

## EXECUTIVE SESSION

REPORT ON PROCEDURES CONCERNING NOMINATION OF  
THE VICE-PRESIDENT; REVIEW OF EXISTING RULES  
ON IMPEACHMENT AND PROPOSED CHANGES.

WEDNESDAY, AUGUST 21, 1974

United States Senate,  
Committee on Rules and Administration,  
Washington, D. C.

The Committee met in executive session, pursuant to recess, in Room 301 of the Russell Senate Office Building, at 10:15 a.m, the Honorable Howard W. Cannon (The Chairman), presiding.

Present: Senators Cannon, Pell, Byrd, Allen, Williams, Cook, Scott, Griffin and Hatfield.

Staff present: William M. Cochran, Staff Director; Hugh Q. Alexander, Chief Counsel; Joseph E. O'Leary, Professional Staff Member (Minority); Joseph P. Coder, Professional Staff Member; Jack L. Sapp, Professional Staff Member; James H. Duffy, Chief Counsel, Subcommittee on Privileges and Elections; James F. Schoener, Minority Counsel, Subcommittee on Privileges and Elections; John K. Swearingen, Staff Director, Subcommittee on Computer Services; Peggy Parrish, Assistant Chief Clerk.

1           The Chairman. The Committee will come to order. Gentle-  
2 men, I will give you a brief report on the procedures relative  
3 to the Vice-Presidential nomination.

4           For the rest of you, I was notified yesterday by the  
5 White House that Mr. Rockefeller was being nominated and I  
6 met with him yesterday afternoon. I have also sent a letter  
7 to him requesting that he make available his complete finan-  
8 cial information, and make available his health records, si-  
9 milar to the request that we made in the Ford nomination.

10           I have talked to and also written a letter to the  
11 Attorney-General requesting full investigation of the nominee  
12 by the Federal Bureau of Investigation, and requested that it  
13 be made as expeditiously as possible. He has assured me that  
14 they had made a rough preliminary investigation, but that  
15 they would commence on the detailed investigation for us  
16 today.

17           I have written a letter to the Chairman of the Joint  
18 Committee on Internal Revenue and Taxation, requesting the  
19 Joint Committee to obtain Federal income and other tax re-  
20 turns on the nominee for the past six years, and to have  
21 its staff analyze, summarize and report to the Rules Com-  
22 mittee on their findings.

23           I have written a letter to the Comptroller-General re-  
24 questing that he assign investigators as needed to assist  
25 the Rules Committee in its investigation of the nominee.

1 I have written Senator Jackson, Chairman of the Per-  
2 manent Investigations Subcommittee of the Government Opera-  
3 tions Committee, requesting that he assign Dick Casad

4 to us in this investigation. Dick was the one that  
5 was assigned to us and worked in the last one.

6 I have written to Dr. Mumford, the Librarian of Congress,  
7 and Lester Jayson, Director of the Congressional Research  
8 Service, requesting the full resources of the Library be  
9 made available to provide us with all available information  
10 on the nominee.

11 And I have had the Staff Director discuss with the Staff  
12 Director of the House Judiciary Committee the procedures for  
13 full cooperation between the two Committees, as we did in  
14 the Ford investigation, including the complete sharing of  
15 information.

16 And I have instructed the Majority and Minority counsel  
17 of the Subcommittee on Privileges and Elections, assisted  
18 by General Accounting Office investigators, to investigate  
19 the nominee's gubernatorial campaign spending reports and  
20 records.

21 Now, that concludes the actions that I have taken to  
22 date on behalf of the Committee. And I would like to have  
23 the approval of the Committee for those actions.

24 Senator Allen. I would like to commend the Chairman.

25 Senator Griffin. What took you so long, Mr. Chairman?

1 [Laughter]

2 Senator Scott. Well, I think that's great.

3 The Chairman. Without objection, those actions will be  
4 approved, then.

5 Senator Scott?

6 Senator Scott. Could I make a suggestion? I have been  
7 informed that the President made inquiry of the Special Pro-  
8 secutor's office and received what amounted to clearance, so  
9 far as that could be given on short notice.

10 I would suggest that the Chairman communicate with Mr.  
11 Jaworski and solicit from him a letter--you may not need  
12 testimony if we decide the letter is sufficient, but in  
13 these circumstances, I think the approach to the Special  
14 Prosecutor is desirable.

15 The Chairman. I think that is a very good suggestion.

16 Senator Scott. One other suggestion, and that is that  
17 I have asked the Governor to make available a liaison man  
18 to anyone on the Hill who wants to make contact directly and  
19 quickly, so that no time is lost. And he has indicated that  
20 he is considering either Mr. Bob Douglass, who used to be his  
21 secretary, and is with Milbank, Tweed, Hadley and McCloy --or Mr.  
22 John Lockwood.

23 So we will hear something on the liaison, to save  
24 time.

25 The Chairman. I asked him that same question, and he

1 told me that he thought Bobby Douglass would be the liaison,  
2 but he would let us know for sure. And I may say that he  
3 assured me that he would cooperate with us in every way  
4 possible, to the extent of furnishing financial records and  
5 authorizing income tax data and all of this sort of thing to  
6 be furnished to him.

7 I, in turn, assured him that as far as I was concerned  
8 I was not interested in going out on a fishing expedition  
9 simply to provide the press with a lot of data which they  
10 might want to write up that didn't necessarily relate to the  
11 problem involved. And that as far as the tax data that is  
12 furnished to us, that, as far as I was concerned, we would  
13 consider that confidential information. And if anything was  
14 to be released, that would be for him to release it--unless  
15 it was something that related to the qualification of the  
16 nominee.

17 Senator Pell. Mr. Chairman, one question. Is it our  
18 intention eventually, while the income taxes should not be  
19 disclosed, if that is the will of the nominee--I remember  
20 asking that question of Mr. Ford in the open hearing--but  
21 because a man has a large fortune or a small fortune or no  
22 fortune, I think they should be treated alike as far as the  
23 publication of the assets.

24 Would that be the intention of the Committee?

25 The Chairman. Well, I would assume that the Committee

1 would follow substantially the same procedural steps that  
2 we followed before.

3 Senator Pell. I think that that should be. I realize  
4 that the press will jump on it with some zest, but never-  
5 theless I think that just because his fortune is very large,  
6 that does not preclude its publication.

7 The Chairman. Now, the steps that remain to be taken.  
8 First, we have to decide the date and the place of the  
9 hearings.

10 The place could be a decision between the Caucus Room  
11 or 1202, where we had the hearings before.

12 The dates I think we would probably have to wait until  
13 we get an estimate from the FBI as to how long they will  
14 take on their investigations.

15 Then I would assume that we would probably want to fol-  
16 low the same format that we did in the Ford hearings, which  
17 I thought worked quite well.

18 We I think now could make the decision that, in light  
19 of the fact that we did permit pooled television broadcast-  
20 ing before, I would think that we would want to follow that  
21 same procedure and let the networks prepare to set up for a  
22 pool whenever we decided to go ahead with it.

23 And I think--did we not adopt some special rules, Bill,  
24 before? And I think that we could review those and the  
25 probabilities are that the special rules that we adopted

1 before would be adequate here.

2 And one other thing. I would like to request that each  
3 Member, each Committee Member, designate a staff representa-  
4 tive to work as a select smaller staff than we normally  
5 have in working on this whole matter.

6 Senator Scott. On the time--so that we can all say  
7 roughly the same thing--that is what we will be asked right  
8 away--would it be all right if we said that we plan to begin  
9 hearings as soon after, as soon as the FBI report is received,  
10 and that we hope we can start as soon after we return as  
11 possible. They are all going to ask us, and if we give  
12 varying dates--and all that is confusing. We can't give  
13 a specific date.

14 The Chairman. That is the answer that I have given  
15 when I have been asked so far, that we would expect to pro-  
16 ceed as soon as possible after the FBI reports are received.  
17 And in the case of the Ford hearing, those reports took  
18 roughly about three weeks time.

19 So that would give you some kind of an idea.

20 Senator Pell. Wouldn't we--the Chairman and I were  
21 talking of this the other day--wouldn't we hear the adverse  
22 and other witnesses first, and then have the Vice-Presidential  
23 candidate as the anchor man. You know, we heard Mr.  
24 Winterberger--and there was somebody else who was adverse,  
25 I forget who it was--before hearing the candidate.

1 And I would think we should reach a decision as to that.

2 The Chairman. Well, I think it would depend on who we  
3 have requests from to be heard. We heard Winterberger, if  
4 you recall, as a result of the book. And we screened him  
5 and we never did put him on.

6 Senator Pell. But we had other witnesses, too, before-  
7 hand.

8 Senator Scott. We began with the Senators, didn't we,  
9 from the home state?

10 Senator Pell. That's right. But we did not call Ford  
11 until he was the anchor witness, so that we didn't have to  
12 have him there and then call him back.

13 Senator Scott. That's right. I think if we did what  
14 we did before and proceed out of courtesy to the two Senators  
15 from New York, Congressmen from New York, if they wish to  
16 appear--pro or con--and then go on with the adverse witnesses  
17 after we have reviewed them.

18 Senator Pell. If there are any.

19 Senator Scott. If there are any. I suppose there will  
20 be. A man of this prominence, the length of time in public  
21 life--some people. But what I think we have to guard  
22 against, as before, are the headline hunters, the people  
23 who are either--whose charges have no merit in the opinion  
24 of the Committee, we decide that.

