

93D CONGRESS }
2d Session }

SENATE

{ REPORT
No. 93-1125

AMENDING THE RULES OF
PROCEDURE AND PRACTICE IN THE SENATE
WHEN SITTING ON IMPEACHMENT TRIALS

(Pursuant to S. Res. 370)

REPORT

OF THE

COMMITTEE ON
RULES AND ADMINISTRATION

TO ACCOMPANY

S. Res. 390

AMENDING THE RULES OF PROCEDURE AND PRACTICE
IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS



AUGUST 22, 1974.—Ordered to be printed

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Calendar No. 1075

93^D CONGRESS }
2d Session }

SENATE

{ REPORT
No. 93-1125

AMENDING THE RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

AUGUST 22, 1974.—Ordered to be printed

Mr. CANNON, from the Committee on Rules and Administration,
submitted the following

REPORT

[To accompany S. Res. 390]

The Committee on Rules and Administration, having considered an original resolution (S. Res. 390) amending the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, reports favorably thereon and recommends that the resolution be agreed to.

Senate Resolution 370, agreed to July 29, 1974, directed the 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 revisions, if necessary, which may be required if the Senate is called upon to conduct such a trial. The resolution further provided (1) that such review be held entirely in executive sessions and (2) that the Committee on Rules and Administration report its recommendations to the Senate no later than September 1, 1974.

Pursuant to that directive the Committee on Rules and Administration has conducted a thorough review and study of the impeachment trial rules and practices in the United States Senate. As a result of its deliberations the Committee has concluded that certain amendments to the present Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials are to be desired. The Committee's recommended amendments to the existing rules are indicated in the following print of Senate Resolution 390 (omit the part struck through and insert the part printed in *italic* or **bold face italic**):

Calendar No. 1075

93RD CONGRESS
2^D SESSION**S. RES. 390**

[Report No. 93-1125]

IN THE SENATE OF THE UNITED STATES

AUGUST 22, 1974

Mr. CANNON, from the Committee on Rules and Administration, reported the following resolution; which was ordered to be placed on the calendar

[Existing rules with proposed amendments indicated as follows: Omit the part struck through and insert the part printed in italic or boldface]

RESOLUTION

Amending the Rules of Procedure and Practice in the Senate
When Sitting on Impeachment Trials.

1 *Resolved*, That the Rules of Procedure and Practice in
2 the Senate When Sitting on Impeachment Trials are amended
3 to read as follows:

4 **RULES OF PROCEDURE AND PRACTICE IN THE SENATE**
5 **WHEN SITTING ON IMPEACHMENT TRIALS.**

6 I. Whensoever the Senate shall receive notice from the
7 House of Representatives that managers are appointed on
8 their part to conduct an impeachment against any person
9 and are directed to carry articles of impeachment to the
10 Senate, the Secretary of the Senate shall immediately inform
11 the House of Representatives that the Senate is ready to

1 receive the managers for the purpose of exhibiting such
2 articles of impeachment, agreeably to such notice.

3 II. When the managers of an impeachment shall be in-
4 troduced at the bar of the Senate and shall signify that they
5 are ready to exhibit articles of impeachment against any
6 person, the Presiding Officer of the Senate shall direct the
7 Sergeant at Arms to make proclamation, who shall, after
8 making proclamation, repeat the following words, viz: "All
9 persons are commanded to keep silence, on pain of imprison-
10 ment, while the House of Representatives is exhibiting to
11 the Senate of the United States articles of impeachment
12 against —————"; after which the articles
13 shall be exhibited, and then the Presiding Officer of the Sen-
14 ate shall inform the managers that the Senate will take
15 proper order on the subject of the impeachment, of which
16 due notice shall be given to the House of Representatives.

17 III. Upon such articles being presented to the Senate,
18 the Senate shall, at 1 o'clock afternoon of the day (Sunday
19 excepted) following such presentation, or sooner if ordered
20 by the Senate, proceed to the consideration of such articles
21 and shall continue in session from day to day (Sundays
22 excepted) after the trial shall commence (unless otherwise
23 ordered by the Senate) until final judgment shall be ren-
24 dered, and so much longer as may, in its judgment, be
25 needful. Before proceeding to the consideration of the

1 articles of impeachment, the Presiding Officer shall admin-
2 ister the oath hereinafter provided to the members of the
3 Senate then present and to the other members of the Senate
4 as they shall appear, whose duty it shall be to take the same.

5 IV. When the President of the United States or the Vice
6 President of the United States, upon whom the powers and
7 duties of the office of President shall have devolved, shall be
8 impeached, the Chief Justice of the Supreme Court of the
9 United States shall preside; and in a case requiring the said
10 Chief Justice to preside notice shall be given to him by the
11 Presiding Officer of the Senate of the time and place fixed
12 for the consideration of the articles of impeachment, as afore-
13 said, with a request to attend; and the said Chief Justice
14 shall be administered the oath by the Presiding Officer of the
15 Senate and shall preside over the Senate during the consid-
16 eration of said articles and upon the trial of the person
17 impeached therein.

18 V. The Presiding Officer shall have power to make and
19 issue, by himself or by the Secretary of the Senate, all
20 orders, mandates, writs, and precepts authorized by these
21 rules or by the Senate, and to make and enforce such other
22 regulations and orders in the premises as the Senate may
23 authorize or provide.

