House, Adam Clayton Powell improperly

**3.** H. Res. 278, 113 CONG. REC. 4997, 90th Cong. 1st Sess.

maintained on his clerk-hire payroll Y. Marjorie Flores (Mrs. Adam C. Powell) from August 14, 1964, to December 31, 1966, during which period either she performed no official duties whatever or such duties were not performed in Washington, D. C. or the State of New York as required by law.

Fourth, as Chairman of the Committee on Education and Labor, Adam Clayton Powell permitted and participated in improper expenditures of government funds for private purposes.

Fifth, the refusal of Adam Clayton Powell to cooperate with the Select Committee and the Special Subcommittee on Contracts of the House Administration Committee in their lawful inquiries authorized by the House of Representatives was contemptuous and was conduct unworthy of a Member; Now, therefore be it

*Resolved,*

1. That the Speaker administer the oath of office to the said Adam Clayton Powell, Member-elect from the Eighteenth District of the State of New York.

2. That upon taking the oath as a Member of the 90th Congress the said Adam Clayton Powell be brought to the bar of the House in the custody of the Sergeant-at-Arms of the House and be there publicly censured by the Speaker in the name of the House.

3. That Adam Clayton Powell, as punishment, pay to the Clerk of the House to be disposed of by him according to law, Forty Thousand Dollars (\$40,000.00). The Sergeant-at Arms of the House is directed to deduct One Thousand Dollars (\$1,000.00) per month from the salary otherwise due the said Adam Clayton Powell and pay

the same to said Clerk, said deductions to continue while any salary is due the said Adam Clayton Powell as a Member of the House of Representatives until said Forty Thousand Dollars (\$40,000.00) is fully paid. Said sums received by the Clerk shall offset to the extent thereof any liability of the said Adam Clayton Powell to the United States of America with respect to the matters referred to in the above paragraphs Third and Fourth of the preamble to this Resolution.

4. That the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 90th Congress.

5. That if the said Adam Clayton Powell does not present himself to take the oath of office on or before March 13, 1967, the seat of the Eighteenth District of the State of New York shall be deemed vacant and the Speaker shall notify the Governor of the State of New York of the existing vacancy.

The House voted down the motion for the previous question on the resolution and substituted an amendment to exclude, which was adopted.<sup>(4)</sup>

### ***Censure of Joseph R. McCarthy***

#### **§ 16.2 The Senate, by resolution reported by a select committee, censured a Senator for his noncooperation with and abuse of certain**

4. 113 CONG. REC. 5020, 5037, 90th Cong. 1st Sess., Mar. 1, 1967. See also § 14.1, *supra*.

#### **Senate committees during an investigation of his conduct as a Senator.**

In 1951, during the 82d Congress, a resolution had been introduced calling for an investigation to determine whether expulsion proceedings should be instituted against Senator Joseph McCarthy, of Wisconsin, by reason, *inter alia*, of his activities in the 1950 Maryland senatorial election; the resolution was referred to the Subcommittee on Privileges and Elections, whose Chairman was Senator Guy M. Gillette, of Iowa. Senator McCarthy rejected invitations to attend the hearings of the Gillette subcommittee, termed the charges against him a Communist smear, and stated that the hearings were designed to expel him "for having exposed Communists in Government." In 1954, during the succeeding 83d Congress, a censure resolution against Senator McCarthy was introduced and referred to a select committee headed by Senator Arthur V. Watkins, of Utah. The Watkins committee recommended censure in part on the ground that Senator McCarthy's conduct toward the Gillette subcommittee, its members and the Senate "was contemptuous, contumacious, and denunciatory, without reason, or justification, and was obstructive to

legislative processes.”<sup>(5)</sup> After debate, the Senate adopted a resolution (S. Res. 301, as amended) censuring Senator McCarthy on two counts:

*Resolved*, That the Senator from Wisconsin, Mr. McCarthy, failed to cooperate with the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration in clearing up matters referred to that subcommittee which concerned his conduct as a Senator and affected the honor of the Senate and, instead, repeatedly abused the subcommittee and its members who were trying to carry out assigned duties, thereby obstructing the constitutional processes of the Senate, and that this conduct of the Senator from Wisconsin, Mr. McCarthy, is contrary to senatorial traditions and is hereby condemned.

Sec. 2. The Senator from Wisconsin, Mr. McCarthy, in writing to the chairman of the Select Committee To Study Censure Charges (Mr. Watkins) after the select committee had issued its report and before the report was presented to the Senate charging three members of the select committee with “deliberate deception” and “fraud” for failure to disqualify themselves; in stating to the press on November 4, 1954, that the special Senate session that was to begin November 8, 1954, was a “lynch party”; in repeatedly describing this special Senate session as a “lynch bee” in a nationwide television and radio show on November 7, 1954; in stating to the public press on No-

vember 13, 1954, that the chairman of the select committee (Mr. Watkins) was guilty of “the most unusual, most cowardly thing I’ve heard of” and stating further: “I expected he would be afraid to answer the questions, but didn’t think he’d be stupid enough to make a public statement”; and in characterizing the said committee as the “unwitting handmaiden,” “involuntary agent,” and “attorneys in fact” of the Communist Party and in charging that the said committee in writing its report “imitated Communist methods—that it distorted, misrepresented, and omitted in its effort to manufacture a plausible rationalization” in support of its recommendations to the Senate, which characterizations and charges were contained in a statement released to the press and inserted in the Congressional Record of November 10, 1954, acted contrary to senatorial ethics and tended to bring the Senate into dishonor and disrepute, to obstruct the constitutional processes of the Senate, and to impair its dignity; and such conduct is hereby condemned.

As noted above, one of the counts on which censure was voted in 1954 concerned his conduct toward the Gillette subcommittee in 1952 during the preceding Congress. The report of the select committee discussed at length the contention by Senator McCarthy that since he was re-elected in 1952, the committee lacked power to consider, as a basis for censure, any conduct on his part occurring prior to Jan. 3, 1953, when he took his seat for a

5. 100 CONG. REC. 16392, 83d Cong. 2d Sess., Dec. 2, 1954 [S. Res. 301, amended], S. REPT. No. 83-2508.

new term (S. REPT. NO. 2508, 83d Cong., pp. 20–23, 30, 31). The committee stated (p. 22):

While it may be the law that one who is not a Member of the Senate may not be punished for contempt of the Senate at a preceding session, this is no basis for declaring that the Senate may not censure one of its own Members for conduct antedating that session, and no controlling authority or precedent has been cited for such position.

The particular charges against Senator McCarthy, which are the basis of this category, involve his conduct toward an official committee and official committee members of the Senate.

The reelection of Senator McCarthy in 1952 was considered by the select committee as a fact bearing on this proposition. This reelection is not deemed controlling because only the Senate itself can pass judgment upon conduct which is injurious to its processes, dignity, and official committees.

Elaborating on its view that only the Senate can pass judgment upon conduct adverse to its processes and committees, the select committee added (pp. 30–31):

Nor do we believe that the reelection of Senator McCarthy by the people of Wisconsin in the fall of 1952 pardons his conduct toward the Subcommittee on Privileges and Elections. The charge is that Senator McCarthy was guilty of contempt of the Senate or a senatorial committee. Necessarily, this is a matter for the Senate and the Senate alone. The people of Wisconsin can only pass upon issues before them;

they cannot forgive an attack by a Senator upon the integrity of the Senate's processes and its committees. That is the business of the Senate.

### *Censure of Thomas J. Dodd*

**§ 16.3 The Senate, by resolution reported by its Select Committee on Standards and Conduct, censured a Senator for exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials and a political campaign.**

The Senate, by resolution reported by its Select Committee on Standards and Conduct,<sup>(6)</sup> censured Senator Thomas J. Dodd, of Connecticut, for exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials and campaigns.

The committee conducted hearings from June, 1966 through March, 1967 on allegations that the Senator had misused campaign funds for personal purposes.<sup>(7)</sup> From its investigations the committee concluded in its re-

6. 113 CONG. REC. 17073, 90th Cong. 1st Sess., June 23, 1967 [S. Res. 112], S. REPT. NO. 90–193.

7. S. REPT. NO. 90–193, p. 9.

port that seven fund-raising events were held for the Senator for the period 1961 through 1965, and that the receipts from these totaled some \$203,983. All but one of the events was represented as being held for political campaign purposes, either to raise funds for the Senator's 1964 campaign or to pay off debts from his 1958 and 1964 campaigns for a seat in the Senate.<sup>(8)</sup> The report stated:

From the circumstances of all the fund-raising events, including the exclusive control of the funds by members of Senator Dodd's staff, the extensive participation by members of Senator Dodd's staff, the close political relationship between Senator Dodd and the sponsors of the fund-raising events, the preoccupation of the organizers with Senator Dodd's apparently political indebtedness, and the partisan political nature of the printed programs, Senator Dodd's knowledge of the political character of these events must be presumed.<sup>(9)</sup>

In addition to the \$203,983, Senator Dodd and the political committees supporting his re-election to the Senate in 1964 received campaign contributions of at least \$246,290. The expenditure of these funds was summarized by the committee, as follows:<sup>(10)</sup>

From the proceeds of the seven fund-raising events from 1961 through 1965

- 8. *Id.* at p. 24
- 9. *Id.* at p. 24.
- 10. *Id.* at p. 25.

and the contributions to the 1964 political campaign, Senator Dodd or his representatives received funds totaling at least \$450,273. From these funds, Senator Dodd authorized the payment of at least \$116,083 for his personal purposes. The payments included Federal income tax, improvements to his Connecticut home, club expenses, transfers to a member of his family, and certain other transportation, hotel, restaurant and other expenses incurred by Senator Dodd outside of Connecticut or by members of his family or his representatives outside of the political campaign period. Senator Dodd further authorized the payment of an additional amount of at least \$45,233 from these proceeds for purposes which are neither clearly personal nor political. These payments were for repayment of his loans in the sum of \$41,500 classified by Senator Dodd as "political-personal" and \$3,733 for bills for food and beverages.

In addition, after the 1964 campaign, Senator Dodd received a campaign contribution of \$8,000 from the International Latex Corp., and, for a period of 21 months, he accepted as gifts the loans of three automobiles in succession from a constituent and used them for personal transportation.<sup>(11)</sup>

- 11. On seven trips from 1961 through 1965, Senator Dodd requested and accepted reimbursement from both the Senate and private organizations for the same travel. *Id.* at p. 25. This was a charge which the committee included in its censure resolution,

The committee found Senator Dodd's conduct censurable, as follows:<sup>(12)</sup>

Senator Dodd exercised the influence and power of his office as a United States Senator to directly or indirectly obtain funds from the public through testimonials which were political in character, over a period of five years from 1961 to 1965. The notices of these fund-raising events received by the public either stated that the funds were for campaign expenses or deficits or failed to state for what purposes the funds were to be used. Not one solicitation letter, invitation, ticket, program, or other written communication informed the public that the funds were to be used for personal purposes. Senator Dodd used part of the proceeds from these political testimonials and part of the contributions from his political campaign of 1964 for his personal benefit. These acts, together with his requesting and accepting reimbursements from 1961 through 1965 for expenses from both the Senate and private organizations for the same travel, comprise a course of conduct which deserves the censure of the Senate, is contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute

The committee reported a resolution of censure, as follows:

but which was deleted by an amendment offered by Senator Allen J. Ellender (La.). See 113 CONG. REC. 17020, 90th Cong. 1st Sess., June 23, 1967.

12. S. REPT. NO. 90-193, p. 25.

*Resolved*, That it is the judgment of the Senate that the Senator from Connecticut, Thomas J. Dodd, for having engaged in a course of conduct over a period of five years from 1961 to 1965 of exercising the influence and power of his office as a United States Senator, as shown by the conclusions in the investigation by the Select Committee on Standards and Conduct

(a) to obtain and use for his personal benefit, funds from the public through political testimonials and a political campaign, and

(b) to request and accept reimbursements for expenses from both the Senate and private organizations for the same travel<sup>(13)</sup> deserved the censure of the Senate; and he is so censured for his conduct, which is contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute.<sup>(14)</sup>

Debate on the resolution<sup>(15)</sup> began on June 13, 1967.<sup>(16)</sup> Senator John Stennis, of Mississippi, chairman of the committee, stated to the Senate that the censure resolution was not bottomed upon any one specific action or violation, nor on one expenditure or a few expenditures and not on one matter which could have been an error. He said:

. . . It is based on the fact that the practice happened over and over and

13. See footnote 11, *supra*.

14. S. Res. 112, 90th Cong. 1st Sess.

15. The resolution, S. Res. 112, was introduced Apr. 27, 1967; see 113 CONG. REC. 10977.

16. 113 CONG. REC. 15663, 90th Cong. 1st Sess.

over again, so much so, and over a long period of time, as to become a pattern of operation.

The words used in the charge itself are “course of conduct.” It amounted to a course of conduct that was wrong on its face, and therefore brought the Senate into disrepute.<sup>(17)</sup>

On June 22, Senator John Tower, of Texas, offered an amendment to delete “censure” and substitute therefor “reprimand.” He declared that:<sup>(18)</sup>

This proposal would give us the opportunity to express our displeasure, our disapproval, and our disassociation, but at the same time avoid the severity of censure . . . inasmuch as there is no precedent for censure on the basis of means of raising funds for private political use, in the absence of an existing rule or code on the subject.

The amendment was defeated, 9 to 87.<sup>(19)</sup>

After debate, which continued until June 23, 1967, the Senate adopted the resolution, by a vote of yeas 92, nays 5, after first striking the second charge relating to double-billing for several trips.<sup>(20)</sup>

## § 17. Imposition of Fine

A fine may be levied by the House against a Member pursu-

17. *Id.* at p. 15664.

18. *Id.* at p. 16979.

19. *Id.* at p. 16986.

20. *Id.* at p. 17020.

ant to its constitutional authority to punish its Members (Art. I, § 5, clause 2).<sup>(1)</sup>

### *Fine of Member For Acts Committed in Prior Congress*

**§ 17.1 The House agreed to a resolution providing for the imposition of a fine against a Member-elect charged with misuse of appropriated funds in a prior Congress.**

In 1967, the recommendation of a House committee that Member-elect Adam Clayton Powell, of New York, be fined was considered and rejected in favor of a resolution that he be excluded.<sup>(2)</sup> Two

1. See H. REPT. NO. 90-27, 90th Cong. 1st Sess. (1967), “In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1,” pp. 28, 29.

See also, 2 Hinds’ Precedents 1665, p. 1142, for the Senate censure case of McLaurin and Tillman, both Senators from South Carolina, 57th Cong.; see also remarks of Senator Mills (Tex.) in debate on charges against Senator Roach (N.D.), 25 CONG. REC. 162, 53d Cong. 1st Sess., Apr. 15, 1893.

2. See H. REPT. NO. 90-27, 90th Cong. 1st Sess. (1967), “In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1,” p. 33. The committee recommended that “(3) Adam Clayton Powell, as pun-

years later, however, on Jan. 3, 1969,<sup>(3)</sup> the House agreed to a resolution which included a provision

ishment (for improper expenditure of House funds for private purposes, and for maintaining a person on his clerk-hire payroll who performed no official duties whatever or did not perform them in Washington, D.C., or in the Member's district), pay the Clerk of the House, to be disposed of by him according to law, \$40,000; that the Sergeant at Arms of the House be directed to deduct \$1,000 per month from the salary otherwise due Mr. Powell and pay the same to the Clerk, said deductions to continue until said sum of \$40,000 is fully paid; and that said sums received by the Clerk shall offset any civil liability of Mr. Powell to the United States of America with respect to the matters referred to in paragraphs second and third above (matter in parentheses)."

See also H. Res. 278, 90th Cong. 1st Sess. The motion for the previous question on this resolution containing the select committee recommendation was defeated (113 CONG. REC. 5020, Mar. 1, 1967), and a substitute amendment excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038, Mar. 1, 1967). See also § 14.1, *supra*.

3. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2]. After having been excluded from the 90th Congress (see 14, *supra*), Mr. Powell won re-election to the 91st Congress, but was required to pay a fine for improper expenditures made prior to the 90th Congress.

for a fine of \$25,000 to be deducted on a monthly basis from Mr. Powell's salary.

## § 18. Deprivation of Seniority Status

Under the U.S. Constitution, the House is authorized to deprive a Member of his seniority status as a form of disciplinary action.<sup>(4)</sup>

### *Procedure*

**§ 18.1 A Member may be reduced in committee seniority as a result of party discipline enforced through the machinery of his party—the caucus and the Committee on Committees.**

*Parliamentarian's Note:* In 1965, two Democratic Members who had refused to support the Presidential candidate of their party were reduced in committee seniority as the result of party discipline enforced through the machinery of the party—the caucus and the Committee on Committees.<sup>(5)</sup>

4. See § 18.2, *infra*.

5. One Member (Albert Watson [S.C.]) resigned from the House, 111 CONG. REC. 805, 806, 89th Cong. 1st Sess., Jan. 15, 1965, and was then re-elect-

As a matter of party disciplinary policy, the Democratic Caucus instructed the Committee on Committees to assign the “last position” on a committee to a particular Member. But other Members subsequently elected to the same committee were junior to him in committee seniority.<sup>(6)</sup>

In 1967, the Democratic Committee on Committees reported to the House a resolution leaving vacancies on certain standing committees pending further consideration by the caucus of committee assignments and seniority thereon of a Member who had, in the preceding Congress, been stripped of his committee seniority (at the direction of the caucus) and assigned to the last position on the committees, and who had asked that he not be assigned to any committee pending a final determination by the caucus.<sup>(7)</sup>

ed as a member of the other political party in a special election called to fill the vacancy. The other (John B. Williams [Miss.]) was voted to the bottom of two committees, 111 CONG. REC. 809, 89th Cong. 1st Sess., Jan. 15, 1965.

6. See 112 CONG. REC. 27486, 89th Cong. 2d Sess., Oct. 18, 1966, wherein committee member John Bell Williams (Miss.) was advised that a newly elected Member would rank below Mr. Williams in seniority.
7. 113 CONG. REC. 1086, 90th Cong. 1st Sess., Jan. 23, 1967, relating to the

***Deprivation of Seniority Status For Acts Committed in Prior Congress***

**§ 18.2 Deprivation of seniority status is a form of disciplinary action that may be invoked by the House against a Member, pursuant to a committee’s recommendation, under article I, section 5, clause 2 of the U.S. Constitution, for acts committed in a prior Congress.**

In the 90th Congress, a committee of the House recommended that a Member-elect, Adam Clayton Powell, of New York, be deprived of his seniority status and subjected to certain other penalties for his conduct in a prior Congress.<sup>(8)</sup>

assignment of committee positions of John Bell Williams (Miss.).

8. See H. REPT. NO. 90-27, 90th Cong. 1st Sess. (1967), “In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1,” p. 33; see also H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967. The motion for the previous question on this resolution containing the select committee recommendation was defeated (113 CONG. REC. 5020, Mar. 1, 1967), and a substitute amendment excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038, Mar. 1, 1967). See § 14.1, *supra*.

The recommendation of the select committee was characterized by a

In the 91st Congress, the House agreed to a resolution which, among other things, reduced the seniority of Mr. Powell to that of first-term Congressman (thus eliminating consideration of any

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Member: "Never before has any Member of the Congress been stripped of his seniority in the course of (punishment) proceedings." 113 CONG. REC. 5006, Mar. 1, 1967, remarks by Representative John Conyers, Jr. (Mich.).

prior service in the computation of seniority).<sup>(9)</sup>

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9. 9. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2]. r. Powell had been excluded by the House in the 90th Congress, but had been reelected to the 91st Congress. The resolution [H. Res. 2] also provided for a fine of \$25,000 against Mr. Powell to be deducted on a monthly basis from his salary, and specified that Mr. Powell had to take the oath before Jan. 15, 1969, or his seat would be declared vacant.

## APPENDIX

### *Opinions of the Committee on Standards of Official Conduct*

	<i>Advisory Opinion No.</i>
Subject:	
Communications with Federal agencies .....	1
Clerk-hire allowance .....	2
Travel at expense of foreign governments .....	3
Acceptance of nonpaid transportation .....	4

#### **ADVISORY OPINION NO. 1**

**(Issued January 26, 1970)**

##### ON THE ROLE OF A MEMBER OF THE HOUSE OF REPRESENTATIVES IN COM- MUNICATING WITH EXECUTIVE AND INDEPENDENT FEDERAL AGENCIES

*Reason for Issuance.*—A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

*Background.*—The first Article in our Bill of Rights provides that “Congress shall make no law . . . abridging the . . . right of the people . . . to petition the Government for a redress of grievances.” The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of

citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result, the individual turns increasingly to his most proximate connection with his Government, his Representative in the Congress, as evidenced by the fact that congressional offices devote more time to constituent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letters or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the legislation and

provide a valuable oversight disclosure to the Congress.

Further, because of the complexity of our vast Federal structure, often a citizen simply does not know the appropriate office to petition.

For these, or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem.

*Representations.*—This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

- request information or a status report;
- urge prompt consideration;
- arrange for interviews or appointments;
- express judgment;
- call for reconsideration of an administrative response which he believes is not supported by established law, Federal regulation or legislative intent;
- perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

*Principles To Be Observed.*—The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence

irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

*Clear Limitations.*—Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another

- (1) at a time when he is a Member of Congress . . . ; or

- (2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . .

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than \$10,000 or imprisoned for not more than two years or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to *any compensation, directly or indirectly, for services by himself or another*. In this connec-

tion, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

### ADVISORY OPINION NO. 2

(Issued July 11, 1973)

ON THE SUBJECT OF A MEMBER'S CLERK HIRE

*Reason for issuance.*—A number of requests have come to the Committee for advice on specific situations which, to some degree, involve consideration of whether moneys appropriated for Members' clerk hire are being properly utilized.

A summary of the responses to these requests forms the basis for this Advisory Opinion which, it is hoped, will provide some guidelines and assistance to all Members.

*Background.*—The Committee requested the Congressional Research Service to examine in depth the full scope of the laws and the legislative history surrounding Members' clerk hire. The search produced little in the way of specific parameters in either case law or congressional intent, concluding that ". . . no definitive definition was found . . .". It is out of this absence of other guidance the Committee feels constrained to express its views.

Clerk hire allowance for Representatives was initiated in 1893 (27 Stat. 757). The law providing it spoke of providing

clerical assistance to a Representative "in the discharge of his official and representative duties . . .". The same phraseology is used today in each Legislative Appropriations bill and by the Clerk of the House in his testimony before the Subcommittee on Legislative Appropriations. An exact definition of "official and representative duties" was not found in the extensive materials researched. Remarks concerning various bills, however, usually refer to "clerical service" or terms of similar import, thus implying a consistent perception of the term as payment for personal services.

*Summary Opinion.*—This Committee is of the opinion that the funds appropriated for Members' clerk hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the clerk's own personal use.

The opinion clearly would prohibit any Member from retaining any person from his clerk hire allowance under either an express or tacit agreement that the sal-

ary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other non-representational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House, it should be noted that, due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual workweek—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

### ADVISORY OPINION NO. 3

(Issued June 26, 1974)

ON THE SUBJECT OF FOREIGN TRAVEL BY  
MEMBERS AND EMPLOYEES OF THE  
HOUSE OF REPRESENTATIVES AT THE  
EXPENSE OF FOREIGN GOVERNMENTS

*Reason for Issuance.*—The Committee has received a number of requests from Members and employees of the House for guidance and advice regarding accept-

ance of trips to foreign countries, the expenses of which are borne by the host country or some agent or instrumentality of it.

The Committee is advised that similar inquiries recently have been put to the Department of State with respect to other Federal employees.

In order to provide widest possible dissemination to views expressed in response to the requests, and to coordinate with statements likely to be forthcoming from other areas of the Federal government in this regard, this general advisory opinion is respectfully offered.

*Background.*—The United States Constitution, at Article I, Section 9, Clause 8, holds that:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

This provision, described as stemming from a "just jealousy of foreign influence of every sort," is extremely broad as to whom it covers, as well as to the "presents" or "emoluments" it prohibits—speaking of the latter as *of any kind whatever*. (emphasis provided)

It is narrow only in the sense that the framers, aware that social or diplomatic protocols could compel some less than absolute observance of a prohibition on the receipt or exchange of gifts, provided for specific exceptions with "the consent of the Congress."

Congress dealt from time to time with these exceptions through public and private bills addressed to specific situations, and dealt generally, commencing in 1881,

with the overall question of management of foreign gifts.

In 1966 Congress passed the latest and the existing Public Law 89-673, "an Act to grant the consent of Congress to the acceptance of certain gifts and decorations from foreign governments." That law is presently codified at Title 5, United States Code, Section 7342, a copy of which is attached.

The law is quite explicit in virtually all particulars, save whether the expense of a trip paid for by a foreign government is a ". . . present or thing, other than a decoration, tendered by or received from a foreign government; . . ."

It is on this point that this Opinion lies.

*Basis of Authority for Opinion.*—Since this matter impinges equally on all Federal employees, the Committee sought advice from the Comptroller General as legal adviser to the Congress, and from the Secretary of State as the implementing authority over 5 U.S.C. 7342.

Copies of their official responses are attached to this Opinion.

*Summary Opinion.*—It is the opinion of this Committee, on its own initiative and with the advice of the Comptroller General and the Assistant Secretary of State, that acceptance of travel or living expenses in specie or in kind by a Member or employee of the House of Representatives from any foreign government, official agent or representative thereof is not consented to in 5 U.S.C. 7342, and is, therefore, prohibited. This prohibition applies also to the family and household of Members and employees of the House of Representatives.

**§ 7342. Receipt and disposition of foreign gifts and decorations**

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia;

(C) a member of a uniformed service;

(D) the President;

(E) a Member of Congress as defined by section 2106 of this title; and

(F) a member of the family and household of an individual described in subparagraphs (A)–(E) of this paragraph;

(2) "foreign government" means a foreign government and an official agent, or representative thereof;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government; and

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) Congress consents to—

(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. However, a gift of more than minimal value is deemed to have been accepted on

behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(d) Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(e) The President may prescribe regulations to carry out the purpose of this section. Added Pub. L. 90-83 §1(45)(C), Sept. 11, 1967, 81 Stat. 208.

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DEPARTMENT OF STATE,  
*Washington, D.C., May 9, 1974.*

Hon. MELVIN PRICE,  
Chairman, Committee on Standards of  
Official Conduct, House of Representa-  
tives.

DEAR MR. CHAIRMAN: I am replying to your letter of April 17 to Mr. Hampton Davis, of the Office of the Chief of Protocol, requesting comment on Congressman Kemp's suggestion that your Committee issue a briefing paper on the propriety of acceptance by Congressional Members and staff of trips offered them at the expense of foreign governments.

Various Federal agencies have put similar questions to the Department of

State on a number of occasions in behalf of their employees who have received but not yet acted on offers of such trips. It has been the Department's consistent position that the offer of an expenses-paid trip is an offer of a gift and that, therefore, if tendered by a foreign government or any representative thereof to a Federal employee, the Foreign Gifts and Decorations Act of 1966 would require its refusal. A trip cannot qualify under the special provision permitting acceptance of a gift of more than minimal value on the ground that to refuse it would appear likely to "cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States". This follows from the requirement that the donee, being deemed to have accepted such a gift on behalf of the United States, deposit it for use and disposal as property of the United States in accordance with the implementing regulations, since the recipient of a trip could not fulfill that requirement.

Precisely because of the impossibility of surrendering the gift of a trip once it has been accepted and taken, we believe it would be highly advisable for your Committee to issue the briefing paper on the subject which Congressman Kemp has suggested. In this connection the Committee may be interested to know that the Department is planning a new informational program designed to improve understanding and compliance with the Foreign Gifts and Decorations Act and the implementing regulations. The program will be aimed not only at those within the Federal establishment who might become donees or who may have responsibility for briefing potential donees, but also at the foreign governments that appear to be less than fully aware of the stringent legal restrictions

that we operate under in this area. We shall be happy to see that the Committee is included in the distribution of the material being developed.

I hope that we have been helpful in this matter and that you will feel free to call upon us at any time you think we can be of assistance.

Sincerely yours,

LINWOOD HOLTON,  
*Assistant Secretary for  
Congressional Relations.*

COMPTROLLER GENERAL  
OF THE UNITED STATES,  
*Washington, D.C., May 9, 1974.*

B-180472.

Hon. MELVIN PRICE,  
*Chairman, Committee on Standards of  
Official Conduct, House of Representa-  
tives.*

DEAR MR. CHAIRMAN: Your letter of April 17, 1974, with attachments, requests our comments on the advisability of issuing a briefing paper on the legal ramifications of the acceptance by Members of Congress, or staff, of trips abroad that are paid for by foreign governments.

We are not aware of any decision by any forum as to the legality of such trips. The question arises because of the prohibition contained in article I, section 9, clause 8, of the United States Constitution, which reads as follows:

"No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title of any kind whatever, from any King, Prince, or foreign State."

In connection with this provision, we have viewed the term "present" as "syn-

onymous with the term 'gift,' denoting "something voluntarily given, free from legal compulsion or obligation." 34 Comp. Gen. 331, 334 (1955); 37 Comp. Gen. 138, 140 (1957). "Emolument" has been defined as profit, gain, or compensation received for services rendered. 49 Comp. Gen. 819, 820 (1970); B-180472, March 4, 1974. Accordingly, and in view of the emphatic language of the Constitution (i.e., present or emolument "of any kind whatever"), we see no basis whereby trips paid for by foreign governments may be accepted by Members of Congress or members of their staffs without the consent of the Congress. If payment of the cost of a trip in a particular case be considered as an emolument for services to be rendered acceptance thereof would be categorically prohibited by the above-cited constitutional provision unless consented to by the Congress.

If on the other hand the payment of travel costs in a particular circumstance constitutes a gift, by enactment of section 7342 of title 5, United States Code, entitled "Receipt and disposition of foreign gifts and decorations," the Congress has given its consent to (quoting the Code provision in part)—

"(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

"(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.

"However, a gift of more than minimal value is deemed to have been accepted on behalf of the United States and shall be deposited by the donee for

use and disposal as the property of the United States under regulations prescribed under this section.”

The term “employee” is defined in section 7342 as including members of Congress.

By Executive Order 11320, the President delegated to the Secretary of State the authority to issue regulations implementing this statute. These regulations are contained in part 3 of title 22, Code of Federal Regulations (CFR). A “gift of minimal value” is defined as “any present or other thing, other than a decoration, which has a retail value not in excess of \$50 in the United States.” 22 CFR § 3.3(e). The statute and regulations do not specifically cover trips, and the legislative history of the Foreign Gifts and Decorations Act of 1966, of which section 7342 is a part, indicates that the statute contemplated gifts of tangible items. In any event, the intent seems clear that, although a gift of more than minimal value may be “accepted” in the limited situations indicated, the value of such gift is not to inure to the benefit of the individual recipient. Accordingly, it is our view that section 7342 would not permit the acceptance of gifts of trips abroad by Members of Congress or members of their staffs that are paid for by foreign governments.

We see no objection to the issuance of a briefing paper, setting forth the above views of our Office, in order to provide guidance to Members of the Congress regarding this matter.

Sincerely yours,  
R. F. KELLER,  
*Acting Comptroller General  
of the United States.*

**ADVISORY OPINION NO. 4**  
**(Issued May 14, 1975)**

ON THE PROPRIETY OF ACCEPTING CERTAIN NON-PAID TRANSPORTATION

*Reason for Issuance.*—The Committee has been requested in writing to express an opinion on the propriety of Members and staff of the U.S. House of Representatives accepting non-paid transportation provided under a number of circumstances. In order that all may be on notice, the response to that request is made in this Committee Advisory Opinion.

*Background.*—It is necessary and desirable that Members and employees of the U.S. House of Representatives, being public officials, maintain maximum contact with the public at large to provide information on the work of the House and to gain citizen input into the legislative process. To accomplish this, considerable travel is required. Under some circumstances, such travel may be appropriately provided by other than commercial means. Conversely, in some circumstances non-paid transportation offers should be declined. It is the intent of this Advisory Opinion to address both situations.

The distinction turns on the *purpose* of the transportation. At times, it will be clear that there is a single identifiable purpose. At other times there may be more than one purpose involved. The Committee stresses that the opinions hereafter stated deal with the *principal* purpose for taking the trip, such purpose to be fairly determined by the person involved, before acceptance of any nonpaid transportation.

*Non-Paid Transportation Offers To Be Declined.*—If the principal purpose of the trip is political campaign activity, and the host carrier is one who would be prohibited by law from making a campaign contribution, such non-paid transportation would amount to a political contribution in kind, and should not be accepted.

If the trip is principally for noncampaign purposes, and the person involved were to request the host carrier to schedule transportation expressly for the convenience of the congressional passenger, such request could be interpreted as abuse of one's public position and should be avoided.

*Non-Paid Transportation Offers Which may be Accepted.*—If the purpose of the trip is principally representational or even personal, and if the host carrier's purpose in scheduling the transportation is solely for the general benefit of the host, and the transportation is furnished on a space-available basis with no additional costs incurred in providing the accommodation, it would not be improper to accept such transportation.

If the purpose of the transportation is to enable the congressional passenger, in his role as a public official, to be present at an event for the general benefit of an audience, the accommodation should be

construed as accruing to the benefit of the audience—not the passenger—and it would not be improper to accept such transportation.

The above principle can be similarly applied to situations in which a congressional passenger is transported in connection with the receipt of an honorarium. Under such circumstances, the transportation may be accepted in lieu of monetary reimbursement for travel to which the passenger would otherwise be entitled.

Congressional officials, like other public officials and private persons, are on occasion invited as guests on scheduled airlines' inaugural flights. Specific authority to provide such non-paid transportation is contained in 14 CFR 223.8 and 399.34. Assuming that the conditions of these sections are strictly met, the Committee finds that there would be nothing improper in the acceptance of such inaugural flights.

## CHAPTER 13

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Commentary and editing by Thomas J. Nicola, J.D.

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Germany and foreign nations, proclamation regarding war between, §12.4  
Germany and Italy, request for declaration of war on, §11.2  
Germany, declaration of war on, by House, §6.2  
Germany, declaration of war on by Senate, §7.2  
Hungary, Bulgaria, and Rumania, request for declaration of war on, §11.3  
Hungary, declaration of war on, by House, §6.5

**War—Cont.**

- Hungary, declaration of war on, by Senate, §7.5
- Italy and Germany, request for declaration of war on, §11.2
- Italy, declaration of war on, by House, §6.3
- Italy, declaration of war on, by Senate, §7.3
- Japan, declaration of war on, by House, §6.1
- Japan, declaration of war on, by Senate, §7.1
- Japan, request for declaration of war on, §11.1
- Rumania, Bulgaria, and Hungary, request for declaration of war on, §11.3

**War—Cont.**

- Rumania, declaration of war on, by House, §6.6
- Rumania, declaration of war on, by Senate, §7.6

**War Powers Resolution**

- passage of, §4.2
- veto of, §4.1

**Western Hemisphere, inducted land forces limited to, §9.5**

**Western Hemisphere, reserve forces limited to, §9.4**

**Withdrawal of Internal Revenue Code amendments by Senate, §19.6**

# ***Powers and Prerogatives of the House***

## **A. GENERALLY**

### **§ 1. Scope**

This chapter does not exhaustively treat the powers of Congress enumerated in the Constitution. It is intended, rather, as a discussion of selected areas, including some in which issues have arisen, or may arise, as to the relative scope of authority of Congress and other branches of government.<sup>(1)</sup>

### **§ 2. Admitting States to the Union**

Article IV, section 3, clause 1, empowers Congress to admit new states to the Union. No new state may be formed within the jurisdiction of any other state or by the junction of two or more states, or parts of states, without the consent of the legislatures of the two

1. See Ch. 11, *supra*, for a discussion of the related subject, privilege of the House, and Ch. 24, *infra*, for a discussion of congressional vetoes.

See also 2 Hinds' Precedents §§1480–1561; and 6 Cannon's Precedents §§314–329, for treatment of precedents arising prior to 1936.

states concerned as well as the Congress.<sup>(2)</sup>

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### ***Alaska***

#### **§ 2.1 The House and Senate agreed to a bill admitting Alaska into the Union.**

The House on May 28, 1958,<sup>(3)</sup> and the Senate on June 30, 1958,<sup>(4)</sup> agreed to H.R. 7999, admitting Alaska into the Union. The measure was approved on July 7, 1958.<sup>(5)</sup>

### ***Hawaii***

#### **§ 2.2 The Senate and House agreed to a bill admitting Hawaii into the Union.**

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2. See *House Rules and Manual* §216 (1973); and *Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 9282, 92d Cong. 2d Sess., pp. 842–845 (1973) for discussion of this provision.

3. 104 CONG. REC. 9756, 9757, 85th Cong. 2d Sess.

4. *Id.* at p. 12650.

5. 572 Stat. 339 (Pub. L. No. 85–508).

The Senate on Mar. 11, 1959,<sup>6</sup> and the House on Mar. 12, 1959,<sup>7</sup> agreed to S. 50 admitting Hawaii into the Union. The House agreed

to S. 50 in lieu of H.R. 4221.<sup>8</sup> S. 50 was approved on Mar. 18, 1959.<sup>9</sup>

## B. WAR POWERS

### § 3. In General

Article I, section 8, clauses 11–14 of the Constitution describe the fundamental war powers of Congress, including:

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;<sup>(10)</sup>

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces. . . .

Like all powers of Congress, the war power must also be understood in light of the general grant of legislative authority of article I, section 8, clause 18:

The Congress shall have Power . . .  
To make all Laws which shall be nec-

essary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

A more general grant of authority appears in article I, section 8, clause 1, “Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .”

In addition to these powers, article I, section 8, clauses 15 and 16 grant Congress power over the militia, including:

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United

the unanimous-consent agreement to consider S. 50 in lieu of H.R. 4221.

6. 105 CONG. REC. 3890, 86th Cong. 1st Sess.

7. *Id.* at pp. 4038, 4039.

8. See 105 CONG. REC. 4005, 86th Cong. 1st Sess., Mar. 12, 1959, for

9. 73 Stat. 4 (Pub. L. No. 86–3).

10. See §5, *infra*, for a discussion of authority to declare war.

States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress. . . .

Closely related to authority to protect the states is article IV, section 4, which imposes duties on the United States without specifying a particular political department:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

Significant among constitutional grants of authority are provisions relating to raising and supporting an army and providing and maintaining a navy. Pursuant to this authority Congress prohibited use of conscripts and reserves beyond the Western Hemisphere prior to World War II<sup>(11)</sup> and prohibited expenditure or obligation of funds for military purposes in certain countries of Indochina during the conflict in Vietnam.<sup>(12)</sup>

Article II, section 2, clause 1 provides that, “The President shall be Commander in Chief of

- 11. See §§9.4, 9.5, *infra*, for illustrations of these restrictions.
- 12. See the precedents in §10, *infra*, for these restrictions.

the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States. . . .”

The precedents in this division focus primarily on congressional authorization of and limitations on use of force by the Commander in Chief.<sup>(13)</sup>

Although the Supreme Court has declined to pass on the constitutionality of the “peacetime” draft, lower courts have uniformly held that the congressional power to raise armies is not limited by the absence of a declaration of war.<sup>(14)</sup> In upholding a statute prohibiting destruction of a selective service registrant’s registration certificate, Chief Justice Warren, speaking for the court majority, observed that, “. . . the power of Congress to classify and conscript manpower for military serv-

- 13. See §§5, 8, *infra*, for discussion of the authorization of use of force by declaration of war and by statute, respectively; and §§9, 10, *infra*, for precedents relating to restrictions on use of force.
- 14. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., p. 331 (1973). See, for example, *Hart v United States*, 382 F2d 1020 (3d Cir. 1967), cert. denied, 391 U.S. 956 (1968); and *United States v Holmes*, 387 F2d 781 (7th Cir. 1967), cert. denied, 391 U.S. 936 (1968).

ice is 'beyond question.'"<sup>(15)</sup> In a dissent, Justice Douglas denied that the question of peacetime conscription was settled.<sup>(16)</sup>

Wartime conscription does not deprive the states of the right to a well-regulated militia or violate the 13th amendment which prohibits involuntary servitude.<sup>(17)</sup> In making this determination, the Supreme Court rejected the contention that congressional power to exact compulsory service was limited to calling forth the militia for the three purposes specified in the Constitution,<sup>(18)</sup> despite the fact that none of these purposes explicitly comprehend service abroad.

The sections in this division focus on the role of Congress in

15. *United States v O'Brien*, 391 U.S. 367, 377 (1967). The internal quotation was taken from *Lichter v United States*, 334 U.S. 742, 756 (1948) which upheld the wartime renegotiation Act as a constitutional exercise of the authority of Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers."
16. *United States v O'Brien*, 391 U.S. 367, 389 (1967). See his dissent to the denial of certiorari in *Holmes v United States*, 391 U.S. 936 (1968).
17. Selective Draft Law Cases, 245 U.S. 381 (1918).
18. *Id.* These purposes are to execute the laws of the Union, suppress insurrections, and repel invasions. See U.S. Const. art. I, §8, clause 15.

committing troops to hostilities, and include discussion of institutional means to insure congressional judgment in such circumstances;<sup>(19)</sup> declarations of war;<sup>(20)</sup> authorization of use of force and activation of reserves by legislation short of declarations of war;<sup>(1)</sup> restrictions on use of force and deployment of troops before World War II<sup>(2)</sup> and during the Vietnam era;<sup>(3)</sup> receipt of Presidential messages;<sup>(4)</sup> and publication of Presidential proclamations.<sup>(5)</sup>

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19. § 4, *infra*.

20. §§ 5-7, *infra*.

1. § 8, *infra*.

2. § 9, *infra*.

3. § 10, *infra*.

4. § 11, *infra*.

5. § 12, *infra*.

6. The articles in this section relate to war powers generally. See collateral references in § 4, *infra*, War Powers Act, and § 10, *infra*, Vietnam Era Restrictions on Military Activity, for articles relating to these areas.

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### ***Termination of State of War With Germany***

#### **§ 3.1 The House and Senate agreed to a House joint reso- lution terminating the state of war between the United States and the government of Germany.**

On July 27, 1951,<sup>(7)</sup> the House by a vote of yeas 379, present 1, not voting 53, agreed to a House joint resolution, terminating the state of war between the United States and the Government of Germany. On Oct. 18, 1951,<sup>(8)</sup> the Senate by voice vote passed the measure<sup>(9)</sup> which was approved by the President in the following form:<sup>(10)</sup>

JOINT RESOLUTION 289

To terminate the state of war between  
the United States and the  
Government of Germany.

*Resolved by the Senate and House of  
Representatives of the United States of*

7. 97 CONG. REC. 9036, 9049, 9050, 82d Cong. 1st Sess.
8. 97 CONG. REC. 13438, 13443, 82d Cong. 1st Sess.
9. See 97 CONG. REC. 13785, 82d Cong. 1st Sess., Oct. 20, 1951, for notification to the Clerk of Presidential approval.
10. This excerpt is taken from 65 Stat. 451, 82d Cong. 1st Sess. (Pub. L. No. 82-181).

*America in Congress assembled*, That the state of war declared to exist between the United States and the Government of Germany by the joint resolution of Congress approved December 11, 1941, is hereby terminated and such termination shall take effect on the date of enactment of this resolution: *Provided, however*, That notwithstanding this resolution and any proclamation issued by the President pursuant thereto, any property or interest which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act, including accruals to or proceeds of any such property or interest, shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest.

Approved October 19, 1951.