25 Because there are going to be two kinds of witnesses.



1 There are going to be serious witnesses, we assume, and not  
2 so serious witnesses.

3 The Chairman. We commenced with the Vice-Présidential  
4 nominee.

5 Senator Pell. And then we had Winterberger afterwards.

6 The Chairman. We had Winterberger in a closed session,  
7 but we had Ford in open session.

8 Mr. Cochran. Then we had the Senators and Congressmen.

9 Senator Hatfield. We heard Winterberger here and Ford  
10 out there.

11 Senator Byrd. Mr. Chairman, I think it is appropriate  
12 to have the nominee first. And he can always be called back  
13 to answer any charges. But it seems to me that that would  
14 be the appropriate starting point, to have the nominee.

15 Senator Scott. Yes, I change my mind on that, too,  
16 Bob, because that is what we did before.

17 The Chairman. Yes, we had the nominee first in open  
18 session, then we had the Senators and House Members. The  
19 second day we had Mr. Winterberger, Hutsnaker [phonetic] and  
20 --what's her name?

21 Senator Hatfield. We had them in here, though.

22 The Chairman. In here in executive session, but the  
23 day after.

24 Senator Byrd. Mr Chairman, I just want to say one  
25 thing on behalf of the leadership, not necessarily on behalf

1 of myself personally.

2 But I would hope--and in stating this I don't imply that  
3 it would be any other way--but I would hope that we would do  
4 everything we possibly could to expedite the action on this  
5 nomination, so as to have it before the Senate, if at all  
6 possible--keeping in mind the importance of this nomination  
7 in itself, in its own right, and also keeping in mind the  
8 larger importance of the nomination by virtue of the fact  
9 that the people will not have voted on this man--we will be  
10 selecting him as representative of the people under the  
11 25th Amendment--hopefully so as to have this nomination on  
12 the floor before, well enough before October 15 so that the  
13 Senate can act on the nomination before we adjourn sine  
14 die.

15 Now, we are making every effort we can to close the  
16 work of the Senate, the session, by no later than October 15--  
17 and I believe we can do it. I think the House is moving in  
18 the Ways and Means Committee on a health insurance bill. We  
19 are going to have one more cloture vote on the Consumer  
20 Protection Bill. The appropriations bills are moving to  
21 the Senate Floor rapidly and the only one we will have any  
22 trouble with is --- operate with the continuing resolution  
23 again.

24 But I think that the momentum is going to build here  
25 for a sine die adjournment by October 15. I think it would

1 be a mistake--I don't want to use that word. I think it  
2 would be unfortunate if we were not to confirm Mr. Rockefeller  
3 well in advance of the November elections. I am as partisan  
4 as anyone when the necessity arises, but I don't want the  
5 Democrats to be accused of partisanship when that is the  
6 farthest thing from our minds.

7 And I want us to demonstrate again--certainly in the  
8 Rules Committee--as the Committee so clearly demonstrated  
9 before, that partisanship is not a factor, that it is going  
10 to do a thorough job and a good job, but it is going to  
11 expedite this matter and get it to the Floor, so that rather  
12 than be criticized undeservedly by some elements--I am not  
13 just saying it would be in the Republican Party, there might  
14 be some in the Democratic Party--I am not looking at that  
15 at all.

16 I just want to be sure that we get this nomination to  
17 the Floor and get it confirmed well in advance of the Novem-  
18 ber elections. If we don't, no matter what we say, we are  
19 going to be tarred with having been political in handling  
20 this nomination.

21 And that is not the worst part of it really. This  
22 country needs a Vice-President. In the event that something  
23 should happen to Ford, Mr. Albert is the next in the line of  
24 succession, who is a Democrat--and I have high regard for him  
25 --but I am confident that he, as much as anyone, would not

1 want anything to happen that would cause this burden to be  
2 placed on him.

3 So we are in a vulnerable position. And I just hope  
4 that we can act to get this to the Floor well in advance of  
5 the November elections.

6 Now, that is all I am going to say on that point. And  
7 in saying that, I don't for a moment think, Mr. Chairman,  
8 that there would ever be any effort in this Committee to  
9 hold you up. Already, as I hear from the press--already,  
10 there are some who are saying that there is going to be  
11 dragging of feet and we are going to stall and all that  
12 business. I know this Committee is not going to stall.

13 But I am just saying this by way of supporting you in  
14 your efforts to expedite it and to indicate that as far as  
15 Senator Mansfield and I are concerned, we want to do every-  
16 thing we can to push it along.

17 Senator Scott. Bob, would you yield there?

18 Senator Byrd. Yes.

19 Senator Scott. I agree. I made a brief speech this  
20 morning in which I said that I didnot believe that anybody--  
21 meaning both Houses--had any intention of delay, that we all  
22 wanted to expedite it. I felt that this was a good spirit  
23 and that we would do what we could in our Committee.

24 I think it is desirable for all the reasons you have  
25 cited, because no matter how proper our motives have been

1 as they were in the Ford confirmation, should there arise  
2 delays which the public can't understand, nothing under  
3 heaven will stop the Democratic and Republican partisans  
4 in the country from trying to make something of it.

5 And you have mentioned the charges that would occur of  
6 willful delay--there would be others, too. There would be  
7 charges that the visibility and the very visage of Rockefeller  
8 would keep one of the most attractive faces in front of the  
9 people before November.

10 In fact I said jokingly in my office this morning, if he  
11 stayed here till November it is better than having him on the  
12 circuit. So you can see the temptations could be both  
13 Democratic and Republican. I am just trying to be fair and  
14 objective about it.

15 And this Committee has done a good job.

16 Senator Byrd. It has.

17 Senator Scott. And I would like to see us do it the  
18 way we did before, with decency and dignity and decorum, and  
19 get on with it as fast as we can.

20 Senator Byrd. I think the Chairman and the Members of  
21 this Committee have demonstrated in the most remarkable way  
22 the dedication of this Committee to duty. And I have no  
23 doubt it is going to do it again.

24 Senator Pell. There are two further thoughts, I think,  
25 here--one of a general political nature, that the House

1 acquitted itself very well from the national viewpoint on  
2 television. As we all know, the esteem of Congress was  
3 about 20 percent last time around whereas the President was  
4 30 percent.

5 And at this point, the public esteem, I think maybe  
6 because of the House show, there is more esteem there. And  
7 I would think there is even more of a burden on us to move  
8 it fast for the general reputation of the Senate and the  
9 country. I have heard this in comments of individuals. I  
10 mentioned that we are going to have to have the FBI check,  
11 it is going to take some weeks, etc., etc., etc. It is  
12 hard to get that across. We know it is necessary. So I  
13 just reinforce what you say.

14 One thought here, you have the 15th of October. You  
15 realize that is immediately following the long four-day  
16 Columbus Day weekend. I suspect you either mean the 19th  
17 or you mean the 11th.

18 Senator Byrd. Well, the joint leadership of both Houses  
19 has marked that day as the outer limit.

20 Senator Scott. Columbus Day or not--I mean, we are going  
21 to stay here.

22 The Chairman. I just simply want to point out, you can  
23 see, as far as the Committee is concerned, we have taken  
24 every step to this point that could possibly be taken that I  
25 could think of. And the two pacing items are these: one,

1 the completion of the FBI report, which we--until we have got  
2 that gone over, we are not in a position to start the hear-  
3 ing.

4 And, secondly, the receipt of the financial data and the  
5 review of that. And you can see that we have taken every  
6 step possible there.

7 And so just as fast as we can get those two jobs done  
8 --and the Attorney-General told me that by noon today he  
9 would hope to be able to give me some kind of an estimate,  
10 a ballpark estimate, of how long it will take the FBI to  
11 do their job.

12 And in that connection, I already mentioned that you  
13 should each appoint a staff person to have access to the  
14 information.

15 Now, in the Ford proceeding, we later modified that pro-  
16 vision to the effect that any confidential or delicate infor-  
17 mation received by the Committee would in the first instance  
18 be made available only to the two staff, top staff, personnel  
19 --Mr. Cochrane for the Majority and Mr. O'Leary for the  
20 Minority--and released to other staff personnel as approved  
21 by the Chairman and Ranking Minority Member.

22 Is there objection to following that same format?

23 Senator Cook. May I say, Mr. Chairman--and I have no  
24 objection to that, I want to get on to the next phase of it  
25 --and that is that you and I were designated as the ones to

1 read all of the raw or confidential data on the nominee at  
2 that time.

3 I would just purely and simply for the benefit of ex-  
4 pediency, so that we can move this thing on, when you get  
5 to that part I have no objection to leaving it the same, as  
6 long as you and I have the authority to designate another  
7 Member of the Committee, with the approval of the Chairman,  
8 to assume that responsibility, if we can't do it. I don't  
9 want to hold this thing up one minute, in fact, if I can  
10 help it.

11 The Chairman. I think that is a good suggestion, be-  
12 cause, if you recall, we even had the difficulty with that  
13 part before, because they wanted to summarize and give it to  
14 us--and then the House, after we got that authority, the  
15 House went a step further and got it for more than the two  
16 Members.

17 So, if there is no objection, first we will approve  
18 this stipulation, then with respect to any delicate or con-  
19 fidential information to be reviewed by the staff Majority  
20 and Minority representative--and that released to the remain-  
21 der of the staff personnel only as approved by the Chairman  
22 and Ranking Minority Member, and that as far as the FBI re-  
23 ports and confidential information is concerned, the Majority  
24 and Minority Member will both have authority to designate  
25 another Member to act ---



1 Senator Scott. That job might have been made simpler  
2 even than it is, in view of the fact that our first and  
3 fourth members on this side were among the semi-finalists.

4 Senator Byrd. Well, as many services as he has per-  
5 formed under various Administrations, Democratic and Repub-  
6 lican, it would not seem to me that it would take long for  
7 the FBI report.

8 Senator Scott. Well, updating--he must have had a great  
9 many FBI reports over the years.

10 Senator Byrd. Yes. And I daresay that his financial  
11 books are probably in such order that the whole picture can  
12 be presented far more quickly than it could in the case of  
13 many people with infinitely lesser means.