24 VI. The Senate shall have power to compel the attend-
25 ance of witnesses, to enforce obedience to its orders, man-

1 dates, writs, precepts, and judgments, to preserve order, and
2 to punish in a summary way contempts of, and disobedience
3 to, its authority, orders, mandates, writs, precepts, or judg-
4 ments, and to make all lawful orders, rules, and regulations
5 which it may deem essential or conducive to the ends of
6 justice. And the Sergeant at Arms, under the direction of
7 the Senate, may employ such aid and assistance as may be
8 necessary to enforce, execute, and carry into effect the lawful
9 orders, mandates, writs, and precepts of the Senate.

10 VII. The Presiding Officer of the Senate shall direct all
11 necessary preparations in the Senate Chamber, and the Pre-
12 siding Officer on the trial shall direct all the forms of pro-
13 ceedings while the Senate is sitting for the purpose of trying
14 an impeachment, and all forms during the trial not otherwise
15 specially provided for. And the Presiding Officer on the
16 trial may rule *on all questions of evidence including, but not*
17 *limited to, questions of relevancy, materiality, and redun-*
18 *dancy* of evidence and incidental questions, which ruling
19 shall stand as the judgment of the Senate, unless some mem-
20 ber of the Senate shall ask that a formal vote be taken
21 thereon, in which case it shall be submitted to the Senate for
22 decision *without debate*; or he may at his option, in the first
23 instance, submit any such question to a vote of the members
24 of the Senate. Upon all such questions the vote shall be
25 ~~without a division, unless the yeas and nays be demanded~~

1 by one-fifth of the members present, when the same shall
2 be taken, taken in accordance with the Standing Rules of the
3 Senate.

4 VIII. Upon the presentation of articles of impeachment
5 and the organization of the Senate as hereinbefore provided,
6 a writ of summons shall issue to the accused, person im-
7 peached, reciting said articles, and notifying him to appear
8 before the Senate upon a day and at a place to be fixed by
9 the Senate and named in such writ, and file his answer to
10 said articles of impeachment, and to stand to and abide the
11 orders and judgments of the Senate thereon; which writ
12 shall be served by such officer or person as shall be named
13 in the precept thereof, such number of days prior to the day
14 fixed for such appearance as shall be named in such precept,
15 either by the delivery of an attested copy thereof to the
16 person accused, impeached, or if that cannot conveniently
17 be done, by leaving such copy at the last known place of
18 abode of such person, or at his usual place of business in
19 some conspicuous place therein; or if such service shall be,
20 in the judgment of the Senate, impracticable, notice to the
21 accused person impeached to appear shall be given in such
22 other manner, by publication or otherwise, as shall be deemed
23 just; and if the writ aforesaid shall fail of service in the man-
24 ner aforesaid, the proceedings shall not thereby abate, but
25 further service may be made in such manner as the Senate

1 shall direct. If the ~~accused~~, *person impeached*, after service,
2 shall fail to appear, either in person or by attorney, on the day
3 so fixed therefor as aforesaid, or, appearing, shall fail to file
4 his answer to such articles of impeachment, the trial shall
5 proceed, nevertheless, as upon a plea of not guilty. If a plea
6 of guilty shall be entered, judgment may be entered thereon
7 without further proceedings.

8 IX. At 12:30 o'clock afternoon of the day appointed for
9 the return of the summons against the person impeached, the
10 legislative and executive business of the Senate shall be
11 suspended, and the Secretary of the Senate shall administer
12 an oath to the returning officer in the form following, viz:
13 "I, _____, do solemnly swear that the return
14 made by me upon the process issued on the _____ day
15 of _____, by the Senate of the United States, against
16 _____, is truly made, and that I have per-
17 formed such service as therein described: So help me God."
18 Which oath shall be entered at large on the records.

19 X. The person impeached shall then be called to appear
20 and answer the articles of impeachment against him. If he
21 appear, or any person for him, the appearance shall be re-
22 corded, stating particularly if by himself, or by agent or
23 attorney, naming the person appearing and the capacity in
24 which he appears. If he do not appear, either personally or
25 by agent or attorney, the same shall be recorded.

1 XI. That in the trial of any impeachment the Presiding
2 Officer of the Senate, upon the order of the Senate, if the
3 Senate so orders, shall appoint a committee of ~~twelve~~ Sena-
4 tors to receive evidence and take testimony at such times
5 and places as the committee may determine, and for such
6 purpose the committee so appointed and the chairman
7 thereof, to be elected by the committee, shall (unless other-
8 wise ordered by the Senate) exercise all the powers and
9 functions conferred upon the Senate and the Presiding Offi-
10 cer of the Senate, respectively, under the rules of procedure
11 and practice in the Senate when sitting on impeachment
12 trials.

13 Unless otherwise ordered by the Senate, the rules of
14 procedure and practice in the Senate when sitting on im-
15 peachment trials shall govern the procedure and practice of
16 the committee so appointed. The committee so appointed
17 shall report to the Senate in writing a certified copy of the
18 transcript of the proceedings and testimony had and given
19 before such committee, and such report shall be received by
20 the Senate and the evidence so received and the testimony so
21 taken shall be considered to all intents and purposes, subject
22 to the right of the Senate to determine competency, rele-
23 vancy, and materiality, as having been received and taken
24 before the Senate, but nothing herein shall prevent the Senate
25 from sending for any witness and hearing his testimony in

1 open Senate, or by order of the Senate having the entire
2 trial in open Senate.