#### ***Attorney General's Opinion Re- garding President's Authority to Exchange Ships for Bases***

**§ 3.2 The House received an opinion of the Attorney General outlining the President's authority to acquire offshore naval and air bases from Great Britain and transfer**

**American destroyers to Great Britain.**

On Sept. 3, 1940,<sup>(11)</sup> the House received an opinion from the Attorney General<sup>(12)</sup> as to the authority of the President to enter into agreements for the acquisition of offshore military bases (see below). The opinion accompanied the President's message regarding the agreements in question.<sup>(13)</sup>

AUGUST 27, 1940.

The PRESIDENT,  
*The White House.*

MY DEAR MR. PRESIDENT: In accordance with your request, I have considered your constitutional and statutory authority to proceed by Executive agreement with the British Government immediately to acquire for the United States certain offshore naval and air bases in the Atlantic Ocean without awaiting the inevitable delays which would accompany the conclusion of a formal treaty.

The essential characteristics of the proposal are:

(a) The United States to acquire rights for immediate establishment and use of naval and air bases in Newfoundland, Bermuda, the Bahamas, Jamaica, Santa Lucia, Trinidad, and

British Guiana, such rights to endure for a period of 99 years and to include adequate provisions for access to and defense of such bases and appropriate provisions for their control.

(b) In consideration it is proposed to transfer to Great Britain the title and possession of certain over-age ships and obsolescent military materials now the property of the United States and certain other small patrol boats which, though nearly completed, are already obsolescent.

(c) Upon such transfer all obligation of the United States is discharged. . . . [Our Government] undertakes no defense of the possessions of any country. In short, it acquires optional bases which may be developed as Congress appropriates funds therefor, but the United States does not assume any continuing or future obligation, commitment, or alliance.

The questions of constitutional and statutory authority, with which alone I am concerned, seem to be these:

First. May such an acquisition be concluded by the President under an Executive agreement, or must it be negotiated as a treaty, subject to ratification by the Senate?

Second. Does authority exist in the President to alienate the title to such ships and obsolescent materials; and if so, on what conditions?

Third. Do the statutes of the United States limit the right to deliver the so-called mosquito boats now under construction or the over-age destroyers by reason of the belligerent status of Great Britain? . . .

Accordingly you are respectfully advised:

(a) That the proposed arrangement may be concluded as an Executive

11. 86 CONG. REC. 11355-57, 76th Cong. 3d Sess.

12. See Borchard, *The Attorney General's Opinion on the Exchange of Destroyers for Naval Bases*, 34 *American Journal of International Law* 690 (1940).

13. See §11.7, *infra*, for the text of the President's message.

agreement, effective without awaiting ratification.

(b) That there is Presidential power to transfer title and possession of the proposed considerations upon certification by appropriate staff officers.

(c) That the dispatch of the so-called mosquito boats would constitute a violation of the statute law of the United States, but with that exception there is no legal obstacle to the consummation of the transaction, in accordance, of course, with the applicable provisions of the Neutrality Act as to delivery.

Respectfully submitted.

ROBERT H. JACKSON,  
*Attorney General.*

#### § 4. War Powers Act

To ensure proper legislative branch participation in decisions to deploy American forces, legislation on war powers was introduced in the 91st and 92d Congresses.<sup>(14)</sup>

In 1973 the House approved House Joint Resolution 542. The Senate struck all after the enacting clause and inserted in lieu thereof the language of S. 440. Following a conference, a compromise between the House and Senate versions was agreed to.<sup>(1)</sup>

14. See, for example, H.J. Res. 1355, 91st Cong. 2d Sess. (1970); S. 2956, 92d Cong. 1st Sess. (1971); H.J. Res. 1, 92d Cong. 1st Sess. (1971); S. 731, 92d Cong. 1st Sess. (1971).

1. See §4.2, *infra*, for the vote overriding the President's veto of the compromise, H.J. Res. 542.

The conferees resolved a major difference in the two measures which related to defining the authority of the Commander in Chief to deploy troops. S. 440, section 3, provided that in the absence of a congressional declaration of war armed forces could be introduced only in certain circumstances, including repulsion of an armed attack, protection of American citizens being evacuated in situations of danger abroad, and pursuant to specific statutory authorization. Sections of the Senate bill which related to reporting, period of commitment, termination dates, and congressional procedures were expressly tied to section 3. House Joint Resolution 542 did not contain a similar provision.

Section 2(c) in the "Purpose and Policy" provisions of the resolution agreed to by the conferees states:

The constitutional powers of the President as Commander in Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Unlike the Senate bill, no subsequent section of the resolution re-

fers to section 2(c), the description of war powers of the Commander in Chief. Much of the debate on the conference report focused on whether the President could introduce troops only in the situations described in section 2(c) and in no other situation<sup>(2)</sup> or whether that section merely stated his authority in a manner which did not limit his authority to deploy troops.<sup>(3)</sup> The most revealing expression of the intent of the conferees on this controversy appears in two sentences in the conference report:<sup>(4)</sup>

Section 2(c) is a statement of the authority of the Commander in Chief respecting the introduction of United States Armed Forces into hostilities. . . . Subsequent sections of the joint resolution are not dependent upon the language of this subsection, as was the

2. Section 2(a) of the act states that insuring the collective judgment of Congress and the President in the introduction of American forces into hostilities is a purpose of the act.
3. In his veto message the President, applying the restrictive interpretation of §2(c), stated that America's effective response in the Berlin crisis of 1961, Cuban missile crisis of 1962, Congo rescue operation of 1964, and the Jordanian crisis of 1970, would have been "vastly complicated or even made impossible." (See 119 CONG. REC. 34990, 34991, 93d Cong. 1st Sess., Oct. 25, 1973.)
4. H. REPT. No. 93-547, 2 U.S. Code legis. and Adm. News, p. 2364 (1973)

case with a similar provision of the Senate bill (section 3).

This statement supports an inference that section 2(c) does not exhaustively define all circumstances in which the President may deploy troops.

A nonrestrictive interpretation of the three situations described in section 2(c) avoids the question whether Congress may define the constitutional authority of the Commander in Chief by statute rather than constitutional amendment. The President in his veto message asserted that a constitutional amendment is the only way in which constitutional authorities of another branch of government may be altered. A statutory attempt to make such alterations is "clearly without force."<sup>(5)</sup> The congressional view on this matter is expressed in section 2(b) of the act. Citing and interpreting article I, section 8, clause 11, of the Constitution, section 2(b) states the constitutional provision:

. . . [P]rovided that the Congress shall have power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States or in any department or officer thereof.

Section 3 of the resolution imposes on the President a duty "in

5. See §4.1, *infra*, for the veto message.

every possible instance” to consult with Congress before introducing troops and to consult regularly after such introduction until armed forces are no longer engaged in hostilities or have been removed from such situations. The conferees explained that this provision is not a limitation upon or substitute for other provisions of the resolution. The conferees intended that consultations take place even when advance consultation is not possible.<sup>(6)</sup>

Section 4 provides that in the absence of a declaration of war, in any case in which United States Armed Forces are introduced in certain circumstances, the President must submit within 48 hours to the Speaker and President pro tempore specified information as well as any other information Congress requests. The President must continue to make reports periodically as long as troops are engaged in hostilities but not less often than once every six months. The objective of this section, explained the conferees, is to insure that Congress by right and as a matter of law will be provided with all the information it needs to carry out its responsibilities.

Section 5 relates to referral of the report to committee and ap-

6. See H. REPT. No. 93-547, 2 U.S. Code Legis. and Adm. News, p. 2364 (1973).

propriate action by the Congress, and requires the President to terminate use of armed forces within 60 days after submission of the report, unless Congress (1) has declared war or enacted specific authorization, (2) has by law extended the 60-day period, or (3) is physically unable to meet. The 60-day period may be extended not more than 30 days. Notwithstanding the 60-day provision, forces engaged in hostilities outside the United States, its possessions, and territories must be removed by the President if Congress so directs by concurrent resolution.<sup>(7)</sup>

Section 6 mandates that a joint resolution or bill declaring war or

7. *Id.* Statutes have been adopted which authorize the use of concurrent resolutions to achieve congressional purposes and which apply procedures patterned after the War Powers Act. Thus, the statute implementing the United States proposal for an early warning system in Sinai empowers Congress by concurrent resolution to remove U.S. civilian personnel from Sinai if it determines that their safety is jeopardized or that continuation of their role is no longer necessary. 22 USC §2441 note, Pub. L. No. 94-110, 89 Stat. 572, Oct. 13, 1975. The National Emergencies Act authorizes Congress by concurrent resolution to terminate a national emergency. 50 USC §1622, Pub. L. No. 94-412, 90 Stat. 1255, Sept. 14, 1976.

authorizing use of armed forces introduced at least 30 days prior to the 60-day period specified in section 5 be referred in the House to the Committee on Foreign Affairs (renamed the Committee on International Relations on Mar. 19, 1975). When reported by the committee, the measure becomes the pending business and is voted on within three calendar days thereafter unless otherwise determined by the yeas and nays. After passage in one House, the measure is to be referred to the counterpart committee of the other House and reported out not later than 14 calendar days before the expiration of the 60-day period and then voted on. In the case of disagreement between the two Houses, conferees are appointed, and the conference committee must report on the measure no later than four calendar days before the expiration of the 60-day period. If conferees cannot agree within 48 hours, they report back to their respective Houses in disagreement. Notwithstanding any rule concerning printing or delay of consideration of conference reports, the report must be acted on by both Houses not later than the expiration of the 60-day period.

Section 7 provides that a concurrent resolution introduced pursuant to section 5 directing the

President to remove forces engaged in hostilities be referred to the House Committee on Foreign Affairs or to the Senate Committee on Foreign Relations, as the case may be. Such committee must report with recommendations within 15 calendar days unless otherwise determined by the yeas and nays. Such resolution becomes the pending business of the House in question. After passage in one House, the resolution is to be referred to the counterpart committee in the other House, and is to be reported out with recommendations within 15 calendar days, at which time it becomes the pending business of that House. In the case of disagreement between the two Houses, conferees must be promptly appointed. The conference committee must report on the measure within six calendar days after referral to the committee of conference. Such report must be acted on by both Houses not later than six calendar days after the report is filed.

Section 8, relating to interpretation of the joint resolution, states that authority to introduce troops shall not be inferred from any provision of law unless such provision specifically authorizes introduction of forces, or from any treaty unless it is implemented by legislation specifically authorizing in-

roduction of forces. The joint resolution does not necessitate further specific statutory authorization to permit American participation in headquarters operations with armed forces of one or more foreign countries. The term "introduction of United States Armed Forces" is clarified. The joint resolution does not alter constitutional authority of the President or Congress. It does not grant any authority to the President which he would not have had in the absence of the joint resolution.

Sections 9 and 10 relate to separability of provisions and the effective date, respectively.

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8. See also the collateral references in §3, supra, and §10, infra, relating to war powers generally and Vietnam era restrictions on military activity.

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### *Veto of War Powers Resolution*

#### **§ 4.1 The War Powers Resolution was vetoed by the President.**

On Oct. 25, 1973,<sup>(9)</sup> the President's veto message outlining his

9. 119 CONG. REC. 34990, 34991, 93d Cong. 1st Sess.

### objections to the War Powers Resolution was laid before the House.

The Speaker<sup>(10)</sup> laid before the House the following veto message from the President of the United States:

*To the House of Representatives:*

I hereby return without my approval House Joint Resolution 542—the War Powers Resolution. While I am in accord with the desire of the Congress to assert its proper role in the conduct of our foreign affairs the restrictions which this resolution would impose upon the authority of the President are both unconstitutional and dangerous to the best interests of our Nation.

The proper roles of the Congress and the Executive in the conduct of foreign affairs have been debated since the founding of our country. Only recently, however, has there been a serious challenge to the wisdom of the Founding Fathers in choosing not to draw a precise and detailed line of demarcation between the foreign policy powers of the two branches.

The Founding Fathers understood the impossibility of foreseeing every contingency that might arise in this complex area. They acknowledged the need for flexibility in responding to changing circumstances. They recognized that foreign policy decisions must be made through close cooperation between the two branches and not through rigidly codified procedures. . . .

House Joint Resolution 542 would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. One of its provisions would automatically cut off certain authorities after sixty days unless the Congress extended them. An-

other would allow the Congress to eliminate certain authorities merely by the passage of a concurrent resolution—an action which does not normally have the force of law, since it denies the President his constitutional role in approving legislation.

I believe that both these provisions are unconstitutional. The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution—and any attempt to make such alterations by legislation alone is clearly without force.

While I firmly believe that a veto of House Joint Resolution 542 is warranted solely on constitutional grounds, I am also deeply disturbed by the practical consequences of this resolution. For it would seriously undermine this Nation's ability to act decisively and convincingly in times of international crisis. . . .

I am particularly disturbed by the fact that certain of the President's constitutional powers as Commander in Chief of the Armed Forces would terminate automatically under this resolution 60 days after they were invoked. No overt Congressional action would be required to cut off these powers—they would disappear automatically unless the Congress extended them. . . .

This Administration is dedicated to strengthening cooperation between the Congress and the President in the conduct of foreign affairs and to preserving the constitutional prerogatives of both branches of our Government. I know that the Congress shares that goal. A commission on the constitutional roles of the Congress and the President would provide a useful opportunity for both branches to work together toward that common objective.

RICHARD NIXON,  
THE WHITE HOUSE,  
*October 24, 1973.*

10. Carl Albert (Okla.).

***Passage of War Powers Resolution***

**§ 4.2 By a two-thirds vote in each body, the House and Senate overrode the President's veto of the War Powers Resolution.**

On Nov. 7, 1973, the House by a vote of yeas 284, nays 135, not voting 14,<sup>(11)</sup> and the Senate by a vote of yeas 75, nays 18,<sup>(12)</sup> two-thirds in each body voting in the

**11.** 119 CONG. REC. 36202, 36221, 36222, 93d Cong. 1st Sess. See also 119 CONG. REC. 24707, 24708, 93d Cong. 1st Sess., July 18, 1973, for initial House approval of this joint resolution (H. Rept. No. 93-287, 93d Cong. 1st Sess. [1973]); and 119 CONG. REC. 33858, 33873, 33874, 93d Cong. 1st Sess., Oct. 12, 1973, for consideration and approval of the conference report (H. Rept. No. 93-547) by a vote of yeas 238, nays 123, not voting 73.

**12.** 119 CONG. REC. 36175, 36197, 36198, 93d Cong. 1st Sess. See also 119 CONG. REC. 25120, 93d Cong. 1st Sess., July 20, 1973, for unanimous-consent agreement to strike from H.J. Res. 542 all after the resolving clause and substitute therefor the text of the Senate version of the War Powers Resolution, S. 440, which the Senate had just approved (p. 25119) by a vote of yeas 72, nays 18 (S. Rept. No. 220, 93d Cong. 1st Sess. [1973]); and 119 CONG. REC. 33569, 93d Cong. 1st Sess., Oct. 10, 1973, for Senate approval of the conference report by a vote of yeas 75, nays 20.

affirmative, agreed to override the President's veto of House Joint Resolution 542, the War Powers Resolution, which became law on Nov. 7, 1973, in the following form: <sup>(13)</sup>

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces

**13.** This excerpt is taken from 87 Stat. 555, 93d Cong. 1st Sess. (Pub. L. No. 93-148). It is codified at 50 USC §§ 1541 et seq.

into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

#### CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

#### REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President

pro tempore of the Senate a report in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

#### CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a) (1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has ad-

journed for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES  
FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall determine by yeas and otherwise nays.

(d) In the case of any disagreement between the two Houses of Congress

with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5 (b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES  
FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred

to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provi-

sion specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress

or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

#### SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application hereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

#### EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

## § 5. Declarations of War

Article I, section 8, clause 11 of the Constitution authorizes Congress to declare war. Granting Congress this authority and making the President the Commander in Chief of the Army and Navy represents a compromise between the views of delegates to the Constitutional Convention who wanted to grant Congress authority to "make" war and delegates who wanted to grant such authority to the President alone, the Senate

alone, or the President and Senate together.<sup>(14)</sup>

All declarations of war since 1936 have been made by adoption of joint resolutions approved by the President.<sup>(15)</sup> Either House may originate a joint resolution to declare war. In all cases during this period, the House suspended the rules and promptly agreed to these joint resolutions.

The provision of the House rules which requires that matters reported by committees not be considered in the House until the third calendar day on which the report has been available to Members does not apply to declarations of war.<sup>(16)</sup>

14. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., p. 325 (1973). Delegates Madison and Gerry, who introduced the amendment substituting "declare war" in place of "make war," which appeared in an early draft of the Constitution, noted that the change would, "leav[e] to the Executive the power to repel sudden attacks." 2 M. Farrand, *The Records of the Constitutional Convention of 1787* (New Haven: rev. ed. 1937) 318; and Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., n. 9, p. 326 (1973).

15. See 4 Hinds' Precedents §3368; and 7 Cannon's Precedents §1038 for earlier precedents relating to declarations of war on Spain and Germany, respectively.

16 Rule XI clause 27(d)(4)(A), *House Rules and Manual* §735(d)(4) (1973).

The House Committee on Foreign Affairs has jurisdiction over legislation declaring war.<sup>(17)</sup>

Despite the constitutional provision authorizing Congress to declare war, American forces have been committed to protracted land wars in Korea and Indochina in the absence of such declarations. After North Korea attacked South Korea in June of 1950, the President without consulting Congress ordered air and sea forces to respond. He committed ground troops when the United Nations Security Council requested assistance from United Nations members. Although the President never requested a declaration of war, he proclaimed the existence of a national emergency in December of 1950, six months after the outbreak of hostilities.<sup>(1)</sup> Congressional acquiescence in the American involvement in the Indochina war was originally found in the Gulf of Tonkin Resolution approved by the House and Senate in August of 1964.<sup>(2)</sup> Following express repeal of this resolution in January of 1971, Congress in most instances<sup>(3)</sup> approved au-

17. Rule XI clause 7(f), *House Rules and Manual* §689 (1973).

1. See §12.1, *infra*, for the text of this proclamation.

2. See §§8.1, 8.2, *infra*, for discussion of this resolution.

3. See the precedents in §10, *infra*, for restrictions on use of forces.

thorizations and appropriations to support troops in the field. The Second Circuit Court of Appeals, applying the test “whether there is any action by the Congress sufficient to authorize or ratify the military activity” in Vietnam in the absence of a declaration of war or express statutory sanction, held that congressional authorization could be implied from approval of legislation to furnish manpower and materials of war.<sup>(4)</sup> The court observed that: “. . . neither the language nor the purpose underlying that provision [the declaration clause] prohibits an inference of the fact of authorization from such legislative action as we have in this instance”<sup>(5)</sup>

4. *Orlando v Laird*, 443 F2d 1039 (1973), cert. denied, 404 U.S. 869. Accord, *Da Costa v Laird*, 448 F2d 1369 (2d Cir. 1971). Contra, *Mottola v Nixon*, 318 F Supp 538 (N.D. Calif. 1970), reversed for lack of standing, 464 F2d 26 (9th Cir. 1972). The Supreme Court summarily affirmed a decision of a three judge district court dismissing a challenge to the constitutionality of the war on political question grounds. *Attlee v Richardson*, 411 U.S. 911 (1973), aff'g., 347 F Supp 689 (D.D.Pa. 1972).

5. *Orlando v Laird*, supra, at p. 1043. Section 8 of the War Powers Resolution (see §4.1, supra, for the text) which states that authority to introduce armed forces cannot be inferred from any provision of law or treaty unless sanction is expressly stated

Congress on several occasions has empowered the President to introduce United States Armed Forces into hostilities by specific statutory authorization short of formal declaration of war.<sup>(6)</sup>

## § 6. House Action

### *On Japan*

**§ 6.1 The House by ye and nay vote suspended the rules and approved a House joint resolution formally declaring a state of war between the United States and the Imperial Government of Japan and then vacated the proceedings and tabled the House joint resolution after agreeing to an identical Senate joint resolution.**

On Dec. 8, 1941,<sup>(7)</sup> the House by a vote of yeas 388, nays 1, not voting 41, approved a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(8)</sup> and approve House Joint

was drafted as a direct result of *Orlando v Laird*. See S. REPT. No. 220, 93d Cong. 1st Sess., at 25 (1973).

6. See § 8, infra.

7. 87 CONG. REC. 9520, 9536, 9537, 77th Cong. 1st Sess.

8. Earlier that day the Speaker was authorized by unanimous consent to recognize Members for suspension of the rules. *Id.* at p. 9519.

**Resolution 254, formally declaring a state of war between the United States and the Imperial Government of Japan.<sup>(9)</sup>**

Mr. McCORMACK: Mr. Speaker, I move to suspend the rules and pass House Joint Resolution 254, which I send to the desk.

The SPEAKER:<sup>(10)</sup> The Clerk will read the joint resolution.

The Clerk read as follows:

Declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Imperial Government of Japan has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

The SPEAKER: Is a second demanded?

Miss [JEANNETTE] RANKIN of Montana: I object.

9. See §11.1, *infra*, for the text of the President's request for a declaration of war.

10. Sam Rayburn (Tex.).

The SPEAKER: This is no unanimous-consent request. No objection is in order.

Is a second demanded?

Mr. [JOSEPH W.] MARTIN of Massachusetts: Mr. Speaker, I demand a second.

The SPEAKER: Without objection, a second is considered as ordered.

There was no objection.

**After debate:**

Mr. McCORMACK: Mr. Speaker, I ask for a vote, and on that I demand the yeas and nays.

Miss RANKIN of Montana: Mr. Speaker—

The SPEAKER: The gentleman from Massachusetts demands the yeas and nays. Those who favor taking this vote by the yeas and nays will rise and remain standing until counted.

The yeas and nays were ordered.

Miss RANKIN of Montana: Mr. Speaker, I would like to be heard.

The SPEAKER: The yeas and nays have been ordered. The question is, Will the House suspend the rules and pass the resolution?

Miss RANKIN of Montana: Mr. Speaker, a point of order.

The SPEAKER: A roll call may not be interrupted.

The question was taken; and there were yeas 388, nays 1, not voting 41, as follows: . . .

So (two-thirds having voted in favor thereof) the rules were suspended, and the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

After receiving a message that the Senate had approved Senate

Joint Resolution 116, which was identical to House Joint Resolution 254, the House by unanimous consent passed the Senate measure and vacated the proceedings by which the House had approved the House measure, and tabled the House joint resolution.<sup>(11)</sup>

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Frazier, its legislative clerk, announced that the Senate had passed a joint resolution (S.J. Res. 116) declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same, in which the concurrence of the House is requested. . . .

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Joint Resolution 116, and agree to the same.

The Clerk read the Senate joint resolution, as follows:

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared . . .

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts [Mr. McCormack]?

11. 87 CONG. REC. 9537, 77th Cong. 1st Sess., Dec. 8, 1941. See §7.1, *infra*, for Senate proceedings on the Senate joint resolution.

Mr. MARTIN of Massachusetts: Mr. Speaker, reserving the right to object—and, of course, I am not going to object—this is the same declaration that we just passed?

The SPEAKER: The same.

Mr. McCORMACK: Yes.

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts [Mr. McCormack]?

There was no objection.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent that the proceedings by which the House passed House Joint Resolution 254 be vacated and that the resolution be laid on the table.

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts [Mr. McCormack]?

There was no objection.

### *On Germany*

**§ 6.2 The House by yeas and nays vote suspended the rules and approved a House joint resolution formally declaring a state of war between the United States and the Government of Germany and then by unanimous consent vacated the proceedings and tabled the House measure after agreeing to an identical Senate joint resolution.**

On Dec. 11, 1941,<sup>(12)</sup> the House by a vote of yeas 393, present 1, not voting 36, agreed to a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(13)</sup> and approve House Joint Resolution 256, formally declaring a state of war between the United States and the Government of Germany.<sup>(14)</sup>

Mr. McCORMACK: Mr. Speaker, I move to suspend the rules and pass House Joint Resolution 256, which I send to the desk and ask to have read.

The Clerk read as follows:

Whereas the Government of Germany has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved*, etc., That the state of war between the United States and the Government of Germany which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Germany; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

- 12. 87 CONG. REC. 9665, 9666, 77th Cong. 1st Sess.
- 13. Earlier that day the Speaker was authorized by unanimous consent to recognize Members for suspension of the rules. *Id.* at p. 9665.
- 14. See §11.2, *infra*, for the President's request for a declaration of war.

The SPEAKER:<sup>(15)</sup> The question is, Will the House suspend the rules and pass the joint resolution?

Mr. McCORMACK: Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered. The question was taken; and there were—yeas 393, answered “present” 1, not voting 36, as follows: . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

After receiving a message that the Senate had approved Senate Joint Resolution 119, which was identical to House Joint Resolution 256, the House by unanimous consent passed the Senate measure and vacated the proceedings by which the House had approved the House measure, and tabled the House joint resolution.<sup>(16)</sup>

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed joint resolutions of the following titles, in which the concurrence of the House is requested:

S.J. Res. 119. Joint resolution declaring that a state of war exists between the Government of Germany and the Government and the people of the United States and making provision to prosecute the same. . . .

- 15. Sam Rayburn (Tex.).
- 16. 87 CONG. REC. 9666, 77th Cong. 1st Sess., Dec. 11, 1941. See §7.2, *infra*, for Senate proceedings on the joint resolution.

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Joint Resolution 119, which is identical with the resolution just adopted by the House, and pass the Senate resolution.

The Clerk read the title of the resolution.

The SPEAKER: Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Senate joint resolution was read a third time, and passed.

A motion to reconsider was laid on the table.

Mr. McCORMACK: Mr. Speaker, I ask unanimous consent that the action just taken by the House in the passage of House Joint Resolution 256 be vacated and that the resolution be laid on the table.

The SPEAKER: Without objection, it is so ordered.

There was no objection.

### *On Italy*

#### **§ 6.3 After receiving a message that the Senate had passed the measure, the House by yea and nay vote suspended the rules and agreed to a Senate joint resolution declaring a state of war between the United States and the Government of Italy.**

On Dec. 11, 1941,<sup>(17)</sup> the House by a vote of yeas 399, present 1,

17. 87 CONG. REC. 9666, 9667 77th Cong. 1st Sess.

not voting 30, suspended the rules and passed Senate Joint Resolution 120, declaring a state of war between the United States and the Government of Italy, after receiving a message that the Senate had agreed to the measure.<sup>(18)</sup>

#### MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed joint resolutions of the following titles, in which the concurrence of the House is requested: . . .

S.J. Res. 120. Joint resolution declaring that a state of war exists between the Government of Italy and the Government and the people of the United States and making provision to prosecute the same. . . .

Mr. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, I move to suspend the rule and pass Senate Joint Resolution 120, which I have sent to the Clerk's desk.

The Clerk read as follows:

Whereas the Government of Italy has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Government of Italy, which has thus been thrust upon the United States, is hereby formally declared.

. . .

THE SPEAKER:<sup>(19)</sup> The question is, Will the House suspend the rules and pass the resolution?

18. See §11.2, *infra*, for the President's request for a declaration of war; and §7.3, *infra*, for Senate approval.

19. Sam Rayburn (Tex.).

MR. McCORMACK: Mr. Speaker, on this vote I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 399, answered “present” 1, not voting 30, as follows: . . .

So, two-thirds having voted in favor thereof, the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

### *On Bulgaria*

#### **§ 6.4 The House by yea and nay vote suspended the rules and unanimously approved a House resolution formally declaring a state of war between the United States and the Government of Bulgaria.**

On June 3, 1942,<sup>(20)</sup> the House by a vote of yeas 357, nays 0, not voting 73, agreed to a motion by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(1)</sup> and pass House Joint Resolution 319, declaring a formal state of war between the United States and Bulgaria.<sup>(2)</sup>

20. 88 CONG. REC. 4816, 4817, 77th Cong. 2d Sess.

1. The Speaker had been authorized by unanimous consent to recognize Members for suspension of the rules. 88 CONG. REC. 4799, 77th Cong. 2d Sess., June 2, 1942.
2. See §11.3, *infra*, for the President's request for a declaration of war; and §7.4, *infra*, for Senate approval of this measure.

MR. McCORMACK: Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 319) declaring that a state of war exists between the Government of Bulgaria and the Government and the people of the United States and making provisions to prosecute the same.

The Clerk read as follows:

Whereas the Government of Bulgaria has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Government of Bulgaria, which has thus been thrust upon the United States, is hereby formally declared. . . .

MR. McCORMACK: Mr. Speaker, on that motion I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER:<sup>(3)</sup> The question is, Will the House suspend the rules and pass the joint resolution.

The question was taken; and there were—yeas 357, nays 0, not voting 73, as follows: . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### *On Hungary*

#### **§ 6.5 The House by yea and nay vote suspended the rules and unanimously approved a**

3. Sam Rayburn (Tex.).

**House joint resolution formally declaring a state of war between the United States and the Government of Hungary.**

On June 3, 1942,<sup>(4)</sup> the House by a vote of yeas 360, nays 0, not voting 70, agreed to a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(5)</sup> and pass House Joint Resolution 320, declaring a formal state of war between the United States and the Government of Hungary.<sup>(6)</sup>

MR. McCORMACK: Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 320) declaring that a state of war exists between the Government of Hungary and the Government and the people of the United States and making provisions to prosecute the same.

The Clerk read as follows:

Whereas the Government of Hungary has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.* That the state of war between the United States and the

4. 88 CONG. REC. 4817, 4818, 77th Cong. 2d Sess.
5. The Speaker had been authorized by unanimous consent to recognize Members for suspension of the rules. See 88 CONG. REC. 4799, 77th Cong. 2d Sess., June 2, 1942.
6. See §11.3, *infra*, for the President's request for the declaration of war; and §7.5, *infra*, for Senate approval of this joint resolution.

Government of Hungary which has thus been thrust upon the United States is hereby formally declared.

. . .

MR. McCORMACK: Mr. Speaker, on that motion I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER:<sup>(7)</sup> The question is, Will the House suspend the rules and pass the joint resolution?

The question was taken; and there were—yeas 360, nays 0, not voting 70, as follows: . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

***On Rumania***

**§ 6.6 The House by yea and nay vote suspended the rules and unanimously agreed to a House joint resolution declaring a formal state of war between the United States and the Government of Rumania.**

On June 3, 1942,<sup>(8)</sup> the House by a vote of yeas 361, nays 0, not voting 69, agreed to a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules<sup>(9)</sup> and pass House

7. Sam Rayburn (Tex.).

8. 88 CONG. REC. 4818, 77th Cong. 2d Sess.

9. The Speaker had been authorized by unanimous consent to recognize

**Joint Resolution 321, declaring a formal state of war between the United States and the Government of Rumania.**<sup>(10)</sup>

MR. McCORMACK: Mr. Speaker, I move to suspend the rules and pass the joint resolution ( H.J. Res. 321) declaring that a state of war exists between the Government of Rumania and the Government and the people of the United States, and making provisions to prosecute the same.

The Clerk read as follows:

Whereas the Government of Rumania has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Government of Rumania which has thus been thrust upon the United States is hereby formally declared. . . .

MR. McCORMACK: Mr. Speaker, on that motion I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER:<sup>11</sup> The question is, Will the House suspend the rules and pass the joint resolution?

The question was taken; and there were—yeas 361, nays 0, not voting 69, as follows: . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

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Members for suspension of the rules. See 88 CONG. REC. 4799, 77th Cong. 2d Sess., June 2, 1942.

- 10. See §11.3, *infra*, for the President's request for a declaration of war, and §7.6, *infra*, for Senate approval of this measure.
- 11. Sam Rayburn ( Tex.).

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

**§ 7. Senate Action**

***On Japan***

**§ 7.1 The Senate by yeas and nays vote unanimously agreed to a Senate joint resolution declaring a state of war between the United States and the Imperial Government of Japan.**

On Dec. 8, 1941,<sup>(12)</sup> the Senate by a vote of yeas 82, nays 0, agreed to Senate Joint Resolution 116, declaring a state of war between the United States and the Imperial Government of Japan.<sup>(13)</sup>

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I introduce a joint resolution, and ask for its immediate consideration without reference to a committee.

THE VICE PRESIDENT:<sup>(14)</sup> The joint resolution will be read.

The joint resolution (S.J. Res. 116) declaring that a state of war exists between the Imperial Government of

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- 12. 87 CONG. REC. 9505, 9506, 77th Cong. 1st Sess.
  - 13. See 11. 1, *infra*, for the President's request for this declaration, and §6.1, *supra*, for House approval of the joint resolution.
  - 14. John N. Garner (Tex.).

Japan and the Government and the people of the United States and making provision to prosecute the same, was read the first time by its title, and the second time at length, as follows:

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared. . . .

THE VICE PRESIDENT: Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

MR. CONNALLY: Mr. President, on the passage of the resolution I ask for the yeas and nays.

The yeas and nays were ordered. . . .

MR. CONNALLY: . . . I therefore ask for the yeas and nays on the passage of the joint resolution.

THE VICE PRESIDENT: If there be no amendment proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

THE VICE PRESIDENT: The joint resolution having been read three times, the question is, Shall it pass? On that question the yeas and nays have been demanded and ordered. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

The result was announced—yeas 82, nays 0, as follows: . . .

So the joint resolution was passed.

### *On Germany*

#### **§ 7.2 The Senate by yea and nay vote unanimously agreed to a Senate joint resolution declaring a state of war between the United States and the Government of Germany.**

On Dec. 11, 1941,<sup>(15)</sup> the Senate by a yea and nay vote of yeas 88, nays 0, agreed to Senate Joint Resolution 119, declaring a state of war between the United States and the Government of Germany.<sup>(16)</sup>

Mr. Connally, from the Committee on Foreign Relations, reported an original joint resolution ( S.J. Res. 119) declaring that a state of war exists between the Government of Germany and the Government and the people of the United States, and making provision to prosecute the same, which was read the first time by its title, and the second time at length, as follows:

Whereas the Government of Germany has formally declared war against the Government and the people of the United States of America: Therefore be it

*Resolved, etc.,* That the state of war between the United States and

15. 87 CONG. REC. 9652, 9653, 77th Cong. 1st Sess.

16. See § 11.2, *infra*, for the President's request for a declaration of war, and § 6.2, *supra*, for House approval.

the Government of Germany, which has thus been thrust upon the United States, is hereby formally declared. . . .

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I shall presently ask unanimous consent for the immediate consideration of the joint resolution just read to the Senate. Before the request is submitted, however, I desire to say that, being advised of the declaration of war upon the United States by the Governments of Germany and Italy, and anticipating a message by the President of the United States in relation thereto, and after a conference with the Secretary of State, as chairman of the Committee on Foreign Relations, I called a meeting of the committee this morning and submitted to the committee the course I expected to pursue as chairman and the request which I expected to make.

I am authorized by the Committee on Foreign Relations to say to the Senate that after consideration of the text of the joint resolution which I have reported and after mature consideration of all aspects of this matter, the membership of the Committee on Foreign Relations unanimously approve and agree to the course suggested. One member of the committee was absent, but I have authority to express his views.

Mr. President, I ask unanimous consent for the present consideration of the joint resolution.

THE VICE PRESIDENT:<sup>(17)</sup> Is there objection?

There being no objection, the Senate proceeded to consider the joint resolution (S.J. Res. 119) declaring that a

state of war exists between the Government of Germany and the Government and the people of the United States, and making provision to prosecute the same.

THE VICE PRESIDENT: The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, and was read the third time.

THE VICE PRESIDENT: The joint resolution having been read the third time, the question is, Shall it pass?

MR. CONNALLY: On that question I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

The result was announced—yeas 88, nays 0, as follows: . . .

So the joint resolution(S.J. Res. 119) was passed.

The preamble was agreed to.

### *On Italy*

#### **§ 7.3 The Senate by yea and nay vote unanimously agreed to a Senate resolution formally declaring a state of war between the United States and the Government of Italy.**

On Dec. 11, 1941,<sup>(18)</sup> the Senate by a vote of yeas 90, nays 0, agreed to Senate Joint Resolution 120, declaring a state of war between the United States and the Government of Italy.<sup>(19)</sup>

**18.** 87 CONG. REC. 9653, 77th Cong. 1st Sess.

**19.** See §11.2, *infra*, for the President's request for a declaration of war, and

**17.** John N. Garner (Tex.).

MR. [TOM T.] CONNALLY [of Texas], from the Committee on Foreign Relations, reported an original joint resolution (S.J. Res. 120) declaring that a state of war exists between the Government of Italy and the Government and the people of the United States and making provision to prosecute the same, which was read the first time by its title and the second time at length, as follows:

Whereas the Government of Italy has formally declared war against the Government and the people of the United States of America: therefore be it

*Resolved, etc.,* That the state of war between the United States and the Government of Italy which has thus been thrust upon the United States is hereby formally declared.

The result [of the vote] was announced—yeas 90, nays 0, as follows:

So the joint resolution (S.J. Res. 120) was passed.

### *On Bulgaria*

#### **§ 7.4 After receiving a message that the House had approved the measure, the Senate by yea and nay vote unanimously agreed to a House joint resolution formally declaring a state of war between the United States and the Government of Bulgaria.**

On June 4, 1942,<sup>(20)</sup> the Senate by a vote of yeas 73, nays 0,

§ 6.3, *supra*, for House approval of the Senate joint resolution.

20. 88 CONG. REC. 4851–54, 77th Cong. 2d Sess.

agreed to House Joint Resolution 319, declaring a formal state of war between the United States and the Government of Bulgaria. The House had approved the measure the previous day.<sup>(1)</sup>

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate: . . .

H.J. Res. 319. Joint resolution declaring that a state of war exists between the Government of Bulgaria and the Government and the people of the United States and making provisions to prosecute the same: . . .

THE VICE PRESIDENT:<sup>(2)</sup> The joint resolution having been read three times, the question is, Shall it pass?

MR. [TOM T.] CONNALLY [of Texas]: I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll. . . .

The result was announced—yeas 73, nays 0, as follows: . . .

So the joint resolution (H.J. Res. 319) was passed.

The preamble was agreed to.

### *On Hungary*

#### **§ 7.5 After receiving a message that the House had approved the measure, the Senate**

1. See § 11.3, *infra*, for the President's request for a declaration of war, and § 6.4, *supra*, for House approval of this joint resolution.

2. John N. Garner (Tex.).

**unanimously agreed to a House joint resolution formally declaring a state of war between the United States and the Government of Hungary.**

On June 4, 1942,<sup>(3)</sup> the Senate by a vote of yeas 73, nays 0, agreed to House Joint Resolution 320, declaring a formal state of war between the United States and the Government of Hungary. The House had approved the measure the previous day.<sup>(4)</sup>

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate: . . .

H.J. Res. 320. Joint resolution declaring that a state of war exists between the Government of Hungary and the Government and the people of the United States and making provisions to prosecute the same. . . .

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, with reference to House Joint Resolution 320, declaring the fact that a state of war exists between the Government of Hungary and that of the United States, I am authorized by the Committee on Foreign Relations to report the resolution to the Senate with a recommendation that it pass. Consent has already been given for the

3. 88 CONG. REC. 4851, 4852, 4854, 4855, 77TH CONG. 2D SESS.
4. See §11.3, *infra*, for the President's request for a declaration of war, and §6.5, *supra*, for House approval of the joint resolution.

immediate consideration of the joint resolution.

THE VICE PRESIDENT:<sup>(5)</sup> Consent has been given for the immediate consideration of the joint resolution.

The Senate proceeded to consider the joint resolution (H.J. Res. 320) declaring that a state of war exists between the Government of Hungary and the Government and people of the United States and making provisions to prosecute the same, which was read, as follows:

Whereas the Government of Hungary has formally declared war against the Government and the people of the United States of America: Therefore be it. . . .

THE VICE PRESIDENT: The joint resolution having been read three times, the question is, Shall it pass?

MR. CONNALLY: I ask for the yeas and nays.

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll. . . .

The result was announced—yeas 73, nays 0, as follows: . . .

So the joint resolution (H.J. Res. 320) was passed.

The preamble was agreed to.

***On Rumania***

**§ 7.6 After receiving a message that the House had approved the measure, the Senate unanimously agreed to a House joint resolution formally declaring a state of war between the United**

5. John N. Garner (Tex.).

### States and the Government of Rumania.

On June 4, 1942,<sup>(6)</sup> the Senate by a vote of yeas 73 to nays 0, agreed to House Joint Resolution 321, declaring a formal state of war between the United States and the Government of Rumania. The House had approved the measure the previous day.<sup>(7)</sup>

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate: . . .

H.J. Res. 321. Joint resolution declaring that a state of war exists between the Government of Rumania and the Government and the people of the United States and making provisions to prosecute the same. . . .

THE VICE PRESIDENT:<sup>(8)</sup> The joint resolution having been read three times, the question is, Shall it pass?

MR. [TOM T.] CONNALLY [of Texas]: I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll. . . .

The result was announced—yeas 73, nays 0, as follows: . . .

So the resolution (H.J. Res. 321) was passed.

The preamble was agreed to.

6. 88 CONG. REC. 4851, 4852, 4855, 4856, 77th Cong. 2d Sess.
7. See §11.3, *infra*, for the President's request for a declaration of war, and §6.6, *supra*, for House approval of this joint resolution.
8. John N. Garner (Tex.).

### § 8. Legislation Authorizing Military Action Prior to War Powers Act

In several instances prior to the War Powers Act, Congress, usually in response to Presidential requests,<sup>(9)</sup> granted the Chief Executive express statutory authority to use force he deemed necessary in specific areas. These so-called "area resolutions" were short of formal declarations of war, but constituted either prior or subsequent acquiescence to Presidential use of force.

A question arose in such situations as to whether, if Congress could authorize the President to use force by approving a statute short of a declaration of war, it could divest the President of that authority merely by repealing the statute. The answer to that question depended on other congressional actions. Only one area resolution, the Gulf of Tonkin Resolution,<sup>(10)</sup> was repealed. Following repeal, the President continued to direct military operations and send troops to Vietnam, and Con-

9. The exception is the Cuba resolution which was not requested by the President. See §§8.7, 8.8, *infra*, for discussion of this resolution.
10. See §§8.1, 8.2, *infra*, for a discussion of approval and repeal of this resolution.

gress continued to approve legislation providing manpower and supplies for the war effort.

Groups of servicemen who had received orders to fight in Vietnam filed suit contending that repeal of the Gulf of Tonkin Resolution had divested the President and other executive branch officials of authority to prosecute the war. Ruling on this challenge, the Court of Appeals for the Second Circuit held that authorization could be inferred from congressional approval of authorizations and appropriations for war supplies and personnel.<sup>(11)</sup>

The following precedents comprise some examples of congressional action prior to the War Powers Act, taken in most instances in response to Presidential requests for such action.

11. *DaCosta v Laird*, 448 F2d 1368 (1971); see also *Orlando v Laird*, 443 F2d 1039 (2d Cir. 1971), cert. denied 404 U.S. 869. Contra, *Mottola v Nixon*, 318 F Supp 538 (N.D. Calif. 1970) which found no ratification [reversed on grounds of lack of standing, 464 F2d 26 (9th Cir. 1972)]. The Supreme Court summarily affirmed a three-judge district court opinion which dismissed a challenge to the constitutionality of the war on political question grounds. *Altee v Richardson*, 411 U.S. 911 (1973), affg. 347 F Supp 689 (E.D.Pa. 1972).