14 Senator Hatfield. How many rich people have you read  
15 about who die without a will? I am not so sure.

16 Mr. Chairman, I would like to ask a question off the  
17 record.

18 (Discussion off the record.)

19 The Chairman. Back on the record. Gentlemen, then,  
20 without objection, we will approve that stipulation with  
21 respect to the Majority and Minority Members of the Committee  
22 being able to designate a Member to assist them in reviewing  
23 the material.

24 And also the staff personnel, first the Majority and  
25 Minority representatives reviewing the confidential or delicate

1 information, and that type of information being released to  
2 the remainder of the staff only on approval of the Chairman  
3 and the Ranking Minority Member.

4 Now, if we may go back to our business of our meeting  
5 today.

6 Senator Griffin. Mr. Chairman, before you leave that--  
7 I think I know the answer to this--I think we are all asked  
8 about whether or not any consideration is being given to  
9 joint hearings with the House Judiciary Committee. I take  
10 it that that probably is impractical.

11 The Chairman. I think it is. We explored that to some  
12 degree in the Ford hearings and we determined then--first,  
13 the House didn't seem to be particularly interested in it,  
14 and we determined that there would be a lot of practical  
15 problems that might be difficult of solution if we were to  
16 go that route.

17 And as long as we have an established precedent, I think  
18 that we really ought to proceed with our established precedent.

19 Senator Griffin. There was a lot of cooperation, however,  
20 between the Committees and they didn't duplicate everything.  
21 It seems to me there could be quite a lot of effort in making  
22 sure that both Committees don't go over exactly the same  
23 ground.

24 Senator Cook. If the Chairman would yield, we covered  
25 a lot of that in that, and, believe me, it made their job a

1 lot easier as a result of our work. And I assume, whoever  
2 starts this, we will do the same thing we did the last time,  
3 and that is make immediate contact with House personnel, so  
4 that ---

5 Senator Griffin. I think that is one of the first ques-  
6 tions you are going to be asked.

7 Senator Byrd. We are going to have a vote at 11, Mr.  
8 Chairman.

9 The Chairman. All right, gentlemen, suppose we proceed  
10 now to our rules. We have four remaining rules to consider.  
11 The first one was Rule VII.

12 Senator Scott. I have an amendment there which I would  
13 like you to give some consideration to. And that is being  
14 circulated. It could be considered in two forms--the  
15 present form--the first form is as you have it before you,  
16 which would say "And the Presiding Officer on the trial may  
17 rule all questions..."--the word "on" is left out because  
18 "on" is left out in the original Rule VII--"...may rule all  
19 questions of relevancy, materiality and redundancy of  
20 evidence and incidental questions,..."

21 If it should be argued that that limits the Presiding  
22 Officer, who is now entitled to rule on all questions of  
23 evidence, then we could insert after the words "all questions"  
24 the phrase "of evidence, specifically including all questions  
25 of relevancy, materiality and redundancy..." And that covers,

1 in my view, the hearsay problem as well, that he could in the  
2 first instance rule that it is not relevant for reasons in-  
3 cluding hearsay.

4 And his rule stands as the judgment of the Senate, un-  
5 less the Senate overrules him, which they have the right to  
6 do by an immediate submission of the question.

7 I just feel, when we were confronted with a situation  
8 that might have gotten us somewhere between six and eight  
9 months of trial, one of the questions that arose in all  
10 cases was whether or not various witnesses could be called,  
11 and the Senate ruled on it--I think after the Chief Justice  
12 had--I am not sure. He was overruled 17 times and after that  
13 he just put the question.

14 So whether this occurs in the first or second half I  
15 am not sure, but they refused to take Gideon Wells. I think  
16 he should have the right to rule that an offer of proof in-  
17 dicates that the witness proposes to give relevant evidence,  
18 and the Senate can overrule him.

19 What is of more concern to me is to be sure that we  
20 eliminate that kind of hearsay which is deemed by the Chief  
21 Justice not to be relevant or that kind of redundancy which  
22 involves somebody offering 200 witnesses.

23 It was clear to me in the situation formerly pending--  
24 which is as nice a way as I can think of putting it--that  
25 counsel for the respondent did intend a very long and

1 exhaustive defense, and that suggested to me at that very  
2 time, however sympathetic I might be, it was not in the  
3 interests of the Senate or the country to put ourselves in  
4 that position if we could properly avoid it.

5 Whether this is the right way or some other way, I  
6 don't know--I have no pride of language. But I would like  
7 something that shows that the Presiding Officer can at least  
8 get after this thing of redundancy, which helps to expedite  
9 the proceedings.

10 The Chairman. Any further discussion?

11 Senator Byrd. Mr. Chairman, I think this is a good  
12 amendment. I am ready to vote on it and I support it. I  
13 will have other little slight amendment after we have passed  
14 on this one.

15 Senator Griffin. Mr. Chairman?

16 The Chairman. Yes.

17 Senator Griffin. I am a little concerned, Hugh, that  
18 maybe you are making the power of the Presiding Officer to  
19 rule less in scope than it was before.

20 Senator Scott. Not if you say "of evidence" where you  
21 then repeat the present Rule VII--"...all questions of  
22 evidence,..." adding "...specifically including all questions  
23 of..."

24 I think there you have retained the original power but  
25 you have spelled it out.

1           Senator Griffin. In other words, it would not read as  
2 it would here, is that right?

3           Senator Scott. "...all questions of evidence, speci-  
4 fically including questions of..."--those three things.

5           The Chairman. Is that different than this one, then?

6           Senator Griffin. Because there would be other ques-  
7 tions of evidence other than relevancy, materiality and  
8 redundancy.

9           Senator Scott. I know it, but we are trying to get  
10 first by that change ---

11          The Chairman. Do you have a copy of that?

12          Senator Scott. "...may rule all questions of evidence  
13 ..." I didn't put the "on" there because it is not in Rule  
14 VII.

15          Senator Byrd. Let's put it in, Hugh.

16          Senator Scott. All right. "...all questions of evi-  
17 dence, specifically including..." Now we have given him  
18 broad general power, but we have indicated the intent of the  
19 Senate that we don't want--"...specifically including all  
20 questions of..."

21          Senator Griffin. What does the word "redundancy" mean?

22          Senator Scott. "Redundancy" merely means that a witness  
23 is repetitive.

24          Redundancy is the thing that I fear--200 witnesses would  
25 be called, of whom 100 might be character witnesses. You have

1 seen it with defense counsel.

2 Senator Griffin. But a second witness might be redun-  
3 dant but might not be ---.

4 Senator Scott. The Chief Justice would rule right away  
5 that if you called three witnesses to a given point, he could  
6 rule either way and immediately be overruled by the Senate.  
7 That would seem to be a reasonable attempt by defense counsel.

8 But if he offered 200 witnesses or 100 witnesses, in-  
9 cluding many character witnesses, then the Chief Justice  
10 would rule that that was clearly redundant, and the Senate  
11 can again overrule him.

12 Senator Griffin. Your change takes care of ---

13 Senator Scott. My change is designed to take care of  
14 that, because it gives him a broad power, and then we spell  
15 out some of the things we have in mind, not excluding any-  
16 thing else.

17 Senator Williams. Why do we need that word "specifi-  
18 cally" in there? Is that necessary?

19 Senator Griffin. Including but not limited to.

20 The Chairman. Yes. I have a suggestion here. "And  
21 the Presiding Officer on the trial may rule on all questions  
22 of evidence, including but not limited to questions of  
23 relevancy, materiality and redundancy of evidence and  
24 incidental questions,..."

25 Senator Scott. That is satisfactory to me.

1           The Chairman. Yes, I think that is better. All right,  
2 is there objection to that amendment?

3           Without objection, then, that amendment will be approved  
4 and that replaces the second sentence of Rule VII.

5           All right, Senator Byrd?

6           Senator Byrd. Yes, Mr. Chairman. After the word "deci-  
7 sion" in line 11 of the present rule, I would like to--I  
8 would move to insert the words "without debate" before the  
9 semicolon.

10          The Chairman. Can you use this mark-up, this print, in  
11 your folder? Use that, page 4.

12          Senator Byrd. On line 21 after the word "decision" and  
13 before the semicolon, insert the words "without debate".

14          The Chairman. You wouldn't want to have the opportunity  
15 for debate?

16          Senator Byrd. Not among Senators, not unless you want  
17 to go into closed session.

18          Senator Scott. This is merely applicable to open ses-  
19 sions, isn't it, Bob?

20          Senator Byrd. Yes.

21          Senator Scott. Well, if it is applicable only to open  
22 sessions I certainly would have no objection to it.

23          Senator Griffin. Is it necessary to say "without debate  
24 by Senators"?

25          Senator Byrd. I don't believe so.



1 Senator Griffin. It would be clear that the counsel  
2 could argue the question.

3 Senator Byrd. Yes, counsel could.

4 Senator Scott. I suggest that we include some reference  
5 in the report to what we mean.

6 I think in the discussion we just might make it clear  
7 to have some legislative history.

8 The Chairman. Yes, I think before he makes that ruling,  
9 counsel will have made their argument to him. Then if he  
10 submits it for a ruling to the Senate without debate.

11 Is there objection, then? Without objection, that will  
12 be approved.

13 Senator Griffin. Mr. Chairman, could I, before you go  
14 on--let me focus attention on page 3 and 4, lines 14 and  
15 15. "...and the said Chief Justice..." And line 12 talks  
16 about the Presiding Officer of the Senate. And line 14  
17 says "...the said Chief Justice shall be administered the  
18 oath by the Presiding Officer of the Senate and shall pre-  
19 side over the Senate during the consideration of said ar-  
20 ticles" and so forth.