3 XII. At 12:30 o'clock ~~afternoon~~ *afternoon, or at such*
4 *other hour as the Senate may order*, of the day appointed
5 for the trial of an impeachment, the legislative and exec-
6 utive business of the Senate shall be suspended, and the
7 Secretary shall give notice to the House of Representatives
8 that the Senate is ready to proceed upon the impeachment of
9 _____, in the Senate Chamber, which chamber is
10 prepared with accommodations for the reception of the House
11 of Representatives. *Chamber.*

12 XIII. The hour of the day at which the Senate shall sit
13 upon the trial of an impeachment shall be (unless otherwise
14 ordered) 12 o'clock m.; and when the hour for such thing
15 shall arrive, the Presiding Officer of the Senate shall so
16 announce; and thereupon the Presiding Officer upon such
17 trial shall cause proclamation to be made, and the business
18 of the trial shall proceed. The adjournment of the Senate
19 sitting in said trial shall not operate as an adjournment of
20 the Senate; but on such adjournment the Senate shall re-
21 sume the consideration of its legislative and executive
22 business.

23 XIV. The Secretary of the Senate shall record the pro-
24 ceedings in cases of impeachment as in the case of legislative

1 proceedings, and the same shall be reported in the same
2 manner as the legislative proceedings of the Senate.

3 XV. Counsel for the parties shall be admitted to appear
4 and be heard upon an impeachment.

5 XVI. All motions made by the parties or their counsel
6 shall be addressed to the Presiding Officer, *All motions, ob-*
7 *jections, requests, or applications whether relating to the pro-*
8 *cedure of the Senate or relating immediately to the trial (in-*
9 *cluding questions with respect to admission of evidence or*
10 *other questions arising during the trial) made by the parties*
11 *or their counsel shall be addressed to the Presiding Officer*
12 *only, and if he, or any Senator, shall require it, they shall be*
13 *committed to writing, and read at the Secretary's table.*

14 XVII. Witnesses shall be examined by one person on
15 behalf of the party producing them, and then cross-examined
16 by one person on the other side.

17 XVIII. If a Senator is called as a witness, he shall be
18 sworn, and give his testimony standing in his place.

19 XIX. If a Senator wishes a question to be put to a
20 witness, *or to a manager, or to counsel of the person im-*
21 *peached, or to offer a motion or order (except a motion to*
22 *adjourn), it shall be reduced to writing, and put by the Pre-*
23 *siding Officer. The parties or their counsel may interpose ob-*
24 *jections to witnesses answering questions propounded at the*

1 *request of any Senator and the merits of any such objection*
2 *may be argued by the parties or their counsel. Ruling on any*
3 *such objection shall be made as provided in Rule VII. It shall*
4 *not be in order for any Senator to engage in colloquy.*

5 XX. At all times while the Senate is sitting upon the
6 trial of an impeachment the doors of the Senate shall be
7 kept open, unless the Senate shall direct the doors to be
8 closed while deliberating upon its decisions. *A motion to*
9 *close the doors may be acted upon without objection, or, if*
10 *objection is heard, the motion shall be voted on with-*
11 *out debate by the yeas and nays, which shall be entered on*
12 *the record.*

13 XXI. All preliminary or interlocutory questions, and all
14 motions, shall be argued for not exceeding one hour (*unless*
15 *the Senate otherwise orders*) on each side, ~~unless the Senate~~
16 ~~shall, by order, extend the time.~~ *side.*

17 XXII. The case, on each side, shall be opened by one
18 person. The final argument on the merits may be made by
19 two persons on each side (unless otherwise ordered by the
20 Senate upon application for that purpose), and the argument
21 shall be opened and closed on the part of the House of
22 Representatives.

23 XXIII. *An article of impeachment shall not be divisible*
24 *for the purpose of voting thereon at any time during the trial.*

1 *Once voting has commenced on an article of impeachment,*
2 *voting shall be continued until voting has been completed on*
3 *all articles of impeachment unless the Senate adjourns for a*
4 *period not to exceed one day or adjourns sine die. On the*
5 *final question whether the impeachment is sustained, the yeas*
6 *and nays shall be taken on each article of impeachment sepa-*
7 *rately; and if the impeachment shall not, upon any of the*
8 *articles presented, be sustained by the votes of two-thirds of*
9 *the members present, a judgment of acquittal shall be entered;*
10 *but if the person accused in such articles of impeachment shall*
11 *be convicted upon any of said articles by the votes of two-*
12 *thirds of the members present, the Senate shall proceed to*
13 *pronounce judgment, and a certified copy of such judgment*
14 *shall be deposited in the office of the Secretary of State. but*
15 *if the person impeached shall be convicted upon any such ar-*
16 *ticle by the votes of two-thirds of the members present, the Sen-*
17 *ate may proceed to the consideration of such other matters as*
18 *may be determined to be appropriate prior to pronouncing*
19 *judgment. Upon pronouncing judgment, a certified copy of*
20 *such judgment shall be deposited in the office of the Secre-*
21 *tary of State. A motion to reconsider the vote by which any*
22 *article of impeachment is sustained or rejected shall not be in*
23 *order.*

1 *Form of putting the question on each article of impeachment*

2 *The Presiding Officer shall first state the question; there-*
 3 *after each Senator, as his name is called, shall rise in his*
 4 *place and answer: guilty or not guilty.*