***Gulf of Tonkin Resolution***

**§ 8.1 The House by yeas and nays vote suspended the rules and agreed to a House joint resolution (known as the Gulf of Tonkin Resolution) supporting the President's actions to repel aggression by North Vietnam.**

On Aug. 7, 1964,<sup>(12)</sup> the House by a vote of yeas 416, nays 0, present 1, not voting 14, suspended the rules and agreed to House Joint Resolution 1145, known as the Gulf of Tonkin Resolution, supporting the President's action to repel aggression by North Vietnam. The resolution was approved by the President on Aug. 10, 1964, in the following form:<sup>(13)</sup>

JOINT RESOLUTION

To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels

12. 110 CONG. REC. 18538-55, 88th Cong. 2d Sess.

13. This excerpt is taken from 78 Stat. 384, 88th Cong. 2d Sess. (Pub. L. No. 88-408).

See § 8.2, *infra*, for Senate approval of this measure.

lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

*Parliamentarian's Note:* After conferring with the congressional leadership and others with respect to attacks by North Vietnamese torpedo boats against U.S. destroyers, President Johnson ordered retaliation against the bases from which the torpedo boats operated. In an address to the nation on radio and TV, late on Monday, Aug. 3, he stated that he had requested the Congress to support his action by a resolution. On Aug. 5, the President transmitted to the Congress a message on the developing situation in Southeast Asia and a draft of a resolution. The Committee on Foreign Affairs, to which the message was referred (H. Doc. 333), asked for and was granted permission to sit during the session of the House on Aug. 6.

Authority granted by this resolution was repealed by approval, on Jan. 12, 1971, of section 12 of an act to amend the Foreign Military Sales Act.<sup>(14)</sup>

### § 8.2 The Senate by yea and nay vote agreed to a House

14. 84 Stat. 2053, 2055, 91st Cong. 1st Sess. (Pub. L. No. 91-672).

**joint resolution known as the Gulf of Tonkin Resolution supporting the President's actions to repel aggression by North Vietnam.**

On Aug. 7, 1964,<sup>(15)</sup> the Senate by a vote of yeas 88, nays 2, agreed to House Joint Resolution 1145, known as the Gulf of Tonkin Resolution, supporting the President's actions to repel aggression by North Vietnam.<sup>(16)</sup>

Authority granted by this resolution was repealed by approval, on Jan. 12, 1971, of section 12 of an act to amend the Foreign Military Sales Act.<sup>(17)</sup>

***Resolution to Protect Formosa and Pescadores***

**§ 8.3 The House by yea and nay vote agreed to a House joint resolution authorizing the President to employ armed forces to protect the security of Formosa, the Pescadores, and related positions and territories of that area.**

On Jan. 25, 1955,<sup>(18)</sup> the House by a vote of yeas 410, nays 3, not

- 15. 110 CONG. REC. 18470, 18471, 88th Cong. 2d Sess.
- 16. See §8.1, supra, for the House vote and text of this measure.
- 17. 84 Stat. 2053, 2055 (Pub. L. No. 91672) H.R. 15628, 91st Cong. 1st Sess.
- 18. 101 CONG. REC. 659, 669, 680, 681, 84th Cong. 1st Sess.

voting 21, agreed to House Joint Resolution 159,<sup>(19)</sup> which was approved by the President on Jan. 29, 1955, in the following form:<sup>(20)</sup>

JOINT RESOLUTION

Authorizing the President to employ the Armed Forces of the United States for protecting the security of Formosa, the Pescadores and related positions and territories of that area.

Whereas the primary purpose of the United States, in its relations with all other nations, is to develop and sustain a just and enduring peace for all; and Whereas certain territories in the West Pacific under the jurisdiction of the Republic of China are now under armed attack, and threats and declarations have been and are being made by the Chinese Communists that such armed attack is in aid of and in preparation for armed attack on Formosa and the Pescadores. . . . Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he hereby is authorized to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he*

- 19. See §8.4, infra, for Senate approval of this measure.
- 20. This excerpt is taken from 69 Stat. 7, 84th Cong. 1st Sess., Ch. 4 (Pub. L. No. 84-4).

judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.

This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress.

**§ 8.4 The Senate by yea and nay vote agreed to a House joint resolution authorizing the President to employ armed forces to protect the security of Formosa, the Pescadores, and related positions.**

On Jan. 28, 1955,<sup>(1)</sup> the Senate by a vote of yeas 85, nays 3, agreed to House Joint Resolution 159, directing the President to employ armed forces to protect the security of Formosa, the Pescadores, and related positions in the area.<sup>(2)</sup>

***Resolution to Protect Middle Eastern Nations***

**§ 8.5 The House by yea and nay vote agreed to a House joint resolution to promote peace and stability in the Middle East by authorizing**

1. 101 CONG. REC. 994, 995, 84th Cong. 1st Sess.
2. See §8.3, supra, for the text of and House vote on this measure.

**the President to cooperate with and assist any nation or group of nations in that area in the development of economic strength, and to undertake programs of military assistance; the resolution further stated congressional intent with respect to using armed forces of the United States to secure and protect the territorial integrity and political independence of any nation which requests aid from armed aggression by any nation controlled by communism.**

On Mar. 7, 1957,<sup>(3)</sup> the House by a vote of 350 yeas, 60 nays, not voting 23, agreed to House Resolution 188, to accept House Joint Resolution 117, authorizing the President to cooperate with nations of the Middle East in the development of economic strength, to undertake programs of military assistance, and to employ armed forces.<sup>(4)</sup>

The joint resolution was approved by the President in the following form on Mar. 9, 1957:<sup>(5)</sup>

3. 103 CONG. REC. 3250, 3265, 3266, 85th Cong. 1st Sess.
4. See §8.6, infra, for the Senate vote on the House joint resolution.
5. This language is taken from 71 Stat. 5, 85th Cong. 1st Sess. [Pub. L. No. 85-7] (footnotes omitted).

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

The President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

Sec. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any such nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided*, That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

Sec. 3. The President is hereby authorized to use during the balance of fiscal year 1957 for economic and military assistance under this joint resolution not to exceed \$200,000,000 from any appropriation now available for carrying out the provisions of the Mutual Security Act of 1954, as amended, in accord with the provisions of such Act: *Provided*, That, whenever the President determines it to be important to the security of the United States, such use may be under the au-

thority of section 401(a) of the Mutual Security Act of 1954, as amended (except that the provisions of section 105(a) thereof shall not be waived), and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957. . . .

Sec. 5. The President shall within the months of January and July of each year report to the Congress his action hereunder.

Sec. 6. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress.

**§ 8.6 The Senate agreed to a House joint resolution to promote peace and stability in the Middle East by authorizing the President to assist nations in that area in the development of economic strength, and to undertake programs of military assistance; the resolution also endorsed the concept of employing armed forces of the United States to secure and protect the territorial integrity and political independence of any nation which requests aid from armed aggression by any nation controlled by communism.**

On Mar. 5, 1957,<sup>(6)</sup> the Senate by a vote of 72 yeas to 19 nays, agreed to House Joint Resolution 117,<sup>(7)</sup> authorizing the President to cooperate with and assist any nation or group of nations in that area in the development of economic strength, to undertake programs of military assistance, and to employ American Armed Forces to resist aggression as stated above. This House joint resolution was approved in lieu of Senate Joint Resolution 19.

***Resolution Regarding Soviet Weapons in Cuba***

**§ 8.7 The Senate agreed to a Senate joint resolution expressing the position of the United States with respect to Soviet buildup of weapons in Cuba.**

On Sept. 20, 1962,<sup>(8)</sup> the Senate by a vote of 86 yeas, 1 nay, agreed to Senate Joint Resolution 230, expressing the position of the United States with respect to buildup of Soviet weapons in Cuba.<sup>(9)</sup>

6. 103 CONG. REC. 3127, 3129, 3130, 85th Cong. 1st Sess.

7. See §8.5, supra, for the text of and House vote on this measure.

8. 108 CONG. REC. 20024, 20058, 87th Cong. 2d Sess.

9. See §8.8, infra, for the text of and House vote on this measure.

**§ 8.8 After rejecting a motion to recommit the measure, the House by yeas and nays vote agreed to a Senate joint resolution expressing the position of the United States with respect to Soviet buildup of weapons in Cuba.**

On Sept. 26, 1962,<sup>(10)</sup> the House by a vote of yeas 384, nays 7, not voting 44, agreed to a Senate joint resolution which was approved by the President on Oct. 3, 1962, in the following form:<sup>(11)</sup>

Whereas President James Monroe, announcing the Monroe Doctrine in 1823, declared that the United States would consider any attempt on the part of European powers "to extend their system to any portion of this hemisphere as dangerous to our peace and safety"; and

Whereas in the Rio Treaty of 1947 the parties agreed that "an armed attack by any State against an American State shall be considered as an attack against all the American States . . . one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self defense recognized by article 51 of the Charter of the United Nations"; and

Whereas the international Communist movement has increasingly ex-

10. 108 CONG. REC. 20859, 20909-11, 87th Cong. 2d Sess.

11. See §8.7, supra, for Senate approval of this measure. This excerpt is taken from 76 Stat. 697, 87th Cong. 2d Sess. (Pub. L. No. 87-733).

tended into Cuba its political, economic, and military sphere of influence; Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States is determined—*

(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination.

Passage of the Senate joint resolution followed rejection by a vote of yeas 140, nays 251, not voting 46, of a motion to recommit with instructions which had been offered by Mr. William S. Broomfield, of Michigan.

*Parliamentarian's Note:* This resolution was approved prior to the Cuban missile crisis of 1962.

***Resolution to Protect Berlin***

**§ 8.9 The House and Senate agreed to a House concurrent resolution expressing the determination of Congress to prevent by whatever means, including the use of**

**arms, Soviet violation of American, British, and French rights to Berlin, including ingress and egress, and to fulfill the American commitment to the people of Berlin.**

On Oct. 5, 1962, the House by a vote of yeas 312, nays 0, not voting 123,<sup>(12)</sup> and on Oct. 10, 1962, the Senate by voice vote,<sup>(13)</sup> agreed to House Concurrent Resolution 570, expressing the sense of the Congress with respect to Berlin in the following language:

Whereas the primary purpose of the United States in its relations with all other nations is and has been to develop and sustain a just and enduring peace for all; and

Whereas it is the purpose of the United States to encourage and support the establishment of a free, unified, and democratic Germany; and

Whereas in connection with the termination of hostilities in World War II of the United States, the United Kingdom, France, and the Soviet Union freely entered into binding agreements under which the four powers have the right to remain in Berlin, with the right of ingress and egress, until the conclusion of a final settlement with the Government of Germany; and

Whereas no such final settlement has been concluded by the four powers and the aforementioned agreements continue in force: Now, therefore, be it

12. 108 CONG. REC. 22618-38, 87th Cong. 2d Sess.

13. *Id.* at pp. 22964-66.

*Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress—*

(a) that the continued exercise of United States, British, and French rights in Berlin constitutes a fundamental political and moral determination;

(b) that the United States would regard as intolerable any violation by the Soviet Union directly or through others of those rights in Berlin, including the right of ingress and egress;

(c) that the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of those rights by the Soviet Union directly or through others, and to fulfill our commitment to the people of Berlin with respect to their resolve for freedom.

### ***Authorization to Activate Reserve Forces***

#### **§ 8.10 The House agreed to a Senate joint resolution authorizing the President to order units and members of the Ready Reserve to active duty for not more than 12 months.**

On July 31, 1961,<sup>(14)</sup> the House by a vote of yeas 403, nays 2, not voting 32, agreed to Senate Joint Resolution 120, authorizing the President to order units and members of the Ready Reserve into active military service. The joint

14. 107 CONG. REC. 14051, 14061, 14062, 87th Cong. 1st Sess.

resolution, passed by the Senate on a vote of yeas 75, nays 0, on July 28, 1961,<sup>(15)</sup> and approved by the President on Aug. 1, 1961,<sup>(16)</sup> reads as follows:<sup>(17)</sup>

#### JOINT RESOLUTION

To authorize the President to order units and members in the Ready Reserve to active duty for not more than twelve months, and for other purposes.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, until July 1, 1962, the President may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve of an armed force to active duty for not more than twelve consecutive months. However, not more than two hundred and fifty thousand members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.*

Sec. 2. Notwithstanding any other provision of law, until July 1, 1962, the President may authorize the Secretary of Defense to extend enlistments, appointments, periods of active duty, periods of active duty for training, peri-

15. *Id.* at pp. 13930, 13942.

16. See 107 CONG. REC. 14370, 87th Cong. 1st Sess., Aug. 2, 1961, for announcement in the Senate of Presidential approval.

17. This excerpt is taken from 75 Stat. 242, 87th Cong. 1st Sess. (Pub. L. No. 87-117).

ods of obligated service, or other military status, in any component of an armed force or in the National Guard that expire before July 1, 1962, for not more than twelve months.

*Parliamentarian's Note:* In an address to the Nation on July 25, 1961, President John F. Kennedy requested authority to call up the Ready Reserves to respond to the Berlin crisis.<sup>(18)</sup>

**§ 8.11 During the Cuban missile crisis, the Senate and House agreed to a Senate joint resolution authorizing the President to activate units and members of the Ready Reserve, for not more than 12 months.**

On Sept. 13, 1962, the Senate by a vote of 76 yeas, 0 nays,<sup>(19)</sup> and on Sept. 24, 1962, the House by a vote of 342 yeas, 13 nays, 80 not voting,<sup>(20)</sup> agreed to Senate Joint Resolution 224, authorizing the President to activate units and members of the Ready Reserve. The measure was approved on Oct. 3, 1962, in the following form: <sup>(1)</sup>

18. This address is reprinted at 107 CONG. REC. 13460-62, 87th Cong. 1st Sess., July 26, 1961.  
 19. 108 CONG. REC. 19349, 19365, 87th Cong. 2d Sess.  
 20. *Id.* at pp. 20489, 20521, 20522  
 1. This excerpt is taken from 76 Stat. 710, 87th Cong. 2d Sess. (Pub. L. No. 87-736).

JOINT RESOLUTION

To authorize the President to order units and members in the Ready Reserve to active duty for not more than twelve months, and for other purposes.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding any other provision of law, until February 28, 1963, the President may, without the consent of the persons concerned, order any unit, or any member, of the Ready Reserve of an armed force to active duty for not more than twelve consecutive months. However, not more than one hundred and fifty thousand members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

Sec. 2. Notwithstanding any other provision of law until February 28, 1963, the President may authorize the Secretary of Defense to extend enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service or other military status, in any component of an armed force or in the National Guard that expire before February 28, 1963, for not more than twelve months. However, if the enlistment of a member of the Ready Reserve who is ordered to active duty under the first section of this Act would expire after February 28, 1963, but before he has served the entire period for which he was so ordered to active duty, his enlistment may be extended until the last day of that period.

Sec. 3. No member of the Ready Reserve who was involuntarily ordered to

active duty or whose period of active duty was extended under the Act of August 1, 1961, Public Law 87-117 (75 Stat. 242), may be involuntarily ordered to active duty under this Act.

### § 9. Pre-World War II Legislative Restrictions on Military Activity

The German invasion of Poland in September of 1939 and the subsequent declarations of war on Germany by Britain and France intensified the public debate over United States involvement or support for its traditional allies in the conflict.

Shortly after the German invasion, the President by proclamation convened an extraordinary session of Congress to act on neutrality legislation.<sup>(2)</sup> Accepting the President's request,<sup>(3)</sup> Congress repealed provisions of the Neutrality Acts of 1935 and 1937 which prohibited shipments of arms and ammunition to belligerent nations.<sup>(4)</sup>

Congress later authorized the President to provide military sup-

2. See § 12.3, *infra*, for this proclamation.
3. See § 11.6, *infra*, for a discussion of the President's address to a joint session.
4. See § 9.1, *infra*, for the discussion of the Neutrality Act of 1939.

plies to American republics.<sup>(5)</sup> The concept of providing assistance to other nations which originated in the joint resolution making military assistance available to American republics was extended beyond the Western Hemisphere. The Lend-Lease Act authorized the President to direct the manufacture, lease, or loan of military and naval supplies to "the government of any country whose defense the President deems vital to the defense of the United States."<sup>(6)</sup> This act permitted the United States to supply Britain and other nations in their struggle against Germany.

At the request of the President, Congress approved the first peacetime draft in the nation's history, the Selective Service Act of 1940, but prohibited the employment of inducted land forces outside the Western Hemisphere.<sup>(7)</sup> An identical restriction had been imposed a month earlier in a joint resolution authorizing the President to activate reserve and retired military personnel.<sup>(8)</sup> Protecting the Western Hemisphere became sig-

5. See § 9.2, *infra*, for a discussion of this measure. The Neutrality Act of 1939 did not apply to American republics.
6. See § 9.3, *infra*, for a discussion of the Lend-Lease Act.
7. See § 9.5, *infra*, for this restriction.
8. See § 9.4, *infra*, for this resolution.

nificant in actions preceding American involvement in World War II. The President justified his actions as in the interest of Western Hemisphere defense when he acted to acquire British territory in Newfoundland, Bermuda, and certain Caribbean islands for bases in exchange for out-of-date American destroyers,<sup>(9)</sup> and sent American troops to replace British forces in Iceland.<sup>(10)</sup>

Legislation regulating the economy was enacted prior to and during World War II. The Priorities Act of May 31, 1941,<sup>(11)</sup> empowered the President to allocate any material where necessary to facilitate the defense effort. The Second War Powers Act<sup>(12)</sup> extended this authority. These two acts furnished the statutory foundation for the extensive system of consumer rationing administered by the Office of Price Administration, as well as for the comprehensive control of industrial materials and output which was exercised by the

War Production Board.<sup>(13)</sup> Under the Emergency Price Control Act,<sup>(14)</sup> the Office of Price Administration regulated the price of almost all commodities, as well as the rentals for housing accommodations in scores of defense rental areas. The War Labor Disputes Act<sup>(15)</sup> permitted the President to commandeer plants which were closed by strikes. The Renegotiation Act,<sup>(16)</sup> which the Su-

9. See §11.7, *infra*. See also §3.2, *supra*, for an opinion of the Attorney General as to the constitutionality of this action taken without consulting Congress.
10. See §11.8, *infra*, for an announcement of this action.
11. 55 Stat. 236, 77th Cong. 1st Sess. (Pub. L. No. 77-92).
12. 56 Stat. 176, 77th Cong. 2d Sess. (Pub. L. No. 77-507).

13. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess. 337 (1973).
14. 56 Stat. 23, 77th Cong. 2d Sess. (Pub. L. No. 77-421).
15. 57 Stat. 163, 78th Cong. 1st Sess. (Pub. L. No. 78-89).
16. The Supreme Court in *Lichter v United States*, 334 U.S. 742, 745 (1948) stated that the term "the Renegotiation Act" included 56 Stat. 226, 77th Cong. 2d Sess. (Pub. L. No. 77-528), the Sixth Supplemental National Defense Appropriation Act, sometimes called the First Renegotiation Act; 56 Stat. 798, 801, 77th Cong. 2d Sess. (Pub. L. No. 77-753), the Revenue Act of 1942, Title VIII, Renegotiation of War Contracts; 57 Stat. 347, 78th Cong. 1st Sess. (Pub. L. No. 78-108), Military Appropriations Act of 1944; 57 Stat. 564, 78th Cong. 1st Sess. (Pub. L. No. 78-149), an act to prevent payment of excessive fees or compensation in connection with the negotiation of war contracts; 58 Stat. 21, 78-93, 78th Cong. 2d Sess. (Pub. L. No. 78-235), Revenue Act of 1943, Title VII, Re-

preme Court found to be a proper exercise of the war powers by Congress,<sup>(17)</sup> authorized the government to recover excessive profits realized on war contracts.

### *Neutrality Act*

#### **§ 9.1 The House and Senate agreed to the conference report on the Neutrality Act of 1939.**

On Nov. 3, 1939, the House by a vote of yeas 243, nays 172, not voting 14,<sup>(18)</sup> and the Senate by a vote of yeas 55, nays 24,<sup>(19)</sup> agreed to the conference report (H. Rept. No. 1475) on House Joint Resolution 306, the Neutrality Act of 1939, to preserve the neutrality and peace of the United States and secure the safety of its citizens and their interests.<sup>(20)</sup>

negotiation of War Contracts, and Title VIII, Repricing of War Contracts.

17. *Lichter v United States*, 334 U.S. 742 (1948).
18. 85 CONG. REC. 1389, 76th Cong. 2d Sess. See also pp. 1381–86, for the conference report and statement of the conferees.
19. *Id.* at p. 1356.
20. 22 USC §§441, 444, 445, 447–451, 453–457; Pub. Res. No. 54, 54 Stat. 4, Ch. 2, H.J. Res. 306, 76th Cong. 2d Sess., approved Nov. 4, 1939. Neutrality legislation had been ap-

The act, which did not apply to any American republic engaged in war against a non-American state or states, authorized the President to issue a proclamation naming foreign states as belligerents whenever he or the Congress by concurrent resolution found that a state of war existed between foreign states.<sup>(1)</sup> He was also authorized to require a bond from the owner or person in command of any domestic or foreign vessel which he had reason to believe was about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches, or information to any warship, tender, or supply ship of a belligerent state; and to promulgate rules and regulations.<sup>(2)</sup>

It was further provided that where states and areas are named as being at war in a Presidential proclamation issued pursuant to

proved on Aug. 31, 1935 (Pub. Res. No. 67, 49 Stat. 1081, S.J. Res. 173, 74th Cong. 1st Sess.), and amended on May 1, 1937 (Pub. Res. No. 27, 50 Stat. 121, S.J. Res. 251, 75th Cong. 1st Sess.).

1. See § 12.4, *infra*, for an example of this kind of proclamation.
2. This provision effectuated a request of the President to repeal embargo provisions of earlier Neutrality Acts. See § 11.6, *infra*, for a discussion of the President's message requesting the Neutrality Act of 1939.

authority granted in the act, no American vessels may lawfully carry passengers or articles to such states.<sup>(3)</sup> Similarly, the terms of the act provided that no American citizen or vessel may lawfully proceed into an area designated by the President as a combat zone.<sup>(4)</sup> Moreover, no American citizen may lawfully travel on any vessel of any such state and no American merchant vessel engaged in commerce with any foreign state may lawfully be armed.<sup>(5)</sup> And no person in the United States may lawfully engage in certain financial transactions with any government or any political subdivision of such states or person acting for or on behalf of such governments.<sup>(6)</sup>

3. This provision, §2 of the Neutrality Act of 1939, was repealed by 55 Stat. 764, Ch. 473 §1, 77th Cong. 1st Sess. (Pub. L. No. 77-294), approved on Nov. 17, 1941.
4. This provision, §3 of the Neutrality Act of 1939, was repealed by 55 Stat. 764, Ch. 473 §1, 77th Cong. 1st Sess. (Pub. L. No. 77-294), approved on Nov. 17, 1941.
5. This provision, §6 of the Neutrality Act of 1939, was repealed by 55 Stat. 764, Ch. 473 §2, 77th Cong. 1st Sess. (Pub. L. No. 77-294), approved Nov. 17, 1941.
6. This provision, §7 of the Neutrality Act of 1939, was amended to be inoperative when the United States engages in war. 56 Stat. 95, Ch. 104,

The act also provided that no person within the United States may solicit or receive any contribution for or on behalf of a government, agency, or instrumentality of such states. Whenever the President places special restrictions on the use of ports and territorial waters of the United States, submarines and armed merchant vessels of a foreign state may not enter or depart from those ports or territorial waters.<sup>(7)</sup>

The act also established the National Munitions Control Board.<sup>(8)</sup>

***Military Assistance to American Republics***

**§9.2 The Senate and House agreed to a joint resolution authorizing the Secretaries of War and of the Navy to assist the governments of American republics to increase their military and naval establishments.**

On May 28, 1940, the Senate amended and passed,<sup>(9)</sup> and on

77th Cong. 2d Sess. (Pub. L. No. 77-459), approved on Feb. 21, 1942.

7. See §12.5, *infra*, for such restrictions.
8. This provision, §12 of the Neutrality Act of 1939, was repealed by 68 Stat. 861, Ch. 937, title V §542(a) (12), 83d Cong. 2d Sess. (Pub. L. No. 83-665, H.R. 9678), approved on Aug. 26, 1954.
9. 86 CONG. REC. 6977, 76th Cong. 3d Sess.

June 5, 1940, the House agreed to Senate amendments and passed,<sup>(10)</sup> House Joint Resolution 367, authorizing the President in his discretion to direct the Secretary of War to manufacture or otherwise procure coast-defense and antiaircraft materiel, including ammunition therefor, and to direct the Secretary of the Navy to construct vessels of war on behalf of any American republic.<sup>(11)</sup>

### *Lend-Lease Act*

#### **§ 9.3 The Senate and House agreed to a bill further to promote the defense of the United States, known as the Lend-Lease Act, which authorized the President to direct manufacture, lease, and loan of war supplies to foreign governments.**

On Mar. 8, 1941, the Senate by a vote of yeas 60, nays 31, not voting 4, amended and agreed to,<sup>(12)</sup> and the House by a vote of yeas 317, nays 71, present 1, not voting 40,<sup>(13)</sup> agreed to Senate amend-

ments and passed, H.R. 1776, further to promote the defense of the United States, known as the Lend-Lease Act, which authorized the President to direct manufacture of defense articles for the government of any country whose defense the President deemed vital to the defense of the United States, and to direct the lease or loan of defense articles. The act was approved in the following language:<sup>(14)</sup>

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "An Act to Promote the Defense of the United States".*

Sec. 2. As used in this Act—

(a) The term "defense article" means—

(1) Any weapon, munition, aircraft, vessel, or boat;

(2) Any machinery, facility, tool, material, or supply necessary for the manufacture, production, processing, repair, servicing, or operation of any article described in this subsection. . . .

Sec. 3. (a) Notwithstanding the provisions of any other law, the President may, from time to time, when he deems it in the interest of national defense, authorize the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government—

1941, for initial House approval of this bill by a vote of yeas 260, nays 165, not voting 6.

14. The text is taken from 55 Stat. 31 (Pub. L. No. 77-11), Mar. 11, 1941.

10. *Id.* at p. 7616. See 85 CONG. REC. 9861, 76th Cong. 1st Sess., July 24, 1939, for initial House approval of this joint resolution.

11. Pub. Res. No. 83, 54 Stat. 396 (June 15, 1940).

12. 87 CONG. REC. 2097. 77th Cong. 1st Sess.

13. *Id.* at p. 2178. See 87 CONG. REC. 815, 77th Cong. 1st Sess., Feb. 8,

(1) To manufacture in arsenals, factories, and shipyards under their jurisdiction, or otherwise procure, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for the government of any country whose defense the President deems vital to the defense of the United States.

(2) To sell, transfer title to, exchange, lease, lend, or otherwise dispose of, to any such government any defense article, but no defense article not manufactured or procured under paragraph (1) shall in any way be disposed of under this paragraph, except after consultation with the Chief of Staff of the Army or the Chief of Naval Operations of the Navy, or both.  
 . . .<sup>(15)</sup>

(3) To test, inspect, prove, repair, outfit, recondition, or otherwise to place in good working order, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for any such government, or to procure any or all such services by private contract.  
 . . .<sup>(16)</sup>

(c) After June 30, 1943, or after the passage of a concurrent resolution by the two Houses before June 30, 1943, which declares that the powers conferred by or pursuant to subsection (a) are no longer necessary to promote the defense of the United States, neither

the President nor the head of any department or agency shall exercise any of the powers conferred by or pursuant to subsection (a); except that until July 1, 1946, any of such powers may be exercised to the extent necessary to carry out a contract or agreement with such a foreign government made before July 1, 1943, or before the passage of such concurrent resolution, whichever is the earlier. . . .<sup>(17)</sup>

Sec. 5. (a) The Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government involved shall, when any such defense article or defense information is exported, immediately inform the department or agency designated by the President to administer section 6 of the Act of July 2, 1940 (54 Stat. 714), of the quantities, character, value, terms of disposition, and destination of the article and information so exported.

(b) The President from time to time, but not less frequently than once every ninety days, shall transmit to the Congress a report of operations under this Act except such information as he deems incompatible with the public interest to disclose. Reports provided for under this subsection shall be transmitted to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, if the Senate or the House of Representatives, as the case may be, is not in session.

Sec. 6. (a) There is hereby authorized to be appropriated from time to

15. See 57 Stat. 2], 25, 78th Cong. 1st Sess. (Pub. L. No. 78-11), for an amendment to this section.  
 16. See 58 Stat. 222, 223, 78th Cong. 2d Sess. (Pub. L. No. 78-304), for an amendment to this provision.

17. See 59 Stat. 52, 79th Cong. 1st Sess. (Pub. L. No. 79-31); 58 Stat. 222, 223, 78th Cong. 2d Sess. (Pub. L. No. 78-304); and 57 Stat. 20, 78th Cong. 1st Sess. (Pub. L. No. 78-9), for amendments to this provision.

time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this Act.

(b) All money and all property which is converted into money received under section 3 from any government shall, with the approval of the Director of the Budget, revert to the respective appropriation or appropriations out of which funds were expended with respect to the defense article or defense information for which such consideration is received, and shall be available for expenditure for the purpose for which such expended funds were appropriated by law, during the fiscal year in which such funds are received and the ensuing fiscal year; but in no event shall any funds so received be available for expenditure after June 30, 1946. . . .<sup>(18)</sup>

Sec. 11. If any provision of this Act or the application of such provision to any circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances shall not be affected thereby.

### ***Reserve Forces Limited to Western Hemisphere***

#### **§ 9.4 The House and Senate agreed to a provision re-**

18. See 61 Stat. 449, 450, 80th Cong. 1st Sess. (Pub. L. No. 80-123), for repeal of this provision which had been amended by 59 Stat. 52, 79th Cong. 1st Sess. (Pub. L. No. 79-31); 58 Stat. 222, 223, 78th Cong. 2d Sess. (Pub. L. No. 78-304); and 57 Stat. 20, 78th Cong. 1st Sess. (Pub. L. No. 78-9).

**stricting employment of reserve components of the United States Army beyond the limits of the Western Hemisphere in a Senate joint resolution authorizing the President to activate the reserves.**

On Aug. 15, 1940,<sup>(19)</sup> the House by a vote of yeas 342, nays 34, not voting 54, agreed to Senate Joint Resolution 286, authorizing the President to order members and units of reserve components and retired personnel of the Regular Army into active military service. The joint resolution, which was passed by the Senate by a vote of yeas 71, nays 7, on Aug. 8, 1940,<sup>(20)</sup> and signed by the President on Aug. 27, 1940, as Public

19. 86 CONG. REC. 10429, 10448, 10449, 76th Cong. 3d Sess. See also 86 CONG. REC. 10763, 76th Cong. 3d Sess., Aug. 22, 1940, for House approval of the conference report.

20. *Id.* at p. 10068. The Senate by a vote of yeas 31, nays 45, rejected a motion to recommit the joint resolution with instructions to report it back forthwith with an amendment substituting "continental United States and Territories and possessions of the United States" in place of the remainder of section 1 beginning with "Western Hemisphere." *Id.* at pp. 10067, 10068. See also 86 CONG. REC. 10791, 76th Cong. 3d Sess., Aug. 23, 1940, for Senate voice vote approval of this measure.

Resolution No. 96,<sup>(1)</sup> contained the following restriction on use of reserves:<sup>(2)</sup>

. . . [T]he members and units of the reserve components of the Army of the United States ordered into active Federal service under this authority shall not be employed beyond the limits of the Western Hemisphere except in the territories and possessions of the United States, including the Philippine Islands.

After commencement of World War II, this provision was repealed.<sup>(3)</sup>

***Inducted Land Forces Limited to Western Hemisphere***

**§9.5 The House and Senate agreed to a provision restricting employment of inducted land forces beyond the limits of the Western Hemisphere in a conference report on the Selective Training and Service Act of 1940.**

On Sept. 14, 1940,<sup>(4)</sup> the House by a vote of yeas 233, nays 124,

1. See 86 CONG. REC. 11089, 76th Cong. 3d Sess., Aug. 28, 1940, for announcement in the Senate of Presidential approval.
2. This excerpt is taken from 54 Stat. 858, 859, 76th Cong. 3d Sess.
3. See 55 Stat. 799, 77th Cong. 1st Sess. (Pub. L. No. 77-338), approved Dec. 13, 1941.
4. 86 CONG. REC. 12207, 12227, 12228, 76th Cong. 3d Sess.

present 2, not voting 70, agreed to a conference report on S. 4164, the Selective Training and Service Act of 1940. This measure, passed as a conference report by the Senate on a vote of yeas 47, nays 25, on Sept. 14, 1940,<sup>(5)</sup> and signed by the President on Sept. 16, 1940, as Public Law No. 783,<sup>(6)</sup> contained the following restriction on use of inducted land forces:<sup>(7)</sup>

(e) Persons inducted into the land forces of the United States under this Act shall not be employed beyond the limits of the Western Hemisphere except in the Territories and possessions of the United States, including the Philippine Islands.

After the commencement of World War II, this provision was repealed.<sup>(8)</sup>

5. *Id.* at pp. 12156-61.
6. See 86 CONG. REC. 12290, 76th Cong. 3d Sess., Sept. 19, 1940, for announcement in the Senate of Presidential approval.
7. This excerpt is taken from 54 Stat. 885, 886, 76th Cong. 3d Sess.
8. See 55 Stat. 799, 77th Cong. 1st Sess. (Pub. L. No. 77-338) approved Dec. 13, 1941. The House by a vote of 203 yeas, 202 nays, had agreed to H.J. Res. 222, extending the period of conscription beyond the 12 months established in the Selective Training and Service Act of 1940. 87 CONG. REC. 6995, 7074, 7075, 77th Cong. 1st Sess., Aug. 12, 1941.

## § 10. Vietnam Era Restrictions on Military Activity

As debate over American involvement in Indochina intensified following the 1968 elections, Congress, exercising its constitutional authority to raise and support armies,<sup>(9)</sup> imposed restrictions on the obligation and expenditure of funds relating to military activity in Vietnam and neighboring areas. These restrictions, which were placed in authorization<sup>(10)</sup> as well as appropriation bills,<sup>(11)</sup> in some instances prohibited obligation or expenditure of funds in particular countries after a fixed date,<sup>(12)</sup> and in other instances did not specify such a date.<sup>(13)</sup>

The precedents in this section comprise a few examples of the many initiatives undertaken by Congress in response to the Vietnam crisis.

### Collateral References<sup>(14)</sup>

Bickel, Alexander M. *The Constitution and the War*. 54 *Commentary* 49 (July 1972).

9. U.S. Const. art. I, §8, clause 12.
10. §§ 10.2, 10.3, *infra*.
11. §§ 10.1, 10.4, *infra*.
12. §§ 10.4, 10.5, *infra*.
13. §§ 10.1–10.3, *infra*.
14. The articles in this section relate to military involvement during the Vietnam era. See collateral ref-

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### ***Prohibition of American Forces in Laos or Thailand***

**§ 10.1 The Department of Defense appropriations bill for fiscal year 1970 was amended to prohibit use of funds to finance introduction of ground combat troops into Laos or Thailand.**

On Dec. 15, 1969,<sup>(15)</sup> the Senate by a vote of yeas 73, nays 17, agreed to an amendment offered by Senator Frank Church, of Idaho, to House bill 15090, making appropriations for the Department of Defense for the fiscal year

15. 115 CONG. REC. 39168, 39172, 91st Cong. 1st Sess.

ending June 30, 1970. The provision appeared in the bill approved by the President in the following form:<sup>(16)</sup>

Sec. 643. In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand.

Because it was a substitute for an amendment offered by Senator John Sherman Cooper, of Kentucky, this provision came to be known as the Cooper-Church amendment.

### ***Prohibition of Military Support for Cambodia and Laos***

**§ 10.2 A bill authorizing appropriations for military procurement for fiscal year 1971 was amended to prohibit use of funds to support Vietnamese or other freeworld forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos.**

On Aug. 21, 1970,<sup>(17)</sup> the Senate by voice vote agreed to amend-

16. 83 Stat. 469, 487, 91st Cong. 1st Sess. (Pub. L. No. 91–171).

17. 116 CONG. REC. 29686, 29688, 91st Cong. 2d Sess. See also 116 CONG. REC. 29572–83, 91st Cong. 2d Sess., Aug. 20, 1971, for debate on amend-

ment No. 812, ordered by Senator J. William Fulbright, of Arkansas, to H.R. 17123, to authorize appropriations for military procurement for the fiscal year 1971. The provision appeared in the form passed by the Senate<sup>(18)</sup> in the bill approved by the President on Oct. 7, 1970.<sup>(19)</sup>

ment No. 812; and 116 CONG. REC. 34580-602, 91st Cong. 2d Sess., Oct. 1, 1970, for debate on and approval of the conference report in the Senate.

- 18.** See 116 CONG. REC. 33924, 33925, 33933, 91st Cong. 2d Sess., Sept. 28, 1970, for the text of the House conference report, H. Rept. No. 91-1473, which states that the House conferees agreed to the Senate amendment and deleted the words "in Vietnam" after the words "and other free world forces" and before the words "and local"; and 116 CONG. REC. 34149, 34161, 34162, 91st Cong. 2d Sess., Sept. 29, 1970, for House approval of the conference report by a vote of yeas 341, nays 11, not voting 77.
- 19.** This excerpt is taken from 84 Stat. 905, 910, 91st Cong. 1st Sess. (Pub. L. No. 91-441). The italicized sentence is the Fulbright amendment. amended, is hereby amended to read as follows:

## AN ACT

To authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to authorize real estate acquisition and construction at certain installations in connection with the Safeguard anti-ballistic missile system, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled . . .*

Sec. 502. Subsection (a) of section 401 of Public Law 89-367, approved March 15, 1966 (80 Stat. 37), as

"(a) (1) Not to exceed \$2,800,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine. None of the funds appropriated to or for the use of the Armed Forces of the United States may be used for the purpose of paying any overseas allowance, per diem allowance, or any other addition to the regular base pay of any person serving with the free world forces in South Vietnam if the amount of such pay-

ment would be greater than the amount of special pay authorized to be paid, for an equivalent period of service, to members of the Armed Forces of the United States (under section 310 of title 37, United States Code) serving in Vietnam or in any other hostile fire area, except for continuation of payments of such additions to regular base pay provided in agreements executed prior to July 1, 1970. *Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Governments of Cambodia or Laos.*"

***Prohibition of American Ground Forces From Cambodia***

**§ 10.3 The Special Foreign Assistance Act of 1971 was amended to prohibit use of funds to finance introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia, and to assert that American military and economic assistance should not be construed as a commitment by the United States to Cambodia.**

On Dec. 16, 1970,<sup>(20)</sup> the Senate by a vote of yeas 72, nays 22,

**20.** 116 CONG. REC. 41788, 91st Cong. 2d Sess. See also 116 CONG. REC 41616,

agreed to strike out all after the enacting clause of the Special Foreign Assistance Act of 1971, H.R. 19911, which had been approved by the House, and insert an amendment, described above, reported from the Committee on Foreign Relations. The provisions<sup>(1)</sup> became law when approved by the President on Jan. 5, 1971, in the same form as the Senate amendment:<sup>(2)</sup>

AN ACT

To provide additional foreign assistance authorizations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Special Foreign Assistance Act of 1971". . . .

Sec. 7. (a) In line with the expressed intention of the President of the

91st Cong. 2d Sess., Dec. 15, 1970, for the text of the amendment from the Committee on Foreign Relations; and 116 CONG. REC. 43221-23, 91st Cong. 2d Sess., Dec. 22, 1970, for Senate approval of the conference report by a vote of yeas 41, nays 20.

1. See 116 CONG. REC. 43133, 43134, 91st Cong. 2d Sess., Dec. 21, 1970; and 116 CONG. REC. 43342, 43343, 91st Cong. 2d Sess., Dec. 22, 1970, for the text of and House approval of the conference report in the House, respectively.
2. This excerpt is taken from 84 Stat. 1942, 1943, 91st Cong. 2d Sess. (Pub. L. No. 91-652).

United States, none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of the United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia.

(b) Military and economic assistance provided by the United States to Cambodia and authorized or appropriated pursuant to this or any other Act shall not be construed as a commitment by the United States to Cambodia for its defense.

***Prohibition of Military Funds After Fixed Date***

**§ 10.4 A House joint resolution continuing appropriations for the fiscal year 1974 was amended to prohibit after a fixed date obligation or expenditure of funds to finance combat activities by United States military forces in, over, or off the shores of North Vietnam, South Vietnam, Laos, or Cambodia.**

On June 29, 1973,<sup>(3)</sup> during consideration of House Joint Resolu-

3. 119 CONG. REC. 22305, 22325, 22326, 93d Cong. 1st Sess. See also 119 CONG. REC. 22603, 22604, 93d Cong. 1st Sess., June 30, 1973, for Senate agreement to the conference report. Senate and House conferees agreed to modify the language of this amendment from “. . . no funds herein, heretofore or hereafter appro-

tion 636, the Senate agreed to an amendment, described above, offered by Senator J. William Fulbright, of Arkansas, on behalf of the Committee on Foreign Relations. The joint resolution as amended<sup>(4)</sup> was approved by the President on July 1, 1973.<sup>(5)</sup>

Joint Resolution making continuing appropriations for the fiscal year 1974, and for other purposes.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

The following sums are appropriated out of any money in the Treasury not otherwise appropriated and, out of applicable corporate or other revenues, receipts, and funds, for the several de-

priated . . .” in the version which originally passed the Senate to “. . . no funds herein or heretofore appropriated . . .” in the version approved by the President.

4. See 119 CONG. REC. 21306, 21309, 21315, 21319, 21320, 93d Cong. 1st Sess., June 26, 1973, for House approval of a substitute amendment offered by Mr. George H. Mahon (Tex.), as amended by an amendment offered by Mr. Clarence D. Long (Md.), prohibiting expenditure of funds under H.J. Res. 636 to support combat activities in, over, or off the shores of Cambodia or Laos. See also 119 CONG. REC. 22632-37, 93d Cong. 1st Sess., June 30, 1973, for House approval of the conference report, H. Rept. No. 93-364.
5. This excerpt is taken from 87 Stat. 130, 93d Cong. 1st Sess. (Pub. L. No. 93-52).

partments, agencies, corporations, and other organizational units of the Government for the fiscal year 1974, namely:

Sec. 108. Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia.

***Prohibition of Military Involvement After Fixed Date***

**§ 10.5 The Senate and House agreed to a conference report (on the Department of State Appropriations Authorization Act of 1973) which included a provision prohibiting, after a fixed date, obligation or expenditure of funds to finance involvement of United States military forces in hostilities in, over, or off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, or to provide assistance to North Vietnam, unless specifically authorized by Congress.**

On Oct. 10, 1973, the Senate<sup>(6)</sup> and House<sup>(7)</sup> by voice vote agreed

- 6. See 119. 33577, 33578, 93d Cong. 1st Sess., for Senate approval of the conference report.
- 7. See 119 CONG. REC. 33609, 93d Cong. 1st Sess., for House approval;

to the conference report (H. Rept. No. 93-563) to H. R. 7645, the Department of State Appropriations Act of 1973. The report included a provision prohibiting, after Aug. 15, 1973, obligation or expenditure of funds as described above. This provision, which originated in the Senate as an amendment by the Committee on Foreign Relations to S. 1248,<sup>(8)</sup> was approved by the President on Oct. 18, 1973, in the following form:<sup>(9)</sup>

DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

\* \* \* \* \*

An Act to authorize appropriations for the Department of State, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

and 119 CONG. REC. 33413-15, 93d Cong. 1st Sess., Oct. 9, 1973, for text of the conference report.