21 I take it that from thereon when you talk about the  
22 Presiding Officer of the Senate, you are talking about the  
23 Chief Justice? Line 11, page 4, "The Presiding Officer of  
24 the Senate..."

25 Senator Byrd. No, sir, that is not talking about the

1 Chief Justice.

2 Senator Griffin. It is not?

3 Senator Pell. When they talk about Presiding Officer  
4 they mean Chief Justice, but Presiding Officer of the Senate  
5 remains Presiding Officer of the Senate.

6 Senator Griffin. I see.

7 The Chairman. That was to clear up the question of  
8 who administers the oath, and we determined then that the  
9 Presiding Officer of the Senate would administer the oath  
10 to the Chief Justice, then the Chief Justice becomes the  
11 Presiding Officer.

12 Senator Griffin. In other words, at that point, you  
13 have Presiding Officer on the trial and Presiding Officer of  
14 the Senate.

15 The Chairman. That is correct.

16 Senator Griffin. I guess that is clear enough.

17 Senator Byrd. Do you think that there should be some  
18 question arise in the event that the--the Vice-President is  
19 the Presiding Officer of the Senate, of course in his absence  
20 the President Pro Tem--can there possibly be any question  
21 arise in the future by way of quibbling over the definition  
22 of the word "Presiding Officer of the Senate"?

23 The Chairman. I don't think so.

24 Senator Byrd. You don't think so?

25 The Chairman. I don't think so. Rule VII starts off

1 with that and relates the Presiding Officer of the Senate--  
2 and in the same sentence the Presiding Officer on the trial,  
3 to show that they are two separate people. I don't think  
4 that we would have any problem in that.

5 All right, are there other amendments to Rule VII?

6 We discussed the other day the question about that last  
7 sentence of Rule VII. "Upon all such questions the vote  
8 shall be without a division, unless the yeas and nays be  
9 demanded..."

10 The question was whether it should be by division, "un-  
11 less the yeas and nays be demanded by one-fifth of the Mem-  
12 bers present, when the same shall be taken."

13 In other words, that is indicating that it would be a  
14 voice vote or a yea and nay vote, the way it stands now.

15 This is the last sentence on line 23, page 4.

16 In other words, "Upon all such questions the vote shall  
17 be without a division, unless the yeas and nays be demanded  
18 by one-fifth of the members present, when the same shall be  
19 taken."

20 Now, in other words, that implies that it is going to  
21 be a voice vote or it is going to be a yea-and-nay vote.  
22 And in our discussion earlier there was some indication that  
23 perhaps we should make it so that it be "by a division, un-  
24 less the yeas and nays be demanded by one-fifth of the  
25 members present, when the same shall be taken."

1 Senator Byrd. Why don't we just strike out the sentence,  
2 Mr. Chairman? It is of no use, except what you are pointing  
3 out--it now rules out a division.

4 If you strike the sentence, we will be operating under  
5 Senate Rules. It can be by voice vote, by division or in  
6 the constitution of a fifth of the members present requesting  
7 yeas and nays.

8 Senator Scott. Or, if you want to, you can say "Upon  
9 all such questions the vote shall be in accordance with the  
10 Standing Rules of the Senate."

11 The Chairman. "Upon all such questions the vote shall  
12 be in accordance with..." "...shall be taken in accordance  
13 with the Standing Rules of the Senate."

14 That, I think, is clear, because the Standing Rules  
15 comply with the Constitutional provision, don't they, doc-  
16 tor?

17 Senator Pell. But in the Standing Rules, can't the  
18 Presiding Officer vote?

19 The Chairman. No.

20 Senator Byrd. To break a tie.

21 The Chairman. To break a tie.

22 Senator Pell. But we do not mean him to vote here, do  
23 we?

24 Senator Byrd. That opens up a question, that opens up  
25 a question. It is not the Standing Rules of the Senate that

1 gives him that vote on a tie, it is the Constitution.

2 The Chairman. Is that agreeable, then? The last line  
3 on page 4 would read, then, "Upon all such questions the  
4 vote shall be taken in accordance with the Standing Rules  
5 of the Senate."

6 Do you see any objection to that, doctor?

7 Mr. Riddick. No, sir.

8 Senator Pell. Does this mean that the Presiding Officer,  
9 i.e., the Chief Justice, can vote to break a tie?

10 The Chairman. The Presiding Officer is not given the  
11 right to break the tie under the Rules of the Senate, is he,  
12 doctor?

13 Mr. Riddick. He is given it under the Constitution.

14 The Chairman. That is under the Constitution. So this  
15 creates no added problems that are not already there.

16 Senator Griffin. If there is any question about that--  
17 we are not creating rules for any particular defendant now,  
18 we couldn't be accused of anything--if there is any question  
19 about that, it would be well to resolve it. If the Senate  
20 does not agree with what we decide, at least we would have  
21 it one way or the other. Either he should be clearly able  
22 to break a tie or not.

23 Senator Pell. This leaves it a little bit in a gray  
24 area.

25 Senator Byrd. I thought I had an amendment entered.

1           Senator Scott. We are going to face that somewhere  
2 else, aren't we?

3           Senator Griffin. I personally think he should be able  
4 to, but I don't really care, as long as it is settled.

5           Senator Byrd. I don't think he should be able to on  
6 the question of judgment, final judgment, as to whether or  
7 not the person impeached can be disqualified from forever  
8 holding office. That is determined by majority vote and I  
9 don't think he should be able to break a tie there.

10          Senator Scott. I would go with you. I would let him  
11 break ties on procedural matters, because otherwise the  
12 country watching it isn't going to understand why with a  
13 tie one side won and the other side lost.

14          But on that key thing he should not have a tie vote.

15          Senator Pell. Since we more or less agree to that  
16 shouldn't we put it in?

17          Senator Byrd. If it is agreeable, let's do.

18          The Chairman. It is not agreeable with me. I don't  
19 think he ought to have the right to break a tie under any  
20 circumstances, because he is not a Member of the Senate and  
21 they are the people that are entitled to vote.

22          So if we can finalize Rule VII here let's do it now and  
23 handle that some place else, because we still have that issue  
24 to be decided.

25          Is there objection, then, to this last sentence reading

1 "Upon all such questions the vote shall be taken in accor-  
2 dance with the Standing Rules of the Senate."

3 Without objection, then, that will be approved.

4 All right, we made the changes in Rule VIII that you  
5 see in italics there. Rules IX and X we had no changes.  
6 Rule XI--we made the changes in italics in Rule XI, to  
7 remove the word "twelve" and also to make it "if the Senate  
8 so orders."

9 Rule--page 8, we had also at "12:30 o'clock afternoon,  
10 or at such other hour as the Senate may order,..." On the  
11 top of page 8, on that second line, strike the word "other-  
12 wise"--that is redundant. "At 12:30 o'clock afternoon, or  
13 at such other hour as the Senate may order,..."

14 Without objection, "otherwise" will be stricken.

15 And we made a technical correction in Rule XIII, to  
16 strike out "for such thing", "the Presiding Officer of the  
17 Senate shall so announce; and thereupon" to make it conform  
18 to present practices.

19 Rule XIV we made no change, XV no change, XVI no  
20 change, XVII no change, XVIII no change. XIX we amended  
21 it to read "or to a manager, or counsel of the person im-  
22 peached," to make it clear that the questions could be put  
23 to other persons than the witness.

24 XX we made no change. XXI we made the change in italics.  
25 XXII we made no change. XXIII we made no change. Oh, XXIII

1 was one that we had open for further discussion. The  
2 question there--Senator Byrd had a proposed amendment,  
3 wasn't it to XXIII, Bob?

4 Senator Byrd. I beg your pardon? Which rule?

5 The Chairman. The XXIII, you had a proposed amendment  
6 to make it so that the articles--the different charges in an  
7 article could not be divided?

8 Senator Byrd. Yes. I think we had better ---

9 The Chairman. We have got a vote on.

10 Senator Griffin. I might just mention right there--  
11 because I think that is a place it might be considered--I  
12 would like to see the Senate consider adopting a rule  
13 concerning burden of proof. I think the burden of proof  
14 should be "beyond a reasonable doubt."

15 Whether or not we will end up doing it or not, I don't  
16 know, but I just want to indicate that I would like to have  
17 it considered. It seems like there is another unresolved  
18 question--which I was against resolving for a particular  
19 defendant in a particular case.

20 But we don't have that situation. It would be good if  
21 we could argue it out and set a standard of proof, as you  
22 have in any other trial.

23 Senator Scott. If I am not here, I would like to be  
24 recorded in favor of that.

25 Senator Griffin. Surely we won't vote on that today.



1           The Chairman. If we try to set that, we are going to  
2 run into a lot of problems on the Senate Floor, because  
3 everybody has got their own ideas as to whether it ought to  
4 be by a preponderance of the evidence, beyond a reasonable  
5 doubt or what--and it may create some problems.

6           Senator Byrd. Mr. Chairman, could we meet over at the ---

7           The Chairman. Are we going to have other votes after  
8 this one now?

9           Senator Byrd. We could very well. It is on that  
10 defense appropriation bill.

11          The Chairman. It's kind of hard to move over there.  
12 If we don't have a vote immediately to follow, we might be  
13 able to wind this up in another hour.

14          Shall we just leave it here and try and come right back  
15 and see what we can do?

16          Senator Byrd. All right.

17          The Chairman. All right, stand in recess.

18          (The Committee recessed at 11:07 a.m. and reconvened  
19 at 11:52 a.m.)

20          The Chairman. On the record. There was a proposal--  
21 we skipped over XX a few moments ago, however it has been  
22 pointed out that there might be a good amendment there.