5 ~~XXIV. All the orders and decisions shall be made and~~
 6 ~~had~~ *All the orders and decisions may be acted upon without*
 7 *objection, or, if objection is heard, the orders and decisions*
 8 *shall be voted on without debate by yeas and nays, which*
 9 *shall be entered on the record, and without debate, sub-*
 10 *ject, however, to the operation of Rule VII, except when the*
 11 *doors shall be closed for deliberation, and in that case no mem-*
 12 *ber shall speak more than once on one question, and for not*
 13 *more than ten minutes on an interlocutory question, and for*
 14 *not more than fifteen minutes on the final question, unless by*
 15 *consent of the Senate, to be had without debate; but a motion*
 16 *to adjourn may be decided without the yeas and nays, unless*
 17 *they be demanded by one-fifth of the members present. The*
 18 *fifteen minutes herein allowed shall be for the whole delibera-*
 19 *tion on the final question, and not on the final question on each*
 20 *article of impeachment.*

21 **XXV.** *Witnesses shall be sworn in the following form,*
 22 *viz: "You, _____, do swear (or affirm, as*
 23 *the case may be) that the evidence you shall give in the*
 24 *case now pending between the United States and _____*
 25 *_____ , shall be the truth, the whole truth, and nothing*

1 but the truth: So help you God." Which oath shall be admin-
 2 istered by the Secretary, or any other duly authorized person.

3 *Form of a subpoena to be issued on the application of the*
 4 *managers of the impeachment, or of the party im-*
 5 *peached, or of his counsel*

6 To _____, greeting:

7 You and each of you are hereby commanded to appear
 8 before the Senate of the United States, on the _____
 9 day of _____, at the Senate Chamber in the city of
 10 Washington, then and there to testify your knowledge in
 11 the cause which is before the Senate in which the House of
 12 Representatives have impeached _____.

13 Fail not.

14 Witness _____, and Presiding Officer
 15 of the Senate, at the city of Washington, this _____ day
 16 of _____, in the year of our Lord _____, and of
 17 the Independence of the United States the _____.

18 _____,

19 Presiding Officer of the Senate.

20 *Form of direction for the service of said subpoena*

21 The Senate of the United States to _____,
 22 greeting:

23 You are hereby commanded to serve and return the
 24 within subpoena according to law.

1 Dated at Washington, this _____ day of
 2 _____, in the year of our Lord _____, and of the
 3 Independence of the United States the _____.

4 _____,

5 Secretary of the Senate.

6 *Form of oath to be administered to the members of the Senate*
 7 *and the Presiding Officer sitting in the trial of*
 8 *impeachments*

9 "I solemnly swear (or affirm, as the case may be) that in
 10 all things appertaining to the trial of the impeachment of
 11 _____, now pending, I will do impartial jus-
 12 tice according to the Constitution and laws: So help me God."

13 *Form of summons to be issued and served upon the person*
 14 *impeached*

15 THE UNITED STATES OF AMERICA, ss:

16 The Senate of the United States to _____,
 17 greeting:

18 Whereas the House of Representatives of the United
 19 States of America did, on the _____ day of _____,
 20 exhibit to the Senate articles of impeachment against you,
 21 the said _____, in the words following:

[Here insert the articles]

22 And demand that you, the said _____, should
 23 be put to answer the accusations as set forth in said articles,
 24 and that such proceedings, examinations, trials, and judg-

1 ments might be thereupon had as are agreeable to law and
2 justice.

3 You, the said _____, are therefore
4 hereby summoned to be and appear before the Senate of the
5 United States of America, at their Chamber in the city of
6 Washington, on the _____ day of _____, at 12:30
7 o'clock ~~afternoon~~, at _____ o'clock _____, then
8 and there to answer to the said articles of impeachment,
9 and then and there to abide by, obey, and perform such or-
10 ders, directions, and judgments as the Senate of the United
11 States shall make in the premises according to the Constitu-
12 tion and laws of the United States.

13 Hereof you are not to fail.

14 Witness _____, and Presiding Officer of
15 the said Senate, at the city of Washington, this _____
16 day of _____, in the year of our Lord _____, and
17 of the Independence of the United States the _____.

18 _____,

19 Presiding Officer of the Senate.

20 *Form of precept to be indorsed on said writ of summons*

21 THE UNITED STATES OF AMERICA, ss:

22 The Senate of the United States to _____,
23 greeting:

24 You are hereby commanded to deliver to and leave with
25 _____, if conveniently to be found, or if not,

1 to leave at his usual place of abode, or at his usual place of
 2 business in some conspicuous place, a true and attested
 3 copy of the within writ of summons, together with a like
 4 copy of this precept; and in whichsoever way you perform
 5 the service, let it be done at least ———— days before
 6 the appearance day mentioned in the said writ of summons.

7 Fail not, and make return of this writ of summons and
 8 precept, with your proceedings thereon indorsed, on or
 9 before the appearance day mentioned in the said writ of
 10 summons.

11 Witness ————, and Presiding Officer of
 12 the Senate, at the city of Washington, this ———— day
 13 of ————, in the year of our Lord ————, and of
 14 the Independence of the United States the ————.

15

—————,

16

Presiding Officer of the Senate.

17 All process shall be served by the Sergeant at Arms of
 18 the Senate, unless otherwise ordered by the ~~court~~ Senate.