- 8. See 119 CONG. REC. 18901-03, 93d Cong. 1st Sess., June 8, 1973, for the text of this amendment, which did not set a date certain but instead made the prohibition effective ". . . upon enactment of this Act. . . ." The date was established in conference. On June 14, 1973, the Senate struck all after the enacting clause of H.R. 7645, and substituted the provisions of S. 1248 (119 CONG. REC. 19648, 93d Cong. 1st Sess.).
- 9. This excerpt is taken from 87 Stat. 451, 93d Cong. 1st Sess. (Pub. L. No. 93-126).

This Act may be cited as the “Department of State Appropriations Authorization Act of 1973” . . .

REQUIREMENTS FOR CONGRESSIONAL AUTHORIZATION FOR THE INVOLVEMENT OF AMERICAN FORCES IN FURTHER HOSTILITIES IN INDOCHINA, AND FOR EXTENDING ASSISTANCE TO NORTH VIETNAM

Sec. 13. Notwithstanding any other provision of law, on or after August 15, 1973, no funds heretofore or hereafter appropriated may: be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter by the Congress. Notwithstanding any other provision of law, upon enactment of this Act, no funds heretofore or hereafter appropriated may be obligated or expended for the purpose of providing assistance of any kind, directly or indirectly, to or on behalf of North Vietnam, unless specifically authorized hereafter by the Congress.

## § 11. Receipt of Presidential Messages

The precedents in this section are limited exclusively to written or oral statements officially received by Congress. Presidential statements made to the public at large through the media are not included.

### *Request for Declaration of War on Japan*

#### § 11.1 The President addressed a joint session of Congress to announce the Japanese attack on Pearl Harbor and request a declaration of war.

On Dec. 8, 1941,<sup>(10)</sup> President Franklin D. Roosevelt addressed a joint session of Congress to announce the Japanese attack on Pearl Harbor and request a declaration of war.<sup>(11)</sup>

ADDRESS BY THE PRESIDENT (H. DOC. NO. 453)

The address delivered by the President of the United States to the joint meeting of the two Houses of Congress held this day is as follows:

*To the Congress of the United States:*

Yesterday, December 7, 1941—a date which will live in infamy—the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan. . . .

I believe I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make very certain that this form of treachery shall never endanger us again.

Hostilities exist. There is no blinking at the fact that our people, our

10. 87 CONG. REC. 9519, 9520, 77th Cong. 1st Sess. The message was referred to the Committee on Foreign Affairs.

11. See §6.1, *supra* (House declaration), and §7.1, *supra* (Senate declaration).

territory, and our interests are in grave danger. . . .

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire.

FRANKLIN D. ROOSEVELT,  
THE WHITE HOUSE,  
December 8, 1941.

***Request for Declaration of War on Germany and Italy***

**§ 11.2 The House received a written message from the President announcing that Italy and Germany had declared war on the United States, and requesting the Congress to recognize a state of war between the United States and Germany and the United States and Italy.**

On Dec. 11, 1941,<sup>(12)</sup> the House received a message, as follows, from President Franklin D. Roosevelt.<sup>(13)</sup>

DECLARATION OF WAR BY GERMANY AND ITALY AGAINST UNITED STATES (H. DOC. NO. 454)

The Speaker<sup>(14)</sup> laid before the House the following message from the

12. 87 CONG. REC. 9665, 77th Cong. 1st Sess.

13. See §§ 6.2, 6.3, supra (House action), and §§ 7.2, 7.3, supra (Senate action), for declarations of war on Germany and Italy.

14. Sam Rayburn (Tex.).

President of the United States, which was read:

*To the Congress of the United States:*

On the morning of December 11, the Government of Germany, pursuing its course of world conquest, declared war against the United States.

The long known and the long expected has thus taken place. . . .

Italy also has declared war against the United States.

I, therefore, request the Congress to recognize a state of war between the United States and Germany, and between the United States and Italy.

FRANKLIN D. ROOSEVELT,  
THE WHITE HOUSE,  
December 11, 1941.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I move that the message of the President be referred to the Committee on Foreign Affairs, and ordered printed.

The motion was agreed to.

***Request for Declaration of War on Bulgaria, Hungary, and Rumania***

**§ 11.3 The House received a written message from the President announcing that the Governments of Bulgaria, Hungary, and Rumania had declared war on the United States and requesting that Congress recognize a state of war between the United States and these nations.**

On June 2, 1942,<sup>(15)</sup> the House received a message, as follows, from President Franklin D. Roosevelt.<sup>(16)</sup>

MESSAGE FROM THE PRESIDENT OF  
THE UNITED STATES (H. Doc. No.  
761)

The Speaker<sup>(17)</sup> laid before the House the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

*To the Congress of the United States:*

The Governments of Bulgaria, Hungary, and Rumania have declared war against the United States. . . .

Therefore I recommend that the Congress recognize a state of war between the United States and Bulgaria, between the United States and Hungary, and between the United States and Rumania.

FRANKLIN D. ROOSEVELT,  
THE WHITE HOUSE,  
*June 2, 1942.*

### ***Request for Authority to Protect Middle Eastern Nations***

#### **§ 11.4 The President personally addressed a joint session of Congress to request au-**

15. 88 CONG. REC. 4787, 77th Cong. 2nd Sess. The message was referred to the Committee on Foreign Affairs.
16. See §§ 6.4–6.6, *supra* (House action), and §§ 7.4–7.6, *supra* (Senate action), for declarations of war on Bulgaria, Hungary, and Rumania.
17. Sam Rayburn (Tex.).

**thorization to cooperate with and assist any Middle Eastern nation or group of nations in the development of economic strength, undertake military assistance, and employ American Armed Forces to secure and protect the territorial integrity and political independence of nations which request aid against armed aggression from any nation controlled by communism.**

On Jan. 5, 1957,<sup>(18)</sup> President Dwight D. Eisenhower addressed a joint session of the House and Senate to request authorization to deal with aggression in the Middle East.<sup>(19)</sup>

THE PRESIDENT: Mr. President, Mr. Speaker, and Members of Congress, first may I express to you my deep appreciation of your courtesy. . . .

The action which I propose would have the following features:

It would, first of all, authorize the United States to cooperate with and assist any nation or group of nations in the general area of the Middle East in the development of economic strength dedicated to the maintenance of national independence.

It would, in the second place, authorize the Executive to undertake in the

18. 103 CONG. REC. 224–27, 85th Cong. 1st Sess. The message was referred to the Committee on Foreign Affairs.
19. See §§ 8.5, 8.6, *supra*, for House and Senate approval of the requested resolution, respectively.

same region programs of military assistance and cooperation with any nation or group of nations which desires such aid.

It would, in the third place, authorize such assistance and cooperation to include the employment of the armed forces of the United States to secure and protect the territorial integrity and political independence of such nations requesting such aid, against overt armed aggression from any nation controlled by international communism.

These measures would have to be consonant with the treaty obligations of the United States, including the Charter of the United Nations and with any action or recommendations of the United Nations. They would also, if armed attack occurs, be subject to the overriding authority of the United Nations Security Council in accordance with the charter.

The present proposal would, in the fourth place, authorize the President to employ, for economic and defensive military purposes, sums available under the Mutual Security Act of 1954, as amended, without regard to existing limitations.

***Request for Authority to Protect the Pescadores and Formosa***

**§ 11.5 The House received a message from the President announcing military activities by the People's Republic of China against Formosa and the Pescadores and requesting a congressional resolution to authorize a Presidential response.**

On Jan. 24, 1955,<sup>(1)</sup> the House received a written message, as follows, from President Dwight D. Eisenhower.<sup>(2)</sup>

The Speaker<sup>(3)</sup> laid before the House the following message from the President of the United States, which was read, referred to the Committee on Foreign Affairs, and ordered to be printed:

*To the Congress of the United States:*

The most important objective of our Nation's foreign policy is to safeguard the security of the United States by establishing and preserving a just and honorable peace. In the Western Pacific, a situation is developing in the Formosa Straits that seriously imperils the peace and our security.

Since the end of Japanese hostilities in 1945, Formosa and the Pescadores have been in the friendly hands of our loyal ally, the Republic of China. We have recognized that it was important that these islands should remain in friendly hands.

What we are now seeking is primarily to clarify present policy and to unite in its application. . . .

For the reasons outlined in this message, I respectfully request that the Congress take appropriate action to carry out the recommendations contained herein.

DWIGHT D. EISENHOWER,  
THE WHITE HOUSE,  
*January 24, 1955.*

1. 101 CONG. REC. 625, 626, 84th Cong. 1st Sess.
2. See §§ 8.3, 8.4, supra, for approval of the requested resolution by the House and Senate, respectively.
3. Sam Rayburn (Tex.).

***Request for Neutrality Legislation***

**§ 11.6** The President addressed a joint session of the House and Senate to explain that he had convened an extraordinary session to permit Congress to act on neutrality legislation.

On Sept. 21, 1939,<sup>(4)</sup> the President addressed a joint session of the House and Senate to explain that he had convened an extraordinary session to permit Congress to act on neutrality legislation. He specifically asked Congress to repeal embargo provisions, restrict American ships from entering war zones, prevent Americans from traveling on belligerent vessels or in danger areas, and require a foreign buyer to take transfer of title in the United States to commodities purchased by belligerents. He also requested that Congress prohibit war credits to belligerents, regulate collection of funds in the United States, and maintain a license system for import and export of arms, ammunition, and implements of war.<sup>(5)</sup>

4. 85 CONG. REC. 9-12, 76th Cong. 2d Sess.

5. See §9.1, *supra*, and § 12.3, *infra*, for the congressional response to this address (the Neutrality Act of 1939), and the President's proclamation convening a special congressional session, respectively.

***Announcement of Exchange of Destroyers for Bases***

**§ 11.7** The House received a written message from the President announcing that the United States had acquired from Great Britain the right to lease naval and air bases in Newfoundland, Bermuda, certain Caribbean Islands, and British Guiana. Notes between the British Ambassador outlining the terms of the lease and the American Secretary of State accepting the terms and announcing transfer of Navy destroyers were also received.

On Sept. 3, 1940,<sup>(6)</sup> the House received a message from the President announcing that the United States had acquired from Great Britain the right to lease naval and air bases.

The Speaker<sup>(7)</sup> laid before the House the following message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee of the Whole House on the State of the Union and ordered to be printed, as follows:

*To the Congress of the United States:*

I transmit herewith for the information of the Congress, notes ex-

6. 86 CONG. REC. 11354, 76th Cong. 3d Sess.

7. William B. Bankhead (Ala.).

changed between the British Ambassador at Washington and the Secretary of State on September 2, 1940, under which this Government has acquired the right to lease naval and air bases in Newfoundland, and in the islands of Bermuda, the Bahamas, Jamaica, Santa Lucia, Trinidad, and Antigua, and in British Guiana; also a copy of an opinion of the Attorney General, dated August 27, 1940, regarding my authority to consummate this arrangement. . . .

This is not inconsistent in any sense with our status of peace. Still less is it a threat against any nation. It is an epochal and far-reaching act of preparation for continental defense in the face of grave danger. . . .

The value to the Western Hemisphere of these outposts of security is beyond calculation. . . .<sup>(8)</sup>

FRANKLIN D. ROOSEVELT,  
THE WHITE HOUSE,  
September 3, 1940.

An opinion of the Attorney General outlining Presidential authority to acquire British offshore naval and air bases and transfer destroyers to Britain accompanied the President's message.<sup>(9)</sup>

8. 8. A Sept. 2, 1940, letter from the British Ambassador to Washington, and the Sept. 2, 1940, response of the Secretary of State, Cordell Hull, are omitted. The British Ambassador outlined the terms of the 99-year rent-free lease. The Secretary of State declared that the Government of the United States "gladly accepts the proposals" and as consideration for the plan "will immediately transfer to His Majesty's Government 50 United States Navy destroyers. . . ."
9. See §3.2, supra, for the text of this opinion.

***Announcement of Arrival of American Forces in Iceland***

**§ 11.8 The House received a written message from the President announcing the arrival in Iceland of forces of the United States Navy to supplement and eventually replace British forces.**

On July 7, 1941,<sup>(10)</sup> the House received a message from the President (H. Doc. No. 307) announcing the arrival in Iceland of United States Navy forces.

The Speaker<sup>(11)</sup> laid before the House the following message from the President of the United States, which was read, and together with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

*To the Congress of the United States:*

I am transmitting herewith for the information of the Congress a message I received from the Prime Minister of Iceland on July 1 and the reply I addressed on the same day to the Prime Minister of Iceland in response to this message.

In accordance with the understanding so reached, forces of the United States Navy have today arrived in Iceland in order to supplement, and eventually to replace, the British forces which have until now been stationed in Iceland in order to insure the adequate defense of that country.

10. 87 CONG. REC. 5868, 5869, 77th Cong. 1st Sess.
11. Sam Rayburn (Tex.).

As I stated in my message to the Congress of September 3 last regarding the acquisition of certain naval and air bases from Great Britain in exchange for certain over-age destroyers, considerations of safety from overseas attack are fundamental. . . .<sup>(12)</sup>

This Government will insure the adequate defense of Iceland with full recognition of the independence of Iceland as a sovereign state.

In my message to the Prime Minister of Iceland I have given the people of Iceland the assurance that the American forces sent there would in no way interfere with the internal and domestic affairs of that country.

FRANKLIN D. ROOSEVELT,  
THE WHITE HOUSE,  
July 7, 1941.

Messages between the Prime Minister and President accompanied the President's message to the Congress.

### ***Announcement of Deployment of Marines to Lebanon***

**§ 11.9 The House received a written message in which the President announced that he had dispatched American Marines to Lebanon to preserve that nation's independence and protect Americans.**

**12.** See §11.7, *supra*, for the message of Sept. 3, 1940, announcing acquisition of British territory for naval and air bases and transfer of American destroyers to Great Britain.

On July 15, 1958,<sup>(13)</sup> a message was received from the President, as follows:

The Speaker<sup>(14)</sup> laid before the House the following message from the President of the United States, which was read and referred to the Committee on Foreign Affairs and ordered to be printed:

*To the Congress of the United States:*

On July 14, 1958, I received an urgent request from the President of the Republic of Lebanon that some United States forces be stationed in Lebanon. . . .

United States forces are being sent to Lebanon to protect American lives and by their presence to assist the Government of Lebanon in the preservation of Lebanon's territorial integrity and independence, which have been deemed vital to United States national interests and world peace. . . .

It is clear that the events which have been occurring in Lebanon represent indirect aggression from without, and that such aggression endangers the independence and integrity of Lebanon. . . .

Our Government has acted in response to an appeal for help from a small and peaceful nation which has long had ties of closest friendship with the United States. . . .

DWIGHT D. EISENHOWER,  
THE WHITE HOUSE,  
July 15, 1958.

**13.** 104 CONG. REC. 13865, 85th Cong. 2d Sess.

**14.** Sam Rayburn (Tex.).

**§ 12. Presidential Proclamations**

The precedents in this section include Presidential proclamations which relate to national security matters and appear in the *Congressional Record*.

***National Emergency Regarding Korea***

**§ 12.1 During the conflict in Korea, the President proclaimed a national emergency which required strengthening of defenses to repel threats to the national security and fulfill responsibilities to the United Nations.**

On Dec. 21, 1950,<sup>(15)</sup> Mr. John W. McCormack, of Massachusetts, inserted in the Record the following proclamation made by the President on Dec. 16, 1950:

MR. MCCORMACK: Mr. Speaker, under leave to extend my remarks in the Record, I include the following text of President Truman's proclamation of the existence of a national emergency, issued today, taken from the New York Times of December 17, 1950:

TEXT OF EMERGENCY PROCLAMATION

Whereas recent events in Korea and elsewhere constitute a grave

15. 96 CONG. REC. A7844, 81st Cong. 2d Sess.

threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and

Whereas world conquest by Communist imperialism is the goal of the forces of aggression that have been loosed upon the world . . .

Now, therefore, I, Harry S. Truman, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security. . . .

In witness whereof, I have heretofore set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 16th day of December in the year of our Lord 1950, and of the independence of the United States of America the one hundred and seventy-fifth.

HARRY S TRUMAN.

By the President:

DEAN ACHESON,  
*Secretary of State.*

***Embargo on Trade With Cuba***

**§ 12.2 A Presidential proclamation relating to an embargo of all trade with Cuba was inserted in the Congressional Record in the Senate.**

On Sept. 20, 1962,<sup>(16)</sup> the following proclamation was inserted in the Record in the Senate:

16. 108 CONG. REC. 20034, 87th Cong. 2d Sess.

EMBARGO ON ALL TRADE WITH CUBA  
BY THE PRESIDENT OF THE UNITED  
STATES OF AMERICA—A PROCLAMA-  
TION

Whereas the eighth meeting of consultation of Ministers of Foreign Affairs, serving as organ of consultation in application of the Inter-American Treaty of Reciprocal Assistance, in its final act resolved that the present Government of Cuba is incompatible with the principles and objectives of the inter-American system; and, in light of the subversive offensive of Sino-Soviet communism with which the Government of Cuba is publicly alined, urged the member states to take those steps that they may consider appropriate for their individual and collective self-defense. . . .

. . . Now, therefore, I, John F. Kennedy, President of the United States of America, acting under the authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do—

1. Hereby proclaim an embargo upon trade between the United States and Cuba in accordance with paragraphs 2 and 3 of this proclamation.

2. Hereby prohibit, effective 12:01 a.m., eastern standard time, February 7, 1962, the importation in the United States of all goods of Cuban origin . . .

Done at the city of Washington this third day of February in the year of our Lord 1962, and of the Independence of the United States of America the 186th.

*John F. Kennedy.*

By the President:

DEAN RUSK,  
*Secretary of State.*

***Extraordinary Session (Neutrality Legislation)***

**§ 12.3 A Presidential proclamation convening an extraordinary session of Congress to act on neutrality legislation was inserted in the Congressional Record.**

On Sept. 21, 1939,<sup>(17)</sup> the following proclamation convening the Congress in extraordinary session was read to the House:<sup>(18)</sup>

THE SPEAKER:<sup>(19)</sup> The Clerk will read the proclamation of the President of the United States convening this extraordinary session of the Seventy-sixth Congress.

The Clerk read as follows:

CONVENING THE CONGRESS IN EXTRA  
SESSION BY THE PRESIDENT OF THE  
UNITED STATES OF AMERICA

A PROCLAMATION

Whereas public interests require that the Congress of the United States should be convened in extraordinary session at 12 o'clock noon on Thursday, the 21st day of September, 1939, to receive such communication as may be made by the Executive: Now, therefore,

17. 85 CONG. REC. 7, 8, 76th Cong. 2d Sess.

18. This proclamation was read in the Senate, *id.* at p. 3.

See §§9.1, 11.6, *supra*, for a discussion of the Neutrality Act of 1939 and the President's message requesting neutrality legislation, respectively.

19. William B. Bankhead (Ala.).

I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extraordinary session at the Capitol in the City of Washington on Thursday, the 21st day of September, 1939, at 12 o'clock noon, of which all persons who shall at that time be entitled to act as Members thereof are hereby required to take notice.

In witness whereof, I have hereunto set my hand and caused to be affixed the great seal of the United States.

Done at the city of Washington this 13th day of September, in the year of our Lord 1939, and of the independence of the United States of America the one hundred and sixty-fourth.

[SEAL]

FRANKLIN D. ROOSEVELT.

By the President:  
CORDELL HULL,  
*Secretary of State.*

***War Between Germany and Foreign Nations***

**§ 12.4 A Presidential proclamation relating to a state of war between Germany and France, Poland, the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, authorized by the Neutrality Act of 1939, was inserted in the Record.**

On Nov. 3, 1939,<sup>(1)</sup> the following Presidential proclamation relating to a state of war between Germany and several nations as authorized by the Neutrality Act of 1939,<sup>(2)</sup> was placed in the *Congressional Record*:

MR. [ALBEN W.] BARKLEY [of Kentucky]: Mr. President, under permission granted on November 3, 1939, page 1358, I wish to insert in the Congressional Record two proclamations issued by the President of the United States, as provided under House Joint Resolution 306, passed at the extra session of Congress, relating to neutrality, as follows:

DEPARTMENT OF STATE,  
*November, 1939.*

PROCLAMATION OF A STATE OF WAR BETWEEN GERMANY AND FRANCE; POLAND; AND THE UNITED KINGDOM, INDIA, AUSTRALIA, CANADA, NEW ZEALAND, AND THE UNION OF SOUTH AFRICA

BY THE PRESIDENT OF THE UNITED STATES:

A PROCLAMATION

Whereas section 1 of the joint resolution of Congress approved November 4, 1939, provides in part as follows:

“That whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the United States

1. 85 CONG. REC. A787, 76th Cong. 2d Sess.
2. See §9.1, supra, for a discussion of the Neutrality Act of 1939.

or to protect the lives of citizens of the United States, the President shall issue a proclamation naming the states involved; and he shall, from time to time, by proclamation, name other states as and when they may become involved in the war." . . .

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution, do hereby proclaim that a state of war unhappily exists between Germany and France, Poland, and the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, and that it is necessary to promote the security and preserve the peace of the United States and to protect the lives of citizens of the United States. . . .

And I do hereby revoke my proclamations Nos. 2349, 2354, and 2360 issued on September 5, 8, and 10, 1939, respectively, in regard to the export of arms, ammunition, and implements of war to France, Germany, Poland, and the United Kingdom, India, Australia, and New Zealand, to the Union of South Africa, and to Canada. . . .

Done at the city of Washington this fourth day of November, in the year of our Lord nineteen hundred and thirty-nine, and of the independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT.

By the President:  
CORDELL HULL,  
*Secretary of State.*

### ***Use of American Ports by Belligerent Nations***

#### **§ 12.5 A Presidential proclamation relating to use of ports**

**or territorial waters of the United States by submarines of foreign belligerent nations, authorized by the Neutrality Act of 1939, was inserted in the Record.**

On Nov. 3, 1939,<sup>(3)</sup> the following Presidential proclamation relating to use of ports or territorial waters of the United States by submarines of foreign belligerent states was inserted in the Record:

Whereas section 11 of the joint resolution approved November 4, 1939, provides:

"Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state, will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United States, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. . . .

Whereas there exists a state of war between Germany [and other nations]; and

3. 85 CONG. REC. A787, 76th Cong. 2d Sess.

See §9.1, *supra*, for a discussion of the Neutrality Act of 1939.

Whereas the United States of America is neutral in such war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 11 of the joint resolution approved November 4, 1939, do by this proclamation find that special restrictions placed on the use of the ports and territorial waters of the United States, exclusive of the Canal Zone, by the submarines of a foreign belligerent state, both commercial submarines and submarines which are ships of war, will serve to maintain peace between the United States and foreign states, to protect the commercial interests of the United States and

its citizens, and to promote the security of the United States;

And I do further declare and proclaim that it shall hereafter be unlawful for any submarine of [specified nations] to enter ports or territorial waters of the United States. . . .

Done at the city of Washington this fourth day of November in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT.

By the President:

Cordell Hull,  
*Secretary of State.*

## C. HOUSE PREROGATIVE TO ORIGINATE REVENUE BILLS

### § 13. In General

The precedents in sections 15–18, *infra*, relate to the constitutional prerogative of the House to originate bills to raise revenue.<sup>(4)</sup> Article I, section 7, clause 1, provides that, “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.”<sup>(5)</sup>

4. See 2 Hinds’ Precedents §§ 1480–1501; 6 Cannon’s Precedents §§ 314–322; and 8 Cannon’s Precedents § 2278, for earlier precedents.
5. See *House Rules and Manual* § 99 (1973).

Because questions relating to the prerogative of the House to originate revenue legislation<sup>(6)</sup> involve interpretation of the Constitution<sup>(7)</sup> rather than House

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See also Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92–82, 92d Cong. 2d Sess. 125, 126 (1973), for discussion of this provision. And see §§ 19, 20, *infra*, for a discussion of Senate authority to amend revenue bills and make appropriations.

6. For one view on what is comprehended by the phrase “bills for raising revenue,” see J. Story, *Commentaries on the Constitution of the United States* § 880, vol. 1, Boston (1833).
7. See, for example, the discussion and cases cited in § 19.2, *infra*.

rules, they are decided by the House rather than the Chair.<sup>(8)</sup> A question alleging that the Senate has invaded this prerogative is privileged<sup>(9)</sup> under Rule IX,<sup>(10)</sup> and may be raised at any time when the House is in possession of the bill and related papers in question.<sup>(11)</sup> The question may be raised pending the motion to call up a conference report on a bill<sup>(12)</sup> and may be committed to conference if raised prior to conference.<sup>(13)</sup>

A Senate bill or joint resolution<sup>(14)</sup> which the House determines infringes upon its prerogatives may be returned to the Senate. When such a measure is received by, or is in possession of the House, a Member may rise to a question of privilege and introduce a resolution. Such resolution normally declares that in the

8. 2 Hinds' Precedents §1490. See also §19.1, *infra*, for an analogous Senate precedent.
9. §14.1, *infra*.
10. *House Rules and Manual* §§661, 662 (1973).
11. §14.2, *infra*.
12. *Id.*
13. 2 Hinds' Precedents §1487.
14. There is precedent for the proposition that a Senate concurrent resolution may also be held to infringe upon the prerogative of the House, notwithstanding the fact that such a resolution does not have the force of law. 6 Cannon's Precedents §319.

opinion of the House the Senate measure contravenes or infringes upon the House prerogative and directs that the measure be returned to the Senate with a message communicating the resolution. After debate the resolution may be approved,<sup>(15)</sup> tabled,<sup>(16)</sup> or referred to committee.<sup>(17)</sup>

On several occasions, the House has chosen to pass a House bill instead of a pending Senate measure where the attention of the House was called to the impropriety of a revenue measure being included in a Senate bill.<sup>(18)</sup>

When a Senate bill or joint resolution which arguably infringes upon the House prerogative has been referred to committee, the committee may refuse to act on it and may report out its own bill in lieu of the Senate measure.<sup>(19)</sup>

The latter two procedures, vacating proceedings whereby the Senate measure had passed the House and massaging a similar House bill to the Senate, and reporting a House bill out of com-

15. See §15, *infra*, for illustrations of approval.
16. See §16.1, *infra*, for a discussion of tabling such a resolution.
17. See §17.1, *infra*, for an illustration of referral to committee.
18. See §§18.1–18.3, *infra* which illustrate this procedure.
19. See §§18.4, 18.5, *infra*, which illustrate this procedure.

mittee, effectively resolve issues relating to the prerogative of the House, because courts do not look behind the bill number. Notwithstanding the fact that a House revenue measure may have been substantially changed by Senate amendments, a bill with a House number will not be challenged in court or on the House floor on the ground that it infringes upon the prerogative of the House to originate bills for raising revenue.<sup>(20)</sup> But the House will assert its prerogative and return a House bill (not raising revenue) with a Senate revenue amendment to the Senate.<sup>(21)</sup>

## § 14. Consideration of Objections

### *Infringement of House Prerogative as Privileged Matter*

#### § 14.1 Infringement by the Senate on the constitutional prerogative of the House to initiate revenue measures may be raised in the House as a matter of privilege.

On May 3, 1971,<sup>(1)</sup> infringement by the Senate of the constitutional

20. See *Hubbard v Lowe*, 226 F 135 (S.D.N.Y. 1915) which is discussed at §§ 19.2, 20.4, *infra*.

21. See § 15.8, *infra*.

1. 117 CONG. REC. 12991, 92d Cong. 1st Sess.

prerogative of the House to initiate revenue measures (art. I, § 7) was raised in the House as a matter of privilege.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I offer a resolution (H. Res. 414) which involves the privileges of the House, and ask for its immediate consideration.

The Clerk read the resolution as follows:

#### H. RES. 414

*Resolved*, That the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER:<sup>(2)</sup> The Chair recognizes the gentleman from Arkansas (Mr. Mills).

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, will the gentleman yield?

MR. MILLS: I will be glad to yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, may we have a brief explanation of the reason for the action that is proposed?

MR. MILLS: Mr. Speaker, I will be glad to explain why I have offered this resolution. It is because the privileges of the House are actually being violated by title IV of the bill S. 860. That title includes an amendment of the Tariff Schedules of the United States,

2. Carl Albert (Okla.).

and all bills which include such amendments must originate in the House.<sup>(3)</sup>

***Timeliness of Objection to Alleged Senate Infringement of House Prerogatives***

**§ 14.2 A question of constitutional privilege relating to the sole power of the House to originate revenue measures and alleging that the Senate, by its amendment to a House bill, has violated article I, section 7 of the Constitution, may be raised at any time when the House is in possession of the papers; and the question has been presented pending the reading of a conference report.**

On June 20, 1968,<sup>(4)</sup> a Member, H.R. Gross, of Iowa, raised a question of constitutional privilege when a conference report was called up.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I call up the conference report on the bill (H.R. 15414) to continue the existing excise tax

3. See §§15.6, 19.5, *infra*, for House and Senate disposition of this matter, respectively.

4. 114 CONG. REC. 17970, 90th Cong. 2d sess.

rates on communication services and on automobiles, and to apply more generally the provisions relating to payments of estimated tax by corporations, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The Speaker Pro Tempore:<sup>(5)</sup> Is there objection to the request of the gentleman from Arkansas?

RESOLUTION OFFERED BY MR. GROSS—  
PRIVILEGE OF THE HOUSE

MR. GROSS: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1222

*Resolved*, That Senate amendments to the bill, H.R. 15414, in the opinion of the House, contravene the first clause of the seventh section of the first article of the Constitution of the United States, and are an infringement of the privileges of this House, and that the said bill, with amendments be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] is recognized for 1 hour.<sup>(6)</sup>

5. Charles M. Price (Ill.).

6. See §16.1, *infra*, for a precedent relating to this point of order.

**§ 15. Return of Senate Legislation**

***Bill Amending Silver Purchase Act***

**§ 15.1 The House by voice vote returned to the Senate a Senate bill which proposed to amend the Silver Purchase Act, on the ground that the bill affected the revenue and therefore was an infringement of the prerogatives of the House.**

On Jan. 15, 1936,<sup>(7)</sup> the House agreed to a resolution returning S. 3260 to the Senate, on the ground that it affected revenue.

MR. [JERE] COOPER of Tennessee: Mr. Speaker, I rise to a question of privilege of the House and offer the following resolution.

The Clerk read as follows:

HOUSE, RESOLUTION 396

*Resolved*, That the bill (S. 3260) to amend Public Law No. 438, Seventy-third Congress, entitled "An act to authorize the Secretary of the Treasury to purchase silver, issue silver certificates, and for other purposes", in the opinion of this House contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Representatives, and is an infringement of the prerogatives of this House, and that said bill be respectfully returned to the Senate

7. 80 CONG. REC. 448, 74th Cong. 2d Sess.

with a message communicating this resolution.

The resolution was agreed to, and a motion to reconsider was laid on the table.

***Bill Amending Tariff Act of 1930***

**§ 15.2 The House by voice vote returned a Senate bill purporting to amend the Tariff Act of 1930, on the ground that it invaded the prerogatives of the House.**

On Jan. 29, 1936,<sup>(8)</sup> the House returned S. 1421 to the Senate on the ground that it invaded the prerogatives of the House.

MR. [JERE] COOPER of Tennessee: Mr. Speaker, I rise to a question of the privilege of the House and present a resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

HOUSE OF RESOLUTION 406

*Resolved*, That the bill (S. 1421) to amend subsection (a) of section 313 of the Tariff Act of 1930, in the opinion of this House, contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Representatives, and is an infringement on the prerogatives of the House, and that said bill be respectfully returned to the Senate with 3 message communicating this resolution.

8. 80 CONG. REC. 1183, 1184, 74th Cong. 2d Sess.

THE SPEAKER:<sup>(9)</sup> The question is on agreeing to the resolution.

The resolution was agreed to, and a motion to reconsider was laid on the table.

***Bill Exempting Olympic Game Receipts From Taxation***

**§ 15.3 The House by voice vote returned a Senate bill which exempted from taxation receipts from the operation of the Olympic games, on the ground that it invaded prerogatives of the House.**

On Feb. 21, 1936,<sup>(10)</sup> the House agreed to a resolution returning S. 3410 to the Senate on the ground that it infringed upon House prerogatives.

MR. [JERE] COOPER of Tennessee: Mr. Speaker, I rise to a question of the privileges of the House and present a resolution for immediate consideration.

The Clerk read the resolution, as follows:

HOUSE, RESOLUTION 425

*Resolved*, That the bill (S. 3410) to exempt from taxation receipts from the operation of Olympic games if donated to the State of California, the city of Los Angeles, and the county of Los Angeles, in the opinion of this House contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Rep-

resentatives, and is an infringement of the prerogative of this House, and that said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER:<sup>(11)</sup> The question is on agreeing to the resolution.

The resolution was agreed to.

On motion of Mr. Cooper of Tennessee, a motion to reconsider the vote by which the resolution was agreed to was laid on the table.

***Measure to Redetermine Sugar Quota***

**§ 15.4 On the ground that it infringed upon the prerogative of the House to originate bills for raising revenue, the House ordered the return of a Senate joint resolution authorizing the President to make a redetermination of the Cuban sugar quota for 1960 [which involved a tariff as well as an incentive payment].**

On July 2, 1960,<sup>(12)</sup> the House by voice vote agreed to House Resolution 598, returning to the Senate Senate Joint Resolution 217 which, notwithstanding the provision of the Quota Act of 1948, as amended, authorized the President to determine the quota for Cuba under that act for the bal-

9. Joseph W. Byrns (Tenn.).

10. 80 CONG. REC. 2583, 74th Cong. 2d Sess.

11. Joseph W. Byrns (Tenn.).

12. 106 CONG. REC. 15818, 15819, 86th Cong. 2d Sess.

ance of the calendar year 1960 in such amounts as he found to be in the national interest. The joint resolution was returned because it infringed upon the prerogative of the House to originate bills for raising revenue.

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, I offer a resolution based on the privileges of the House and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 598

That Senate Joint Resolution 217 in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said resolution be respectfully returned to the Senate with a message communicating this resolution.

MR. [CHARLES A.] HALECK [of Indiana]: Mr. Speaker, will the gentleman yield?

MR. McCORMACK: I yield.

MR. HALECK: Will the gentleman explain the resolution?

MR. McCORMACK: This resolution has the effect of sending back to the Senate the Senate resolution in relation to the sugar legislation. It states that the House respectfully declines to receive it on the ground that it involves revenue or affects revenue; and, under the Constitution, such legislation should originate in the House of Representatives.

THE SPEAKER: <sup>(13)</sup> The question is on the resolution.

13. Sam Rayburn (Tex.).

The resolution was agreed to.

A motion to reconsider was laid on the table.

***Bill Raising Duty on Fishery Products***

**§ 15.5 A Senate-passed bill authorizing the President to raise the duty on fishery products was held to be an infringement of the privilege of the House, and was returned to the Senate.**

On May 20, 1965,<sup>(14)</sup> the House by voice vote agreed to House Resolution 397, returning S.1734 to the Senate, on the ground that it infringed the privileges of the House.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I rise on a question of the privileges of the House, send a resolution to the desk, and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 397

*Resolved*, That the bill of the Senate (S. 1734) to conserve and protect domestic fishery resources in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

14. 111 CONG. REC. 11149, 11150, 89th Cong. 1st Sess.

THE SPEAKER:<sup>(15)</sup> The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The objectionable portion of S. 1734 stated:

That when the Secretary of the Interior determines that the fishing vessels of a country are being used in the conduct of fishing operations in a manner or in such circumstances which diminish the effectiveness of domestic fishery conservation programs, the President. . . *may increase the duty on any fishery product in any form from such country for such time as he deems necessary to a rate not more than 50% above the rate existing on July 1, 1934.*" (Emphasis supplied.)

### ***Bill Amending Tariff Schedules***

**§ 15.6 The Senate having passed a bill relating to the Trust Territory of the Pacific Islands containing one title amending the tariff schedules of the United States, the House held that the Senate's action constituted a violation of article I, section 7 of the Constitution, and adopted a resolution returning the bill to the Senate.**

On May 3, 1971,<sup>(16)</sup> the House by voice vote agreed to House Res-

15. John W. McCormack (Mass.).

16. 117 CONG. REC. 12991, 92d Cong. 1st Sess.

olution 414, returning S. 860 to the Senate because it contravened article I, section 7 of the Constitution and infringed upon the privileges of the House.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I offer a resolution (H. Res. 414) which involves the privileges of the House, and ask for its immediate consideration.

The Clerk read the resolution as follows:

#### H. RES. 414

*Resolved*, That the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER:<sup>(17)</sup> The Chair recognizes the gentleman from Arkansas (Mr. Mills).

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, will the gentleman yield?

MR. MILLS: I will be glad to yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, may we have a brief explanation of the reason for the action that is proposed?

MR. MILLS: Mr. Speaker, I will be glad to explain why I have offered this resolution. It is because the privileges of the House are actually being violated by title IV of the bill S. 860. That title includes an amendment of the Tariff Schedules of the United States,

17. Carl Albert (Okla.).

and all bills which include such amendments must originate in the House. . . .

The resolution was agreed to.

A motion to reconsider was laid on the table.<sup>(18)</sup>

***Bill Amending Firearms Act***

**§ 15.7 The House returned a Senate bill to amend the National Firearms Act, on the ground that it contravened the constitutional prerogative of the House to originate bills to raise revenue.**

On Mar. 30, 1937,<sup>(19)</sup> the House by voice vote agreed to House Resolution 170, returning S. 1905 to the Senate because the Senate bill contravened the constitutional prerogative of the House under article I, section 7.

MR. [JERE] COOPER [of Tennessee]: Mr. Speaker, I offer a resolution for immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 170

*Resolved*, That the bill (S. 1905) to amend the National Firearms Act, passed June 26, 1934, in the opinion of this House contravenes that clause of the Constitution of the United States requiring revenue bills to originate in the House of Representatives and is an infringement of the prerogatives of this House,

**18.** See § 19.5, *infra*, for Senate disposition of this matter.

**19.** 81 CONG. REC. 2930, 75th Cong. 1st Sess.

and that said bill be respectfully returned to the Senate with a message communicating this resolution.

The resolution was agreed to.

***Substitute Adding Tax to House Bill***

**§ 15.8 The House held that a Senate amendment in the nature of a substitute imposing an additional tax, offered to a House bill to amend the Railroad Retirement Act, was an infringement upon the privileges of the House; and the House bill, as amended, was returned to the Senate.**

On Sept. 14, 1965,<sup>(20)</sup> the House by voice vote agreed to House Resolution 578, returning H.R. 3157 to the Senate because Senate amendments to that bill contravened the constitutional prerogative of the House to originate revenue bills.

Mr. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I rise to a question of the privilege of the House and offer a resolution.

The Clerk read the resolution, as follows:

H. RES. 578

*Resolved*, That the amendment in the nature of a substitute added by the Senate to the House bill (H.R. 3157) to amend the Railroad Retirement Act,

**20.** 111 CONG. REC. 23632, 89th Cong. 1st Sess.

ment Act of 1937 in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House, and that the said bill, with the amendments, be respectfully returned to the Senate with a message communicating this resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## § 16. Tabling Objection to Infringement

### *Senate Surtax Amendment*

**§ 16.1 The Senate having amended a House bill relating to excise tax rates by adding a general surtax on income, the House during consideration of the conference report refused to hold that the Senate's action constituted a violation of article I, section 7 of the Constitution, and laid on the table a resolution raising the matter as a question of the privileges of the House.**

On June 20, 1968,<sup>(1)</sup> the House by a vote of yeas 257, nays 162, not voting 14, tabled House Resolution 1222 which sought to return to the Senate H.R. 15414 (a

1. 114 CONG. REC. 17970-78, 90th Cong. 2d Sess.

bill relating to excise tax rates) along with Senate amendments which added a surtax on income. The resolution was based on a contention that the Senate amendments contravened the constitutional prerogative of the House to originate revenue bills.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I call up the conference report on the bill (H.R. 15414) to continue the existing excise tax rates on communication services and on automobiles, and to apply more generally the provisions relating to payments of estimated tax by corporations, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.<sup>(2)</sup>

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from Arkansas?

RESOLUTION OFFERED BY MR. GROSS—  
PRIVILEGE OF THE HOUSE

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution.

THE SPEAKER PRO TEMPORE: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1222

*Resolved*, That Senate amendments to the bill, H.R. 15414, in the

2. See §14.2, *supra*, for a further discussion of this precedent.
3. Charles M. Price (Ill.).

opinion of the House, contravene the first clause of the seventh section of the first article of the Constitution of the United States, and are an infringement of the privileges of this House, and that the said bill, with amendments, be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] is recognized for 1 hour. . . .

REVENUE AND EXPENDITURE CONTROL ACT OF 1968—CONFERENCE REPORT

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] has the floor.

MR. GROSS: . . . Mr. Speaker, the legislation now before us, H.R. 15414, represents one of the most direct attempts in the history of the Republic to cut away and destroy one of the most fundamental privileges and rights of this House—the right, the responsibility, and the duty, under the Constitution, to initiate revenue measures.

Section 7 of article I of the Constitution conferred this privilege on the Members of this body, and there are numerous precedents upholding the right of the House—and the House alone—to originate revenue bills.

For example, in 1807 the House refused to agree to Senate amendments that greatly enlarged the scope of a revenue bill. The record of the debate in the House on that day shows that John Randolph of Virginia, assailed the Senate amendments because they went far beyond merely amending the details of the bill as passed by the House.

Randolph believed, and rightly so, that under the Constitution the Senate

had no power to amend a money bill by varying the objects of that bill.

I do not claim, of course, that the Senate has no power whatsoever to amend a revenue bill of the House. But I do say it cannot, under the guise of an amendment, propose new revenue legislation. . . .

MR. MILLS: . . . If the Members of the House will turn to the Constitution to refresh their recollection of article I, section 7, clause 1, they will observe that it reads as follows:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

There have been several instances where the question of the constitutionality involving this issue has been argued before the Supreme Court and where the Court has rendered decisions. Let me go back in history for two instances—and in these cases not as far back as the gentleman from Iowa went for his precedents in support of his argument.

I would like to point out how the Supreme Court has ruled on this matter. In *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143, in 1911, the court held that the substitution of a corporate tax by the Senate for an inheritance tax passed by the House was constitutional. . . .

In another case also the Supreme Court upheld an amendment by the Senate of a tax bill. In this case the Senate added a section imposing an excise tax upon the use of foreign-built pleasure yachts. The Supreme Court in this case, *Rainey v. United States*, 232 U.S. 310 (1914), decided that the

amendment did not contravene article I, section 7, clause 1 of the Constitution. . . .

MR. GROSS: Mr. Speaker, I move the previous question on the resolution.

MR. MILLS: Mr. Speaker, I move to lay the resolution offered by the gentleman from Iowa on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Arkansas.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. MILLS: Mr. Speaker, on that question I demand the yeas and nays. The yeas and nays were ordered.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BOGGS: Am I correct in understanding that a vote "yea" is in favor of the motion offered by the gentleman from Arkansas, which would mean we would go back to orderly debate on this conference report?

THE SPEAKER PRO TEMPORE: The gentleman is correct. The motion is to lay the resolution on the table.

The question was taken; and there were—yeas 257, nays 162, not voting 14. . . .

So the motion to table the resolution was agreed to. . . .

A motion to reconsider was laid on the table.

MR. MILLS: Mr. Speaker, I renew my request that the statement of the managers on the part of the House be read in lieu of the report.

THE SPEAKER:<sup>(4)</sup> Is there objection to the request of the gentleman from Arkansas?

There was no objection.