23          XX provides that "At all times while the Senate is  
24 sitting upon the trial of an impeachment the doors of the  
25 Senate shall be kept open, unless the Senate shall direct

1 the doors to be closed while deliberating upon its decisions."

2 And this suggestion was made, that after the word "de-  
3 cisions," this sentence follow: "A motion to close the doors  
4 shall be voted on without debate and shall be made and had  
5 by yeas and nays which shall be entered on the record."

6 In other words, that would get away from--in the current  
7 rules, where a person who makes the motion to go into closed  
8 session and has it seconded, it is a closed session.

9 Is that correct, doctor?

10 Mr. Riddick. Well, Senator, I think that is true under  
11 our legislative rules, but I think under precedents this is  
12 what we followed before.

13 The Chairman. This is just restating what they did in  
14 the precedent, is that correct?

15 Mr. Riddick. That is correct, because the Chief Justice  
16 --that is the first time he voted, was to go into closed  
17 session.

18 Senator Byrd. Also, it provides for that taking place  
19 without debate, which is good.

20 The Chairman. Do you see any reason why this amendment  
21 should not be put in?

22 Mr. Riddick. No, sir, I do not. The only question I  
23 would raise is whether you want a yea and nay vote.

24 The Chairman. I think you ought to in a situation like  
25 this.

1 Senator Byrd. I think you ought to have a yea-and-nay  
2 vote going into closed session.

3 Mr. Riddick. That would be the only question.

4 The Chairman. Without objection, then, that amendment  
5 will be added to Rule XX.

6 Senator Byrd. Howard, if there is unanimous consent to  
7 go into closed session, that would save the time of a roll  
8 call. You could say by yeas and nays unless otherwise  
9 ordered.

10 Mr. Riddick. That is what I was thinking--without  
11 objection or by yeas and nays.

12 Senator Hatfield. You would have to be without objec-  
13 tion first, preceding yeas and nays, to be followed by yeas  
14 and nays as an alternative.

15 Mr. Riddick. Correct. Without objection or by yeas  
16 and nays.

17 The Chairman. Take a look there, doctor, and see if  
18 you have suggestions for the language there.

19 Mr. Riddick. I don't have that copy. The only thing  
20 that I was going to suggest--shall be acted on without debate  
21 and shall be made without objection or by yeas and nays,  
22 which shall be entered on the record.

23 Senator Hatfield. Shall be acted upon and/or made  
24 by the procedure of no objection or yeas and nays.

25 Senator Byrd. Why not say shall be determined, instead

1 of made and had.

2 The Chairman. Then the language now proposed is "A  
3 motion to close the doors shall be acted upon without objec-  
4 tion or, if objection is heard, shall be voted on without  
5 debate and shall be made and had by yeas and nays, which  
6 shall be entered on the record."

7 Is there objection to that language, then? Without  
8 objection, that will be approved.

9 That covers XX. Now, Senator Byrd had a proposed amend-  
10 ment on Rule XXIII.

11 Senator Byrd. Shall I read it now, Mr. Chairman?

12 The Chairman. Yes, why don't you read it.

13 Senator Byrd. Rule XXIII is amended, one, by inserting  
14 at the beginning of the text--wait a minute.

15 Rule XXIII is amended as follows: 1. "An article  
16 of impeachment shall not be divisible for the purpose of  
17 voting thereon at any time during the trial."

18 Shall we proceed further or act on that first?

19 The Chairman. I think they would all have to go toge-  
20 ther.

21 Senator Byrd. All right. 2. By inserting at the  
22 beginning of the text the following: "Once voting has  
23 commenced on an article of impeachment, voting shall be  
24 continued until voting has been completed on all articles  
25 of impeachment, unless the Senate adjourns for a period not

1 to exceed one day or adjourns sine die."

2 And, 3, by striking out all after the last semicolon  
3 and inserting in lieu thereof the following: "But if the  
4 person accused shall be convicted upon any such article by  
5 the votes of two-thirds of the Members present, the Senate  
6 may proceed to the consideration of such other matters as  
7 may be determined to be appropriate prior to pronouncing  
8 judgment. Upon pronouncing judgment, a certified copy of  
9 such judgment shall be deposited in the Office of the Secre-  
10 tary of State."

11 And, 4, "A motion to reconsider the vote by which any  
12 article of impeachment is sustained or rejected shall not  
13 be in order."

14 I thought we had already adopted that part.

15 Senator Hatfield. We did.

16 Mr. Riddick. There was some question as to what ---

17 Senator Byrd. I see now. We had adopted the first  
18 item, "An article of impeachment shall not be divisible  
19 for the purpose of voting thereon at any point during the  
20 trial." We adopted that.

21 And we adopted the last part, "A motion to reconsider  
22 the vote by which any article of impeachment is sustained  
23 or rjected shall not be in order."

24 We adopted those, am I correct?

25 Mr. Cochrane. It wasn't completely clear, sir, from

1 the transcript. It looked as though it had been just dropped  
2 and proceeded from that point.

3 Senator Byrd. Well, I thought we adopted those.

4 Mr. Riddick. I thought so, too, Senator.

5 Senator Byrd. There was no opposition to either of  
6 them.

7 The Chairman. I am advised that it is somewhat ambi-  
8 guous in the transcript and the Chairman suggested that  
9 Senator Byrd pull all of these amendments together and we  
10 would consider them as one amendment to XXIII.

11 Senator Byrd. Very well.

12 The Chairman. Now, what comes out of XXIII--what re-  
13 mains or what comes out here now?

14 Senator Byrd. Nothing needs to come out. We just need  
15 to clean up this amendment a little bit.

16 Senator Hatfield. Especially leave in the two-thirds  
17 required for conviction.

18 Senator Byrd. We just need to clean up my amendment a  
19 little bit.

20 Mr. Ticer. Senator, may I help on that?

21 Senator Byrd. Yes.

22 Mr. Ticer. Under this amendment, the way it would work,  
23 the initial sentence, on the question of whether the article  
24 is divisible, would go into the beginning of Rule XXIII. It  
25 would be followed by the language concerning "Once voting

1 has commenced on an article of impeachment, voting shall be  
2 continued until voting has been completed on all articles of  
3 impeachment, unless the Senate adjourns for a period, etc."

4 Senator Byrd. Yes.

5 Mr. Ticer. Then it would continue with the existent  
6 language down to the semicolon on page 10, line 12. Then  
7 you strike all that follows the semicolon and put in the  
8 matter that appears on the amendment as item 2.

9 Senator Byrd. Yes.

10 Mr. Ticer. And at the end of that you pick up the last  
11 sentence, which is also on that line.

12 Senator Byrd. Yes.

13 The Chairman. So that you would have Senator Byrd's  
14 proposed subdivision 1, proposed subdivision 2, the beginning  
15 of Rule XXIII, then the present portion of Rule XXIII would  
16 follow his subdivision 2 down to and including the word  
17 "entered" on line 12, the balance of present XXIII would be  
18 stricken and Senator Byrd's amendment designated 3 and 4  
19 would follow, is that correct?

20 Mr. Ticer. Yes, sir.

21 The Chairman. Any further discussion? We want to make  
22 it clear that we understand what this does, now. This means  
23 that, for example, if we had articles of impeachment over  
24 here, such as in the matter that the House was considering,  
25 the various charges in the first article of impeachment that

1 was voted out by the House Judiciary Committee could not be  
2 divided for the purpose of separate votes, so that if an im-  
3 peachment bill came over containing six or more subdivisions--  
4 or any more than one--it would require a finding on that  
5 entire grouping to find a charge of guilty for impeachment.

6 Senator Hatfield. Mr. Chairman, could I restate it by  
7 asking a question? If we had six charges under Article One  
8 or under a single article, what would be in the mind of the  
9 individual Senator if he found the person guilty on one of  
10 the six? That would be sufficient for him to vote for the  
11 article of impeachment, or would he have to find in his mind  
12 the person guilty on all six of the charges?

13 The Chairman. I would call on the author of the amend-  
14 ment.

15 Senator Byrd. Well, I think that would be a matter for  
16 each individual Senator's judgment, Mark. If there was one  
17 charge among the six that I felt he ought to be impeached on,  
18 I would vote him guilty on that. And then I would explain  
19 in my opinion or my statement that I didn't find the other  
20 five charges sufficient--but on that one I thought in my own  
21 mind that the evidence was beyond any reasonable doubt, and  
22 it was an impeachable offense, therefore I voted him guilty.

23 Senator Hatfield. But it would be just as logical, say,  
24 if I found him guilty on two and not guilty on four--or let's  
25 say there were five of them--I found him not guilty on three,



1 but on two, that I would vote for acquittal on that article,  
2 because the balance was in favor of the not guilty.

3 Senator Byrd. It would be in your own individual judg-  
4 ment and you would state in your speech which you would mail  
5 out to your constituents explaining your vote.

6 Senator Hatfield. I support the amendment just on the  
7 practicality of not having to find him guilty on all five or  
8 six of the charges, but I don't think we can impose any kind  
9 of a standard upon individual Senators any more than we can  
10 on the rules of evidence.

11 The Chairman. All right, is there objection, then, to  
12 that? Without objection, then, Rule XXIII will be so amended.

13 Now, we had a question on Rule XXIV. Was that one of  
14 yours, Senator Byrd?

15 Senator Hatfield. May I ask Senator Byrd a question?

16 Senator Byrd. Yes, sir.

17 Senator Hatfield. Do the indictments in a court of law  
18 have subdivisions?

19 Senator Byrd. Separate charges--what do they call them?  
20 Counts, separate counts. In other words, you wouldn't have  
21 one count with subdivisions in a court of law. You would  
22 have each individual count.