19 XXVI. If the Senate shall at any time fail to sit for the
 20 consideration of articles of impeachment on the day or hour
 21 fixed therefor, the Senate may, by an order to be adopted
 22 without debate, fix a day and hour for resuming such
 23 consideration.

SUMMARY OF THE COMMITTEE'S ACTIONS PURSUANT TO SENATE RESOLUTION 370

Senate Resolution 370, which directed the Committee on Rules and Administration to undertake a review of the Senate impeachment trial rules and practices, was agreed to by the Senate on July 29, 1974. The Committee commenced its review thereon on July 31, 1974. Additional executive sessions of the Committee on the subject were held on August 1, 5, 6, 7, 14, and 21, 1974. The sessions of August 5 and 6 were devoted to receiving testimony from other Members of the Senate. Twelve members appeared and seven others submitted written statements for the record. Included in the Committee's own deliberations, as well as being the subject of remarks by testifying Senators, was the proposal Senate Resolution 371, to permit television and radio coverage of any impeachment trial that may occur in the Senate.

A summary of the Committee's most important actions and determinations throughout the course of those executive sessions follows:

JULY 31, 1974

(Morning and afternoon sessions)

Chairman Cannon first announced that he and the other Committee members had received from Majority Leader Mansfield a draft proposal to effect changes in the procedure covering impeachment trials in the Senate, together with a section-by-section analysis thereof.

It was proposed that the three subjects (1) Senate Resolution 370, (2) Senate Resolution 371, and (3) the Mansfield proposal, be referred to the Subcommittee on Standing Rules of the Senate. After considerable discussion, the Committee agreed, in view of the overriding importance of its responsibility in respect to a possible impeachment trial in the Senate that for this purpose the Rules Subcommittee and the full Committee would be consolidated and in effect meet concomitantly. The Committee then turned to other business, at the conclusion of which it agreed to meet again on the impeachment-trial matters during the afternoon of the same day.

When the Committee reconvened, Chairman Cannon announced that he had invited Dr. Floyd Riddick, Senate Parliamentarian, and Wilmer Ticer, Assistant Legislative Counsel (Senate), to meet with and counsel the Committee. The Chairman then turned the Chair over to Senator Robert C. Byrd, Chairman of the Subcommittee on Standing Rules of the Senate.

First, it was agreed that all Members of the full Committee could vote on matters considered. At the suggestion of Senator Byrd, it was agreed that the Committee request the services and assistance of cer-

tain specialists from the Library of Congress. (Subsequently assigned to the Committee from the American Law Division of the Congressional Research Service were Robert Tienken and Raymond Celada, both Senior Specialists in American Public Law, and Robert Thornton, Legislative Attorney.) The Committee decided it would commence its next session with consideration of the Mansfield proposed substitute for the existing impeachment-trial rules.

It was determined that later other Members of the Senate would be invited to appear and testify, but only after the Committee had briefed itself adequately on the existing rules and precedents and had reviewed the Mansfield proposal. Also, it was agreed that the testimony of the other Senators in executive session would subsequently be released to the public and printed. The Committee also agreed that each Member of the Committee could designate a member of his Senatorial staff to sit in on the meetings. After discussion, it was agreed that the Committee would move toward reporting on the matter of media coverage of any impeachment trial in the Senate (S. Res. 371) before reporting any recommended changes in the existing impeachment-trial rules.

On the matter of a quorum the Committee determined that (a) five members shall constitute a quorum for reporting any legislative measure, (b) three members shall constitute a quorum for the transaction of routine business, and (c) three members shall constitute a quorum for the purpose of taking testimony under oath, provided that once such a quorum is established, one member could continue to take such testimony.

The Committee then heard from Dr. Riddick, Senate Parliamentarian, who gave a brief explanation of the historical operation of the impeachment-trial rules, with emphasis on their operation during the Senate trial of President Andrew Johnson. During this discussion the Members raised with the Parliamentarian several important questions on the precedents and procedures, including the role of the Chief Justice and the circumstances under which he has voted during a trial, appeals from the ruling of the Chair, the divisibility of an article for the purpose of voting on separate charges therein, and the standard of evidence to be applied, if any.

The Committee agreed to continue its review on August 1, the following day.

August 1, 1974

(Morning and afternoon sessions)

Senator Robert C. Byrd called the morning session to order. He then requested Chairman Cannon to preside, in view of the fact that the full Committee was present, including its Chairman.

Senator Cannon assumed the Chair and stated that the Committee would proceed through the comparative print showing the respective sections of the existing rules and of the Mansfield proposal side by side. The Chairman requested Dr. Riddick, the Parliamentarian of the Senate, to read the text of the print, with interruptions by any Member desiring to make a point or discuss any issue. The session was continued throughout the afternoon and all of the present rules, as well as the recommended changes, were reviewed.

While the Committee took no definite action thereon during this session, many issues and questions were raised, including the following:

- (1) The proposal to incorporate into the present rules certain language from the Federal Rules of Civil Procedure and of Criminal Procedure;
- (2) The appropriateness of the use of the terms "judge" (Senator), "chief judge" (Majority Leader, Minority Leader), and "deputy chief judge" (Assistant Majority Leader, Assistant Minority Leader);
- (3) Replacing the term "accused" with the term "respondent";
- (4) Whether the Chief Justice should take an oath, and if so by whom should it be given;
- (5) Replacing the term "court" with the term "Senate";
- (6) The desirability of voting by division, as well as by voice and by roll call;
- (7) The percentage of the Membership vote which should be required to go into executive or closed session;
- (8) The division of articles of impeachment for the purpose of voting thereon;
- (9) The question of whether to permit filing of interim briefs by the parties;
- (10) The amount of time which should be available to Members for debate on or discussion of questions, including the final question;
- (11) The desirability of establishing a standard of evidence;
- (12) The procedure for the examination of witnesses;
- (13) The question of proceeding with other articles after the person impeached had been convicted on one article; and
- (14) The desirability of continuing to vote successively on all articles of impeachment without adjournment or recess.