## § 17. Referring Objection to Committee

### *Senate Authorization to Use Securities Proceeds as Debt Transaction*

**§ 17.1 The House agreed to refer to the Committee on the Judiciary a resolution which alleged that a Senate joint resolution "authorizing the Secretary of the Treasury to use as a public-debt transaction certain proceeds of securities hereafter issued under authority of the Second Liberty Loan Act . . . to effectuate [an Anglo-American debt agreement]" infringed upon the constitutional powers of the House in the matter of revenue.**

On May 14, 1946,<sup>(5)</sup> the House by voice vote agreed to a motion to refer to the Committee on the Judiciary a resolution alleging that Senate Joint Resolution 138 infringed upon the constitutional prerogative of the House to originate revenue-raising bills.

MR. [HAROLD] KNUTSON [of Minnesota]: Mr. Speaker, I rise to present

5. 92 CONG. REC. 5000-12, 79th Cong. 2d Sess.

4. John W. McCormack (Mass.).

a question of the privilege of the House. . . .

THE SPEAKER:<sup>(6)</sup> The gentleman from Minnesota is recognized. . . .

MR. KNUTSON: Mr. Speaker, the question of the privilege of the House is set forth in a resolution, which I send to the Clerk's desk; and on that I ask for recognition.

The Clerk read as follows:

Resolution offered by Mr. Knutson:

*"Resolved, That Senate Joint Resolution 138, authorizing the Secretary of the Treasury to use as a public-debt transaction certain proceeds of securities hereafter issued under authority of the Second Liberty Loan Act, as amended, to effectuate a certain debt agreement between the United States and the United Kingdom of Great Britain, extending the purposes for which securities may be issued under that act and requiring payments of interest to the United States to be covered into the Treasury as miscellaneous receipts, is a bill to raise revenue within the meaning and intent of article I, section 7, of the Constitution of the United States requiring all such bills to originate in the House of Representatives;*

*"That Senate Joint Resolution 138 therefore is an infringement of the prerogatives and privileges of this House and that said bill be taken from the Speaker's table and respectfully returned to the Senate with a message communicating this resolution."*

THE SPEAKER: The gentleman from Minnesota is recognized.

MR. KNUTSON: . . . In this case the Senate has not proposed or concurred

in amendments to a revenue measure, but on the contrary it has initiated a bill the sole purpose of which is the raising of revenue through the issuance of bonds or notes of the United States. . . .

. . . The rates of duty on goods imported from Great Britain in the future will be fixed in an amount which the State Department determines to be consistent with the terms of the financial agreement which this bill brings into existence.

The Senate report, on page 17, says:

The proposed credit is to enable Britain to participate in world trade without currency and trade discrimination, while she reconverts her industries to peacetime production and resumes her place in world trade.

Tariff duties are, in their very nature, trade discriminations.

The bill amends the Second Liberty Loan Act by adding to and expanding the purposes for which securities may be issued under the authority of that act. It does not merely refer to similar authority contained in some other act of Congress but explicitly authorizes bonds to be issued under authority of that act and expressly extends the scope of that act to include such bonds. The purposes for which bonds may be issued, and the authority for issuing them are strictly revenue matters.

Responding to Mr. Knutson, Mr. John W. McCormack, of Massachusetts, cited 2 Hinds' Precedents §1490, in which the House rejected a motion to return to the Senate a bill fixing the maximum amount of United States notes and providing for issuance of an

6. Sam Rayburn (Tex.).

additional amount in circulation in national banks. Mr. McCormack inserted a memorandum supporting his position that the pending bill did not infringe upon the prerogatives of the House.<sup>(7)</sup>

## MEMORANDUM

Senate Joint Resolution 138, "to implement further the purposes of the Bretton Woods Agreements Act by authorizing the Secretary of the Treasury to carry out an agreement with the United Kingdom, and for other purposes," has originated in the Senate. The question arises, therefore, whether there is reasonable ground for sustaining a question of privilege which might be raised under article I, section 7, clause 1 of the Constitution which states: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." An examination of the judicial decisions, congressional decisions, and precedents in the form of similar bills leads to the conclusion that there is not sufficient basis for sustaining a question of privilege.

. . . [I]t appears to be clear that a bill to raise funds through the sale of Government obligations does not violate the privilege of the House as set forth in article I, section 7, clause 1 of the Constitution. Even if it should be concluded, however, that a bill to raise funds by selling Government bonds violates the privilege of the House, it would be necessary for the House to reach the additional conclusion that

Senate Joint Resolution 138 does provide for the raising of funds through the sale of Government obligations. Such a conclusion would be illogical. Under the Second Liberty Bond Act, as amended, the Secretary of the Treasury is already authorized for certain purposes to issue public debt obligations of the United States up to a specified maximum. Senate Joint Resolution 138 merely instructs the Secretary of the Treasury how to use funds which he is already authorized to raise under the Second Liberty Bond Act, as amended. The resolution would not increase the limit of public-debt issues, it would not authorize the Secretary of the Treasury to issue any securities not already provided for by the Second Liberty Bond Act, as amended, and it would not vary in any way the type of security which may be issued at the present time under existing law. . . .

Senate Joint Resolution 138 is not a bill providing for the raising of revenue within the meaning of article I, section 7, clause 1, of the Constitution. But even if it did provide for the raising of revenue it would fall within the class of legislation where revenue-raising provisions are only incidental to broader general purposes.<sup>(8)</sup> The primary purpose of Senate Joint Resolution 138 is to authorize the execution of the financial agreement between the United States and the United Kingdom dated December 6, 1945. It is, accordingly,

8. See §13, *supra*, for discussion of the distinction between bills which primarily raise revenue and would therefore infringe on the prerogative if they originated in the Senate, and those which incidentally raise revenue and do not so infringe.

7. 92 CONG. REC. 5004, 5005, 79th Cong. 2d Sess.

legislation to make effective agreements between the two Governments regarding exchange controls, monetary policies, import controls, participation in the International Monetary Fund and the International Bank for Reconstruction and Development and participation in efforts to bring into being an international trade organization for the purpose of eliminating restrictive practices detrimental to world trade. . . .

In view of the fact that Senate Joint Resolution 138 authorizes the expenditure of funds by the Secretary of the Treasury, an examination has also been made of the practice of Congress with respect to appropriation bills. This purpose is stated in Cannon's Procedure in the House of Representatives (4th ed. 1945), as follows: <sup>(9)</sup>

"Under immemorial custom the general appropriation bills (as distinguished from special bills appropriating for single, specific purposes) originate in the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution." . . .

He also states that: <sup>(10)</sup>

[B]ills providing special appropriations for specific purposes are not general appropriation bills. . . ."

It is clear, therefore, that a resolution appropriating funds for the extension of a line of credit to the United Kingdom is not a general appropriation and can originate either in the House or in the Senate. . . .

MR. MCCORMACK: Mr. Speaker, I offer a motion.

9. This passage appears on p. 20 of the 1959 edition of *Cannon's Procedure*.
10. This passage appears on p. 22 of the 1959 edition of *Cannon's Procedure*.

The Clerk read as follows:

Mr. McCormack moves to refer the resolution to the Committee on the Judiciary.

MR. KNUTSON: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from Massachusetts [Mr. McCormack].

The motion was agreed to.

*Parliamentarian's Note:* The unnumbered House resolution was not reported back to the House. Senate Joint Resolution 138, after referral to the Committee on Banking and Currency, eventually was passed by the House and approved by the President.

## **§ 18. Action on House Bill in Lieu of Senate Bill**

### ***Floor Approval***

**§ 18.1 The House amended a Senate bill to insert provisions of a similar House-passed bill which included a tax provision, but subsequently vacated proceedings whereby the House bill had been laid on the table and the Senate bill approved, passed the House bill again, and messaged it to the Senate.**

On May 4, 1959,<sup>(11)</sup> the House by unanimous consent vacated the proceedings whereby the House had tabled H.R. 5610, then amended and passed the bill again, and messaged it to the Senate. The proceedings whereby a Senate bill, S. 226, had been amended by the House to strike out Senate language and insert in lieu thereof the language of H.R. 5610, were vacated by unanimous consent.

MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I ask unanimous consent that the proceedings whereby the bill H.R. 5610 was laid on the table, the amendment agreed to, the bill engrossed and read a third time, and passed, be vacated for the purpose of offering an amendment.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from Arkansas?

MR. [JOHN B.] BENNETT of Michigan: Reserving the right to object, Mr. Speaker, will the chairman of our committee explain the purpose of this request?

MR. HARRIS: The purpose of this unanimous consent request is that the bill H.R. 5610 be reconsidered, after the vacating of the proceedings of the House of last week in connection therewith, for the purpose of agreeing to an amendment.

MR. BENNETT of Michigan: I withdraw my reservation of objection, Mr. Speaker. . . .

11. 105 CONG. REC. 7310-13, 86th Cong. 1st Sess.

12. Sam Rayburn (Tex.).

THE SPEAKER: Is there objection to the request of the gentleman from Arkansas [Mr. Harris]?

There was no objection.

MR. HARRIS: Mr. Speaker, I move to strike out all after the enacting clause and insert an amendment, which I send to the Clerk's desk.

THE SPEAKER: The Clerk will report the amendment. . . .

THE SPEAKER: The Clerk will read the amendment.

The Clerk read as follows:

Strike out all after the enacting clause and insert the following: . . .

MR. HARRIS: Mr. Speaker, for the information of the Members of the House, I have asked unanimous consent that the proceedings whereby the bill H.R. 5610 was laid on the table, the amendment agreed to, the bill engrossed and read a third time and passed, be vacated, for the purpose of offering an amendment.

The unanimous consent request was agreed to, and I have offered an amendment, which has just been read.

The amendment to the bill H.R. 5610 which I have just offered strikes out all after the enacting clause and inserts the provisions of the bill that passed the Senate last week.

You will recall that H.R. 5610, to amend the Railroad Retirement Act of 1937, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act, was considered in the House last Wednesday. A substitute was offered by the distinguished gentleman from West Virginia [Mr. Staggers]. The substitute was practically the same bill that was considered and passed by the other body, with the ex-

ception of one amendment, which had to do with section 4. Under this amendment pensions and annuities under this act or the Railroad Retirement Act of 1935 will not be considered as income for the purposes of section 522 of title 38 of the United States Code. The Senate had considered that amendment, which is not out of line with other provisions of law in other matters of this kind. So that is the matter that is before us now.

The necessity for this action is that last week after the House had taken the action it did, we, as usual, when we have a bill from the other body on the same subject on the Speaker's table, asked that that bill be taken from the Speaker's desk, that all after the enacting clause be stricken out, and that the House-passed bill be inserted. That was the usual procedure we followed, and I made the request after the House had taken its action last week. It later developed that that was not the correct action that should have been taken because there are tax provisions in this legislation. The Constitution provides, as you know, that all legislation relating directly to tax measures, revenues, must originate in the House of Representatives. Therefore, this action to vacate that proceeding is in order to comply with the constitutional provision by passing this legislation in order to accomplish what the House intended last week after it considered this matter rather extensively.

MR. [KENNETH A.] ROBERTS [of Alabama]: Mr. Speaker, the amendment to section 20 of the Railroad Retirement Act of 1937 made by section 4 of the amendment provides that payments under such act shall not be considered

as income for purposes of section 522 of title 38, United States Code. Under that section, pension for non-service-connected permanent and total disability is not paid to a veteran whose annual income exceeds \$1,400 if he has no dependents or \$2,700 if he has one or more dependents. Under existing law, certain items are disregarded in determining whether a veteran has exceeded the income limitations, and the amendment will add to the list of such items payments under the Railroad Retirement Act of 1937.

The cost of this amendment is negligible.

The amendment was sponsored in the other body by Senator Hill, of Alabama. I was happy to sponsor it in the House.

THE SPEAKER: The question is on the amendment.

The amendment was agreed to.

THE SPEAKER: The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

THE SPEAKER: The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

MR. HARRIS: Mr. Speaker, I ask unanimous consent that the proceedings whereby S. 226, an act to amend the Railroad Retirement Act of 1937, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act, so as to provide increases in benefits, and for other purposes, as amended, was read a third time, and passed, be vacated, and the bill be indefinitely postponed.

THE SPEAKER: Is there objection to the request of the gentleman from Arkansas?

There was no objection.

*Parliamentarian's Note:* On Apr. 29, 1959, while the House had under consideration H.R. 5610, the Senate messaged to the House S. 226, a measure differing in only one respect from the House bill as it had been amended on the floor. After passage of H.R. 5610, a motion was adopted to strike out all after the enacting clause in S. 226 and insert the language of the House bill; the House bill was then laid on the table. The following day, shortly before the Senate bill was to be messaged to the Senate, a question was raised as to the constitutionality of the Senate-passed bill because it included a tax feature, and the delivery of the message to the Senate was stopped. The proceedings of the House on May 4, 1959, were necessitated by the requirement under the Constitution that all bills raising revenue originate in the House. Following the amendment of the House bill and the indefinite postponement of the Senate bill, the House bill, H. R. 5610, was messaged to the Senate on May 5, 1959.

**§ 18.2 The House, after it had amended a Senate bill to insert provisions of a similar**

**House passed bill which included a revenue-raising title, vacated the proceedings whereby the House bill had been laid on the table, passed the bill again, and messaged it to the Senate.**

On Dec. 7, 1970,<sup>(13)</sup> the House by unanimous consent vacated the proceedings whereby the House had tabled H.R. 19504, then passed the bill again, and messaged it to the Senate.

MR. [GEORGE H.] FALLON [of Maryland]: Mr. Speaker, I ask unanimous consent that the proceedings whereby the bill (H.R. 19504) to authorize appropriations for the construction of certain highways in accordance with title 23, United States Code, and for other purposes, was read a third time, passed, and the motion to reconsider laid on the table and the bill then laid on the table, be vacated.

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from Maryland?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, I am at a loss to understand why this request is being made. What is the reason therefor?

MR. FALLON: Mr. Speaker, I will say to the gentleman from Iowa, we should not have vacated the House number and substituted the Senate bill, since title III of the bill is a revenue measure and must originate in the House.

13. 116 CONG. REC. 40096, 91st Cong. 2d Sess.

14. John W. McCormack (Mass.).

MR. GROSS: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from Maryland?

There was no objection.

The engrossed House bill (H.R. 19504) was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* The House did not ask for the return to the House of the amended Senate bill, S. 4418. That bill never emerged from conference. It was the House measure which was finally enacted as Public Law No. 91-605.

**§ 18.3 The House vacated the proceedings by which it added a revenue-raising amendment to a pending Senate bill, preferring to postpone further consideration of the Senate bill while sending a House bill, containing the revenue provision, to the Senate.**

On May 11, 1970,<sup>(15)</sup> the House agreed to amend S. 2694, amending the District of Columbia Police and Firemen's Salary Act of 1958 and the District of Columbia Teachers' Salary Act of 1955, by

15. 116 CONG. REC. 14951-60, 91st Cong. 2d Sess.

striking out all after the enacting clause and inserting in lieu thereof the language of H.R. 17138, a similar measure which, unlike the Senate bill, included a provision (title V) to impose new taxes. The House bill, H.R. 17138, was tabled.

MR. [DON] FUQUA [of Florida]: Mr. Speaker, I ask unanimous consent that the Committee on the District of Columbia be discharged from further consideration of S. 2694, to amend the District of Columbia Police and Firemen's Salary Act of 1958 and the District of Columbia Teachers' Salary Act of 1955 to increase salaries, and for other purposes, a Senate bill similar to that passed by the House, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2694

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

TITLE I.—SALARY INCREASES FOR DISTRICT OF COLUMBIA POLICEMEN AND FIREMEN

\* \* \* \* \*

MR. FUQUA: Mr. Speaker, I offer an amendment.

16. John W. McCormack (Mass.).

The Clerk read as follows:

Amendment offered by Mr. Fuqua: Strike out all after the enacting clause of S. 2694 and insert in lieu thereof the language of H.R. 17138, as passed, as follows:

TITLE I.—SALARY INCREASES FOR DISTRICT OF COLUMBIA POLICEMEN AND FIREMEN

\* \* \* \* \*

TITLE V.—AMENDMENTS TO THE DISTRICT OF COLUMBIA REVENUE LAWS

Sec. 501. Section 3 of title VI of the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Code, sec. 47-1567b(a)) is amended to read as follows:

“Sec. 3. Imposition of Tax.—In the case of a taxable year beginning after December 31, 1969, there is hereby imposed on the taxable income of every resident a tax determined in accordance with the following table: . . .”

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 17138) was laid on the table.

On May 12, 1970,<sup>(17)</sup> the House vacated the proceedings whereby H.R. 17138 was tabled and subsequently passed the House bill.

MR. FUQUA: Mr. Speaker, I ask unanimous consent that the proceedings whereby the bill (H.R. 17138)

17. 116 CONG. REC. 15145-50, 91st Cong. 2d Sess.

to amend the District of Columbia Police and Firemen's Salary Act of 1968, and the District of Columbia Teachers' Salary Act of 1955 to increase salaries, and for other purposes, was read a third time and passed and laid on the table be vacated.

THE SPEAKER: Is there objection to the request of the gentleman from Florida?

There was no objection.

MR. FUQUA: Mr. Speaker, I ask unanimous consent for the immediate consideration of the engrossed bill.

THE SPEAKER: Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the engrossed bill.

It then vacated the proceedings of May 11, 1970, whereby S. 2694, as amended by insertion of the language of the House bill, was approved, and indefinitely postponed further action on the Senate bill.

VACATING PROCEEDINGS ON S. 2694, SALARY INCREASES FOR DISTRICT OF COLUMBIA TEACHERS, POLICEMEN, AND FIREMEN

MR. FUQUA: Mr. Speaker, I ask unanimous consent that the proceedings whereby the House considered, amended, and passed the bill of the Senate (S. 2694) to amend the District of Columbia Police and Firemen's Salary Act of 1958 and the District of Columbia Teacher's Salary Act of 1955 to increase salaries, and for other purposes, be vacated and that further proceedings on that bill be indefinitely postponed.

THE SPEAKER: Is there objection to the request of the gentleman from Florida?

There was no objection.

*Parliamentarian's Note:* S. 2694 as passed by the Senate did not contain a revenue provision. Title V of the House passed bill (H.R. 17138) did, however, contain a provision amending the D.C. revenue laws to impose new taxes on D.C. residents. S. 2694 was amended on May 10 to include the provisions of the House-passed bill. On the morning of May 12, before the Senate bill had been messaged back to the Senate, it was discovered that the House amendment to the Senate bill contained the revenue feature, which constituted a violation of article I, section 7 of the Constitution (requiring bills for raising revenue to originate in the House). For this reason, the House vacated the proceedings of May 11 and messaged the House bill to the Senate.

***Committee Decision***

**§ 18.4 The Committee on Ways and Means, having voted not to recommend to the House the return of a Senate bill decreasing the debt limit as infringing on the prerogatives of the House, reported out a House bill on the same**

**subject, which passed the House and Senate and became a public law.**

On June 6, 1946,<sup>(18)</sup> the Committee on Ways and Means, after deciding not to recommend that the House return to the Senate a Senate bill which had been referred to it, and which sought to decrease the debt limit, reported out a bill (H.R. 2404) on the same subject, which passed the House and Senate and became Public Law No. 79-28 (59 Stat. 47).

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1760. An act to decrease the debt limit of the United States from \$300,000,000,000 to \$275,000,000,000; to the Committee on Ways and Means.

**§ 18.5 Where the Senate had passed a bill which possibly infringed upon the House's constitutional prerogative to originate revenue legislation—a bill to authorize the President to extend certain privileges and immunities (including exemptions from customs duties and importation taxes) to the Organization of African Unity—the House passed an identical**

18. 92 CONG. REC. 6436, 79th Cong. 2d Sess.

**bill reported from the Committee on Ways and Means.**

On Nov. 6, 1973,<sup>(19)</sup> the House by a vote of yeas 340, nays 39, not voting 54, approved H.R. 8219, a bill identical to a Senate-passed bill which arguably infringed upon the constitutional prerogative of the House to originate revenue legislation.

MR. [ALBERT C.] ULLMAN [of Oregon]: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8219) to amend the International Organizations Immunities Act to authorize the President to extend certain privileges and immunities to the Organization of African Unity.

The Clerk read as follows:

H.R. 8219

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the International Organizations Immunities Act (22 U.S.C. 288–288f) is amended by adding at the end thereof the following new section:

“Sec. 12. The provisions of this title may be extended to the Organization of African Unity in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.”

19. 119 CONG. REC. 36006–08, 93d Cong. 1st Sess.

THE SPEAKER:<sup>(1)</sup> Is a second demanded?

MR. [HERMAN T.] SCHNEEBELI [of Pennsylvania: Mr. Speaker, I demand a second.

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection.

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

Mr. Speaker, the purpose of the pending bill, as reported to the House by the Committee on Ways and Means, is to provide the President with authority to extend to the Organization of African Unity and its office, officials, and employees in the United States those privileges and immunities specified in the International Organizations Immunities Act.

Under the bill, at the discretion of the President the Organization of African Unity—OAU—may be designated by the President as an international organization for purposes of the International Organizations Immunities Act. Upon such a designation the organization, to the extent so provided by the President, will be exempt from customs duties on property imported for the activities in which it engages, from income taxes, from withholding taxes on wages, and from excise taxes on services and facilities. In addition, the employees of the international organization, to the extent not nationals of the United States, may not be subject to U.S. income tax on the income they receive from OAU. OAU is an organization composed of 41 member states, representing all the independent African nations—except the Republic of

1. Carl Albert (Okla.).

South Africa—and acts to further the goals of political and economic development of Africa. It presently has a mission in New York. . . .

THE SPEAKER: The question is on the motion of the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 8219.

The question was taken.

MR. [JOHN R.] RARICK [of Louisiana]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 340, nays 39, not voting 54, as follows: . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* Although it did not directly “raise” revenue, the Senate bill clearly “affected” revenue, because it granted an immunity from taxation.

## **§ 19. Senate Action on Revenue Legislation**

In addition to its mandate that the House originate all revenue bills, article I, section 7 of the Constitution<sup>(2)</sup> authorizes the

2. See annotation following article I, section 7, *House Rules and Manual*.

Senate to propose or concur with amendments as on other bills. Senate authority to amend revenue bills is broad, but not unlimited. A principle frequently applied is that the Senate may substitute one kind of tax for a tax that the House has proposed, but may not impose a tax if one had not originally been proposed by the House. Thus, the Supreme Court has held that a Senate amendment which substituted a corporate tax in place of an inheritance tax which had been proposed in the original House version did not contravene the constitutional provision; for the bill had properly originated in the House as a revenue-raising measure and the Senate amendment could constitutionally be added thereto.<sup>(3)</sup>

In a similar case, the House without debate and by voice vote held that a Senate amendment in the nature of a substitute infringed upon the House prerogative and returned the bill, as amended, to the Senate.<sup>(4)</sup> In this case, the substitute, which was offered to a House bill to amend the Railroad Retirement Act, sought to impose a tax.

On the other hand, as a further application of the above principle,

3. *Flint v Stone Tracy Co.*, 220 U.S. 107 (1911). See also *Rainey v United States*, 232 U.S. 310 (1914).

4. See § 15.8, *supra*.

the House tabled a resolution to return to the Senate a House excise tax bill, which the Senate had amended by provision for a general surtax.<sup>(5)</sup>

When the issue has been raised, the Senate has generally respected the House prerogative. Thus, the Senate rejected a committee amendment changing a definition in the Internal Revenue Code which was added to a Senate bill granting independence to the Philippine Islands.<sup>(6)</sup> On another occasion, the Senate sustained a point of order that a Senate amendment affecting the Revenue Act, offered to a House bill directed to administrative purposes rather than raising revenue, infringed on the prerogative.<sup>(7)</sup> Moreover, after the House returned a Senate bill to the Senate on the ground that certain tariff schedule amendments infringed upon the House prerogative, the Senate deleted the amendments.<sup>(8)</sup> And the Senate has deleted amendments to the Internal Revenue Code that appeared in a Senate bill.<sup>(9)</sup>

5. See § 16.1, *supra*.

6. See § 19.3, *infra*.

7. See § 19.4, *infra*.

8. See § 19.5, *infra*.

9. See § 19.6, *infra*.

### ***Constitutional Issue Submitted to Senate***

**§ 19.1 Because it requires interpretation of the Constitution rather than the rules of the Senate, an issue as to whether a Senate amendment to a House bill infringes upon the prerogative of the House to originate bills raising revenue is decided by the Senate, not the Chair.**

On Mar. 28, 1935,<sup>(10)</sup> a question of order as to the propriety of a Senate amendment to a House bill was submitted to the Senate.<sup>(11)</sup>

The Senate resumed the consideration of the bill (H.R. 6359) to repeal certain provisions relating to publicity of certain statements of income.

THE VICE PRESIDENT:<sup>(12)</sup> The question is on the amendment offered by the Senator from Wisconsin [Mr. La Follette].

The amendment offered by Mr. La Follette is after line 5 insert a new section reading as follows:

Sec. 2. (a) Section 11 of the Revenue Act of 1934, relating to the normal tax on individuals, is amended by striking out "4 percent" and inserting in lieu thereof "6 percent."

10. 79 CONG. REC. 4583, 4584, 4586, 4587, 74th Cong. 1st Sess.

11. See also 84 CONG. REC. 6339-49, 76th Cong. 1st Sess., May 31, 1939, for submission of a similar issue to the Senate.

12. John N. Garner (Tex.).

(b) Section 12(b) of the Revenue Act of 1934, relating to rates of surtax, is amended to read as follows:

“(b) Rates of surtax: There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

“Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$8,000, 6 percent of such excess. . . .”

MR. [PAT] HARRISON [of Mississippi]: Mr. President, I make a point of order against the amendment offered by the Senator from Wisconsin. I do not think I formally made it yesterday, because the Senator from Wisconsin said he desired to make a brief statement. He made that statement yesterday afternoon, and I now make the point of order that the pending bill is not, in a strict sense, a revenue bill, and that for the Senate to attach a tax proposal to the bill at this time would be contrary to that provision of the Constitution requiring all bills for raising revenue to originate in the House of Representatives. . . .

THE VICE PRESIDENT: The point of order is well taken. The Chair is ready to rule.

The present occupant of the chair has at no time declined to construe the rules of the Senate; and if this were a matter of the rules of the Senate, he would not hesitate for a moment to express his opinion about it and make a ruling.

It seems to the Chair, however, that this is purely a constitutional question; and under the rulings and under the precedents for more than a hundred years, where constitutional questions are involved as to the right of the Sen-

ate to act, the Chair has universally submitted the question to the Senate.

The Chair thinks the logic of that rule is correct, the reasoning of it is good, because the Chair might undertake to interpret the Constitution when a majority of the Senators would have a different viewpoint. So the Chair is going to follow a long line of precedents and submit to the Senate the question whether or not it is constitutional for the Senate to propose this amendment; and it occurs to the Chair that the only question involved is, Is this a bill to raise revenue?

So the Chair is going to submit to the Senate of the United States the question as to whether or not the Senate, under the Constitution, has a right to propose this amendment.

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, must that question be determined without debate?

MR. [HUEY P.] LONG [of Louisiana]: No: it is subject to debate.

THE VICE PRESIDENT: The point of order has been made by the Senator from Mississippi [Mr. Harrison] to the amendment of the Senator from Wisconsin [Mr. La Follette]. The question before the Senate is whether or not the point of order shall be sustained. That question is debatable.<sup>(15)</sup>

In connection with his ruling on the point of order made by the Senator from Mississippi, the Chair asks unanimous consent to insert in the Record some decisions and precedents prepared by the parliamentary clerk. Is there objection? The Chair hears none.

The matter referred to is as follows:

**13.** See also § 19.4, *infra*, for further debate on this question.

[FROM THE CONSTITUTION OF THE UNITED STATES, AS REVISED AND ANNOTATED, 1924]

ARTICLE I SECTION 7, CLAUSE 1,  
REVENUE BILLS

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

“All bills for raising revenue.”

“The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills for purposes which incidentally create revenue.”

*U.S. v. Norton* (91 U.S. 566) [1875].

*Twin City Bank v. Nebeker* (167 U.S. 196) [1897].

*Millard v. Roberts* (202 U.S. 429) [1906].

QUESTIONS INVOLVING CONSTITUTIONALITY OF BILLS ARE SUBMITTED TO SENATE

*Wednesday, January 16, 1924*

The Senate, in a call of the calendar under rule VIII, reached the bill (S. 120) to provide for a tax on motor vehicle fuels sold within the District of Columbia, and for other purposes.

Mr. McKellar made a point of order against the bill on the ground that it was a revenue measure and that under the Constitution of the United States all revenue-raising measures must originate in the House of Representatives, and that the bill had no place on the Senate Calendar.

The question was argued, and Mr. Lenroot made the contention that it was not the function of the Chair to

pass upon the question of whether bills are or are not in violation of the Constitution.

After further argument, the President pro tempore (Albert B. Cummins, of Iowa) made the following ruling:

“The Chair is of the opinion that he has no authority to declare a proposed act unconstitutional. The only precedent which the Chair has been able to find since the question arose was presented to the Senate in 1830, and the Vice President then in the chair ruled in accordance with the suggestion which the Chair has just made, holding that it was a question which must be submitted to the Senate and one which could not be ruled upon by the Chair, which entirely concurs with the views of the present occupant of the chair in the matter. The question before the Senate, therefore, is, Shall the point of order which is made by the Senator from Tennessee [Mr. McKellar], which is that the bill now under consideration is unconstitutional and should have originated in the House of Representatives, be sustained? [Putting the question.] The ayes have it, and the point of order is sustained. The bill will be indefinitely postponed.”

*January 22, 1925*<sup>(14)</sup>

The Senate had under consideration the bill (S. 3674) reclassifying the salaries of postmasters and employees of the Postal Service, readjusting their salaries and compensation on an equitable basis, increasing postal rates to provide for such readjustment, and for other purposes.

Pending debate,

14. The incident of Jan. 22, 1925, is discussed at 6 Cannon's Precedents §317.

Mr. Swanson raised a question of order, viz, that that portion of the bill dealing with increased postal rates proposed to raise revenue, and, under the Constitution, must originate in the House of Representatives, and was therefore in contravention of the Constitution.

The Presiding Officer (Mr. Jones of Washington) held that the Chair had no authority to pass upon the constitutionality of a bill, and submitted to the Senate the question, Shall the point of order be sustained?

On the following day the Senate, by a vote of 29 yeas to 50 nays, overruled the point of order.

The bill was subsequently passed and transmitted to the House of Representatives. On February 3 the House returned the bill to the Senate with the statement that it contravened the first clause of the seventh section of the first article of the Constitution and was an infringement of the privileges of the House.

The message and bill were referred to the Committee on Post Offices and Post Roads, and no further action taken. A House bill, H.R. 11444, of an identical title, was subsequently passed by both Houses and became a law. . . .

*March 2, 1931*<sup>(15)</sup>

Mr. Capper moved that the Senate proceed to the consideration of the bill (S. 5818) to regulate commerce between the United States and foreign countries in crude petroleum and all products of petroleum, including fuel

15. The incident of Mar. 2, 1931, is discussed at 6 Cannon's Precedents § 320.

oil, and to limit the importation thereof, and for other purposes.

Mr. Ashurst made the point of order that the bill was a revenue-raising measure, and, under the Constitution, should originate in the House of Representatives.

The Vice President submitted the point of order to the Senate.

Mr. Capper's motion was subsequently laid on the table, and the point of order was not passed upon.

*December 17, 1932*

The Senate had under consideration the bill (H.R. 7233) to enable the people of the Philippine Islands to adopt a constitution and provide a government for the Philippine Islands, to provide for the independence of the same, and for other purposes.

Mr. Dickinson offered an amendment imposing on imports of pearl buttons or shells, in excess of 800,000 gross in a year, the same rates of duty imposed on like articles imported from foreign countries.

Mr. Walsh of Montana raised a question of order, viz, that the amendment proposed to raise revenue and could not, under the Constitution, originate with the Senate.

The Vice President submitted to the Senate the question, Is the point of order well taken? and

It was determined in the affirmative.

Subsequently, Mr. Dickinson stated that the amendment above indicated was identical, except as to the commodity, with the language in the bill dealing with sugar and coconut oil; when

The President pro tempore ruled that in view of the language contained

in the House text, the amendment was in order.

After debate, and other proceedings, the following occurred:<sup>(16)</sup>

MR. HARRISON: Mr. President, I ask for a vote on the point of order raised by me.

THE PRESIDING OFFICER:<sup>(17)</sup> The question is, Shall the Senate sustain the point of order raised by the Senator from Mississippi [Mr. Harrison] against the amendment proposed by the Senator from Wisconsin [Mr. La Follette] on the ground that it contravenes the constitutional provision? [Putting the question.] The "ayes" have it, and the point of order is sustained.

***Committee Jurisdiction of Bill Incidentally Producing Revenue***

**§ 19.2 The Presiding Officer of the Senate held that the Senate Committee on Banking and Currency did not exceed its jurisdiction in reporting an original bill with a revenue-producing measure to amend the Internal Revenue Code therein, because that measure was incidental to the main purpose of the bill, making equity capital and long-term credit more readily available for small business concerns.**

16. 79 CONG. REC. 4613, 74th Cong. 1st Sess.

17. Harry S Truman (Mo.).

On June 9, 1958,<sup>(18)</sup> the Presiding Officer, William Proxmire, of Wisconsin, held that the Senate Committee on Banking and Currency did not exceed its jurisdiction in reporting S. 3651 with a revenue producing measure to amend the Internal Revenue Code, because that measure was incidental to the main purpose of the bill.<sup>(19)</sup>

MR. [JOHN J.] WILLIAMS [of Delaware]: Mr. President, I should like to have the attention of the chairman of the committee. The text of the bill, beginning on page 50, line 10, and extending to page 52, through line 17, embraces a proposed amendment to the Internal Revenue Code. I am wondering if the committee did not make a mistake when it placed this provision in the bill, because, in the first place, measures of such nature should be considered by the Senate Finance Committee. Secondly, revenue measures should originate in the House. . . .

Mr. President, I call attention to the fact that, under paragraph (d) of rule XXV, the Committee on Banking and Currency may not deal with any revenue-producing measure. . . .

I next invite the attention of the Senate to the fact that in this bill the attempt is not made to amend an ordinary House bill; nor even a bill which deals with a revenue-raising provision; nor a bill which had been reported by the Committee on Finance; nor one

18. See the proceedings at 104 CONG. REC. 10522-25, 85th Cong. 2d Sess.

19. *Id.* at pp. 10524, 10525.

which had been considered by the Committee on Ways and Means of the House. What is attempted is an amendment of the Revenue Code on a Senate bill which has been considered only by the Banking and Currency Committee. I shall make the point of order that the Committee on Banking and Currency has exceeded its jurisdiction, and this section of the bill should be stricken. . . .

MR. [FRANCIS H.] CASE of South Dakota: Mr. President the distinguished Senator from Delaware has raised a very important question. He has raised two questions, in fact. He has raised the question of a possible violation of the rule of the Senate with respect to the jurisdiction of the Committee on Banking and Currency in reporting the pending bill. He has also raised the constitutional question as to whether a bill carrying tax provisions must originate in the House of Representatives.

I should like to have the attention of the Parliamentarian while I am speaking on this point. The question first came up in 1955, when the Committee on Public Works was considering the interstate highway bill.

At that time I consulted the Parliamentarian as to whether the Committee on Public Works could report a bill which would raise revenue for the purpose of defraying the cost of the highway program, particularly the standard interstate program. The Parliamentarian called my attention to a decision [*Hubbard v Lowe* 226 F 135 (S.D.N.Y.), appeal dismissed, 242 U.S. 654 (1916)] in the so-called Cotton Futures Act, which held that a bill which had originated in the Senate, but which had a revenue item added to it in the House of Representatives.

The Supreme Court held that that act was not valid, because they could not go behind the number of the bill. Even though in that instance the revenue feature was added by the House of Representatives, the Supreme Court held that the origin of the bill was determined by the number it carried. That bill carried a Senate number. So the Supreme Court invalidated the Cotton Futures Act because section 7 of the Constitution provides that all bills for raising revenue shall originate in the House of Representatives.

On the basis of that Supreme Court ruling, which the Parliamentarian called to my attention, the Committee on Public Works decided that it should not risk the validity of the highway bill by reporting revenue features. In fact, in 1956, when the question of a highway act again was before the Senate, because the House had failed to pass a highway bill in 1955, the Committee on Public Works decided it would defer to the action of the House, and wait until a bill could come over from the House carrying revenue features or carrying a House bill number, so that we would not run into danger. The Committee on Public Works did not want to risk invalidating the proposed legislation by placing a Senate number on a bill which included revenue features.

Under that decision of the Supreme Court, cited to me by the Parliamentarian, I cannot understand why members of the Committee on Banking and Currency would want to risk the fate of this bill by having it continue to carry tax provisions. The Senator from Delaware [Mr. Williams] has already pointed them out. For emphasis, I invite the committee's attention to the

fact that section 308 specifically refers to the Internal Revenue Code of 1954 and then, in parentheses, reads: "relating to deduction of losses." It amends section 165 of the Internal Revenue Code relating to the deduction of losses.

Further, in section 308, subparagraph (c), there is an amendment of section 243 of the Internal Revenue Code, "relating to dividends received by corporations"

In other words, the language of the bill before us very clearly changes the Revenue Code, by changing the provisions which raise revenue and the provisions relating to deductions. Certainly it must be considered a bill to raise revenue or a bill to change the code relating to revenue. Based on the opinions which the Parliamentarian gave in 1955 and 1956, I do not see how this bill, S. 3651, could carry those provisions and still be considered a valid bill. . . .

MR. WILLIAMS. Mr. President, before I raise the question of constitutionality, my first point of order is that the committee exceeded its jurisdiction. It had no authority at all to report a bill dealing with the Revenue Code. Therefore, I make the point of order against that section of the bill on that basis.

The question is, Does the Senate Committee on Banking and Currency have jurisdiction to report measures relating to the Revenue Code? If they have such jurisdiction, other committees likewise have the jurisdiction to report similar bills.

I confine my point of order, first, to that phase of the question. . .

Mr. [J. WILLIAM] FULBRIGHT [of Arkansas]: Mr. President, in regard to

the point of order, it is my position and that of the committee that the revenue provision of the bill is strictly of a subsidiary and incidental nature to the main purpose of the bill itself; that this is a very common practice; and that the point of order is invalid.

THE PRESIDING OFFICER: The Chair has been informed by the Parliamentarian that in the case of *Millard v. Roberts* (202 U.S. 429) decided in 1906, the Supreme Court of the United States made a decision which has a bearing on the present situation.

In that case, a bill which had originated in the Senate provided for the construction of a Union Station in the District of Columbia, and contained a small incidental tax provision. The constitutionality of the bill was attacked on the ground that revenue bills must originate in the House.

The Court, after citing the case of *Twin City Bank v. Nebeker* (167 U.S. 203) [1897], which quoted Mr. Justice Story as holding that "revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes, which may incidentally create revenue," said, "here was no purpose, by the act or any of its provisions, to raise revenue to be applied in meeting the expenses or obligations of the Government."

That situation applies to the bill in question. The Committee on Banking and Currency has jurisdiction over the pending bill and may report some provisions incidental to carrying out the main purposes of the bill.

There are numerous precedents for the establishment of the Small Business Administration and the method of its financing, against which no point of

order was made when bills establishing those corporations or administrations similar in their financing were under consideration in the Senate.

This is the opinion of the Parliamentarian as given to the Chair. The Chair makes it his own opinion and, therefore, the Chair overrules the point of order.<sup>(20)</sup>

***Amendment to Senate Bill as Infringement***

**§ 19.3 The Senate rejected a committee amendment to a Senate bill granting independence to the Philippines, on the ground that the amendment invaded the prerogative of the House to originate bills to raise revenue.**

On May 31, 1939,<sup>(21)</sup> the Senate by a vote of yeas 8, nays 54, decided that a committee amendment to S. 2390 was out of order because it invaded the prerogative of the House to originate bills to raise revenue.

MR. [MILLARD E.] TYDINGS [of Maryland]: Mr. President, I ask unanimous consent for the immediate consideration of Senate bill 2390, to amend an act entitled "An act to provide for the complete independence of the Phil-

**20.** See § 19.6, *infra*, for a discussion of withdrawing revenue amendments from this bill.

**21.** 84 CONG. REC. 6331, 6339, 6348-50, 76th Cong. 1st Sess.

ippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes." . . .

The next amendment was, on page 19, after line 23, to insert a new paragraph, as follows:

"(f) Subsection (a)(1) of section 2470 of the Internal Revenue Code (I.R.C., ch. 21, sec. 2470(a)(1)), is hereby amended by striking out the comma after the words 'coconut oil,' and inserting in lieu thereof the following: '(except coconut oil rendered unfit for use as food or for any but mechanical or manufacturing purposes as provided in paragraph 1732 of the Tariff Act of 1930), and upon the first domestic processing of.' "

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I make a point of order against the amendment.

THE PRESIDING OFFICER:<sup>(22)</sup> The Senator from Texas will state his point of order.

MR. CONNALLY: I make the point of order that the amendment proposed is a revenue measure, and, under the Constitution, must originate in the House of Representatives. If the Chair desires argument, I can make an argument; but it is so patent that I feel no argument is necessary.

THE PRESIDING OFFICER: The Chair will state to the Senator from Texas that the present occupant of the chair is always delighted to hear arguments from the Senator from Texas, but, under the long-established usage, practice and precedents of the Senate, a constitutional point is not decided by the Chair, but is submitted to the Senate, and the present occupant of the chair will follow that practice. . . .<sup>(1)</sup>

**22.** Edwin C. Johnson (Colo.).

**1.** See § 19.1, *supra*, for a discussion of authorities supporting the principle

MR. [HIRAM W.] JOHNSON of California: Mr. President, I wish to fortify, if I can, the position of the Senator from Arizona. . . .

The latest edition of the Constitution of the United States of America, annotated—oh, it is a presumptuous thing to be referring to the Constitution here—contains notes under the various headings. I will read the notes for what they are worth. I shall not attempt to comment upon them in any way, shape, form, or manner. Other Senators can understand them as well as I can, although they may understand them differently:

Sec. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

The note says:

All bills for raising revenue: The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills having some other legitimate and well defined general purpose but which incidentally create revenue.

Under that particular text the following cases are cited: *United States v. Norton* (91 U.S. 566) [1875], *Twin City National Bank v. Nebeker* (167 U.S. 196) [1897], *Millard v. Roberts* (202 U.S. 429) [1906].

Amendments by Senate: It has been held within the power of the

that the Senate and not the Chair decides the constitutional question relating to the prerogative of the House.

Senate to remove from a revenue collection bill originating in the House a plan of inheritance taxation and substitute therefor a corporation tax.

The following cases are cited: *Flint v. Stone Tracy Co.* (220 U.S. 107) [1911], *Rainey v. United States* (232 U.S. 310) [1914].

That is all.

MR. CONNALLY: Mr. President, I have not had the opportunity to read the decisions cited by the Senator from California; but there is no difficulty in that regard. As I understand the rule and the precedents, the language of the Constitution provides that all bills for raising revenue shall originate in the House. However, the Senate, of course, may amend them. When a revenue bill comes to the Senate, the Senate is at liberty, if it desires, to adopt a new tax which is not even contained in the House bill, because it has complete legislative powers, except for the prohibition that it shall not originate the bill.

If the doctrine asserted by Senators on the floor is sound, then the Senate need never pay attention to the constitutional provision about revenue measures, because when any bill comes over from the House a Senator may offer on the floor of the Senate an amendment cutting down the taxation, as this bill does, and say that it does not raise any revenue, and is therefore in order. The bill immediately becomes subject to amendment, and another Senator may offer an amendment raising the revenue, or adding a new tax, thus rendering absolutely nugatory the constitutional provision.