23 Senator Hatfield. And guilty on one as if guilty on  
24 all?

25 Senator Byrd. Right. As far as the person is concerned,

1 he is found guilty, if he is found not guilty on the others.

2 Senator Hatfield. Does the sentence--does the imposi-  
3 tion of a sentence of a man take into consideration that the  
4 man was found not guilty on ten counts and guilty on one?

5 Senator Byrd. That would be up to the judge.

6 Senator Hatfield. Or do they stop the trial after guilt  
7 is found on the first count and not even try him on the  
8 others.

9 The Chairman. They try on all of the charges and he may  
10 be found not guilty on--say there are ten charges--found not  
11 guilty of nine of the charges but guilty of the one, and then  
12 that is the determination for the sentence.

13 Senator Hatfield. And does the determination of a sen-  
14 tence take that into consideration?

15 The Chairman. Absolutely.

16 Senator Hatfield. All right, then, let me ask you this.  
17 If they found him guilty on the first count or the first  
18 charge, do they have to go ahead and try him on the others?

19 The Chairman. The trial is already concluded on all of  
20 them. The trial is concluded on all of the charges, and then  
21 the jury may find him guilty on count No. 1 and count No. 3  
22 and not guilty on Count No. 2, 4 and 5.

23 Senator Hatfield. And the degree of punishment, then,  
24 is related to the ---

25 The Chairman. That is correct.

1 Now, the question in Rule XXIV was the question of the  
2 limitation of time for the Members to speak on a question--  
3 interlocutory question and final question. We had some  
4 discussion on that.

5 I don't have any proposed language, but I think that is  
6 something we need to discuss.

7 Now, this is quite limited here. You will recall, I  
8 think Senator Javits raised the question that this was not  
9 adequate. And other people raised the question. Although  
10 we do have the escape clause there, "...unless by consent of  
11 the Senate."

12 And it may be that you prefer to leave the rule as it  
13 is and then require consent if any changes are to be made.

14 Senator Byrd. I would just as soon leave it like it  
15 is, with the exception of providing for orders and decisions  
16 to be made without objection up there. Orders and decisions  
17 could be made, doctor, by unanimous consent or by yea and  
18 nay vote.

19 Mr. Riddick. Yes.

20 Senator Byrd. How's that? "All the orders and deci-  
21 sions shall be made..."?

22 The Chairman. Well, aren't you going a little broad  
23 if you make "All the orders and decisions shall be made  
24 without objection or by yea and nay vote"?

25 There are certainly some orders and decisions of the

1 Senate as a body that you wouldn't want to run the risk of  
2 just, say, without objection.

3 Senator Byrd. Well, any Senator could object. It seems  
4 to me that there could be some minor orders and decisions that  
5 --certainly decisions, minor decisions you wouldn't need a  
6 yea or nay vote on.

7 Doctor, what do you think?

8 Mr. Riddick. I think you are right. The same problem  
9 that was presented before, because if something is non-  
10 controversial why have a yea and nay vote on it.

11 The Chairman. Then we could use the same language that  
12 we put into Rule XX and say "All orders and decisions shall  
13 be acted upon without objection or, if objection is heard,  
14 shall be made and had by the yeas and nays, which shall be  
15 entered on the record."

16 Senator Byrd. Do you see any problem with that?

17 Mr. Riddick. No, sir.

18 The Chairman. Do you see any difficulty there?

19 Mr. Riddick. Using "without objection," I think you  
20 could say without objection, will not have yeas and nays and  
21 get a division vote.

22 Senator Byrd. Except, doctor, can a Senator reserve  
23 the right to object and get some debate in?

24 Mr. Riddick. No, because wherever there is a unanimous  
25 consent proposal, while we do tolerate "Mr. President, I

1 reserve the right to object," the Chair can say, as we have  
2 done, "This is not debatable. Is there objection?" But  
3 they normally let it run along, so they might resolve the  
4 solution quicker.

5 The Chairman. All right, then, if there is no objection,  
6 we shall insert after the word "decisions," "shall be acted  
7 upon without objection or, if objection is heard,..."

8 Now, are there other amendments to Rule XXIV?

9 Senator Byrd. I had some other amendments I offered  
10 here the last time. Do you have them?

11 The Chairman. All right, without objection, then, Rule  
12 XXIV will be approved as amended.

13 Are there any other amendments then?

14 We approved that change on XXV before.

15 Senator Byrd. I would like to take a look at Rule XVI.  
16 I would like to strike "all motions made by the parties or  
17 their counsel shall be addressed to the Presiding Officer,"  
18 and insert in lieu thereof: "All motions, objections, re-  
19 quests, or applications whether relating to the procedure  
20 of the Senate or relating immediately to the trial (including  
21 questions with respect to admission of evidence or other  
22 questions arising during the trial) made by the parties or  
23 their counsel shall be addressed to the Presiding Officer  
24 only."

25 The Chairman. And then would you leave in "...and if he

1 or any Senator, shall require it, they shall be committed  
2 to writing, and read at the Secretary's table"?

3 Senator Byrd. Yes.

4 The Chairman. I think that clarifies it a little. Is  
5 there objection to that?

6 Doc, do you see any problem there?

7 Mr. Riddick. No, sir.

8 The Chairman. Without objection, then, that amendment  
9 will be approved.

10 Senator Byrd. I would suggest with regard to Rule XIX  
11 that it is amended by adding at the end of the rule, the  
12 present rule, the following: "The parties or their counsel  
13 may interpose objections to witnesses answering questions  
14 propounded at the request of any Senator and the merits of  
15 any such objection may be argued by the parties or their  
16 counsel. Ruling on any such objection shall be made as pro-  
17 vided in Rule VII. It shall not be in order for any Senator  
18 to engage in colloquy or to address questions to parties or  
19 their counsel. The remarks of each Senator shall be addressed  
20 to the Presiding Officer only."

21 Senator Hatfield. May I ask a question?

22 Senator Byrd. Yes.

23 Senator Hatfield. When you say the remarks of each  
24 Senator shall be addressed to the Presiding Officer only, is  
25 that in writing or could a Senator engage in colloquy with

1 the presumption that he is only addressing himself in his  
2 remarks to the Presiding Officer?

3 Senator Byrd. Well, a Senator could not address counsel  
4 for the defense or could not address a manager on the part  
5 of the House. He would address the Presiding Officer.

6 Senator Hatfield. What about reduced to writing?

7 Senator Byrd. Well, he would say "Mr. President, I  
8 have a question which I shall reduce to writing." He  
9 would then sit down and write it out. That is all I have  
10 in mind.

11 Senator Hatfield. So this is an add-on to that Rule  
12 XIX. It is not to replace it.

13 Senator Byrd. No, sir, it is not to replace it.

14 Senator Hatfield. So you are still reduced to writing,  
15 and remarks of each Senator shall be addressed to the Presi-  
16 ding Officer only in writing?

17 The Chairman. We are actually being repetitious there.  
18 We have already got--if a Senator wishes a question to be put  
19 to a witness or to a manager or counsel of the person im-  
20 peached or to offer a motion or order, except a motion to  
21 adjourn, it shall be reduced to writing and put by the  
22 Presiding Officer."

23 Those last two sentences are sort of duplicative. I  
24 think then you could go on and say "The parties or their  
25 counsel may interpose objections to witnesses answering

1 questions propounded at the request of any Senator and the  
2 merits of any such objection may be argued by the parties  
3 or their counsel. Ruling on any such objection shall be  
4 made as provided in Rule VII."

5 Senator Hatfield. Why not strike those last two sen-  
6 tences? When you use the words "remarks of each Senator,"  
7 you mean any possible verbal statement.

8 Senator Byrd. You are right, I think that sentence  
9 should be stricken.

10 There is some question in the minds of Senators as to  
11 whether or not Senators can engage in colloquy in open ses-  
12 sion. I would personally like to make it clear that that  
13 can't be done.

14 Senator Hatfield. Say between two Senators?

15 Senator Byrd. Yes.

16 Senator Hatfield. What would the Senator have the  
17 floor for to make oral statement anyway, under what circum-  
18 stance?

19 Senator Byrd. He shouldn't have, in my judgement, in  
20 open session.

21 Senator Hatfield. That is right. But then the colloquy  
22 can't occur. One Senator has been recognized and is permitted  
23 to engage in some verbal statement, that has to occur before  
24 a colloquy can ensue.

25 Senator Byrd. He is not supposed to be recognized for a



1 verbal statement.

2 Senator Hatfield. That's right, so a colloquy isn't  
3 possible, is it?

4 Senator Byrd. It is not supposed to be, yes. I am  
5 wondering if that is clear in the present rule.

6 Senator Hatfield. Isn't a colloquy a verbal visit?

7 The Chairman. Why don't we do this--why don't we strike  
8 the last sentence, leave the next-to-the-last sentence but  
9 make this change: "It shall not be in order for any Senator  
10 to engage in colloquy or to address questions directly to  
11 parties or their counsel."

12 Now, we have already provided for how they can direct  
13 questions to the Presiding Officer. And this would make a  
14 prohibition on any colloquy and make it that they couldn't  
15 address questions directly to parties or their counsel.

16 Senator Byrd. XIX takes care of that, if you put a  
17 period after "colloquy." That would do it, Howard.

18 Senator Hatfield. Yes, because there you are raising  
19 the question, Mr. Chairman, or already say in the first  
20 sentence of Rule XIX, if a sSenator wishes a question to be  
21 put to witness or manager or counsel, then you say here  
22 "address questions"--well, you can address them in writing.

23 I think if you put a period after "colloquy" ---

24 The Chairman. All right, just after "colloquy." "It  
25 shall not be in order for any Senator to engage in colloquy."