The Committee then agreed to the suggestion of the Chairman that it request other Members of the Senate to appear and testify August 5 and 6 on the Senate impeachment-trial rules and on the question of authorizing media coverage of any impeachment trial which may occur.

The Committee also agreed that when it proceeded to mark-up, it would use the existing rules as a basis therefor. At this point there appeared to be a consensus among the Members that for the most part the existing rules should be retained and that amendments thereto should be proposed only with the most valid justification.

AUGUST 5-6, 1974

The Committee on Rules and Administration continued its review of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials on August 5 and 6, 1974, on both of which dates it heard testimony from other Members of the Senate.

Chairman Cannon set the tone for the hearing in his opening statement, the pertinent portions of which are as follows:

This meeting of the Committee on Rules and Administration has been called to hear testimony from Members of the United States Senate with respect to certain aspects of

any impeachment trial which may occur in the United States Senate.

On Monday, July 29, the Senate unanimously approved Senate Resolution 370, which was introduced and sponsored by the joint leadership of the Senate—Senators Mansfield and Scott, the majority and minority leaders, and Senators Byrd and Griffin, the assistants to the majority and minority leaders.

Pursuant to Senate Resolution 370 this Committee has been directed to study the Senate rules and precedents applicable to impeachment trials. In respect to this investigation the Committee is instructed to report back to the Senate no later than September 1, 1974, or on such earlier date as the majority and minority leaders may designate. It has further been directed by the Senate that such review by this Committee shall be held entirely in Executive Sessions.

The Committee commenced immediately on its work under those directives and held the first of four Executive Sessions on Wednesday, July 31, thus initiating its provision-by-provision review of the existing rules and of a proposal for changes.

Today we are hearing testimony from Members of the Senate, and we welcome both oral and written statements from our colleagues, all of which will, without objection, be made a part of this hearing record. Any written statements submitted by Senators on or before August 9 will be printed in the record.

My colleagues on the Rules Committee share with me the determination that the rules which will govern this most solemn of all proceedings provided for under the Constitution of the United States shall be in all respects fair and just.

In conjunction with that major responsibility the Committee also has had referred to it Senate Resolution 371, which would permit television and radio coverage of any impeachment trial, if it occurs.

* * * * *

Because of its importance, I would like to read into the record the provisions of the Constitution of the United States relating to an impeachment trial in the Senate.

Article I, Section 3 of the Constitution provides in pertinent part as follows:

“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. 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.”

On August 5 the following Members of the Senate appeared to testify and respond to the questions of Committee members:

Senator Sam J. Ervin, Jr.;
 Senator Strom Thurmond;
 Senator Frank E. Moss;
 Senator Lee Metcalf;
 Senator Robert T. Stafford;
 Senator William D. Hathaway; and
 Senator Jesse Helms.

The following day, August 6, the Committee heard from these other Members of the Senate:

Senator John C. Stennis;
 Senator Jacob K. Javits;
 Senator Philip A. Hart;
 Senator Robert Taft, Jr.; and
 Senator Edward W. Brooke.

In addition to the above indicated testimony, the Committee received written statements on various aspects of Senate impeachment-trial procedure from the following other Members of the Senate:

Senator Daniel K. Inouye;
 Senator Birch Bayh;
 Senator Walter F. Mondale;
 Senator Harry F. Byrd, Jr.;
 Senator William L. Scott;
 Senator Harold E. Hughes; and
 Senator Edward M. Kennedy.

All of the testimony and statements received by the Committee from other Members of the Senate, together with the colloquies between them and the members of this Committee, are contained in the printed record of the hearings.

AUGUST 7, 1974

(Morning and afternoon sessions)

The Committee on Rules and Administration devoted its entire working day of August 7 to the consideration of Senate Resolution 371, to permit television and radio coverage of any impeachment trial that may occur with respect to President Richard M. Nixon. As referred to the Committee the resolution stated as follows:

Resolved, That, in the event that the House of Representatives should impeach President Richard M. Nixon, the proceedings of the Senate with respect to the trial of impeachment may be broadcast.

Chairman Cannon first advised that of the twelve Senators who were heard by the Committee only four had expressed specific opposition to the broadcasting of an impeachment trial in the Senate. (On this question of broadcasting, Senators who submitted statements but did not testify are recorded as follows: In favor—3, opposed—1, no comment—3.) There was a general consensus in the testimony as well as in the Committee, however, that should such broadcasting be permitted, it must be done in such a manner as to preserve the decorum and dignity of the Senate at the same time it was depicting a just and equitable procedure in respect to the person impeached.