There was a reason for the constitutional provision that revenue bills

should originate in the House. The theory was that the Members of the House of Representatives are representatives of the people, and that Senators are representatives of the States, formerly being elected by the legislatures of the States. The old theory, upon which the Revolution itself was founded, was that taxation without representation was cause for revolution. Therefore, the makers of the Constitution wisely provided that no tax should be laid upon the backs of the people unless their Representatives in the House of Representatives should propose the bill seeking to levy the tax; but the Constitution says that when that bill comes to the Senate the Senate may amend it, or change it, or do what it pleases with it, once the House has opened the door.

We have before us a bill which did not even originate in the House. The whole bill originated in the Senate. It is now proposed to take off a tax. It does not make any difference whether the bill raises or lowers the tax; it is still a revenue measure. It still relates to the revenue. I could offer in a moment an amendment raising the tax, instead of repealing the 3-cent tax, as is proposed. I could offer an amendment to make it 5 cents. Such an amendment would be in order. Then we should unquestionably have a bill raising revenue.

Mr. President, we ought not to adopt the pending amendment. I think everyone ought to know that it is violative of the spirit of comity, good will, and respect for the prerogatives of the two Houses. We ought not to add a revenue measure by a committee amendment.

. . .

THE PRESIDING OFFICER: To the committee amendment the Senator from

Texas raised the point of order that the committee amendment is itself a revenue measure and may not originate in the Senate. The question now occurs, Is the committee amendment in order? Those Senators who think it is in order will vote "aye"; those who think the point of order is well taken will vote "no."

MR. [ALBEN W.] BARKLEY [of Kentucky]: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. BARKLEY: Is not the question whether the point of order is well taken, on which those who believe it well taken will vote "aye"?

THE PRESIDING OFFICER: The present occupant of the chair will say that he entertains the same idea as that of the Senator from Kentucky, but he submitted the question to the Parliamentarian, and the Parliamentarian advised the occupant of the chair that the better practice is to submit the question, "Is the committee amendment in order?" Therefore, so that it may be understood, the Chair will repeat the question, Is the committee amendment in order? Those who think it is in order will vote "aye," and those who think it is not in order will vote "no". [Putting the question.] By the sound, the "noes" appear to have it.

MR. [CARL] HAYDEN [of Arizona]: Mr. President, I ask for a division.

Mr. Harrison, Mr. Barkley, and Mr. La Follette called for the yeas and nays.

The yeas and nays were ordered.

. . .

The result was announced—yeas 8, nays 54, as follows: . . .

So the Senate decided the committee amendment to be out of order.

***Amendment to House Bill as Infringement***

**§ 19.4 The Senate sustained a point of order that a Senate amendment to a House bill to repeal certain provisions relating to publicity of certain statements of income invaded the constitutional prerogative of the House to originate revenue-raising bills.**

On Mar. 28, 1935,<sup>(2)</sup> the Senate by voice vote sustained a point of order that a Senate amendment to H.R. 6359 invaded the constitutional prerogative of the House to originate revenue-raising bills.

The Senate resumed the consideration of the bill (H.R. 6359) to repeal certain provisions relating to publicity of certain statements of income.

THE VICE PRESIDENT:<sup>(3)</sup> The question is on the amendment offered by the Senator from Wisconsin [Mr. La Follette].

The amendment offered by Mr. La Follette is after line 5 insert a new section reading as follows:

Sec. 2. (a) Section 11 of the Revenue Act of 1934, relating to the normal tax on individuals, is amended by striking out "4 percent" and inserting in lieu thereof "6 percent."

2. 79 CONG. REC. 4583-87, 4613, 74th Cong. 1st Sess.

3. John N. Garner (Tex.).

(b) Section 12(b) of the Revenue Act of 1934, relating to rates of surtax, is amended to read as follows:

"(b) Rates of surtax: There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

"Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$8,000, 6 percent of such excess. . . ."

MR. [PAT] HARRISON [of Mississippi]: Mr. President, I make a point of order against the amendment offered by the Senator from Wisconsin. I do not think I normally made it yesterday, because the Senator from Wisconsin said he desired to make a brief statement. He made that statement yesterday afternoon, and I now make the point of order that the pending bill is not, in a strict sense, a revenue bill, and that for the Senate to attach a tax proposal to the bill at this time would be contrary to that provision of the Constitution requiring all bills for raising revenue to originate in the House of Representatives. . . .

Mr. President, I was of the opinion that perhaps the question was so clear upon its face that it would require no argument to convince anyone that we would be violating precedents and not acting in accordance with the Constitution if we should attempt to write a revenue amendment upon a bill which seeks merely to repeal the "pink slip" provision of the law.

It will be noted that the title of House bill 6359 is "To repeal certain provisions relating to publicity of certain statements of income." Those provisions deal solely with administrative purposes and features of the existing

law; in no way, not by the wildest stretch of the imagination, can they be construed to affect the raising of revenue.

Mr. Story, in section 880 of his works on the Constitution, makes this statement with reference to the constitutional provision:

What bills are properly "bills for raising revenue", in the sense of the Constitution, has been matter of some discussion. A learned commentator supposes that every bill which indirectly or consequently may raise revenue is, within the sense of the Constitution, a revenue bill. He therefore thinks that the bills for establishing the post office and the mint, and regulating the value of foreign coin, belong to this class, and ought not to have originated—as in fact they did—in the Senate. But the principal construction of the Constitution has been against his opinion. And, indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. No one supposes that a bill to sell any of the public lands, or to sell public stock, is a bill to raise revenue, in the sense of the Constitution. Much less would a bill be so deemed which merely regulated the value of foreign or domestic coins, or authorized a discharge of insolvent debtors upon assignments of their estates to the United States, giving a priority of payment to the United States in cases of insolvency, although all of them might incidentally bring revenue into the Treasury.

In one of the most important cases decided by the courts of the United States, the case of *Twin City Bank v. Nebeker* (167 U.S. 202) [1897], the court said:

The case is not one that requires either an extended examination of precedents, or a full discussion as to the meaning of the words in the Constitution, "bills for raising revenue." What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject. It is sufficient in the present case to say that an act of Congress providing a national currency secured by a pledge of bonds of the United States and which, in the furtherance of that object, and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives. Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue (1 Story on Constitution, sec. 880). The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question.

Throughout the decisions the same construction of the constitutional provision has been given by the courts.

I desire to cite a few precedents relative to what has been done with reference to bills which originated in the House which were not revenue bills, upon which some revenue amendment was tacked by the Senate, and the House later refused to accept the amendment, returning the bill to the Senate.

In the Sixty-fourth Congress, second session, February, March 1917, the Senate added an amendment to the naval appropriation bill (H.R. 20632) authorizing the Secretary of the Treasury to borrow certain sums on the credit of the United States and to prepare and issue bonds therefor (proposed by Mr. Swanson).

The House, on March 2, 1917, returned the bill and amendment to the Senate with the statement that it contravened the first clause of section 7 of article I of the Constitution and was an infringement of the privileges of the House.

The Senate subsequently reconsidered the vote on the passage and engrossment of the bill and amendments, and a motion was agreed to whereby the amendment providing for the bond issue was stricken from the bill. . . .

On June 30, 1864,<sup>(4)</sup> the bill (H.R. 549) further to regulate and provide for the enrolling and calling out of the national forces was passed by the Senate with an amendment, among others, providing for a 5-percent duty on incomes. The House ordered the bill returned to the Senate with the statement that the amendment in question contravened the first clause of section 7 of article I of the Constitution and was an infringement of the privileges of the House.

The Senate on the same day reconsidered the bill and eliminated the objectionable amendment.

Mr. President, so it goes on down the line. I submit that the bill now before us, which deals solely with the repeal of an administrative provision of law,

namely, the pink-slip provision, affects in no way the revenues of the Government.

Mr. Justice Story and the courts say a bill must go further than incidentally to affect the revenues of the Government and must deal directly with the revenues before the Senate may take cognizance to the extent of adding revenue provisions.

It seems to me it is without question that the Senate ought to sustain the point of order, if submitted, or, if the Chair desires to rule without submitting the question to the Senate, he should sustain the point of order. Certainly the Senate of the United States ought not to assume, in view of the provision of the Constitution to which I have invited attention, the privilege and the right of writing a revenue bill in this way.

Sooner or later at the present session of Congress we may be forced to consider a revenue bill which might have a tendency to increase taxes or to extend the application of those taxes which by operation of law would otherwise lapse on June 30. Certainly, when that time comes the House ought to be given its privilege and right, which it has always exercised, to construct its own revenue bill without the Senate assuming in the beginning to write a revenue bill and send it to the House. I think the House would have just cause to feel it was an abuse of their privilege, and, so far as I am concerned, I am not willing to go that far. Therefore, I have made the point of order. . . .

THE VICE PRESIDENT: The point of order is well taken. The Chair is ready to rule.

4. This instance is discussed at 2 Hinds' Precedents § 1486.

The present occupant of the chair has at no time declined to construe the rules of the Senate; and if this were a matter of the rules of the Senate, he would not hesitate for a moment to express his opinion about it and make a ruling. . . .<sup>(5)</sup>

The . . . Chair is going to follow a long line of precedents and submit to the Senate the question whether or not it is constitutional for the Senate to propose this amendment; and it occurs to the Chair that the only question involved is, Is this a bill to raise revenue? . . .

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, must that question be determined without debate?

MR. [HUEY P.] LONG [of Louisiana]: No; it is subject to debate.

After debate, and other proceedings, the following occurred:

MR. HARRISON: Mr. President, I ask for a vote on the point of order raised by me.

THE PRESIDING OFFICER:<sup>(6)</sup> The question is, Shall the Senate sustain the point of order raised by the Senator from Mississippi [Mr. Harrison] against the amendment proposed by the Senator from Wisconsin [Mr. La Follette] on the ground that it contravenes the constitutional provision? [Putting the question.] The "ayes" have it, and the point of order is sustained.

### ***Deletion of Tariff Schedule Amendments***

#### **§ 19.5 After the House returned a Senate bill con-**

5. See §19.1, *supra*, for the full text of the ruling regarding the submission of the question for decision by the Senate on constitutional issues.
6. Harry S Truman (Mo.).

**taining a provision which infringed upon the constitutional power of the House to originate revenue measures, the Senate, by unanimous consent, reconsidered the vote by which the bill had passed, adopted an amendment deleting the objectionable provision, and then passed the bill as so amended.**

On May 4, 1971,<sup>(7)</sup> the Senate reconsidered the vote on S. 860, deleted title 4, a tariff schedule which contravened the prerogatives of the House, and passed the bill as so amended.

MR. [MICHAEL J.] MANSFIELD [of Montana]: Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 860.

The President pro tempore laid before the Senate a message from the House of Representatives that the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.<sup>(8)</sup>

MR. MANSFIELD: Mr. President, I ask unanimous consent that the Senate re-

7. 117 CONG. REC. 13273, 92d Cong 1st Sess.
8. See §15.6, *supra*, for House disposition of this matter.

consider the vote by which S. 860 was passed, together with third reading.

THE PRESIDENT PRO TEMPORE:<sup>(9)</sup> Is there objection? Without objection, it is so ordered. The bill is open to amendment.

MR. MANSFIELD: Mr. President, I send to the desk an amendment to strike title 4 of the bill.

THE PRESIDENT PRO TEMPORE: The amendment will be stated.

The amendment was read, as follows:

Beginning on page 15, line 1, strike all language through line 10, page 17.

THE PRESIDENT PRO TEMPORE: The question is on agreeing to the amendment of the Senator from Montana (Mr. Mansfield).

The amendment was agreed to.

THE PRESIDENT PRO TEMPORE: The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 860) was ordered to be engrossed for a third reading, was read the third time, and passed.

### *Withdrawal of Internal Revenue Code Amendments*

**§ 19.6 Amendments to the Internal Revenue Code, incorporated in a Senate bill designed to make equity capital and long-term credit more readily available for small business concerns, were on motion deleted from the bill during debate.**

9. Allen J. Ellender (La.).

On June 9, 1958,<sup>(10)</sup> the Chairman of the Committee on Banking and Currency, J. William Fulbright, of Arkansas, moved to delete proposed amendments to the Internal Revenue Code from S. 3651, a bill to make equity capital and long-term credit more readily available for small business concerns.

MR. [JOHN J.] WILLIAMS [of Delaware]: I now make the point of order on the ground that it is not constitutional for the Senate to originate revenue measures. Certainly this point of order should be sustained. I suggest the absence of a quorum.

The clerk proceeded to call the roll.

THE PRESIDING OFFICER:<sup>(11)</sup> A quorum is present. The Senator from Delaware has raised a point of order that the bill is not constitutional in its tax provision at page 50. . . .

. . . Does the Senator from Delaware wish to make an observation?

MR. WILLIAMS: I understand the Committee on Banking and Currency has decided that it will withdraw the disputed section of the bill, and strike it out. With that understanding I withdraw my point of order.

MR. [HOMER E.] CAPEHART [of Indiana]: Mr. President, will the Senator yield?

MR. WILLIAMS: I yield.

MR. CAPEHART: As I understand, the Senator from Delaware is withdrawing his point of order, with the under-

10. 104 CONG. REC. 10525-27, 85th Cong. 2d Sess. See also § 19.2, *supra*, for a precedent relating to committee jurisdiction of this bill.

11. William Proxmire (Wis.).

standing that the complete section will be taken out. . . .

MR. WILLIAMS: Mr. President, I withdraw the point of order. . . .

THE PRESIDING OFFICER: Will the Senator from Arkansas inform the Chair how much of the language he wishes to have stricken? . . .

MR. FULBRIGHT: All the tax provisions which are involved in this matter are included in section 308, beginning at page 50, and continuing to section 309. That is the part which, as the manager of the bill, I ask to have stricken.

MR. [JOSEPH S.] CLARK [of Pennsylvania]: And that the subsequent sections be renumbered.

MR. FULBRIGHT: Yes. . . .

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Arkansas [Mr. Fulbright] to strike out section 308, beginning in line 10, on page 50, and down to and including line 17, on page 52.

The motion was agreed to.

*Parliamentarian's Note:* The portion of the bill, relating to the Internal Revenue Code, which was stricken by the Senate, was as follows:

TAX PROVISIONS

Sec. 308. (a) Section 165 of the Internal Revenue Code of 1954 (relating to deduction for losses) is amended by adding at the end of subsection (h) the following new paragraphs:

"(3) For special rule for losses on stock in a small business investment company, see section 1242.

"(4) For special rule for losses of a small business investment company, see section 1243."

(b) Subchapter P of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new sections:

"Sec. 1242. Losses on small business investment company stock.

"In the case of a taxpayer if—

"(1) A loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

"(2) Such loss would (but for this section) be treated as a loss from the sale or exchange of a capital asset, then such loss shall be treated as a loss from the sale or exchange of an asset which is not a capital asset.

"Sec. 1243. Loss of small business investment company.

"In the case of a small business investment company, if—

"(1) A loss is on convertible debentures (including stock received pursuant to the conversion privilege) acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

"(2) Such loss would (but for this section) be treated as a loss from the sale or exchange of a capital asset, then such loss shall be treated as a loss from the sale or exchange of an asset which is not a capital asset."

(c) Section 243 of the Internal Revenue Code of 1954 (relating to dividends received by corporations) is amended as follows:

(1) by striking from subsection (a) the following language "In the case of a corporation" and inserting in lieu thereof the following language "In the case of a corporation (other than a small business investment company operating under the Small Business Investment Act of 1958)".

(2) By adding at the end thereof the following new subsection:

“(c) Small business investment company. In the case of a small business investment company, there shall be allowed as a deduction an amount equal to 100 percent of the amount received as dividends (other than dividends described in paragraph (1) of section 244, relating to dividends on preferred stock of a public utility) from a domestic corporation which is subject to taxation under this chapter.”

(d) Section 246(b)(1) of the Internal Revenue Code of 1954 (relating to limitation on aggregate amount of deductions for dividends received) is amended by striking “243” wherever appearing and inserting in lieu thereof “243 (a) and (b)”.

## § 20. Authority to Make Appropriations

The precedents in this section relate to the efforts of the Senate to originate appropriation measures.<sup>(12)</sup> Mr. Clarence Cannon has observed:<sup>(13)</sup>

Under immemorial custom the general appropriation bills, providing for a number of subjects<sup>(14)</sup> as distinguished from special bills appropriating for single, specific purposes,<sup>(15)</sup> originate in

12. See 2 Hinds' Precedents §§ 1500, 1501; and 6 Cannon's Precedents §§ 319–322, for earlier precedents.
13. Cannon's Procedure (1959) p. 20.
14. 4 Hinds' Precedents §§ 3566–3568.
15. Cannon's Precedents § 2285.

the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution.

Following the view expressed by Mr. Cannon, the House has returned Senate-passed general appropriation bills.<sup>(16)</sup>

The Senate has not always accepted the view that the House has the exclusive right to originate appropriation measures.<sup>(17)</sup>

### *Resolution Regarding Authority to appropriate*

**§ 20.1 The Senate has adopted a resolution asserting that the power to originate appropriation bills is not exclusively in the House of Representatives but is shared by the Senate, and suggesting that an appropriate commission be established to study article I, section 7, clause 1, of the Constitution.**

On Oct. 13, 1962,<sup>(18)</sup> the Senate by voice vote agreed to Senate Resolution 414, asserting the

16. See § 20.3, *infra*.

17. See § 20.1, *infra*. See also Authority of the Senate to Originate Appropriation Bills, S. Doc. No. 17, 88th Cong. 1st Sess., Apr. 30, 1963.

18. 108 CONG. REC. 23470, 87th Cong. 2d Sess.

**power of the Senate to originate bills appropriating money.**<sup>(19)</sup>

ASSERTION OF THE POWER OF THE SENATE TO ORIGINATE BILLS APPROPRIATING MONEY FOR THE SUPPORT OF THE GOVERNMENT

MR. [RICHARD B.] RUSSELL [of Georgia]: Mr. President, I submit and send to the desk a privileged resolution, for which I request immediate consideration.

**19.** See 108 CONG. REC. 12898, 12899, 12904-11, 87th Cong. 2d Sess., July 9, 1962, for a resolution of the Senate Committee on Appropriations, setting forth areas of dispute between it and the House Committee on Appropriations, and resolving that among the issues to be discussed or negotiated between them was the power of the Senate to originate appropriation bills; a resolution of the House Committee on Appropriations suggesting negotiations on conference procedures between special committees of the House and Senate Committees on Appropriations; and the text of a report of the Committee on the Judiciary (H. Rept. No. 147, 46th Cong. 3d Sess., Feb. 2, 1881), in which the majority recommended adoption of a resolution stating that the Senate may originate appropriation bills and that the power to originate bills appropriating money is not exclusive in the House. 2 Hinds' Precedents § 1500 discusses this report.

For a recent discussion of this subject, see Authority of the Senate to Originate Appropriation Bills, S. Doc. No. 17, 88th Cong. 1st Sess., Apr. 30, 1963.

THE ACTING PRESIDENT PRO TEMPORE:<sup>(20)</sup> The resolution will be read.

The resolution (S. Res. 414) submitted by Mr. Russell was read, as follows:

Whereas the House of Representatives has adopted House Resolution 831 alleging that Senate Joint Resolution 234, a resolution continuing the appropriations for the Department of Agriculture, to be in contravention of the first clause of the seventh section of the Constitution and an infringement of the privileges of the House; and

Whereas this clause of the Constitution provides only that "All bills for raising revenue shall originate in the House of Representatives," and does not in anywise limit or restrict the privileges and power of the Senate with respect to any other legislation; and

Whereas the acquiescence of the Senate in permitting the House to first consider appropriation bills cannot change the clear language of the Constitution nor affect the Senate's coequal power to originate any bill not expressly "raising revenue"; and

Whereas the Committee on the Judiciary of the House of Representatives, pursuant to a directive of the House of Representatives, reported to the House in 1885 that the power to originate bills appropriating money from the Treasury did not reside exclusively in the House: Therefore be it

*Resolved*, That the Senate respectfully asserts its power to originate bills appropriating money for the support of the Government and declares its willingness to submit the issue either for declaratory judgment by an appropriate appellate court of the United States or to an appropriate commission of outstanding educators specializing in the study of

**20.** Lee Metcalf (Mont.).

the English language to be chosen in equal numbers by the President of the Senate and the Speaker of the House; and be it further

*Resolved*, That a copy of this resolution be transmitted to the House of Representatives.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, the Senate will proceed to the immediate consideration of the resolution.

MR. RUSSELL: Mr. President, this resolution is just as self-explanatory, I believe, as the clause of the Constitution which is involved. I see no necessity for laboring it.

I move the adoption of the resolution. . . .

THE ACTING PRESIDENT PRO TEMPORE: The question is on agreeing to the resolution.

The resolution was agreed to.

### ***Department of Agriculture Appropriation***

#### **§ 20.2 A Senate joint resolution making an appropriation out of the general funds of the Treasury was held to be an infringement of the privileges of the House, and was returned to the Senate.**

On Oct. 10, 1962,<sup>(1)</sup> the House by a vote of yeas 245, nays 1, not voting 188, agreed to House Resolution 831, returning to the Senate Senate Joint Resolution 234, because it infringed upon the

1. 108 CONG. REC. 23014-16, 87th Cong. 2d Sess.

privileges of the House. The Senate joint resolution provided in part as follows:

That there is appropriated out of any money in the Treasury not otherwise appropriated, and out of the applicable corporate and other revenue . . . such amounts as may be necessary for continuing, during . . . 1963 . . . projects of the Department of Agriculture.

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I offer a privileged resolution (H. Res. 831) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That Senate Joint Resolution 234, making appropriations for the Department of Agriculture and the Farm Credit Administration for the fiscal year 1963, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House, and that the said joint resolution be taken from the Speaker's table and be respectfully returned to the Senate with a message communicating this resolution.

MR. CANNON: Mr. Speaker, on October 4, 1962, the other body messaged to the House Senate Joint Resolution 234, now on the Speaker's table. This joint resolution is an infringement on the privileges of the House, as stated in section 7 of article I of the Constitution, under which the House of Representatives has always maintained the right to originate the appropriation bills.

The priority of the House in the initiation of appropriation bills is buttressed by the strongest and most im-

pling of all rules, the rule of immemorial usage. As Mr. Asher Hinds relates in section 1500 of volume II of "Hinds' Precedents" at page 973—while the issue has been raised a number of times—"there has been no deviation from the practice." . . .

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The question is on the resolution.

MR. CANNON: Mr. Speaker, on that ask for the yeas and nays.

The yeas and nays were ordered.

MR. [JOHN J.] ROONEY [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(3)</sup> The gentleman will state it.

MR. ROONEY: Would a yea vote be a vote to send Senate Joint Resolution 234 back to the Senate?

THE SPEAKER PRO TEMPORE: The gentleman has correctly stated the situation.

The question was taken; and there were—yeas 245, nays 1, not voting 188, as follows: . . .

So the resolution was agreed to.

### ***District of Columbia Appropriation***

#### **§ 20.3 The House returned a Senate joint resolution which appropriated money from the District of Columbia general funds, on the ground that it invaded the prerogatives of the House.**

On Mar. 12, 1953,<sup>(4)</sup> the House by voice vote agreed to House Resolution

2. Carl Albert (Okla.).
3. John W. McCormack (Mass.).
4. 99 CONG. REC. 1897, 1898, 83d Cong. 1st Sess.

176, to return to the Senate Senate Joint Resolution 52, appropriating money from the District of Columbia general fund.

MR. [JOHN] TABER [of New York]: Mr. Speaker, I rise to a question of privilege of the House and offer a resolution (H. Res. 176).

The Clerk read the resolution, as follows:

*Resolved*, That Senate Joint Resolution 52, making an appropriation out of the general fund of the District of Columbia, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House, and that the said joint resolution be taken from the Speaker's table and be respectfully returned to the Senate with a message communicating this resolution.

MR. TABER: Mr. Speaker, Senate Joint Resolution 52 was passed on Monday, providing an appropriation out of the general fund of the District of Columbia. It was not referred, as the rules require, to the Committee on Appropriations of the Senate, but was passed direct. This infringes the privileges of the House as set forth in section 7 of article I of the Constitution which gives the House of Representatives the privilege of initiating all appropriation bills.

This question was thoroughly discussed by the Honorable John Sharp Williams when he was a Member of the Senate back in 1912. He analyzed the authorities on that subject. The article was printed as a Senate document on July 15, 1919. The article discusses the situation in great detail, and there is no question about it. I hope that the resolution will be promptly adopted.

Pursuant to the consent granted me, I submit herewith certain parts of Senator Williams' treatise:

Mr. President, if the Senate can constitutionally originate general appropriation bills when money is in the Treasury, then it can do the same thing when there is no money in the Treasury; and thus this body, representing the States and not the people, representing chiefly the smaller States, could force either Federal insolvency, not to be thought of, or else could force the House to levy new or additional taxes; thus force the House to originate tax bills. The two things hang together. If this Senate could originate general supply bills, then it could commit the Government to a course of expenditure that would coerce the House not only into originating but into passing tax bills.

As Seward well says, speaking of the long practice under which the House always insisted upon and the Senate always conceded, the right of the House to originate general appropriation bills:

"This [practice] could not have been accidental; it was therefore designed. The design and purpose were those of the contemporaries of the Constitution itself. It evinces their understanding of the subject, which was that bills of a general nature for appropriating the public money or for laying of taxes or burdens on the people, direct or indirect in their operation, belonged to the province of the House of Representatives." (See Congressional Record, vol. 16, pt. 2, p. 959.)

He added:

"If this power be confined to the one and not to the other, that is, to the levying of taxes to get money, but not to its expenditure, then the right is useless, because we change revenue laws so seldom."

This criticism of Seward's is correct, although it was made in view of

what occurred later and not of what was in the minds of the framers of the Constitution. I believe it is not too much to say that, in the minds of the framers of the Constitution, a bill to raise revenue was a budget; that is, a bill levying taxes and at the same time appropriating the proceeds of the levy, because such was the contemporaneous practice.

Mr. Sumner, of Massachusetts, said that he regarded the Senate origination of general appropriation bills as "a departure from the spirit of the Constitution" (*ibid.*).

Mr. Hinds, in his incomparable work, in a note at the bottom of page 973, volume 2 [§1500], concerning the question of the right of the House to originate general appropriation or supply bills, says: "But while there has been a dispute as to the theory, there has been no deviation from the practice that the general appropriation bills originate in the House of Representatives." He expressly uses this phrase as contradistinguished from special bills appropriating for single, specific purposes.

It is well to remember in this connection the Hurd resolution of January 13, 1885,<sup>(5)</sup> which was laid on the table in the House. The fact that it was laid upon the table has been quoted very frequently, but the resolution was directed at Senate bill 398 (the Blair educational bill). It was not a supply bill, but a bill of specific appropriation; not a bill for carrying on the Government any more than a bill making appropriation for a public building would be a bill for carrying on the Government.

Mr. Speaker, I yield to the gentleman from Missouri [Mr. Cannon].

MR. [CLARENCE] CANNON: Mr. Speaker, this is not an inconsequential

5. See 2 Hinds' Precedents §1501 for discussion of this incident, which actually occurred on Jan. 23, 1885.

matter. It is fundamental in the practice of the House and is supported by the strongest rule known in parliamentary procedure, the rule of immemorial usage. A great many precedents could be recited, but the whole matter is summed up in a comment by the former Parliamentarian of the House, Asher Hinds, who knew more about procedure and had more to do with establishing the orderly procedures of the House than any man in American history with the single exception of Vice President Jefferson. . . .

In summing up the whole question Asher Hinds said:

There has been some debate about the theory of restricting the origin of appropriation bills to the House but there has been no deviation in the practice.

As Mr. Hinds pointed out, this rule is one of the rules which came down to us from the English Parliament. . . .

[The House of] Commons through the years began to assert and eventually maintained through debate and by the sword the primacy of the House in the origin of money bills, the levying of taxes, and the appropriation and expenditure of revenues.

Whenever the Commons became too insistent on the redress of grievances and began to protest too vigorously the chronic denial of justice, the King would prorogue Parliament and send them home. But inevitably the forced loans, the sale of privileges, and the money borrowed at usurious rates of interest dwindled and as a last resort the King would be compelled to convene Parliament. In that day, as now, the control of the purse strings was the only recourse of the people. It was and

is the primary prerogative of democracy and the one effective weapon in defense of rights and liberties of a free nation.

. . . The Representatives in the House, elected by the people every 2 years, should have exclusive rights in the origination of appropriation bills. I hope the resolution of the gentleman from New York will be agreed to.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, will the gentleman yield?

MR. TABER: I yield.

MR. MCCORMACK: Mr. Speaker, I am sure when my friend, the gentleman from New York [Mr. Taber] and my friend, the gentleman from Missouri [Mr. Cannon] agree that the House of Representatives must, indeed, have a sound case. But will the gentleman, for the record, state just what part of this resolution, which has come from the other body, violates the long standing custom and usage and practice of the Congress?

MR. TABER: This resolution, Mr. Speaker, in its entirety, violates the practice. There is no part of it which could be construed as covering anything else or any other subject matter.

MR. MCCORMACK: Mr. Speaker, the gentleman's statement satisfies me.

MR. TABER: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:<sup>(6)</sup> The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### **§ 20.4 After receiving a Senate joint resolution which had**

6. Joseph W. Martin. Jr. (Mass.).

**been returned on the ground that it infringed upon the prerogative of the House to originate revenue-raising bills, the Senate entertained a discussion of its prerogative to originate bills affecting the revenue of the District of Columbia.**

On Mar. 16, 1953,<sup>(7)</sup> the prerogative of the Senate to originate bills affecting the revenue of the District of Columbia was discussed.

MR. [ROBERT C.] HENDRICKSON [of New Jersey]: Mr. President, on Monday, March 9, the Senate passed by unanimous consent Senate Joint Resolution 52, which was thereafter transmitted to the House. This resolution appropriated \$17,000 out of the general fund of the District of Columbia for the operation of the Office of Rent Control in the District of Columbia.

On March 12 the House passed House Resolution 176, returning Senate Joint Resolution 52 to the Senate on the ground that it "contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House."

I invite the attention of the Senate to a similar situation which obtained during the 82d Congress. On May 7, 1952, the Senate considered and passed S. 2703 which would increase the District of Columbia gasoline tax from 4 to 5 cents per gallon. At that time the House refused to consider S. 2703, also on the ground that it con-

travened the constitutional provision referred to in House Resolution 176.

It is suggested that the issue thus raised on two occasions within the past year by the House of Representatives involves not only a parliamentary question but a constitutional question as well.

Indeed, these recent House actions appear to constitute a challenge to the concept that home rule may be achieved in the District of Columbia by means short of a constitutional amendment.

The issue of whether such legislation can originate in the Senate was one aspect of the routine analyses the Republican calendar committee gave to these bills. Their consideration of the bills included a routine discussion of the parliamentary question with the Parliamentarian of the Senate, Mr. Charles L. Watkins. He stated that article I, section 7 of the Constitution does not apply to such bills. He reasoned that the bills do not contemplate the raising of Federal revenue; that they are limited in their application to the District of Columbia; and that, as such, like any other bill affecting the District, the Senate may initiate such legislation. . . .

Article I, section 7, paragraph 1, of the Constitution provides as follows:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Article I, section 8, paragraph 17, provides Congress with power—

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding 10 miles square)

7. 99 CONG. REC. 1978, 1979, 83d Cong. 1st Sess.

as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States.

It is well established that the various provisions of the Constitution must be harmonized.

In expounding the Constitution of the United States every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood. (*Holmes v. Jennison* ((1840) 14 Peters 540, 570); see also *Cohens v. Virginia* ((1821) 6 Wheat 264).)

There is no conflict whatever between the two provisions of the Constitution cited above, and where Congress exercises exclusive legislative power over the District of Columbia, article I, section 7, of the Constitution does not apply.

Only one case comes to hand that construes article I, section 7 of the Constitution. In *Hubbard v. Lowe* ((1915) 226 Fed. 135), the District Court for the Southern District of New York had before it a challenge to the validity of a statute dealing with contracts for cotton futures. A bill which originated in and passed the Senate called for their exclusion from the mails. The House struck out all after the enacting clause and inserted a substitute by way of a prohibitive tax. The

House version was the one which was ultimately enacted. The court in that case threw out the statute as being unconstitutional, since prior to enactment it had a Senate number—S. 1107. The question became moot because of the enactment shortly thereafter of a revenue bill which dealt with the problem of cotton futures.

It will be recalled that some years ago the Congress provided by statute for the establishment of local government in the District of Columbia. The legislative body of that government passed revenue and appropriation measures. In this connection, attention is directed to an 1885 decision in the case of the *District of Columbia v. Waggaman* (4 Mackey 328). The following is quoted from that decision:

We have to consider first, then, the validity of the act of the legislative assembly which imposed this tax on commissions earned by real-estate agents, and required a semi-annual return of those commissions and a bond to secure the performance of these and other acts prescribed by law.

In *Roach v. Van Riswick* (7 Wash. L. Rep., 496), this court held that the very broad terms in which the organic act of 1870 granted legislative powers to the legislative assembly had the effect to clothe that body with only such powers as might be given to a municipal corporation, and that it was not competent for Congress to delegate the larger powers of general legislation which it had itself received from the Constitution. We are still satisfied with that decision; but we hold, on the other hand, that the provision referred to had the effect to bestow every power of municipal legislation which could be given to a municipal corporation, and especially the power of taxation and implied or included

power to provide measures by which taxes may be enforced and collected. Section 49 of the organic act provided that "the legislative power of the District shall extend to all rightful subjects of legislation within the District, consistent with the Constitution of the United States and the provisions of this title"; and section 57 provided that "the legislative assembly shall not have power to tax the property of the United States, nor to tax the lands or other property of nonresidents higher than the lands or other property of residents."

The court referred to the legal tender cases and then went on to state that "the general grant of power to legislate on all rightful subjects, and so forth, is by inclusion, an express grant of power to legislate on this subject of taxation, except as limited in section 57." There is another case which bears on the subject, namely, *Welsh v. Cook* (97 U.S. 541, 542) [1879].

It can thus be seen that a local legislative body in the District of Columbia was given authority to enact revenue legislation affecting the District of Columbia; that pursuant to such authority that local legislative body enacted such revenue legislation; and the cited cases established judicial sanction for such enactment. If a local legislative

body can pass valid revenue legislation for the District of Columbia, it appears equally clear that the Senate of the United States has authority to initiate a revenue bill concerning the District of Columbia. That conclusion certainly would be consistent with the Senate's share of responsibility in exercising exclusive legislative power over the District under article I, section 8, paragraph 17, of the Constitution.

There is a further aspect to the issue raised by the House last week in connection with Senate Joint Resolution 52. This is the question whether an appropriation bill comes within the purview of article I, section 7, paragraph 1 of the Constitution, relating to the raising of revenue. However, the issue of whether a general appropriation bill may originate in the Senate, notwithstanding long established custom to the contrary, warrants much fuller discussion than will here be made. As a Member of the Senate, I categorically dispute the House's contention in respect to Senate Joint Resolution 52.

The Senate did not take further action on Senate Joint Resolution 52.

## D. CONGRESS AND THE BUDGET; IMPOUNDMENT

### § 21. In General; Congressional Budget Act

Concern about escalating federal spending immediately after World War II resulted in enactment of a budget procedure in the

Legislative Reorganization Act of 1946. Under this procedure, the House Committee on Ways and Means and Committee on Appropriations, and the Senate Committee on Finance and Committee on Appropriations or their sub-

committees were required to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget.<sup>(8)</sup> This procedure was designed to coordinate revenue with expenditures and thereby more readily identify and limit deficits.<sup>(9)</sup>

However, until the adoption of the Congressional Budget and Impoundment Control Act of 1974, the Congress lacked a comprehensive uniform mechanism for establishing priorities among its budgetary goals and for determining national economic policy regarding the federal budget. Despite periodic efforts to centralize budget authority in appropriations committees, budget responsibility re-

8. See §21.2, *infra*, for an illustration of this concurrent resolution.

9. For discussion of the role of Congress in the budget process, see, Fenno, Richard F., Jr., *The Power of the Purse*, Little, Brown and Co., Inc. (1966); Pressman, Jeffrey L., *House v Senate*, Yale University Press, New Haven, Conn. (1966); Wallace, Robert Ash, *Congressional Control of Federal Spending*, Wayne State University Press, Detroit, Mich. (1960).

This section has been compiled by Norah Schwarz, J.D., and has been drawn in part from a report of the House Committee on the Budget entitled "The Congressional Budget and Impoundment Control Act of 1974: A General Explanation," November 1974.

mained fragmented throughout the Congress. Both taxing and spending actions were taken over a period of many months and by way of many different legislative measures. The size of the budget, and whether it should be in surplus or deficit, were not subject to effective controls. The budget process was, in fact, merely the sum of dozens of isolated and usually unrelated actions. Backdoor spending—that is, spending outside the regular appropriation process—represented a significant percentage of all spending. And outlays (that is, actual expenditures) were not always controlled by Congress, since congressional budget actions often reached only to the authority to obligate funds, resulting in little direct relationship in some cases between congressional budget actions and actual expenditures in any given year.

In 1972, the Congress established a Joint Study Committee on Budget Control and directed it to study:

. . . [T]he procedures which should be adopted by the Congress for the purpose of improving congressional control of budget outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully coordinated with an overall view of anticipated revenues for that year.<sup>(10)</sup>

10. Pub. L. No. 92-599, 92d Cong. 2d Sess.

The joint committee issued its final report in April 1973,<sup>(11)</sup> and legislation was introduced in both Houses to implement the report's recommendations, including the addition of anti-impoundment procedures. Both Houses overwhelmingly approved the measure, which became known as the Congressional Budget and Impoundment Control Act of 1974 (hereinafter referred to as "the Act"). The bill was signed into law July 12, 1974, as Public Law No. 93-344.

### ***Summary of the Act***

The Act<sup>(12)</sup> consists of 10 titles which, for purposes of explanation, can be grouped into categories (to be discussed more fully below), as follows:

Title I and title II established new committees on the budget in both the House and the Senate, and a Congressional Budget Office designed to improve Congress' informational and analytical resources with respect to the budgetary process.

Title III and title IV set forth a timetable and new procedures for various phases of the congressional budget process. Title V provides for a new fiscal year.

Title VI spells out the information to be included in the President's budget submissions and amends section 201 of the 1921 Budget and Accounting Act to so provide. The procedures for program review and evaluation are explained in title VII.

Title VIII provides for standardization of budget terminology and availability of information to Congress, while title IX sets out the effective date for various provisions of the Act.

Title X establishes procedures for congressional review of Presidential impoundment actions.

### ***Budget Committees***

The Act establishes a new standing committee in each House known as the Committee on the Budget. The rules of the House were amended to provide for the Committee on the Budget and membership thereon.<sup>(13)</sup> The House Budget Committee was originally composed of 23 members: five from the Committee on Appropriations, five from the Committee on Ways and Means, 11 from other House standing committees and one member each from the majority and minority leadership.<sup>(14)</sup> Membership on this committee was increased to 25, pursuant to a resolution of the House<sup>(15)</sup> which provided for 13 members to be elected from other standing committees of the House.

11. See 119 CONG. REC. 13162, 13163, 93d Cong. 1st Sess., Apr. 18, 1973.

12. See 31 USC §§ 1301 et seq.

13. This committee was established pursuant to the Act (§ 101) in the 93d Congress effective July 12, 1974 (88 Stat. 299).

14. Rule X clause I(e)1, *House Rules and Manual* (1975).

15. H. Res. 5, 121 CONG. REC. 20-22, 94th Cong. 1st Sess., Jan. 14, 1975.

***Budget Timetable***

Title III of the Act<sup>(16)</sup> establishes a timetable for various phases of the congressional budget

process, prescribing the actions to take place at each stage under the new procedure:

<i>On or before</i>	<i>Action to be completed</i>
November 10 .....	President submits current services budget.
15th day after Congress meets	President submits his budget.
March 15 .....	Committees and joint committees submit reports to Budget Committees.
April 1 .....	Congressional Budget Office submits report to Budget Committees.
April 15 .....	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15 .....	Committees report bills and resolutions authorizing new budget authority.
May 15 .....	Congress completes action on first concurrent resolution on the budget.
7th day after Labor Day .....	Congress completes action on bills and resolutions providing new budget authority and new spending authority.
September 15 .....	Congress completes action on second required concurrent resolution on the budget.
September 25 .....	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1 .....	Fiscal year begins.

***November 10: Current Services Budget***

The first element in the timetable is the President's submission by Nov. 10 of the current services budget which estimates the outlays needed to carry on existing programs and activities for the following fiscal year. Its purpose is to provide Congress with detailed information with which to begin analysis and preparation of

the budget for the forthcoming year. Budget projections are then made by the Congressional Budget Office and the House and Senate Budget Committees based on the current fiscal year's levels. To facilitate evaluation of the President's projections, the Joint Economic Committee is required by the terms of the Act<sup>(17)</sup> to report to the budget committees on the estimates and economic assump-

**16.** 31 USC §§ 1321 et seq.

**17.** 15 USC § 1024.

tions on the current services budget.

***15th Day After Convening:  
President Submits Budget***

The President's budget is due to be submitted 15 days after Congress convenes.<sup>(18)</sup> This date remains unchanged from previous practice. Shortly after its submission, the budget committees of both Houses begin hearings on the President's budget, the economic assumptions on which it is based, the national budget priorities, and the budget in general. Testimony is taken from Members of Congress, administration officials, representatives of national interest groups, and the general public, such as the committee deem fit.<sup>(19)</sup>

***March 15: Committee Reports  
Submitted to Budget Committees***

A new aspect of the budget process is the requirement that each of the standing committees of the House and Senate submits its recommendations on the proposed budget as viewed by the particular committee. These views are given to the budget committees of the House or Senate and are due on Mar. 15, one month prior to the reporting date of the

**18.** 31 USC § 1321.

**19.** 31 USC § 1322(d).

first concurrent resolution on the budget.<sup>(20)</sup>

The purpose of these reports is to provide the budget committees with an early and comprehensive indication of spending plans for the coming fiscal year. The reports contain the views and estimates of the committees and joint committees on budgetary matters within their jurisdiction, and their estimates of new budget outlays to be authorized by legislation within their jurisdiction during the following fiscal year.

***April 1: Congressional Budget  
Office Submits Report to  
Budget Committees***

The Congressional Budget Office is required to submit its report to the budget committees on or before Apr. 1.<sup>(21)</sup> This report is primarily concerned with alternative budget levels and national budget priorities. It is the first of several required of the Congressional Budget Office. It is most significant, however, in that it is timed for use in the budget committees' deliberations on the first concurrent resolution on the budget, particularly with respect to committee discussions of national budget priorities.