1 Senator Byrd. Okay?

2 The Chairman. Is there objection to that amendment?

3 Senator Byrd. Well, wait just a minute. Shouldn't we  
4 say "in open session"? Colloquy "in open session"?

5 The Chairman. You have already got a provision in  
6 closed session for debate. So that would be clear.

7 Senator Byrd. All right.

8 The Chairman. Without objection, then, Rule XIX will  
9 be so amended.

10 Senator Byrd. Did I have any others, Bill?

11 Mr. Cochrane. Not to my knowledge. You might ask the  
12 doctor or Bill Ticer, Senator.

13 The Chairman. Do you know of any other amendments that  
14 any of the Committee Members had.

15 Mr. Riddick. Only one thing, Senator. Let me see if I  
16 can find it here. That form.

17 The Chairman. The form of a subpoena?

18 Mr. Riddick. The form of putting a question.

19 Senator Byrd. In some of the impeachment trials, the  
20 Presiding Officer has addressed each Senator and repeated  
21 the question to each Senator, as he did in the case of the  
22 impeachment of Mr. Johnson.

23 Senator Hatfield. For his vote on conviction or acquit-  
24 tal.

25 Senator Byrd. Right. What we are suggesting is that we

1 have a rule which simply provides that the Presiding Officer  
2 state the question, whatever it is; when each Senator's name  
3 is called, he will answer guilty or not guilty.

4 Senator Hatfield. Like a roll call.

5 Senator Byrd. Yes, that rather than addressing the  
6 question each time. It is a minor thing, I think.

7 Senator Hatfield. It would be through the clerk calling  
8 the roll rather than the Chief Justice addressing each Senator  
9 personally?

10 Senator Byrd. Yes. The Chief Justice states the ques-  
11 tion, the clerk calls the roll and each Senator responds  
12 guilty or not guilty.

13 The Chairman. Well, is there a rule in here on that?

14 Senator Byrd. Not as to the form.

15 Senator Hatfield. It is the precedent of the Johnson  
16 case that you are referring to rather than any stated proce-  
17 dure, isn't it?

18 Senator Byrd. Yes.

19 Senator Hatfield. Are we bound by that precedent?

20 Senator Byrd. No, that has varied in various trials.

21 Senator Hatfield. Do we need to codify it?

22 Senator Byrd. I think it is very minor myself, but,  
23 doctor, what do you think?

24 Mr. Riddick. Well, the only reason, as I discussed with  
25 you, is that they did fight it out in the case of the Chief

1 Justice, in the President's trial. They adopted orders in  
2 the Ritter trial to do this. He would state the question,  
3 the roll is called and he merely answers guilty or not guilty.  
4 And this would obviate adopting an order each time.

5 Senator Byrd. How did that order read in the Ritter  
6 trial, doctor?

7 Mr. Riddick. This is the exact language.

8 The Chairman. But the way this is stated would require  
9 him to state it to each Senator.

10 Mr. Riddick. I think that should be modified a little  
11 bit. Mr. Ticer and I were talking about it this morning.  
12 I think you could have it that the Chair would just merely  
13 state this and the Senator should answer guilty or not guilty.

14 The Chairman. You could save the form of putting your  
15 question on each article of impeachment, "The Presiding  
16 Officer shall state the question and each Senator, as his  
17 name is called, shall rise in his place and state guilty or  
18 not guilty."

19 Do you want to cover that by rule?

20 Senator Byrd. I think it would be all right.

21 The Chairman. If so, we could add that in on Rule XXIII  
22 --it logically comes there. I will restate it again, then,  
23 and if there is no objection we will adopt that as an add-on  
24 to Rule XXIII.

25 "Form of Putting the Question on Each Article of

1 Impeachment. The Presiding Officer shall first state the  
2 question. Thereafter, each Senator, as his name is called,  
3 shall rise in his place and state guilty--and answer guilty  
4 or not guilty."

5 Senator Byrd. Yes. Put guilty in quotes and not guilty  
6 in quotes.

7 And shouldn't you have after the word "shall," "if not  
8 excused from voting, rise in his place and answer...?"

9 Mr. Riddick. That would certainly acknowledge that you  
10 are going to excuse him, but previously--I don't know about  
11 every time--the Senator requested, because he had been absent  
12 so much, just before he started voting, to be excused. So  
13 the chances were he was not even in the Senate.

14 Senator Byrd. Well, he might decide at the last minute,  
15 for reasons that he had not foreseen.

16 Mr. Riddick. I think this would make it clearer.

17 Senator Byrd. Yes.

18 Senator Hatfield. Let's say he wants to renege on his  
19 excuse or he wants to invalidate his excuse that he had been  
20 given prior.

21 Can he do that?

22 Senator Byrd. Yes.

23 Senator Hatfield. Why don't we handle excuses under an  
24 excuse clause and leave it clear here.

25 The Chairman. Let's not complicate the problem here.

1           Senator Byrd. The only thing here is, this is making it  
2 mandatory that he will have to vote--guilty or not guilty.

3           Senator Hatfield. Well, then, he should then foresee  
4 that and absent himself from the Floor. That is not a  
5 requirement. It is up to each Senator to implement his  
6 excuse as he sees fit or to invalidate it at the last minute.

7           Senator Byrd. It is up to the Senate whether to excuse  
8 him.

9           Senator Hatfield. But once it has been granted, does  
10 he have to come back and get Senate action to change his  
11 mind and decide he wants to vote?

12           Senator Byrd. I am sure he could just announce ---

13           Senator Hatfield. That he has been granted an excuse  
14 that he is not going to exercise.

15           Senator Byrd. Granted an excuse, but he feels honor-  
16 bound to cast a vote one way or the other.

17           Senator Hatfield. I don't know, I would just prefer  
18 to see this put in, as previously stated by the Chair--let  
19 the question of excuse be handled separately.

20           The Chairman. Without objection, then, that will be  
21 so amended.

22           Now, the two remaining questions that I recall--and  
23 one, we haven't acted one way or the other on whether or not  
24 the Presiding Officer shall have the right to vote to break  
25 a tie. And the other question was Senator Griffin's question

1 of evidence, of the burden of proof.

2 Senator Byrd. Here is Bob. I would not want to see  
3 us write in any standard of proof, because I think this is  
4 a matter for each Senator to determine within his own con-  
5 science.

6 The Chairman. Bob?

7 Senator Griffin. Well, I don't think it is going to  
8 be the end of the world one way or the other whether we  
9 actually adopt this, but I--it seems to me that at a time  
10 when there is no, we don't have any particular defendant  
11 involved--it is one of those questions that I think every  
12 Senator has to wrestle with.

13 Maybe we ought to debate it or try to reach a standard.  
14 I personally feel--I know that Sam Ervin feels and others--  
15 that this is enough akin to a criminal procedure, recognizing  
16 that it is not a criminal procedure in all respects, that you  
17 ought to expect proof beyond a reasonable doubt to convict.

18 Now, of course, each Senator is still free in his own  
19 mind to determine, obviously, whether or not he thinks proof  
20 is beyond reasonable doubt.

21 But I guess I just think that all these unresolved ques-  
22 tions that are floating around--it would be good if we could  
23 resolve them and have some guidelines, as long as we are  
24 looking at the rules. That is my general thesis.

25 If I happen to be in the minority, all right, fine.

1           The Chairman. Well, Bob, I agree with you as to what  
2 the burden of proof ought to be, but I can recognize imme-  
3 diately that a lot of people on the Senate Floor would dis-  
4 agree with me as to the burden of proof.

5           Senator Griffin. Well, right now they have no guidance  
6 and they are perfectly free, I suppose, to convict on a scin-  
7 tilla of evidence, if they want to. It seems to me that  
8 there ought to be a little more guidance in that.

9           The Chairman. But even if you write in that it should  
10 be by a preponderance of the evidence, the Senator--if he  
11 finds a scintilla he is going to find in his own mind that  
12 that is a preponderance of the evidence as far as that case  
13 is concerned, because he doesn't have a judge there defining  
14 what burden of proof is and giving him instructions and  
15 say unless you find beyond reasonable doubt that all of  
16 these charges have been met, that you will then acquit.

17           Senator Hatfield. Mr. Chairman, whatever we do in this  
18 Committee, I am sure it is not going to be accepted by all  
19 Senators and that question, it seems to me, will be obviously  
20 one that will be discussed on the Floor. I mean, if we put  
21 in one criterion, no criteria--I think from just the Senators  
22 that appeared before us, there is great variance in opinion.

23           I would personally like to see us go to the Floor without  
24 a definition and let that be debated on the Floor--it will  
25 ultimately anyway--and try to take as clean a bill or as clean



1 a set of rules as possible.

2 Senator Byrd. Mr. Chairman.

3 Senator Griffin. I don't have any objection to that.  
4 I just thought I would raise it and reserve my right to pos-  
5 sibly do it on the Floor.

6 Senator Byrd. My objections would be numerous, one  
7 being that it would be unenforceable. Two, being that in  
8 the case of judges who are to hold their office on good be-  
9 havior--my personal standards of proof might be different  
10 in the case of a judge than in the case of a President of  
11 the United States.

12 Thirdly, I would think we would open up what to me is  
13 a dreadful Pandora's box in that this might give the lawyers  
14 on the part of the defense an opening at least to try to get  
15 a Supreme Court ruling on the decision.

16 Now, I highly respect Senator Ervin's knowledge of  
17 constitutional law, but I am unalterably opposed to his ap-  
18 parent viewpoint, as I listen to it, that there might be--  
19 that this might be justiciable.

20 I guess I am just so blind to that argument that I can't  
21 even admit that there is such an argument. And I think if  
22 we have a standard of proof, then that, if anything, could  
23 give the Supreme Court an opening to rule on the decision--  
24 that might.