The Chairman then reported to the Committee that the previous day he had met informally with representatives of the networks to discuss some of the basic factors in respect to such proposed broadcasting. The principal points made by the broadcasters were:

- (1) It would require no more light for color than for black and white telecasting;
- (2) In view of the historical significance of such an event, color should be used since a much more faithful reproduction could be thus obtained;
- (3) A single camera fixed on the well of the Senate would not serve for this important purpose. Five cameras at fixed locations, all in the Galleries, should be employed;
- (4) Broadcasting commentaries from the Senate Chamber itself would not be necessary, since normally that would be done from the studios;
- (5) Any such commentaries would be limited to necessary explanations of the proceedings;
- (6) The networks representatives stated that the broadcasting could be accomplished with a minimum of intrusion on the proceedings in the Senate, citing their satisfactory handling of the "Watergate" hearings in the Senate and the House Judiciary Committee meetings on the impeachment resolution;
- (7) The representatives also stated that under some instances panning of cameras would be necessary to accomplish satisfactory coverage, but that every effort would be made to keep such panning at a minimum;
- (8) The broadcasting would be done on a pool basis, and be available to all networks including public television. The sound portion would be made available to radio broadcast stations;
- (9) The networks agreed to make available to the Senate and other Government entities copies of the broadcasts as official records of the trial, with no claim of copyright;
- (10) If appropriate space were provided, any interviews would be accommodated therein, permitting a cleared and uncluttered area surrounding the Senate Chamber. The provisions should include accommodations for regular reporters and still photographers. Any interviews would take place only during breaks in the proceedings; and
- (11) No commercials would be presented during the proceedings, only during breaks therein or before or after the proceedings.

A lengthy discussion then ensued in the Committee, first as to whether broadcasting per se of a Senate impeachment trial should be permitted, and second, if so, under what circumstances and safeguards should it be allowed.

While many aspects of the problem were considered, perhaps most of the discussion centered on what would occur in the public mind when the Senate decided, which could be quite frequently, to go into closed session to debate and decide various specific issues. While the Committee did not make a formal determination on the point, the consensus appeared to be that the broadcasting should be interrupted when the Senate decided to go into closed session.

Upon the suggestion of Senator Scott, the Committee then discussed the role to be played by the Leadership in any Senate impeachment trial. It was agreed that while the Committee on Rules and Administration had technical jurisdiction over the rules and a definite role in establishing broad policy in the matter, the Leadership of the Senate should be the entity chiefly responsible for effecting the same. Operating on that premise, and taking into consideration other factors it had previously discussed, the Committee on Rules and Administration agreed to report Senate Resolution 371 with an amendment¹ in the nature of a substitute, which contains the following provisions:

- (1) The proceedings in open session of the Senate with respect to trials of impeachment may be broadcast by radio and television;
- (2) Rule IV of the Rules for the Regulations of the Senate Wing of the Capitol (prohibiting the taking of pictures in the Senate Chamber) is suspended for the purpose of photography (during an impeachment trial);
- (3) Such broadcasting and photography shall be accomplished in conformity with procedures thereon agreed upon by the Committee on Rules and Administration in consultation with the Joint Floor Leadership; and
- (4) The implementation of such procedures shall be effected by the Joint Floor Leadership after consultation with the chairman and ranking minority member of the Committee on Rules and Administration.

The text of Senate Resolution 371 as reported is shown in the following print:

¹ It should be noted that the Committee by its amendment converted a proposal which would have applied only to the pending impeachment trial to one which would constitute a standing order applicable to all future impeachment trials.

Calendar No. 1036

93RD CONGRESS
2^D SESSION**S. RES. 371**

IN THE SENATE OF THE UNITED STATES

JULY 30, 1974

Mr. ROBERT C. BYRD (for himself and Mr. MANSFIELD) submitted the following resolution; which was referred to the Committee on Rules and Administration

AUGUST 8, 1974

Reported by Mr. CANNON, with amendments

[Strike out all after the word "Resolved," and insert the part printed in *italics*]

RESOLUTION

To permit television and radio coverage of any impeachment trial that may occur with respect to President Richard M. Nixon.

1 *Resolved, That, in the event that the House of Repre-*
 2 *sentatives should impeach President Richard M. Nixon, the*
 3 *proceedings of the Senate with respect to the trial of im-*
 4 *peachment of the President may be broadcast. That the*
 5 *proceedings in open session of the Senate with respect to trials*
 6 *of impeachment may be broadcast by radio and television.*
 7 *Rule IV of the Rules for Regulation of the Senate Wing*
 8 *of the United States Capitol is also accordingly suspended*
 9 *for the purpose of photography.*

10 *Such broadcasting and photography shall be accom-*
 11 *plished in conformity with procedures therein agreed upon by*
 12 *the Committee on Rules and Administration in consultation*

1 *with the joint floor leadership. The implementation of such*
2 *pro. edures shall be effected by the joint floor leadership after*
3 *consultation with the chairman and ranking minority mem-*
4 *ber of the Committee on Rules and Administration.*

Amend the title so as to read: "Resolution to permit radio, television, and photographic coverage of impeachment trials in the United States Senate."

Rollcall Vote on Senate Resolution 371

On the question of reporting Senate Resolution 371 favorably to the Senate as amended (see above) the Committee voted as follows:

Yeas—8

Mr. Cannon
 Mr. Pell
 Mr. Byrd
 Mr. Allen
 Mr. Williams
 Mr. Cook
 Mr. Scott
 Mr. Hatfield

Nays—1

Mr. Griffin

Thus, the resolution as amended was agreed to.