**20.** 31 USC 1322(c).

**21.** 31 USC § 1321.

***April 15: First Concurrent Resolution Reported***

The budget committees must report the first concurrent resolution on the budget to Congress by Apr. 15.<sup>(1)</sup> This allows each House a maximum of one month for floor consideration, conferences, and the adoption of conference reports.<sup>(2)</sup>

The first concurrent resolution on the budget provides estimates and preliminary budget targets for fiscal year beginning on Oct. 1. It must set forth: (1) the appropriate level of total budget outlays and of total new budget authority; (2) an estimate of budget outlays and an appropriate level of new budget authority in various categories; (3) the amount, if any, of appropriate budget surplus or deficit; and (4) the recommended level of federal revenues and the amount, if any, by which the aggregate level of federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees.<sup>(3)</sup>

The report of the budget committee on the resolution compares its revenue estimates and outlay levels with the estimates and amounts in the President's budg-

1. 31 USC § 1321.
2. 31 USC § 1322(d).
3. 31 USC § 1322.

et. It also identifies recommended sources of revenues, makes five-year budget projections, and spells out the economic assumptions and objectives of the resolution.<sup>(4)</sup>

The Act provides special procedures for House consideration of budget resolutions and conference reports on such resolutions. The Act also provides for important material to be included in the joint statement of managers accompanying the conference report. The joint statement must distribute the allocations of total budget authority and outlays contained in the resolution among the appropriate committees. For example, if the conference report allocates \$7 billion in budget authority and \$6 billion in outlays for the functional category "Community and Regional Development," the statement of managers must divide those amounts among the various committees with jurisdiction over programs and authorities covered by that functional category. Each committee to which an allocation is made must, in turn, further subdivide its allocation among its subcommittees or programs.

***May 15: Reporting New Budget Authority; Completion of Action on First Concurrent Resolution***

May 15 is the deadline for committees to report legislation au-

4. 31 USC § 1322(d).

thorizing new budget authority.<sup>(5)</sup> It is also the deadline for the adoption of the first budget resolution by Congress.<sup>(6)</sup>

Consideration of bills or resolutions authorizing new budget authority reported after May 15 is permitted in the House only if an emergency waiver reported by the Committee on Rules is adopted.<sup>(7)</sup>

The Budget Act sets forth special procedures by which the House is to consider budget resolutions and conference reports relating thereto. Such resolutions are initially considered in the Committee of the Whole. General debate is limited to 10 hours, and motions to further limit debate are not debatable. Under the original statute, the resolution was read for amendment under the five-minute rule by sections.<sup>(8)</sup>

After the Committee of the Whole has reported the resolution to the House, the previous question is considered as ordered on the resolution and amendments thereto to final passage without intervening motion. The only amendment in order under the Act prior to final passage is one effecting changes necessary to achieve mathematical consistency.<sup>(9)</sup>

5. 31 USC § 1352.

6. 31 USC § 1322.

7. 31 USC § 1352.

8. 31 USC § 1326.

9. *Id.*

Debate on the conference report on the resolution is limited to five hours.<sup>(10)</sup>

***Seventh Day After Labor Day; Action on Measures Providing New Budget or Spending Authority***

The seventh day after Labor Day is the recommended deadline for completing action on regular budget authority and entitlement bills.<sup>(11)</sup> The only exception to this requirement is for appropriation bills whose consideration has been delayed because necessary authorizing legislation has not been timely enacted.<sup>(12)</sup>

The Congressional Budget Office issues periodic reports on the status of measures providing new budget authority and revenue and debt legislation.<sup>(13)</sup>

***September 15, 25; Action on Second Concurrent Resolution***

Sept. 15 and 25 are the dates for the adoption of the second resolution and completion of the reconciliation process, the final legislative phase of the new budget process under the Act.<sup>(14)</sup>

10. *Id.*

11. 31 USC § 1330.

12. *Id.*

13. 31 USC § 1329.

14. 31 USC § 1331.

The completion of reconciliation actions on Sept. 25 brings the budget timetable to within five days of the new fiscal year—Oct. 1.

The importance of the timely completion of this phase of the budget process is underlined by the provision of the Act which states that Congress may not adjourn *sine die* unless such action is completed.<sup>(15)</sup>

The second resolution reflects changed economic circumstances, taking into consideration the spending authority exercised by Congress and the matters contained in the first resolution, namely the “target” levels of budget authority and outlays, total revenues, and the public-debt limit. In addition, the committees with jurisdiction over the recommended changes are directed to determine and recommend such changes to the House.<sup>(16)</sup>

After adoption of the second resolution and completion of the reconciliation process, it is not in order in either House to consider any new spending legislation that would cause the aggregate levels of total budget authority or outlays adopted in that resolution to be exceeded, nor to consider a

measure that would reduce total revenues below the levels in the resolution.<sup>(17)</sup>

It should be pointed out, however, that Congress may adopt a revision of its most recent resolution at any time during the fiscal year. In addition to the May and September resolutions, Congress may adopt at least one additional resolution each year, either in conjunction with a supplemental appropriations bill or in the event of sharp revisions in revenue or spending estimates brought on by major changes in the economy.<sup>(18)</sup>

### ***Program Review and Evaluation***

The budget committees of the House and Senate are directed to study budget proposals, including program analysis and evaluation and time limits on program authorizations.<sup>(19)</sup> These committees also make continuing studies of “off budget” agencies and periodically report their findings and recommendations. An “off budget” agency is an agency of the federal government which is exempt from the President’s budget under the Budget and Accounting Act of 1921, section 201.<sup>(20)</sup>

17. 31 USC § 1332.

18. 11. Rept. No. 93-658, 93d Cong. 1st Sess. (1973).

19. 31 USC § 1303.

20. 31 USC 11b.

15. *Id.*

16. *Id.*

***Impoundment Controls***

Impoundment control is a companion feature of the new budget control system. In the words of the House Committee on Rules' report on the budget reform legislation:

One without the other would leave the Congress in a weak and ineffective position. No matter how prudently Congress discharges its appropriations responsibility, legislative decisions have no meaning if they can be unilaterally abrogated by executive impoundments. On the other hand, if Congress appropriates funds without full awareness of the country's fiscal condition, its actions may be used by the President to justify [his] withholding of funds. By joining budget and impoundment control in a complete overhaul of the budget process [the bill], seeks to assure that the power of appropriation assigned to the Congress is responsibly and effectively exercised.<sup>(21)</sup>

Impoundment is a term used to describe situations wherein the executive branch declines to enter into obligations or commitments for the full amount of funds appropriated therefor by Congress.<sup>(1)</sup>

The statute recognizes two types of impoundment actions by the executive branch: rescissions and deferrals.<sup>(2)</sup>

**21.** H. Rept. No. 93-658, 93d Cong. 1st Sess. (1973).

**1.** Levinson and Mills, Budget Reform and Impoundment Control, 27 Vand. L. Rev. 615 (1974).

**2.** 31 USC §§1400 et seq.

Rescissions must be proposed by the President whenever he determines that (1) all or part of any budget authority will not be needed to carry out the full objectives of a particular program; (2) budget authority should be rescinded for fiscal reasons; or (3) all or part of budget authority provided for only one fiscal year is to be reserved from obligation for that year. In such cases, the President is to submit a special message to the Congress requesting rescission of the budget authority, explaining fully the circumstances and reasons for the proposed action. Unless both Houses of the Congress complete action on a rescission bill within 45 days of the President's submission, the budget authority must be made available for obligation.<sup>(3)</sup>

Deferrals must be proposed by the President whenever any executive action or inaction effectively precludes the obligation or expenditure of budget authority. In such cases, the President is to submit a special message to the Congress recommending the deferral of that budget authority. The President is required to make such budget authority available for obligation if either House passes an "impoundment resolution" disapproving the proposed

**3.** 31 USC §1402.

deferral at any time after receipt of the special message.<sup>(4)</sup>

Rescission and deferral messages are also to be transmitted to the Comptroller General who must review each message and advise the Congress of the facts surrounding the action and its probable effects. In the case of deferrals, he must state whether the deferral is, in his view, in accordance with existing statutory authority.”<sup>(5)</sup>

If budget authority is not made available for obligation by the President as required by the impoundment control provisions, the Comptroller General is authorized to bring a civil action to bring about compliance. However, such action may not be brought until 25 days after the Comptroller General files an explanatory statement with the House and Senate.<sup>(6)</sup>

***“Backdoor” Spending***

Under the Act new procedures were established for the enactment of contract and borrowing authority in order to promote a more comprehensive and consistent control over spending actions. The Act states that effective January 1976, new contract au-

thority and borrowing authority legislation, to be in order for consideration in either House, must contain a provision that such new authority is to be effective only to the extent or in such amounts as are provided in appropriations acts. In this manner, the Act prohibits the consideration of bills obligating certain types of new government spending in advance of the appropriations process. The Speaker has ruled, however, that such prohibition may be waived by a resolution reported as privileged from the Committee on Rules. The Speaker’s ruling, on Mar. 20, 1975,<sup>(7)</sup> was based on the fact that the provisions of the Act in question were intended to state a rule of proceeding, and could therefore be waived or changed by the House at any time pursuant to its constitutional authority to “determine the Rules of its Proceedings.”<sup>(8)</sup>

The provisions of the Act described above do not apply to contract or borrowing authority in effect prior to January 1976, unless specifically implemented earlier, pursuant to section 906 of the Act.<sup>(9)</sup>

4. 31 USC §1403.  
5. 31 USC §1404.  
6. 31 USC §1406.

7. 121 CONG. REC. 7677, 94th Cong. 1st Sess., Mar. 20, 1975 (ruling by Speaker Carl Albert [Okla.]).  
8. U.S. Const. art. I, section 5.  
9. See 31 USC §1351.

***Legislative Reorganization Act of 1946***

**§ 21.1 The House and Senate agreed to a provision of the Legislative Reorganization Act of 1946 which authorized certain House and Senate committees to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget. This provision was repealed by the Legislative Reorganization Act of 1970.**

On July 25, 1946, the House by voice vote agreed to<sup>(10)</sup> and on July 26, 1946, the Senate by voice vote concurred in,<sup>(11)</sup> a House substitute to S. 2177, the Legislative Reorganization Act of 1946. Section 138 of the substitute directed certain Senate and House committees to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget. The text of the provision follows:<sup>(12)</sup>

10. 92 CONG. REC. 10047, 10051-53, 10075, 10077-80, 10104, 79th Cong. 2d Sess.

11. *Id.* at p. 10152. See also 92 CONG. REC. 6442 (text of section 130, the budget provision of the Senate bill), and 6577, 6578 (vote), 79th Cong. 2d Sess., June 7, and June 10, 1946, respectively.

12. This excerpt is taken from 60 Stat. 812, 832, 833 (Pub. L. No. 79-601). It was codified as 2 USC § 190e.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

That (a) this Act, divided into titles and sections according to the following table of contents, may be cited as the "Legislative Reorganization Act of 1946": . . .

LEGISLATIVE BUDGET

Sec. 138. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, are authorized and directed to meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget recommendations of the President, report to their respective Houses a legislative budget for the ensuing fiscal year, including the estimated over-all Federal receipts and expenditures for such year. Such report shall contain a recommendation for the maximum amount to be appropriated for expenditure in such year which shall include such an amount to be reserved for deficiencies as may be deemed necessary by such committees. If the estimated receipts exceed the estimated expenditures, such report shall contain a recommendation for a reduction in the public debt. Such report shall be made by February 15.

(b) The report shall be accompanied by a concurrent resolution adopting such budget, and fixing the maximum

amount to be appropriated for expenditure in such year. If the estimated expenditures exceed the estimated receipts, the concurrent resolution shall include a section substantially as follows: "That it is the sense of the Congress that the public debt shall be increased in an amount equal to the amount by which the estimated expenditures for the ensuing fiscal year exceed the estimated receipts, such amount being \$ ."

Section 138 was repealed by approval of the Legislative Reorganization Act of 1970.<sup>(13)</sup>

***Concurrent Resolution***

**§ 21.2 Pursuant to the Legislative Reorganization Act of 1946, the Senate and House agreed to a concurrent resolution expressing the judgment of Congress regarding levels of revenues and expenditures for the fiscal year 1949.**

On Feb. 18, 1948, the Senate by voice vote,<sup>(14)</sup> and on Feb. 27, 1948, the House by a vote of 315 yeas, 36 nays, 79 not voting,<sup>(15)</sup>

agreed to Senate Concurrent Resolution 42, expressing the sense of Congress as to the amount of revenues and expenditures for fiscal year 1949.

*Resolved by the Senate (the House of Representatives concurring),* That it is the judgment of the Congress, based upon presently available information, that revenues during the period of the fiscal year 1949 will approximate \$47,300,000,000 and that expenditures during such fiscal year should not exceed \$37,200,000,000, of which latter amount not more than \$26,600,000,000 would be in consequence of appropriations hereafter made available for obligation in such fiscal year.

Senate Concurrent Resolution 42 was considered under a special order of the Committee on Rules (H. Res. 485), which provided for consideration in the Committee of the Whole and waiver of all points of order. After general debate, which was confined to the concurrent resolution and limited to two hours, the concurrent resolution was considered as having been read for amendment.

13. 84 Stat. 1140, 1172 [see 2 USC § 242 (b) (1970)].

14. 94 CONG. REC. 1398, 1399, 1408, 80th Cong. 2d Sess.

15. *Id.* at pp. 1875, 1885-87. The House agreed to this concurrent resolution after rejecting by a vote of 73 yeas,

276 nays, not voting 81, a motion to recommit it to the Joint Committee on the Legislative Budget with instructions to strike out expenditures of \$37.2 billion and insert in lieu thereof \$36.7 billion.

## E. RELATIONS WITH EXECUTIVE BRANCH

**§ 22. In General; Confirmation of Nomination for Vice President**

Amendment 25, section 2, of the Constitution<sup>(16)</sup> provides:

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

**Gerald R. Ford**

**§ 22.1 After adopting a rule which waived the three-day layover requirement for committee reports and provided for Committee of the Whole consideration under general debate, the House agreed to a resolution confirming the nomination of House Minority Leader Gerald R. Ford, of Michigan, as Vice President of the United States, pursuant to the 25th amendment, and then received a message announcing the Senate's confirmation of the nomination.**

16. See *House Rules and Manual* §282c (1973).

On Dec. 6, 1973,<sup>(17)</sup> after adopting House Resolution 738 (the rule for consideration which waived the three-day layover requirement), the House by voice vote agreed to House Resolution 735, confirming the nomination of Mr. Gerald R. Ford to be Vice President, pursuant to the 25th amendment.

MR. [JAMES J.] DELANEY [of New York]: Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 738 and ask for its immediate consideration.

The Clerk read the resolution as follows:

## H. RES. 738

*Resolved*, That upon the adoption of this resolution it shall be in order to move, clause 27(d) (4) of rule XI<sup>(18)</sup> to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States. After general debate, which shall be confined to the resolution and shall continue not to exceed six hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the Committee shall rise and report the resolution to the House,

17. 119 CONG. REC. 39807, 39812, 39813, 39899, 93d Cong. 1st Sess.

18. *House Rules and Manual* §735(d)(4) (1973).

and the previous question shall be considered as ordered on the resolution to final passage.

THE SPEAKER:<sup>(19)</sup> The gentleman from New York is recognized for 1 hour.

MR. DELANEY: Mr. Speaker, I yield 30 minutes of that hour to the gentleman from Illinois (Mr. Anderson) pending which I now yield myself such time as I may consume.

Mr. Speaker, this resolution makes in order consideration of House Resolution 735, a simple resolution providing for the confirmation of the Honorable Gerald R. Ford of the State of Michigan to be Vice President of the United States. The resolution provides for 6 hours of general debate. It also provides that points of order against clause 27(d)(4) of rule XI of the Rules of the House of Representatives be waived. That simply means that we are waiving the 3-day rule.

Mr. Speaker, I urge adoption of House Resolution 738 in order that we may discuss and debate House Resolution 735. . . .

THE SPEAKER: The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 389, nays 15, not voting 29, as follows: . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States.

THE SPEAKER: The question is on the motion offered by the gentleman from New Jersey (Mr. Rodino).

The motion was agreed to. . . .

MR. RODINO: Mr. Chairman, I have no further requests for time.

MR. [EDWARD] HUTCHINSON [of Michigan]: Mr. Chairman, I have no further requests for time.

THE CHAIRMAN:<sup>(1)</sup> Under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Patman, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the resolution (H. Res. 735) confirming the nomination of Gerald R. Ford, of the State of Michigan, to be Vice President of the United States, pursuant to House Resolution 738, he reported the resolution back to the House.

THE SPEAKER: Under the rule, the previous question is ordered.

19. Carl Albert (Okla.).

1. Wright Patman (Tex.).

The question is on the resolution.

MR. HUTCHINSON: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 387, nays 35, not voting 11, as follows: . . .

So the resolution was agreed to.<sup>(2)</sup>

Following this action, the House received a message from the Senate announcing that body's confirmation.<sup>(3)</sup>

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate did, on November 27, 1973, pursuant to section 2 of the 25th amendment to the Constitution of the United States, confirm the nomination of the Honorable Gerald R. Ford of Michigan to be Vice President of the United States.<sup>(4)</sup>

2. President Nixon's nomination was referred to the Committee on the Judiciary, chaired by Mr. Rodino, on Oct. 13, 1973 (119 CONG. REC. 34032, 93d Cong. 1st Sess.). That committee reported out H. Res. 735 (H. Rept. No. 93-695) on Dec. 4, 1973 (119 CONG. REC. 39419, 93d Cong. 1st Sess.).

See also 120 CONG. REC. 41516, 41517, 93d Cong. 2d Sess., Dec. 19, 1974, for House approval, 287 yeas to 128 nays, of H. Res. 1511, confirming the nomination of Nelson A. Rockefeller to be Vice President, and 120 CONG. REC. 38936, 93d Cong. 2d Sess., Dec. 10, 1974, for Senate approval, 90 yeas to 7 nays, of this nomination.

3. 119 CONG. REC. 39900, 93d Cong. 1st Sess., Dec. 6, 1973.
4. See 119 CONG. REC. 38225, 93d Cong. 1st Sess., Nov. 27, 1973, for

***Buckley v Valeo; Effect on Congressional Appointment Authority***

**§ 22.2 Parliamentarian's Note:** In reviewing the Federal Election Campaign Act Amendments of 1974 (Pub. L. No. 93-443, 83 Stat. 1263), the United States Supreme Court held that the procedure for appointing members of the Federal Election Commission by the Speaker of the House and President pro tempore of the Senate violated article II, section 2, clause 2, the Appointments Clause, which provides that the President shall nominate, and with the advice and consent of the Senate, appoint all "Officers of the United States." In reaching this holding, the Court found that members of the commission were "Officers of the United States" whom only the President could nominate and, with the advice and consent of the Senate, appoint. This finding was based on the fact that the Federal Election Commission was granted not only investigatory and information-gathering functions

Senate confirmation by a vote of 92 yeas, 3 nays.

**which may constitutionally be exercised by Congress, but also rulemaking and enforcement powers which have been delegated to other branches of government. The Speaker and President pro tempore may appoint members to commissions whose authority is restricted to investigation and information-gathering. *Buckley v Valeo*, 424 U.S. 1 (1976).**

### **§ 23. Executive Reorganization Plans**

The President was, prior to 1973, authorized to reorganize an agency or agencies of the executive department if he submitted a plan to each House of Congress. A provision contained in a reorganization plan could take effect only if the plan was transmitted before Apr. 1, 1973,<sup>(5)</sup> since the authority of the President to transmit reorganization plans had not been extended beyond that date. A reorganization could be ordered to promote better execution of laws; reduce expenditures; in-

5. 5 USC § 903, 5 USC § 905(b). Reorganization authority was again extended, with certain procedural changes, in the 95th Congress. Pub. L. No. 95-17.

crease efficiency; group, coordinate, and consolidate agencies; reduce the number of agencies by consolidation; and eliminate overlapping and duplication of effort.<sup>(6)</sup> These purposes could be achieved by transferring all or part of an agency or the function thereof to another agency; abolishing all or part of the functions of an agency; consolidating or coordinating the whole or part of an agency with another agency or the same agency; authorizing an officer to delegate any of his functions; or abolishing the whole or part of an agency which did not have or would not, as a consequence of the reorganization, have any functions.<sup>(7)</sup> Under this statute a reorganization plan could not create, abolish, or transfer an executive department or consolidate two or more executive departments.

A reorganization plan accompanied by a declaration that the reorganization was necessary to accomplish a recognized purpose must be delivered to both Houses on the same day and to each House while in session.<sup>(8)</sup> A plan

6. 5 USC § 901.

7. 5 USC § 903. See also 5 USC § 904, for other provisions of, and 5 USC § 905, for limitations on, reorganization plans.

8. 5 USC § 903(a), (b), 5 USC § 905(b).

submitted before Apr. 1, 1973, would become effective at the end of the first period of 60 calendar days of continuous congressional session after the transmittal date unless, during that period, either House passed a resolution stating in substance that it did not favor the plan.<sup>(9)</sup>

As an exercise of the rule-making power of the Senate and House of Representatives and with full recognition of the constitutional right of either House to change its rules,<sup>(10)</sup> Congress provided for the form of resolutions disapproving reorganization plans,<sup>(11)</sup> reference of such resolutions to committees,<sup>(12)</sup> discharge of committees considering such resolution after 20 days,<sup>(13)</sup> as well as procedure after report or discharge of committee and debate on such resolutions.<sup>(14)</sup> The procedure after reporting or discharge

9. 5 USC § 906. The form of the resolution is outlined in 5 USC § 909.

Congress could accelerate the effective date; see §§ 23.33, 23.34, *infra*, for a discussion of House and Senate approval of a joint resolution to accelerate a reorganization plan establishing the Department of Health, Education, and Welfare.

10. 5 USC § 908.

11. 5 USC § 909.

12. 5 USC § 910.

13. 5 USC § 911.

14. 5 USC § 912.

of the committee and procedure for debate is clearly stated:

(a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(b) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

Congress also provided that motions to postpone relating to such resolutions, or to proceed to other business, should be decided without debate.<sup>(15)</sup> Appeals from decisions of the Chair applying House or Senate rules to the consideration of resolutions disapproving reorganization plans were also to be decided without debate.<sup>(16)</sup>

Most of the precedents in this section discuss substantive as-

15. 5 USC § 913.

16. *Id.*

pects of Presidential reorganization plans.<sup>(17)</sup> Congress may also reorganize executive agencies by statute.<sup>(18)</sup>

Statutes authorizing the President to promulgate reorganization plans were approved in 1939,<sup>(1)</sup> 1945,<sup>(2)</sup> 1949,<sup>(3)</sup> and 1966.<sup>(4)</sup> Amendments to the major reorganization acts were approved in 1953,<sup>(5)</sup> 1957,<sup>(6)</sup> 1961,<sup>(7)</sup> 1964,<sup>(8)</sup>

17. The exceptions are §§ 23.33–23.36, *infra*. See also Ch. 24, *infra*, for a discussion of certain procedural matters relating to resolutions of disapproval generally and *House Rules and Manual* § 1013 (1975) for a compilation of statutory “legislative veto” provisions. § 23.1, *infra*, discusses the procedure for consideration of the Presidential reorganization plan which consolidated a number of programs into one agency, ACTION.
18. See House Committee on Government Operations, *Reorganization by Plan and by Statute, 1946–1956* (May 1957) for examples of both kinds of reorganization.
  1. 53 Stat. 561, 76th Cong. 1st Sess. (Pub. L. No. 76–19).
  2. 59 Stat. 613, 79th Cong. 1st Sess. (Pub. L. No. 79–263).
  3. 63 Stat. 203, 81st Cong. 1st Sess. (Pub. L. No. 81–109).
  4. 80 Stat. 378, 89th Cong. 2d Sess. (Pub. L. No. 89–554). Note: Title 5 of the United States Code includes reorganization plans.
  5. 67 Stat. 4, 83d Cong. 1st Sess. (Pub. L. No. 83–3).
  6. 71 Stat. 611, 85th Cong. 1st Sess. (Pub. L. No. 85–286).
  7. 75 Stat. 41, 87th Cong. 1st Sess. (Pub. L. No. 87–18).
  8. 78 Stat. 240, 88th Cong. 2d Sess. (Pub. L. No. 88–351).

1965,<sup>(9)</sup> 1969,<sup>(10)</sup> and 1971.<sup>(11)</sup> In addition to the above legislation, title I of the War Powers Act of 1941,<sup>(12)</sup> granted the President emergency reorganization powers to make such redistribution of functions among executive agencies as he deemed necessary during World War II.

### **ACTION**

#### **§ 23.1 The House by ye and nay vote rejected a resolution disapproving a Presidential reorganization plan to consolidate a number of volunteer programs into one agency, ACTION.**

On May 25, 1971,<sup>(13)</sup> the House under the procedures prescribed by the Reorganization Act of 1966, rejected by a vote of yeas 131, nays 224, not voting 77, House Resolution 411, disapproving Reorganization Plan No. 1 (consolidating a number of volunteer pro-

9. 79 Stat. 135, 89th Cong. 1st Sess. (Pub. L. No. 89–43).
10. 83 Stat. 6, 91st Cong. 1st Sess. (Pub. L. No. 91–5). See also Pub. L. No. 95–17.
11. 85 Stat. 574, 92d Cong. 1st Sess. (Pub. L. No. 92–179).
12. 55 Stat. 838, 77th Cong. 1st Sess. (Pub. L. No. 77–354).
13. 117 CONG. REC. 16803, 16804, 16832 16833, 92d Cong. 1st Sess.

grams into one agency, ACTION, and transmitted by the President on Mar. 24, 1971).

The Chairman of the Committee on Government Operations, Chet Holifield, of California, moved that the House resolve itself into the Committee of the Whole for consideration of the resolution disapproving the plan and proceedings ensued as indicated below:

MR. HOLIFIELD: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 411) disapproving Reorganization Plan No. 1, transmitted to the Congress by the President on March 24, 1971; and pending that motion, Mr. Speaker, I ask unanimous consent that debate on the resolution may continue not to exceed 3 hours, the time to be equally divided and controlled by the gentleman from New York ( Mr. Horton) and myself. . . .

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

THE SPEAKER: The question is on the motion offered by the gentleman from California.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of House Resolution 411, with Mr. [John] Brademas [of Indiana] in the chair.

14. Carl Albert (Okla.).

The Clerk read the title of the resolution.

By unanimous consent, the first reading of the resolution was dispensed with.

THE CHAIRMAN: Under the unanimous consent agreement, the gentleman from California (Mr. Holifield) will be recognized for 1½ hours, and the gentleman from New York (Mr. Horton) will be recognized for 1½ hours.

The Chair recognizes the gentleman from California.

Mr. Holifield described the plan in the Committee of the Whole:

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, House Resolution 411 is a resolution to disapprove Reorganization Plan No. 1 of 1971 submitted to the Congress by President Nixon on March 24. Both the plan and the resolution were referred to the Committee on Government Operations under the rules of the House. The committee has reported back the resolution with a recommendation that it not be approved. This is in effect an endorsement of the plan itself which we hope will be supported by the House. The vote, however, will be on the resolution itself. Those who favor the plan should vote "no" on the resolution. Those who oppose the plan should vote "aye" on the resolution.

The President proposes in the reorganization plan to create a new agency called Action to which would be transferred:

First, Volunteers in Service to America, now in the Office of Economic Opportunity;

Second, auxiliary and special volunteer programs, now in the Office of Economic Opportunity;

Third, Foster Grandparents, now in the Department of Health, Education, and Welfare;

Fourth, the retired senior volunteer program, now in the Department of Health, Education, and Welfare; and

Fifth, the Service Corps of Retired Executives and Active Corps of Executives, both now in the Small Business Administration.

The President intends later to transfer the Peace Corps to the new agency by executive order and to similarly transfer the Office of Volunteer Action.

The President advised in his message that he also intends to submit legislation to Congress to transfer the Teacher Corps from HEW to Action.

Following this description and debate the Clerk read the resolution; the Committee of the Whole agreed to rise with the recommendation that the resolution of disapproval not be agreed to:

THE CHAIRMAN: The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 411

*Resolved*, That the House of Representatives does not favor the Reorganization Plan Numbered 1 transmitted to the Congress by the President on March 24, 1971.

MR. HOLIFIELD: Mr. Chairman, I move that the Committee do now rise and report the resolution back to the House with the recommendation that the resolution be not agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Brademas, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration House Resolution 411, to disapprove Reorganization Plan No. 1 of 1971, had directed him to report the resolution back to the House with the recommendation that the resolution be not agreed to.

The Clerk reported the resolution;

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: Mr. Speaker, for the information of the Members of the House, is it true that a vote "aye" on the resolution is a vote against Reorganization Plan No. 1, and that a vote of "nay" is a vote to approve the President's reorganization plan?

The inquiry having been answered in the affirmative, the vote was taken:

THE SPEAKER: The question is on the resolution.

MR. HOLIFIELD: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 131, nays 224, not voting 77, as follows: . . .

So the resolution was rejected.

**§ 23.2 The Senate by yea and nay vote rejected a resolution disapproving a Presidential reorganization plan to consolidate a number of**

**volunteer programs into one agency, ACTION.**

On June 3, 1971,<sup>(15)</sup> the Senate by a vote of yeas 29, nays 54, rejected Senate Resolution 108, disapproving Reorganization Plan No. 1, consolidating a number of volunteer programs into one agency, ACTION, submitted by the President on Mar. 24, 1971.

*Bureau of the Budget*

**§ 23.3 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to reorganization of the Bureau of the Budget.**

On May 13, 1970,<sup>(16)</sup> the House by a vote of yeas 164, nays 193, not voting 73, rejected House Resolution 960, disapproving Reorganization Plan No. 2, relating to the Bureau of the Budget (transmitted by the President on Mar. 12, 1970), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it be agreed to.<sup>(17)</sup>

15. 117 CONG. REC. 17801-04, 92d Cong. 1st Sess. See also 117 CONG. REC. 17645-72, 92d Cong. 1st Sess., June 2, 1971, for debate on this resolution.

16. 116 CONG. REC. 15297, 15298, 15331, 15332, 91st Cong. 2d Sess.

17. The name of the Bureau of the Budget has been changed to the Office of Management and Budget.

*Bureau of Internal Revenue and Department of the Treasury*

**§ 23.4 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Bureau of Internal Revenue and Department of the Treasury.**

On Jan. 30, 1952,<sup>(18)</sup> the House by voice vote rejected House Resolution 494 disapproving Reorganization Plan No. 1, relating to the Bureau of Internal Revenue and Department of the Treasury (transmitted by the President on Jan. 14, 1952), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.

*Bureau of Narcotics*

**§ 23.5 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to the creation of a new Bureau of Narcotics in the Department of Justice.**

On Apr. 2, 1968,<sup>(19)</sup> the House by a vote of yeas 190, nays 200,

18. 98 CONG. REC. 642, 643, 671, 82d Cong. 2d Sess.

19. 114 CONG. REC. 8601, 8628, 8629, 90th Cong. 2d Sess.

present 2, and not voting 41, rejected House Resolution 1101 disapproving Reorganization Plan No. 1, creating a new Bureau of Narcotics in the Department of Justice (transmitted by the President on Feb. 7, 1968), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

#### ***Civil Aeronautics Board***

**§ 23.6 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to the Civil Aeronautics Board.**

On June 20, 1961,<sup>(20)</sup> the House by a vote of yeas 178, nays 213, not voting 46, rejected House Resolution 304 disapproving Reorganization Plan No. 3, relating to the Civil Aeronautics Board (transmitted by the President on May 3, 1961), after the Committee of the Whole approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

20. 107 CONG. REC. 10839-44, 87th Cong. 1st Sess.

#### ***Community Relations Service***

**§ 23.7 The House by yea and nay vote rejected a resolution disapproving a Presidential reorganization plan relating to the transfer of the Community Relations Service from the Department of Commerce to the Department of Justice.**

On Apr. 20, 1966,<sup>(1)</sup> the House by a vote of yeas 163, nays 220, not voting 49, rejected House Resolution 756 disapproving Reorganization Plan No. 1, relating to the transfer of the Community Relations Service from the Department of Commerce to the Department of Justice (transmitted by the President on Feb. 10, 1966), after the Committee of the Whole by voice vote approved a motion to rise and report the resolution to the House with the recommendation that it not be agreed to.

#### ***Departments of Agriculture and Interior***

**§ 23.8 The House agreed to a resolution disapproving a Presidential reorganization plan relating to the Department of Agriculture and Department of the Interior.**

1. 112 CONG. REC. 8498-516, 89th Cong. 2d Sess.

On July 7, 1959,<sup>(2)</sup> the House by a vote of yeas 266, nays 124, not voting 44, agreed to House Resolution 295, disapproving Reorganization Plan No. 1, transferring from the Department of the Interior to the Department of Agriculture functions relating to minerals and forest lands. The plan had been transmitted by the President on May 22, 1959. This House action followed approval by the Committee of the Whole of a motion to report the resolution back to the House with the recommendation that it pass.<sup>(3)</sup>

***Departments of Army, Navy, and Air Force***

**§ 23.9 The House as in Committee of the Whole by voice vote agreed to a resolution disapproving a Presidential reorganization plan relating to the Departments of Army, Navy, and Air Force.**

On July 5, 1956,<sup>(4)</sup> the House as in Committee of the Whole agreed to House Resolution 534, disapproving Reorganization Plan No. 1, relating to new offices in the Departments of the Army,

2. 105 CONG. REC. 12856, 86th Cong. 1st Sess.

3. 105 CONG. REC. 12740-46, 86th Cong. 1st Sess., July 6, 1959.

4. 102 CONG. REC. 11886, 84th Cong. 2d Sess.

Navy, and Air Force, transmitted by the President on May 16, 1956.

***Department of Commerce***

**§ 23.10 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Department of Commerce.**

On May 18, 1950,<sup>(5)</sup> the House by voice vote rejected House Resolution 546, disapproving Reorganization Plan No. 5, transferring all functions of all other officers of the Department of Commerce to the Secretary (with the exception of hearings examiners employed by the Department of Commerce, Civil Aeronautics Board, Inland Waterways Corporation, and the Advisory Board of the Inland Waterways Corporation), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.<sup>(6)</sup>

***Department of Labor***

**§ 23.11 The House by voice vote rejected a resolution**

5. 96 CONG. REC. 7266-74, 81st Cong. 2d Sess.

6. Reorganization Plan No. 5 was transmitted by the President on Mar. 13, 1950.

**disapproving a Presidential reorganization plan relating to the Department of Labor.**

On Aug. 11, 1949,<sup>(7)</sup> the House by voice vote rejected House Resolution 301, disapproving Reorganization Plan No. 2, transferring the Bureau of Employment Security, Veterans' Placement Service Board, and Federal Advisory Council to the Department of Labor (transmitted by the President on June 20, 1949), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report back to the House with a recommendation that the resolution not pass.

**§ 23.12 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Department of Labor.**

On May 18, 1950,<sup>(8)</sup> the House by voice vote rejected House Resolution 522, disapproving Reorganization Plan No. 6, centralizing authority for all Department of Labor functions in the Secretary of Labor (transmitted by the President on Mar. 13, 1950) after the Committee of the Whole by voice vote approved a motion that

7. 95 CONG. REC. 11296-314, 81st Cong. 1st Sess.

8. 96 CONG. REC. 7241, 7266, 81st Cong. 2nd Sess.

the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

***Department of Urban Affairs and Housing***

**§ 23.13 The House by yea and nay vote agreed to a resolution disapproving a Presidential reorganization plan relating to the Department of Urban Affairs and Housing.**

On Feb. 21, 1962,<sup>(9)</sup> the House by a vote of 264 yeas, 150 nays, 1 present, 20 not voting, agreed to House Resolution 530, disapproving Reorganization Plan No. 1, establishing a Department of Urban Affairs and Housing (transmitted by the President on Jan. 30, 1962). The Committee of the Whole had recommended that the resolution not be agreed to.<sup>(10)</sup>

***District of Columbia Government***

**§ 23.14 The House by a yea and nay vote rejected a resolution disapproving a Presidential reorganization plan**

9. 108 CONG. REC. 2630-80, 87th Cong. 2d Sess.

10. The Department of Housing and Urban Development was approved on Sept. 9, 1965, 79 Stat. 667 (Pub. L. No. 89-174).

**relating to the District of Columbia government.**

On Aug. 9, 1967,<sup>(11)</sup> the House by a vote of yeas 160, nays 244, not voting 28, rejected House Resolution 512, disapproving Reorganization Plan No. 3, relating to the Government, of the District of Columbia (transmitted by the President on June 1, 1967), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report back to the House with the recommendation that the resolution not be agreed to.

***Executive Office of the President; Federal Agencies***

**§ 23.15 The House by a yea and nay vote rejected a concurrent resolution disapproving a Presidential reorganization plan relating to the Executive Office of the President, Federal Security Agency, Federal Works Agency, and Federal Loan Agency.**

On May 3, 1939,<sup>(12)</sup> the House by a vote of yeas 128, nays 265, present 2, and not voting 35, rejected House Concurrent Resolution 19, disapproving Reorganiza-

11. 113 CONG. REC. 21941-76, 90th Cong. 1st Sess.

12. 84 CONG. REC. 5085, 5086, 76th Cong. 1st Sess.

tion Plan No. 1, relating to the Executive Office of the President, Federal Security Agency, Federal Works Agency, and Federal Loan Agency (transmitted by the President on Apr. 25, 1939), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.

***Environmental Protection Agency***

**§ 23.16 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan establishing the Environmental Protection Agency.**

On Sept. 28, 1970,<sup>(13)</sup> the House by voice vote rejected House Resolution 1209, disapproving Reorganization Plan No. 3, establishing the Environmental Protection Agency (transmitted by the President on July 9, 1970), after the Committee of the Whole by voice vote approved a motion to rise and report the resolution back to the House with the recommendation that it be rejected.

***Federal Communications Commission***

**§ 23.17 The House by yea and nay vote agreed to a resolu-**

13. 116 CONG. REC. 33871-84, 91st Cong. 2d Sess.

**tion disapproving a Presidential reorganization plan relating to the Federal Communications Commission.**

On June 15, 1961,<sup>(14)</sup> the House by a vote of yeas 323, nays 77, not voting 36, agreed to House Resolution 303 disapproving Reorganization Plan No. 2, relating to the Federal Communications Commission (transmitted by the President on Apr. 27, 1961), after the Committee of the Whole approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it be agreed to.<sup>(15)</sup>

**§ 23.18 The House having agreed to a resolution disapproving a Presidential reorganization plan relating to the Federal Communications Commission, the Senate Committee on Government Operations ordered reported, without recommendation, a resolution to the same effect.**

On June 16, 1961,<sup>(16)</sup> the Chairman of the Senate Committee on Government Operations, John L.

14. 107 CONG. REC. 10448-62, 87th Cong. 1st Sess.

15. See § 23.18, *infra*, for Senate disposition.

16. 107 CONG. REC. 10628, 87th Cong. 1st Sess.

McClellan, of Arkansas, made an announcement regarding Senate disposition of a Presidential reorganization plan.

MR. MCCLELLAN: Mr. President, on June 13, 1961, the Committee on Government Operations, in executive session, ordered reported, without recommendation, S. Res. 142, expressing disapproval of Reorganization Plan No. 2 of 1961.

Under section 6 of the Reorganization Act of 1949, as amended, a reorganization plan may not become effective if a resolution of disapproval is adopted by a simple majority of either House. On June 15, 1961, the House of Representatives adopted House Resolution 303, to disapprove Reorganization Plan No. 2 of 1961.<sup>(17)</sup> Since this action results in the final disposition of the matter, it is no longer necessary either for the Committee on Government Operations to file a report on S. Res. 142, or for the Senate to take any further action.

I call attention to the fact, however, that hearings on that resolution have been held and will be available shortly for the information of Members of the Senate. Legislation to enact certain provisions of Reorganization Plan No. 2 is now pending before the Senate Committee on Commerce—S. 2034—and the House Committee on Interstate and Foreign Commerce—H. R. 7333—and the House committee has now completed hearings on H.R. 7333.

I thought it proper to make this announcement in view of the fact that the committee had voted to report the resolution as I have indicated.

17. See § 23.17, *supra*, for House disposition.

***Federal Home Loan Bank Board***

**§ 23.19** The House by voice vote rejected a motion to discharge the Committee on Government Operations from further consideration of a resolution disapproving a reorganization plan, relating to the Federal Home Loan Bank Board.

On Aug. 3, 1961,<sup>(18)</sup> the House by voice vote rejected a motion to discharge the Committee on Government Operations from further consideration of House Resolution 335, disapproving Reorganization Plan No. 6, relating to the Federal Home Loan Bank Board (transmitted by the President on June 12, 1961). The motion was offered by Mr. H. R. Gross, of Iowa, who qualified as being in favor of the resolution.<sup>(19)</sup>

***Federal Maritime Functions***

**§ 23.20** The House by yea and nay vote rejected a motion to

18. 107 CONG. REC. 14548-54, 87th Cong. 1st Sess.

19. See 63 Stat. 203, 207, 81st Cong. 1st Sess. (Pub. L. No. 81-109, §204b), for the requirement that the Member making the motion to discharge must qualify as favoring the resolution of disapproval. This provision was later codified as 5 USC §911(b) (1970), 80 Stat. 397, Sept. 6, 1966 (Pub. L. No. 89-554).

**discharge the Committee on Government Operations from further consideration of a resolution disapproving a reorganization plan relating to federal maritime functions.**

On July 20, 1961,<sup>(20)</sup> the House by a vote of yeas 184, nays 208, not voting 35, rejected a motion to discharge the Committee on Government Operations from further consideration of House Resolution 336, disapproving Reorganization Plan No. 7, relating to the Federal Maritime Administration, Federal Maritime Board, and the Federal Maritime Commission<sup>(1)</sup> (transmitted by the President on June 12, 1961). The motion was offered by Mr. H. R. Gross, of Iowa, who qualified as favoring the resolution of disapproval.

**§ 23.21** The Senate on a roll call vote rejected a resolution disapproving a Presidential reorganization plan relating to maritime functions.

On Aug. 10, 1961,<sup>(2)</sup> the Senate by a vote of yeas 35, nays 60, rejected Senate Resolution 186, dis-

20. 107 CONG. REC. 13084-97, 87th Cong. 1st Sess.

1. See §23.21, *infra*, for Senate disposition of this plan.

2. 107 CONG. REC. 15460, 15461, 87th Cong. 1st Sess.

approving Reorganization Plan No. 7, relating to the Federal Maritime Administration, Federal Maritime Board, and Federal Maritime Commission.<sup>(3)</sup>

***Federal Savings and Loan Insurance Corporation***

**§ 23.22 The House as in Committee of the Whole agreed to a resolution disapproving a Presidential reorganization plan creating the Federal Savings and Loan Insurance Corporation.**

On July 5, 1956,<sup>(4)</sup> the House as in Committee of the Whole by voice vote agreed to House Resolution 541, disapproving Reorganization Plan No. 2, creating the Federal Savings and Loan Insurance Corporation (transmitted by the President on May 17, 1956).

***Federal Security Agency, Social Security Board, and United States Employment Service***

**§ 23.23 The House by voice vote agreed to a concurrent resolution disapproving a Presidential reorganization plan relating to the Federal**

3. See § 23.20, supra, for House disposition of this resolution.

4. 102 CONG. REC. 11886, 84th Cong. 2d Sess.

**Security Agency, Social Security Board, and United States Employment Service.**

On June 10, 1947,<sup>(5)</sup> the House by voice vote agreed to House Concurrent Resolution 49, disapproving Reorganization Plan No. 2, relating to the Federal Security Agency, Social Security Board, and United States Employment Service (transmitted by the President on May 1, 1947), after the Committee of the Whole approved a motion to rise and report back to the House with the recommendation that it be agreed to.

***Federal Trade Commission***

**§ 23.24 The House by yeas and nays vote rejected a resolution disapproving a Presidential reorganization plan relating to the Federal Trade Commission.**

On June 20, 1961,<sup>(6)</sup> the House by a vote of yeas 178, nays 221, not voting 38, rejected House Resolution 305, disapproving Reorga-

5. 93 CONG. REC. 6722-40, 80th Cong. 1st Sess. See appendix, infra, which indicates that concurrence of both Houses was required to disapprove reorganization plans prior to June 20, 1949, the effective date of the relevant provision of the Congressional Reorganization Act of 1949.