25 And I am fearful of it, Bob.

1 Finally, frankly, even though the House were not to in-  
2 clude an article of impeachment going to the refusal of the  
3 Vice-President or the President or any civil officer to  
4 submit in response to the House request information bearing  
5 upon impeachment, just that refusal, in my judgement, nulli-  
6 fies the impeachment clause, renders it a nullity--if the  
7 President won't cooperate with the House, if he refuses to  
8 give information, then as far as I am concerned the presump-  
9 tion of innocence changes to a presumption of guilt.

10 And in my own mind I am frank to say, I think, that I  
11 would have voted to convict Mr. Nixon. Now, there are those  
12 who say the House could have gone to the courts, the House  
13 didn't run out--it hasn't exhausted its remedies. But if it  
14 does that, then the House is acknowledging that the courts  
15 may have a voice in this impeachment process.

16 As far as I am concerned, if I hadn't found him guilty  
17 on the three articles--and the third article may have provided  
18 something along this line, I don't recall--but if he stead-  
19 fastly refused to cooperate with the House in carrying out his  
20 constitutional duty under the impeachment clause, he negates  
21 that clause, he amends that clause, he deletes it from the  
22 Constitution.

23 And regardless what standard of proof you put in there,  
24 I would vote him guilty, whether he is a Democrat or a  
25 Republican.

1           So that is why I say it is unenforceable and I think  
2 we would make a mistake to attempt to write something like  
3 that.

4           Senator Griffin. Mr. Chairman, I am not going to offer  
5 the amendment. I may give it some more thought and try to  
6 offer it on the Floor--I suspect if I don't, someone else  
7 will.

8           I think maybe the consensus here is not for it.

9           The Chairman. All right. Are there other amendments?  
10 The only other question that I recall now that was raised  
11 that we have not resolved is whether the Presiding Officer  
12 should have the right to vote to break a tie. And if we  
13 leave it as is, that would be a matter to be determined at  
14 the time by the Senate. There is no provision in the rules.

15           Senator Byrd. Also, there is one other argument, Bob--  
16 Mr. Chairman, if you will indulge me, I will make it very  
17 b. ef. If the person impeached were to refuse evidence re-  
18 quested by the Senate, even though it is not in the House  
19 impeachment articles, I would vote to convict him.

20           That is all.

21           The Chairman. What are your wishes? Do you want to  
22 leave that as is?

23           Senator Griffin. I would like to move, I guess, that  
24 we follow Bob's suggestion that the Presiding Officer be  
25 allowed to vote except--of course, if it were the President

1 Pro Tem, he would be a Member of the Senate, if he would  
2 be presiding--but not on the question of guilt or innocence  
3 or the matter of punishment.

4 Senator Hatfield. He wouldn't vote on guilt or inno-  
5 cence anyway, that is a two-thirds requirement.

6 Senator Griffin. The only place where it might be a  
7 matter of concern is the area that you brought up.

8 Senator Byrd. Yes, on the final judgment, if the Senate  
9 wanted to proceed to vote to disqualify the person convicted  
10 from holding any office, from holding or enjoying any office  
11 of honor, trust or profit under the United States--and it was  
12 a tie vote, I suppose the Chief Justice could cast a vote.  
13 The Constitution says the Vice President may not vote except  
14 in case of a tie. I don't suppose that could be carried over  
15 to the Chief Justice, because the Constitution says he shall  
16 preside--it doesn't say he can vote in case of a tie.

17 And I suppose that constitutionally we could write into  
18 our rules that he could not vote on any question of judgment.

19 I would prefer to leave it go at that.

20 The Chairman. As it is now.

21 Senator Byrd. Leave it as it is now, but with that one  
22 rule added. We could add that as a rule.

23 The Chairman. Now, wait a minute--you would say it how?

24 Senator Griffin. What is the rule that you would add,  
25 Bob?

1 Senator Hatfield. Would the Senator yield?

2 Senator Byrd. Yes.

3 Senator Hatfield. I am going to have to go to another  
4 meeting. If you want a motion to report this out before I  
5 leave--because otherwise you don't have a quorum--I would  
6 be happy to ---

7 Senator Griffin. Why don't we do this--why don't we  
8 make reference to these two points in the report, and indi-  
9 cate ---

10 The Chairman. And just leave it open for the Floor?

11 Senator Griffin. That the Committee did not resolve  
12 these questions.

13 The Chairman. While we have a quorum, I would like to  
14 have authority for the staff to make technical corrections  
15 that might be needed. Is there objection? Without objection,  
16 then.

17 I would also like to have authority to report the rules  
18 out as amended without a written report and request permission  
19 to file a written report later, so that we will comply with  
20 our September first deadline. Is there objection? Without  
21 objection.

22 Now, then, there is a quorum present. Senator Griffin  
23 made the suggestion that we leave these two items open in  
24 the report. I will do whatever you wish.

25 I think, in my judgement, we are getting into a

1 constitutional question if we try to give the Presiding Of-  
2 ficer the authority to break a tie. I don't think he has it  
3 constitutionally. Because the right to vote is given to the  
4 Vice-President not to the Presiding Officer.

5 Senator Hatfield. Mr. Chairman, may I move that we  
6 report the rules out to the Floor, that those two questions  
7 be resolved by the remaining people--and you can have my  
8 proxy.

9 The Chairman. Is there objection? Without objection,  
10 then, the rules are ordered reported.

11 Senator Byrd. Mark, I am not convinced that maybe we  
12 oughtn't to write something in here--maybe the majority  
13 wouldn't want to--just dealing with the vote of the Chief  
14 Justice on the matter of judgment.

15 That question has never come up. It has never come up.

16 Senator Hatfield. The motion is subject to amendment,  
17 as we do in the Appropriations Committee, whatever the re-  
18 maining people want to do to amend. I would leave my proxy  
19 on the basis that I believe the Chief Justice should preside,  
20 period. And I would not suggest we broaden his powers to  
21 what they are at the present time.

22 Senator Byrd. I wouldn't suggest we broaden his powers.  
23 Couldn't we just deal with the one question of judgment with-  
24 out implying that he could vote on anything else?

25 Senator Griffin. Mark, it is my understanding that in

1 that one Johnson trial, he did vote to break a tie on one  
2 occasion.

3 Senator Hatfield. No, four times or two times, and he  
4 was sustained three.

5 Senator Griffin. So does he have the right to break a  
6 tie or doesn't he? Precedent says he does.

7 Senator Hatfield. I think he voted three times and ---

8 Senator Griffin. The Chairman doesn't think so.

9 The Chairman. Precedent on procedural matters. What  
10 I am saying is that if we write in here, if we give him by  
11 rule the authority to vote in the case of a tie, you can  
12 conceive of a situation where the Senate has voted to con-  
13 vict on an impeachment, which requires a two-thirds vote,  
14 and then we have the decision to make are we going to put  
15 a provision in that he shall not be eligible to hold any  
16 office of public trust.

17 And on that case it could be a tie vote and the--if  
18 you give the judge, the Presiding Officer here, the right to  
19 vote in case of a tie, then he would have the right to break  
20 that tie. And it was never intended that, because he is not  
21 a member of the Senate.

22 Senator Byrd. Howard, I am willing to let precedent  
23 take care of it. But it seems to me that without giving him  
24 the right to vote, we could state specifically that on the  
25 matter of judgement, that he couldn't vote.

1           Would that imply that on other things he could?

2           The Chairman. It would imply--and personally I would  
3 prefer to leave it as is. And then it will come up as the  
4 situation arises, as it did in the precedents--and if it is  
5 a tie vote and the Justice attempts to vote, then the Senate  
6 will decide it right then and there.

7           And I would personally prefer just to leave it that  
8 way.

9           Senator Williams. To exclude him from one, doesn't  
10 that sort of tilt the argument towards including him in the  
11 vote on other questions?

12          Senator Byrd. It might. I can't envision his doing it  
13 really.

14          Senator Griffin. Well, do you want to go to the Floor  
15 the way it is?

16          Senator Hatfield. The precedent is that he votes in  
17 case of tie, if we go by the Johnson case.

18          The Chairman. But they were on a procedural case, and  
19 the Senate would decide that. Where it comes up on a matter  
20 of precedent, the Parliamentarian would state what the pre-  
21 cedent is and the Senate would decide either to follow it or  
22 to reject it. And they could do it by majority vote.

23          Senator Hatfield. You would leave it as it is and let  
24 each case be handled by the Senate, if it should arise?

25          The Chairman. That would be my view.



1 Senator Griffin. My suggestion was that we recognize  
2 by rule the precedent of procedural matters and then spell  
3 out that he doesn't have the right to break a tie in matters  
4 of judgment.

5 The Chairman. It isn't in the matters of judgment. Ob-  
6 viously he doesn't there, because of the Constitution. And  
7 it requires two-thirds. But it does on the penalty. On  
8 the penalty is something that is the real question.

9 Senator Hatfield. Well, why can't you just say the  
10 Chief Justice will be permitted to vote only on procedural  
11 questions in case of a tie vote?

12 Senator Byrd. The Chairman doesn't want to do that and  
13 there are others who don't want to do that, too.

14 Senator Hatfield. Well, I will let you resolve it.

15 The Chairman. Well, what are your wishes, gentlemen?  
16 There is no amendment pending, the Chair will entertain a  
17 motion to adjourn.

18 Senator Williams. So move.

19 The Chairman. Very well. Thank you very much, gentle-  
20 men. I appreciate it very much. We will report this without  
21 the written report--then we will give you the chance to re-  
22 view the written report before we file that with the Senate.

23 (Whereupon, at 12:46 p.m., the Committee adjourned.)  
24  
25