6. 107 CONG. REC. 10844-56, 87th Cong. 1st Sess.

nization Plan No. 4, relating to the Federal Trade Commission (transmitted by the President on May 9, 1961), after the Committee of the Whole approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

***Housing, Lending, and Insuring Agencies***

**§ 23.25 The House as in Committee of the Whole by voice vote agreed to a concurrent resolution disapproving a Presidential reorganization plan relating to housing, lending, and insuring agencies.**

On June 18, 1947,<sup>(7)</sup> the House as in Committee of the Whole by voice vote agreed to House Concurrent Resolution 51, disapproving Reorganization Plan No. 3, relating to housing, lending, and insuring agencies, transmitted by the President on May 27, 1947.

7. 93 CONG. REC. 7252, 80th Cong. 1st Sess. See appendix, *infra*, which indicates that concurrence of both Houses was required to disapprove reorganization plans prior to June 20, 1949, the effective date of the relevant provision of the Congressional Reorganization Act of 1949.

***National Labor Relations Board***

**§ 23.26 The House by a yeay and nay vote agreed to a resolution disapproving a Presidential reorganization plan relating to the National Labor Relations Board.**

On July 20, 1961,<sup>(8)</sup> the House by vote of yeas 231, nays 179, present 2, not voting 25, agreed to House Resolution 328, disapproving Reorganization Plan No. 5, relating to the National Labor Relations Board (transmitted by the President on May 24, 1961), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.<sup>(9)</sup>

**§ 23.27 The Senate indefinitely postponed further consideration of a resolution disapproving a reorganization plan relating to the National Labor Relations Board, after the House agreed to a resolution of disapproval (thereby terminating the plan).**

8. 107 CONG. REC. 13069-78, 87th Cong. 1st Sess.

9. See § 23.27, *infra*, for Senate disposition.

On July 20, 1961,<sup>(10)</sup> the Senate indefinitely postponed Calendar No. 545, Senate Resolution 158, disapproving Reorganization Plan No. 5, relating to the National Labor Relations Board (transmitted by the President on May 24, 1961), after the House agreed to disapprove the plan.<sup>(11)</sup>

***National Oceanic and Atmospheric Administration***

**§ 23.28 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan creating the National Oceanic and Atmospheric Administration within the Department of Commerce.**

On Sept. 28, 1970,<sup>(12)</sup> the House by voice vote rejected House Resolution 1210 disapproving Reorganization Plan No. 4, creating the National Oceanic and Atmospheric Administration within the Department of Commerce (transmitted by the President on July 9, 1970), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to

10. 107 CONG. REC. 13027, 87th Cong. 1st Sess.

11. See § 23.26, supra, for House disposition.

12. 116 CONG. REC. 33885-96, 91st Cong. 2d Sess.

the House with the recommendation that it be rejected.

***Office of Science***

**§ 23.29 The House by voice vote rejected a resolution disapproving a Presidential reorganization plan relating to the Office of Science after the Committee of the Whole adversely reported the measure.**

On May 16, 1962,<sup>(13)</sup> the House by voice vote rejected House Resolution 595, disapproving Reorganization Plan No. 2 of 1962 establishing the Office of Science and Technology in the Executive Office of the President (transmitted by the President on Mar. 29, 1962), after the Committee of the Whole by voice vote approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.

***Reconstruction Finance Corporation***

**§ 23.30 The House by a yea and nay vote rejected a resolution disapproving a Presidential plan reorganizing the Reconstruction Finance Corporation.**

13. 108 CONG. REC. 8468-73, 87th Cong. 2d Sess.

On Mar. 14, 1951,<sup>(14)</sup> the House by a vote of yeas 200, nays 198, not voting 35,<sup>(15)</sup> failed to agree to House Resolution 142, disapproving Reorganization Plan No. 11, relating to the Reconstruction Finance Corporation (transmitted to the Congress on Feb. 19, 1951), after the Committee of the Whole by voice vote approved a motion that the Committee rise and report the resolution back to the House with the recommendation that it not be agreed to.

***Securities and Exchange Commission***

**§ 23.31 The House by yeas and nays vote rejected a resolution disapproving a Presidential reorganization plan relating to the Securities and Exchange Commission.**

On June 15, 1961,<sup>(16)</sup> the House by a vote of yeas 176, nays 212, not voting 48, rejected House Res-

14. 97 CONG. REC. 2409-18, 82d Cong. 1st Sess.

15. *Parliamentarian's Note*: Under 5 USC §§ 1332-1334 an affirmative vote of a majority of the authorized membership of the House was required to adopt a resolution disapproving a Presidential reorganization plan. This requirement was deleted on Sept. 4, 1957, by approval of 71 Stat. 611 (Pub. L. No. 85-286).

16. 107 CONG. REC. 10463-71, 87th Cong. 1st Sess.

olution 302, disapproving Reorganization Plan No. 1, relating to the Securities and Exchange Commission (transmitted by the President on Apr. 27, 1961), after the Committee of the Whole approved a motion to rise and report the resolution back to the House with the recommendation that it not be agreed to.<sup>(17)</sup>

**§ 23.32 The Senate by roll call vote agreed to a resolution disapproving a Presidential reorganization plan relating to the Securities and Exchange Commission.**

On June 21, 1961,<sup>(18)</sup> the Senate by a vote of yeas 52, nays 38, agreed to Senate Resolution 148, disapproving Reorganization Plan No. 1, relating to the Securities and Exchange Commission (transmitted by the President on Apr. 27, 1961).<sup>(19)</sup>

***Acceleration of Effective Date for Department of Health, Education, and Welfare Reorganization Plan***

**§ 23.33 Instead of following the procedure prescribed by the**

17. See § 23.32, *infra*, for Senate disposition of this plan.

18. 107 CONG. REC. 11003, 87th Cong. 1st Sess.

19. See § 23.31, *supra*, for House disposition of this plan.

**Reorganization Act of 1949 to vote on a resolution disapproving a Presidential reorganization plan, the House approved a House joint resolution effectuating a plan to create the Department of Health, Education, and Welfare 10 days after enactment of the joint resolution, rather than 60 days after submission of the plan as provided in the act.**

On Mar. 13, 1953,<sup>(20)</sup> the House agreed to House Joint Resolution 223, effectuating Presidential Reorganization Plan No. 1, creating the Department of Health, Education, and Welfare from the Federal Security Agency, 10 days after enactment of the joint resolution. Approval of this joint resolution did not follow the procedures prescribed by the Reorganization Plan of 1946, which provided that a Presidential reorganization plan would become effective 60 days after its submission to Congress unless either House agreed to a resolution disapproving the plan. The following House joint resolution and amendment were approved:

*Resolved, etc.,* That the provisions of Reorganization Plan No. 1 of 1953, submitted to the Congress on March

12, 1953, shall take effect 10 days after the date of the enactment of this joint resolution and its approval by the President, notwithstanding the provisions of the Reorganization Act of 1949 as amended, except that section 9 of such act shall apply to such reorganization plan and to the reorganization made thereby. . . .

Amendment offered by Mr. [William C.] Lantaff [of Florida]: Page 1, line 4, after the numbers "1953" insert the words "except the words in section 7 thereof which read: 'The Secretary may from time to time establish central administrative services in the field of procurement, budgeting, accounting, personnel, library, legal, and services and activities common to the several agencies of the Department'." . . .

THE SPEAKER:<sup>(1)</sup> Under the rule the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

THE SPEAKER: The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

THE SPEAKER: The question is on the passage of the joint resolution.

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 291, nays 86, answered "present" 3, not voting 51, as follows:

So the House joint resolution was passed.<sup>(2)</sup>

1. Joseph W. Martin, Jr. (Mass.).
2. The report on this joint resolution is H. Rept. No. 166. See §23.34, *infra*,

20. 99 CONG. REC. 2086–2113, 83d Cong. 1st Sess.

House Joint Resolution 223, was considered under the following rule (H. Res. 179):<sup>(3)</sup>

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Joint Resolution 223, providing that Reorganization Plan Numbered 1 of 1953 shall take effect 10 days after the date of the enactment of this joint resolution. After general debate, which shall be confined to the joint resolution, and shall continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the joint resolution shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the

for Senate approval of this joint resolution.

See Pub. Res. No. 75, 76th Cong. 3d Sess. (H.J. Res. 551) for a joint resolution providing that Reorganization Plan No. 5, relating to the Immigration and Naturalization Service and the Department of Labor and transmitted by the President on May 22, 1940, should take effect on the 10th day after enactment of the joint resolution. The joint resolution was approved on June 4, 1940.

3. 99 CONG. REC. 2086, 83d Cong. 1st Sess.

joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

**§ 23.34 Instead of following the procedure prescribed in the Reorganization Act of 1949, to vote on a resolution disapproving a Presidential reorganization plan, the Senate approved a House joint resolution effectuating a plan to create the Department of Health, Education, and Welfare 10 days after enactment of the joint resolution rather than 60 days after submission of the plan as provided in the act.**

On Mar. 30, 1953,<sup>(4)</sup> the Senate agreed to House Joint Resolution 223, as amended by the House,<sup>(5)</sup> creating the Department of Health, Education, and Welfare from the Federal Security Agency.<sup>(6)</sup>

### ***Postponing Vote***

**§ 23.35 The House may postpone voting on a resolution to disapprove a reorganiza-**

4. 99 CONG. REC. 2448-59, 83d Cong. 1st Sess.
5. See § 23.33, *supra*, for the text of the joint resolution and amendment.
6. The report on this resolution is S. Rept. No. 126.

**tion plan by disagreeing to the highly privileged motion that the House resolve itself into the Committee of the Whole for consideration of such resolution.**

On June 8, 1961,<sup>(7)</sup> the House postponed voting on a resolution to disapprove a reorganization plan by disagreeing to the motion that the House resolve itself into the Committee of the Whole for consideration of such resolution.

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, is it in order and proper at this time to submit a highly privileged motion?

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> If the matter to which the gentleman refers is highly privileged, it would be in order.

MR. GROSS: Then, Mr. Speaker, under the provisions of section 205(a) Public Law 109, the Reorganization Act of 1949, I submit a motion. . . .

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALLECK: As I understand, there is a motion pending to call up what is known as Reorganization Plan No. 2.

THE SPEAKER PRO TEMPORE: The chair would state that the gentleman from Iowa indicated he would submit

such a motion, but it has not been reported.

MR. HALLECK: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALLECK: The majority leader, the gentleman from Massachusetts [Mr. McCormack], talked to me yesterday about scheduling this matter for the consideration of the House of Representatives and indicated to me that it would be scheduled in due time upon agreement between the majority and the minority Members. In view of this I would like to inquire whether or not we could have any assurance from the leadership on the Democratic side, including the acting majority leader and the chairman of the Committee on Government Operations, as to when this matter might be called, if this motion now does not prevail.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, in reply to the gentleman, in the absence of the majority leader, I can only say that I can give the assurance that the plan will be called up. It is my understanding that the chairman of the committee has indicated that he will confer with the majority leader on calling it up next Thursday. In the absence of the majority leader I cannot give a date positive, but I can give assurance that it will be called up. . . .

MR. HALLECK: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALLECK: If the pending motion is voted down, would it still be in order at a subsequent date to call up a motion rejecting plan No. 2 for another

7. 107 CONG. REC. 9775-77, 87th Cong. 1st Sess.

8. Oren Harris (Ark.).

vote? I ask that because I am opposed to plan No. 2. The committee has reported adversely in respect to plan No. 2. I am going to vote against that plan and in support of the resolution of the committee. But under my responsibility as the minority leader and under my agreement with the majority leader, I do not see how I could vote today unless, under the situation as it exists, that vote today would be conclusive as to plan No. 2. . . .

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, under the Reorganization Act, it could be called up at a subsequent date.

MR. HALLECK: In other words, the action that would be taken today would not be final?

THE SPEAKER PRO TEMPORE: The gentleman is correct. . . .

MR. [CLARENCE J.] BROWN [of Ohio]: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BROWN: As I understand the parliamentary situation the motion would be to take up the resolution of rejection; is that correct?

THE SPEAKER PRO TEMPORE: The Chair would like to state that the motion has not yet been reported; but the Chair understands that the motion is for the House to go into Committee of the Whole House for the consideration of it.

MR. BROWN: If that should be defeated, of course, we would not have the resolution of rejection before us.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. BROWN: And therefore the vote would be simply on whether we want to take it up today or take it up later?

THE SPEAKER PRO TEMPORE: The gentleman is correct. . . .

The Chair feels that this matter has probably gone far enough.

The Clerk will report the motion offered by the gentleman from Iowa.

The Clerk read as follows:

Mr. Gross moves that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of H. Res. 303 introduced by Mr. Monagan disapproving Reorganization Plan No. 2 transmitted to the Congress by the President on April 27, 1961.

THE SPEAKER PRO TEMPORE: The question is on the motion.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN of Michigan: Mr. Speaker, if I vote to postpone this; am I then on record as approving the plan?

THE SPEAKER PRO TEMPORE: Of course, that is not a parliamentary inquiry.

MR. [BYRON G.] ROGERS of Colorado: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. ROGERS of Colorado: Mr. Speaker, is a motion to lay this motion on the table in order?

THE SPEAKER PRO TEMPORE: It would not be in order at this time.

The question is on the motion offered by the gentleman from Iowa [Mr. Gross].

The motion was rejected.<sup>(9)</sup>

9. See §23.17, *supra*, for a discussion of the House vote on this plan to reor-

***Priority of Consideration***

**§ 23.36 The House having agreed that consideration of the general appropriation bill of 1951 take priority over all business except conference reports, it was held that such agreement gave a higher privilege to the appropriation bill than consideration of resolutions disapproving reorganization plans of the President.**

On May 9, 1950,<sup>(10)</sup> Speaker pro tempore John W. McCormack, of Massachusetts, ruled that a unanimous-consent agreement that consideration of the general appropriation bill of 1951, a bill combining all appropriations measures, take priority of all business except conference reports, gave a higher priority to the appropriation bill than consideration of resolutions disapproving Presidential reorganization plans.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, I make the point of order that the House is not proceeding in the regular order because under section 205a of the Reorganization Act, which is Public Law 109 of the Eighty-first Congress, first session, any Member of the House is privileged, and this

ganzize the Federal Communications Commission.

10. 96 CONG. REC. 6720-24, 81st Cong. 2d Sess.

is a highly privileged motion, to make the motion that the House proceed to the consideration of House Resolution 516.

The gentleman from Michigan being on his feet to present this highly privileged motion, the regular order is that he be recognized for that purpose that the motion be entertained and the question put before the House, and my motion is that the House proceed to the consideration of House Resolution 516.

THE SPEAKER PRO TEMPORE: That is the resolution disapproving one of the reorganization plans?

MR. HOFFMAN of Michigan: That is right, House Resolution 516 disapproving plan No. 12.<sup>(11)</sup>

And, Mr. Speaker, I ask unanimous consent to revise and extend my remarks in connection with the point of order. . . .

Mr. Speaker, may I be heard further on the point of order?

THE SPEAKER PRO TEMPORE: The Chair is glad to hear the gentleman from Michigan.

MR. HOFFMAN: . . . [O]n the 3d of April the gentleman from Missouri [Mr. Cannon] asked unanimous consent "that time for general debate be equally divided, one-half to be controlled by the gentleman from New York [Mr. Taber] and one-half by myself [Mr. Cannon]; that debate be confined to the bill and that following the reading of the first chapter of the bill, not to exceed 2 hours of general debate be had before the reading of each subsequent chapter, one-half to be con-

11. This plan related to the National Labor Relations Board.

trolled by the chairman and one-half by the ranking minority member of the subcommittee in charge of the chapter."

The gentleman from Texas [Mr. Mahon] cites page 4835 of the daily Record of April 5, which reads as follows:

Mr. Cannon. I ask unanimous consent that the general appropriation bill for the fiscal year 1951 have right-of-way over all other privileged business under the rules until disposition, with the exception of conference reports.

Still later and on April 6, the gentleman from Missouri [Mr. Cannon] asked unanimous consent that the Record be corrected. His request was as follows—pages 4976–4977 of the daily Record:

Mr. Cannon. Mr. Speaker, on page 4835 of the Record of yesterday, the first column carrying the special order made by the House last night reads that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until disposition. The order made was until final disposition. I ask unanimous consent that the Record and Journal be corrected to conform with the proceedings on the floor of the House yesterday.

There was no objection. . . .

Furthermore, while appropriation bills have a privileged status, but under the subsequent rule of the House, adopted in the reorganization bill, a motion to consider a resolution is highly privileged. Certainly that has priority over this ordinary privilege or special privilege which the gentleman from Missouri [Mr. Cannon] secured.

How can unanimous consent secured by the gentleman from Missouri [Mr.

Cannon] on either the 3d, the 5th, or the 6th of April, even though the corrected request states "that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until final disposition," have priority over Public Law No. 109, Eighty-first Congress, when, under title II, we find the following:

Sec. 201. The following sections of this title are enacted by the Congress:

(a) As an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in such House in the case of resolutions (as defined in section 202); and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(b) With full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House. . . .

Sec. 205. (a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. No amendment to such motion shall be in order and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to. . . .<sup>(12)</sup>

12. Subsequent material—several *Congressional Record* excerpts from the

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from Michigan makes a point of order, the substance of which is that the motion he desires to make or that someone else should make in relation to the consideration of a disapproving resolution of one of the reorganization plans takes precedence over the appropriation bill insofar as recognition by the Chair is concerned. The gentleman from Michigan raises a very serious question and the Chair feels at this particular time that it is well that he did so.

The question involved is not a constitutional question but one relating to the rules of the House and to the Legislative Reorganization Act of 1949 which has been alluded to by the gentleman from Michigan and other Members when addressing the Chair on this point of order. The Chair calls attention to the language of paragraph (b) of section 201 of title II of the Reorganization Act of 1949 which reads as follows: "with full recognition of the constitutional right of either House to change such rules so far as relating to procedure in such House at any time in the same manner and to the same extent as in the case of any other rule of such House."

It is very plain from that language that the intent of Congress was to recognize the reservation to each House of certain inherent powers which are necessary for either House to function to

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debate on reorganization plan provisions of the Reorganization Act of 1949, which indicate that the intent of the framers was to ensure a congressional veto power over such plans—is omitted here.

meet a particular situation or to carry out its will.

On April 5, the gentleman from Missouri [Mr. Cannon], chairman of the Committee on Appropriations, submitted a unanimous-consent request to the House, which was granted, which has the force of a rule, and which relates to the rules of the House governing the consideration of the omnibus appropriation bill while it is before the House and, of course, incidentally affecting other legislation. The consent request submitted by the gentleman from Missouri was "that the general appropriation bill for the fiscal year 1951 have right-of-way over all other privileged business under the rules until disposition, with the exception of conference reports."

That request was granted by unanimous consent. On the next day, the gentleman from Missouri [Mr. Cannon], in correcting and interpreting the consent request granted on April 5, submitted a further unanimous-consent request.

The daily Record shows, on page 4976, April 6, that the gentleman from Missouri [Mr. Cannon] said:

Mr. Speaker, on page 4835 of the daily Record of yesterday, the first column carrying the special order made by the House last night reads that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until disposition. The order made was until final disposition. I ask unanimous consent that the Record and Journal be corrected to conform with the proceedings on the floor of the House yesterday.

The Record further shows that the Speaker put the request and there was no objection.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: Let the Chair finish.

MR. RANKIN: Mr. Speaker, I would like to propound a parliamentary inquiry at this time.

THE SPEAKER PRO TEMPORE: The Chair is in the process of making a ruling.

MR. RANKIN: That is the reason I want to propound the inquiry right at this point.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman.

MR. RANKIN: We for the first time this year have all the appropriations in one bill. Now, if they drag out consideration under the 5-minute rule beyond the 24th, would that not shut the Congress off entirely from voting on any of these recommendations? So we do have a constitutional right to consider these propositions without having them smothered in this way.

THE SPEAKER PRO TEMPORE: The Chair will state that the House always has a constitutional right and power to refuse to go into the Committee of the Whole on any motion made by any Member, so that the House is capable of carrying out its will whatever may be the will of the majority of the House.

Continuing, the Chair will state that in the opinion of the present occupant, in view of the unanimous-consent request made by the gentleman from Missouri and granted by the House, if any member of the Appropriations Committee moves that the House resolve itself into the Committee of the Whole on the State of the Union to

consider the appropriation bill, that motion has preference over any other preferential motion. It is a matter that the House decides when the motion is made as to what it wants to do and it has an opportunity when that motion is made to carry out its will.

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MILLER of Nebraska: I understood the statement of the gentleman from Missouri on April 6 was that the appropriation bill would take precedence over all legislation and special orders until entirely disposed of. Does that include conference reports?

THE SPEAKER PRO TEMPORE: A conference report is in a privileged status in any event.

MR. [JOHN] TABER [of New York]: They were specifically exempted.

THE SPEAKER PRO TEMPORE: They were specifically exempted. In relation to the observation made by the gentleman from Michigan [Mr. Hoffman] that because other business has been brought up and that therefore constitutes a violation of the unanimous-consent request, the Chair, recognizing the logic of the argument, disagrees with it because that action was done through the sufferance of the Appropriations Committee and, in the opinion of the Chair, does not constitute a violation in any way; therefore does not obviate the meaning and effect of the unanimous-consent request heretofore entered into, and which the Chair has referred to.

For the reasons stated, the Chair overrules the point of order.

POWERS AND PREROGATIVES OF THE HOUSE **Ch. 13 §23**

MR. HOFFMAN of Michigan: Mr. Speaker, a further point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN of Michigan: The point of order is the same as I raised before; but, to keep the Record clear, I wish to make the same point of order regarding House Resolution 522, House Resolution 545, and House Res-

olution 546, that is, that the House proceed to the consideration of each of those resolutions in the order named, assuming, of course, that the ruling will be the same, but making a record.

THE SPEAKER PRO TEMPORE: The Chair will reaffirm his ruling in relation to the several resolutions the gentleman has referred to.



## APPENDIX

On Apr. 3, 1939, the President signed into law H.R. 4425 [Pub. L. No. 76-19] which authorized the President to submit plans for reorganization of the executive branch of the government to the Congress. Section 5(a) of that law provided that such plans would become effective after expiration of 60 calendar days unless Congress, by concurrent resolution, disapproved such plan. This law was in effect until June 20, 1949, when the Reorganization Act of 1949, H.R. 2361 [Pub. L. No. 109] was approved. Until that date, the concurrence of both Houses was required to disapprove plans. After that date, plans could be disapproved by agreeing to a simple resolution of disapproval by either House.

### Reorganization Plans From 1939 to 1973

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 1 of 1939 ...	Yes (53 Stat. 1423)	Executive Office of President, Federal Security Agency, Federal Works Agency, and lending agencies.	H. Con. Res. 19—adverse report from Select Committee on Government Organization; disagreed to May 3, 1939.
No. 2 of 1939 ...	Yes (53 Stat. 1431)	Department of State, Department of the Treasury, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, and Executive Office of President.	S. Con. Res. 16—adverse report; disagreed to May 12, 1939, in Senate.
No. 3 of 1940 ...	Yes (54 Stat. 1231)	Department of the Treasury, Department of the Interior, Department of Agriculture, Department of Labor, and Civil Aeronautics Authority.	No action.
No. 4 of 1940 ...	Yes (54 Stat. 1234)	Department of State, Department of the Treasury, Department of Justice, Post Office Department, Department of the Interior, Department of Commerce, Department of Labor, Maritime Commission, and Federal Security Agency.	H. Con. Res. 60—Select Committee discharged by unanimous consent May 7, 1940; agreed to in House May 8, 1940. S. Con. Res. 43—reported adversely in Senate; no Senate action.
No. 5 of 1940 ...	Yes (54 Stat. 1238)	Immigration and Naturalization Service.	H.J. Res. 551—passed House May, 27, 1940. Pub. Res. 76-75.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 1 of 1946 ...	No .....	Department of State, Office of Inter-American Affairs, U.S. High Commissioner to the Philippine Islands, Department of the Treasury, Department of Agriculture, Office of War Mobilization and Reconversion, National Housing Agency, and Federal Deposit Insurance Corporation..	H. Con. Res. 155—reported and agreed to in House, June 28, 1946; agreed to in Senate, July 15, 1946.
No. 2 of 1946 ...	Yes (60 Stat. 1095)	Federal Security Agency, Department of Labor.	H. Con. Res. 151—reported and agreed to in House, June 28, 1946; disagreed to in Senate, July 15, 1946.
No. 3 of 1946 ...	Yes (60 Stat. 1097)	Department of the Treasury, U.S. Coast Guard, Bureau of Customs, Departments of War and Navy, Department of the Interior, Department of Agriculture, Department of Commerce, National Labor Relations Board, Smithsonian Institution, and U.S. Employment Service.	H. Con. Res. 154—reported and agreed to in House, June 28, 1946; disagreed to in Senate, July 13, 1946.
No. 1 of 1947 ...	Yes (61 Stat. 951; amended, 63 Stat. 399).	Alien Property Custodian, President, Office of Contract Settlement, Department of Justice, Bureau of Internal Revenue, Department of Agriculture, Federal Deposit Insurance Corporation, and War Assets Administration.	No action.
No. 2 of 1947 ...	No .....	Department of Labor, Federal Security Agency.	H. Con. Res. 49—reported and agreed to in House, June 10, 1947; agreed to in Senate, June 30, 1947.
No. 3 of 1947 ...	Yes (61 Stat. 954)	Housing and Home Finance Agency.	H. Con. Res. 51—disapproval reported June 12, 1947; agreed to June 18, 1947; disagreed to in Senate, July 22, 1947.
No. 1 of 1948 ...	No .....	Department of Labor, Federal Security Agency.	H. Con. Res. 131—reported Feb. 9, 1948; passed House Feb. 25, 1948; passed Senate Mar. 16, 1948.
No. 1 of 1949 ...	No .....	Federal Security Agency (Department of Welfare).	S. Res. 147 (disapproval)—passed Senate Aug. 16, 1949.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1949 ...	Yes (63 Stat. 1065)	Department of Labor, Federal Security Agency, and Veteran's Placement Service Board.	H. Res. 301 (disapproving)—reported—failed of passage Aug. 11, 1949; S. Res. 151—failed of passage Aug. 17, 1949.
No. 3 of 1949 ...	Yes (63 Stat. 1066)	Post Office Department .....	No action.
No. 4 of 1949 ...	Yes (63 Stat. 1067)	Executive Office of the President (National Security Council, National Security Resources Board).	No action.
No. 5 of 1949 ...	Yes (63 Stat. 1067)	U.S. Civil Service Commission ..	No action.
No. 6 of 1949 ...	Yes (63 Stat. 1069)	Maritime Commission .....	No action.
No. 7 of 1949 ...	Yes (63 Stat. 1070)	Federal Works Agency, Department of Commerce (Public Roads Administration).	S. Res. 155—reported and failed of passage, Aug. 17, 1949.
No. 8 of 1949 ...	No .....	National Military Establishment	Congress adjourned before plan became effective.
No. 1 of 1950 ...	No .....	Department of the Treasury .....	S. Res. 246—agreed to May 11, 1950.
No. 2 of 1950 ...	Yes (64 Stat. 1261)	Department of Justice .....	No action.
No. 3 of 1950 ...	Yes (64 Stat. 1262)	Department of the Interior .....	No action.
No. 4 of 1950 ...	No .....	Department of Agriculture .....	S. Res. 263—agreed to May 18, 1950.
No. 5 of 1950 ...	Yes (64 Stat. 1263; amended, 68 Stat. 430).	Department of Commerce .....	H. Res. 546—reported and disagreed to May 18, 1950; S. Res. 259—reported and disagreed to May 23, 1950.
No. 6 of 1950 ...	Yes (64 Stat. 1263)	Department of Labor .....	H. Res. 522—reported and disagreed to May 18, 1950.
No. 7 of 1950 ...	No .....	Interstate Commerce Commission.	H. Res. 545—reported; no action in House; S. Res. 253—reported and agreed to May 17, 1950.
No. 8 of 1950 ...	Yes (64 Stat. 1264)	Federal Trade Commission .....	S. Res. 254—reported and disagreed to May 22, 1950.
No. 9 of 1950 ...	Yes (64 Stat. 1265)	Federal Power Commission .....	S. Res. 255—reported and disagreed to May 22, 1950.
No. 10 of 1950	Yes (64 Stat. 1265)	Securities and Exchange Commission.	No action.
No. 11 of 1950	No .....	Federal Communications Commission.	S. Res. 256—reported and agreed to May 17, 1950.
No. 12 of 1950	No .....	National Labor Relations Board	H. Res. 516—reported; no action; S. Res. 248—reported and agreed to May 11, 1950.
No. 13 of 1950	Yes (64 Stat. 1266)	Civil Aeronautics Board .....	No action.
No. 14 of 1950	Yes (64 Stat. 1267)	Department of Labor .....	No action.
No. 15 of 1950	Yes (64 Stat. 1267)	General Services Administration, Department of the Interior.	No action.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 16 of 1950	Yes (64 Stat. 1268)	General Services Administration, Federal Security Agency.	No action.
No. 17 of 1950	Yes (64 Stat. 1269)	General Services Administration, Housing and Home Finance Agency.	S. Res. 271—reported and disagreed to May 23, 1950.
No. 18 of 1950	Yes (64 Stat. 1270)	General Services Administration	H. Res. 539—reported; no Action in House; S. Res. 270—reported and disagreed to May 23, 1950.
No. 19 of 1950	Yes (64 Stat. 1271)	Federal Security Agency, Department of Labor.	No action.
No. 20 of 1950	Yes (64 Stat. 1272)	Department of State, General Services Administration.	No action.
No. 21 of 1950	Yes (64 Stat. 1273)	U.S. Maritime Commission, Department of Commerce.	S. Res. 265—reported and disagreed to May 19, 1950.
No. 22 of 1950	Yes (64 Stat. 1277)	Reconstruction Finance Corp., Housing and Home Finance Agency.	S. Res. 299—reported and disagreed to July 6, 1950.
No. 23 of 1950	Yes (64 Stat. 1279)	Reconstruction Finance Corp., Housing and Home Finance Agency.	No action.
No. 24 of 1950	No .....	Reconstruction Finance Corp., Department of Commerce.	H. Res. 648—reported and disagreed to June 30, 1950; S. Res. 290—reported and agreed to July 6, 1950.
No. 25 of 1950	Yes (64 Stat. 1280)	National Security Resources Board.	No action.
No. 26 of 1950	Yes (64 Stat. 1280)	Department of the Treasury .....	No action.
No. 27 of 1950	No .....	Federal Security Agency (Department of Health, Education, and Welfare).	H. Res. 647—reported and agreed to July 10, 1950; S. Res. 302—reported, no action.
No. 1 of 1951 ...	Yes (65 Stat. 773)	Reconstruction Finance Corp .....	H. Res. 142—reported and disagreed to Mar. 14, 1951; S. Res. 76—reported and disagreed to Apr. 13, 1951.
No. 1 of 1952 ...	Yes (66 Stat. 823; amended, 69 Stat. 182).	Department of the Treasury (Bureau of Internal Revenue).	H. Res. 494—reported and disagreed to Jan. 30, 1952; S. Res. 285—reported and disagreed to Mar. 13, 1952.
No. 2 of 1952 ...	No .....	Post Office Department .....	S. Res. 317—reported; Congress adjourned July 7, 1952, before plan became effective.
No. 3 of 1952 ...	No .....	Department of the Treasury (Bureau of Customs).	S. Res. 331—reported; Congress adjourned July 7, 1952, before plan became effective.
No. 4 of 1952 ...	No .....	Department of Justice .....	S. Res. 330—reported; Congress adjourned July 7, 1952, before plan became effective.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 5 of 1952 ...	Yes (66 Stat. 824; amended, 69 Stat. 182).	District of Columbia Government.	No action.
No. 1 of 1953 ...	Yes (67 Stat. 631)	Federal Security Agency, Department of Health, Education, Welfare.	H.J. Res. 223—passed House Mar. 18, 1953; passed Senate Mar. 30, 1953, Pub. L. No. 83-13.
No. 2 of 1953 ...	Yes (67 Stat. 633)	Department of Agriculture .....	H. Res. 236—motion to discharge not agreed to June 3, 1953; S. Res. 100—reported and disagreed to June 27, 1953.
No. 3 of 1953 ...	Yes (67 Stat. 634)	Office of Defense Mobilization (National Security Resources Board), Departments of Army, Navy, and Air Force, Department of the Interior, General Services Administration, and Department of Defense.	No action.
No. 4 of 1953 ...	Yes (67 Stat. 636)	Department of Justice .....	No action.
No. 5 of 1953 ...	Yes (67 Stat. 637)	Export-Import Bank of Washington.	No action.
No. 6 of 1953 ...	Yes (67 Stat. 638)	Department of Defense .....	H. Res. 295—reported and disagreed to June 27, 1953.
No. 7 of 1953 ...	Yes (67 Stat. 639)	Foreign Operations Administration, Institute of Inter-American Affairs, and Department of State.	H. Res. 261—adverse report; disagreed to July 17, 1953.
No. 8 of 1953 ...	Yes (67 Stat. 642; amended, 69 Stat. 183).	United States Information Agency, Department of State.	H. Res. 262—adverse report; disagreed to July 17, 1953.
No. 9 of 1953 ...	Yes (67 Stat. 644)	Executive Office of the President (Council of Economic Advisers).	H. Res. 263—adverse report; no action in House.
No. 10 of 1953 ..	Yes (67 Stat. 644)	Civil Aeronautics Board, Post Office Department.	H. Res. 264—adverse report; no action in House.
No. 1 of 1954 ...	Yes (68 Stat. 1279)	Foreign Claims Settlement Commission, War Claims Commission, International Claims Commission, and Department of State.	No action.
No. 2 of 1954 ...	Yes (68 Stat. 1280)	Reconstruction Finance Corp., Export-Import Bank of Washington, and Federal National Mortgage Association.	No action.
No. 1 of 1956 ...	No .....	Departments of Army, Navy, and Air Force.	H. Res. 534—reported and agreed to July 5, 1956.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1956 ...	No .....	Federal Savings and Loan Insurance Corporation, Federal Home Loan Bank Board.	H. Res. 541—reported and agreed to July 5, 1956.
No. 1 of 1957 ...	Yes (71 Stat. 647)	Reconstruction Finance Corp .....	No action.
No. 1 of 1958 ...	Yes (72 Stat. 1799; amended 72 Stat. 535, 72 Stat. 861; 75 Stat. 630 (1961); 75 Stat. 788 (1961))..	Office of Civil and Defense Mobilization.	No action.
No. 1 of 1959 ...	No .....	Department of the Interior, Department of Agriculture.	H. Res. 295—reported and agreed to July 7, 1959.
No. 1 of 1961 ...	No .....	Securities and Exchange Commission.	H. Res. 302—reported and disagreed to June 15, 1961; S. Res. 148—reported and agreed to June 21, 1961.
No. 2 of 1961 ...	No .....	Federal Communications Commission.	H. Res. 303—reported and agreed to June 15, 1961.
No. 3 of 1961 ...	Yes (75 Stat. 837)	Civil Aeronautics Board .....	H. Res. 304—reported and disagreed to June 20, 1961; S. Res. 143—reported and disagreed to June 29, 1961.
No. 4 of 1961 ...	Yes (75 Stat. 837)	Federal Trade Commission .....	H. Res. 305—reported and disagreed to June 20, 1961; S. Res. 147—reported and disagreed to June 29, 1961.
No. 5 of 1961 ...	No .....	National Labor Relations Board	H. Res. 328—reported and agreed to July 20, 1961.
No. 6 of 1961 ...	Yes (75 Stat. 838)	Federal Home Loan Bank Board	No action.
No. 7 of 1961 ...	Yes (75 Stat. 840)	Federal Maritime Commission ..	H. Res. 336—motion to discharge not agreed to July 20, 1961.
No. 1 of 1962 ...	No .....	Housing and Home Finance Agency, Federal National Mortgage Association.	H. Res. 530—adverse report; agreed to Feb. 21, 1962.
No. 2 of 1962 ...	Yes (76 Stat. 1253)	Office of Science and Technology, National Science Foundation.	H. Res. 595—adverse report; disagreed to May 16, 1962.
No. 1 of 1963 ...	Yes (77 Stat. 869)	Secretary of the Interior, Administrator of General Services.	H. Res. 372—reported; no action in House.
No. 1 of 1965 ...	Yes (79 Stat. 1317)	Bureau of Customs, Secretary of the Treasury.	H. Res. 347—adverse report; no action in House; S. Res. 102—adverse report; disagreed to in Senate, May 24, 1965.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1965 ...	Yes (79 Stat. 1318)	Weather Bureau (Chief), Coast and Geodetic Survey (Director), Secretary of Commerce, and Environmental Science Services Administration (Administrator).	No action.
No. 3 of 1965 ...	Yes (79 Stat. 1320)	Interstate Commerce Commission, Director of Locomotive Inspection.	No action.
No. 4 of 1965 ...	Yes (79 Stat. 1321)	National Housing Council, National Advisory Council on International Monetary and Financial Problems, Board of Foreign Service, Board of Examiners for the Foreign Service, Civilian-Military Liaison Commission, Civil Service Commission, Advisory Council on Group Insurance, Small Business Administration, Loan Policy Board, Department of the Interior, Bonneville Power Advisory Board, Attorney General, Atomic Weapons Awards Board, and Department of Health, Education, and Welfare.	No action.
No. 5 of 1965 ...	Yes (79 Stat. 1323)	National Science Foundation .....	No action.
No. 1 of 1966 ...	Yes (80 Stat. 1607)	Department of Commerce (Community Relations Service), Department of Justice.	H. Res. 756—adverse report; disagreed to Apr. 20, 1966; S. Res. 220—adverse report; disagreed to Apr. 6, 1966.
No. 2 of 1966 ...	Yes (80 Stat. 1608)	Department of Health, Education, and Welfare, Secretary of the Interior, Federal Water Pollution Control Administration, Water Pollution Control Advisory Board, Surgeon General, Assistant Secretary of the Interior, and Assistant Secretary of Health, Education, and Welfare.	H. Res. 827—adverse report; no action in House.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 3 of 1966 ...	Yes (80 Stat. 1610)	Department of Health, Education, and Welfare, Public Health Service, Bureau of Medical Services, Bureau of State Services, National Institutes of Health, and Office of Surgeon General.	No action.
No. 4 of 1966 ...	Yes (80 Stat. 1611)	Board of Commissioners of the District of Columbia, Smithsonian Institute.	No action.
No. 5 of 1966 ...	Yes (80 Stat. 1611)	National Capital Regional Planning Council.	No action.
No. 1 of 1967 ...	Yes (81 Stat. 947)	Secretary of Commerce, Secretary of Transportation.	No action.
No. 2 of 1967 ...	No .....	U.S. Tariff Commission, Chairman of the U.S. Tariff Commission.	H. Res. 405—adverse report; no action in House; S. Res. 114—reported and agreed to May 15, 1967.
No. 3 of 1967 ...	Yes (81 Stat. 948)	District of Columbia (local self Government).	H. Res. 512—adverse report; disagreed to Aug. 9, 1967.
No. 1 of 1968 ...	Yes (82 Stat. 1367)	Attorney General, Department of the Treasury, Department of Health, Education, and Welfare, Department of Justice (Bureau of Narcotics and Dangerous Drugs), and Bureau of Narcotics.	H. Res. 1101—adverse report; disagreed to Apr. 2, 1968.
No. 2 of 1968 ...	Yes (82 Stat. 1369)	Secretary of Transportation, Department of Housing and Urban Development, and Urban Mass Transportation Administration.	No action.
No. 3 of 1968 ...	Yes (82 Stat. 1370)	Commissioner of the District of Columbia, District of Columbia Recreation Board.	No action.
No. 4 of 1968 ...	Yes (82 Stat. 1371)	Commissioner of the District of Columbia, District of Columbia Redevelopment Land Agency.	No action.
No. 1 of 1969 ...	Yes (83 Stat. 859)	Interstate Commerce Commission.	No action.
No. 1 of 1970 ...	Yes (84 Stat. 2083)	Office of Telecommunications Policy, Director of Telecommunications, and Executive Office of the President.	H. Res. 841—reported; no action in House.

## Reorganization Plans From 1939 to 1973—Continued

Reorganization Plan	Allowed to become effective	Department or agency affected	Disapproval resolutions
No. 2 of 1970 ...	Yes (84 Stat. 2085)	Bureau of the Budget, Domestic Council, Office of Management and Budget, Executive Office of the President.	H. Res. 960—reported; disagreed to May 13, 1970.
No. 3 of 1970 ...	Yes (84 Stat. 2086)	Council on Environmental Quality, Department of Agriculture, Environmental Protection Agency, Department of the Interior, Department of Health, Education, and Welfare, Atomic Energy Commission, and Federal Aviation Council.	H. Res. 1209—adverse report; disagreed to Sept. 28, 1970.
No. 4 of 1970 ...	Yes (84 Stat. 2090)	Department of Commerce, National Oceanic and Atmospheric Administration, Department of the Interior, Secretary of Defense, Environmental Science Service Administration and Bureau of Commercial Fisheries.	H. Res. 1210—adverse report; disagreed to Sept. 28, 1970; S. Res. 433—reported and disagreed to Oct. 1, 1970.
No. 1 of 1971 ...	Yes (85 Stat. 819)	Executive Office of the President, ACTION, Office of Economic Opportunity, Department of Health, Education, and Welfare, and Small Business Administration.	H. Res. 411—reported and disagreed to May 25, 1971.
No. 1 of 1973 ...	Yes (87 Stat. 1089)	Executive Office of the President, Office of Emergency Preparedness, National Science Foundation, Office of Science and Technology, and Civil Defense Advisory Council.	No action.
No. 2 of 1973 ...	Yes (87 Stat. 1091)	Bureau of Narcotics and Dangerous Drugs, Drug Enforcement Administration, Bureau of Customs, Department of the Treasury, Department of Justice, Office of Drug Abuse Law Enforcement, and Office of National Narcotics Intelligence.	H. Res. 382—reported and disagreed to June 7, 1973.

NOTE.—“Adverse report” means adverse report on disapproval resolution, not on plan.

## CHAPTER 14

# *Impeachment Powers*

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- § 1. Constitutional Provisions; House and Senate Functions
- § 2. Who May Be Impeached; Effect of Resignation
- § 3. Grounds for Impeachment; Form of Articles
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Commentary and editing by Peter D. Robinson. J.D.

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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*).

***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>

— tice 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 “duplication” 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." Gouveneur 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

**16.** 6 Cannon's Precedents § 516.

**17.** 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 Swayne, 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

8. 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 Thresher. 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

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

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

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

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

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

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

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

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

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

RULES FOR THE IMPEACHMENT INQUIRY  
STAFF

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

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

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

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

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

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

*Parliamentarian's Note:* On June 21, 1974, a Member, John N. Erlenborn, of Illinois, took the floor to allege that he was being denied permission to study files and records gathered by the Committee on the Judiciary in its impeachment inquiry into the conduct of the President, in violation of Rule XI clause 27(c) of the House rules.<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

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

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

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

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

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

***Issuance of Subpenas; Effect of Noncompliance***

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

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

22. 80 CONG. REC. 5558, 74th Cong. 2d Sess.

1. 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 inves-**

**tigate 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 ye 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

15. 76 CONG. REC. 5177, 5178, 72d Cong. 2d Sess.

16. See 6 Cannon's Precedents §§516, 517.

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>

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 receipt 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 messaged 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 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. 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 "mal-conduct."<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 . . . prevert 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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