AUGUST 8, 14, AND 21, 1974

The Committee on Rules and Administration commenced its final consideration and mark-up of the Rules and Practice in the Senate When Sitting on Impeachment Trials on August 8, 1974, devoting the full day to the purpose. At a meeting on August 14 that action was continued, a portion of the time being devoted to regular legislative business. The Committee concluded its consideration of the impeachment procedure on August 21, at the end of which session it was agreed, without objection, to report favorably an original resolution (S. Res. 390) incorporating into the existing rules certain amendments recommended by the Committee. A description and explanation of those amendments may be found starting on the following page of this report.

COMMITTEE AMENDMENTS

A description and explanation of the changes in the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials recommended by the Committee on Rules and Administration is as follows:

Rule I

Rule I, which provides that upon being advised that the House has appointed managers the Senate shall order the Secretary of the Senate to inform the House of its readiness to receive the managers for purposes of presenting the articles of impeachment, is *reported without change*.

Rule II

Rule II, which relates to the appearance of the managers in the Senate Chamber and the presentation of the articles of impeachment, is *reported without change*.

Rule III

Rule III, which provides that following the presentation of the articles of impeachment the Senate shall organize for trial and the oath shall be administered to the Senators by the Presiding Officer, is *reported without change*.

Rule IV

Rule IV, which implements the constitutional requirement that the Chief Justice of the United States shall preside over the Senate when sitting on a presidential impeachment trial, is *amended* by inserting after the phrase "Chief Justice" following the last semicolon the phrase "shall be administered the oath by the Presiding Officer of the Senate and." In brief, Rule VI is modified to provide that the Chief Justice as Presiding Officer on the trial shall be administered the oath by the Presiding Officer of the Senate. As explained by Chairman Cannon:

Rule IV: The suggestion was made, and it was pointed out there is no provision here for administering of the oath to the Chief Justice, and that perhaps we might want to consider on line 14 where it says, "and the said Chief Justice shall preside over the Senate," we might insert after the words "and the said Chief Justice" the following, "shall be administered the oath by the Presiding Officer of the Senate and" and then go on with the remainder of that sentence, which will say, "shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein."

The only thing that does is just make it clear that the Chief Justice is to be administered the oath, and give that duty to the Presiding Officer of the Senate.

Senator Scott stated that this change was desired by the Senate leadership which "believes that this is a Senate process, and rather

than have the Chief Justice select the next senior judge [to administer the oath to him], the Senate propose having the President Pro Tem of the Senate [do it]."

These and similar remarks by other members of the Committee indicated an awareness of and a desire to avoid a repetition of an incident during the Johnson trial, the only occasion when a Chief Justice has presided over the Senate when sitting in the trial of an impeachment. At the time of the Johnson trial, the Senate deleted an oath requirement in the then existing rules only to have Chief Justice Chase bring Associate Justice Nelson to the Senate Chamber to administer the oath to him. It appears that the Senate was persuaded to delete the oath requirement because of some doubt regarding its legality and to make it clear that the Chief Justice was not a voting member of the court as the Senate theretofore referred to itself. Restoration of the requirement is intended to reinforce the prevailing view that trials on matters of impeachment are entirely a "Senate process." However, no change is intended regarding the position taken by the Senate at the time of the Johnson trial, namely that the Chief Justice is not a member of the body, for purposes, among others, of voting on the final question. A description of the aforementioned incident during the Johnson trial follows:

* * * The Chief Justice of the United States entered the Chamber accompanied by the ranking associate justice of the Supreme Court and escorted by a Senate committee of three appointed for that purpose. Upon taking the Chair, the Chief Justice made the following statement:

"Senators: I attend the Senate in obedience to your notice, for the purpose of joining with you in forming a court of impeachment for the trial of the President of the United States, and I am now ready to take the oath."¹

The oath was then administered to the Chief Justice by the Associate Justice as follows:

I do solemnly swear that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, I will do impartial justice according to the Constitution and laws. So help me God.²

The phrase "of the Supreme Court" which appears in the reference to the Chief Justice in Rule IV, viz: "the Chief Justice of the Supreme Court of the United States," is deleted in order to conform to statutory and preferred usage. (See, for example, 28 U.S.C. §1.)

¹ Mar. 5, 1868, 40-2, *Congressional Globe*, p. 1671.

² *Ibid.*, p. 871. This form was agreed to in 1868, but as reported to the Senate, it provided that the form of the oath was to be administered to the Presiding Officer and members of the Senate. Senator Charles Drake of Missouri raised the point that the Constitution did not require that the Presiding Officer be sworn, only the Senators, and indeed that the Chief Justice was already sworn to perform his duties, and that presiding in an impeachment trial was part of those duties. (Mar. 2, 1868, 40-2, *Congressional Globe*, pp. 1590-93). As a result, the Senate agreed to an amendment striking out the words "Presiding Officer" from the heading providing for the oath. In spite of this, when the Chief Justice arrived in the Senate for the trial of Andrew Johnson, he was accompanied by the senior Associate Justice of the Supreme Court who did administer the oath. (Procedure and Guidelines for Impeachment Trials in the United States Senate, Senate Document No. 93-102, pp. 17-18 (1974).)

Rule V

Rule V, which authorizes the Presiding Officer, either by himself or by the Secretary of the Senate, to issue Senate process and to enforce Senate regulations and orders, is *reported without change*.

Rule VI

Rule VI, which relates to the Senate's power to compel attendance of witnesses and otherwise enforce Senate process, is *reported without change*.

Rule VII

Rule VII, which describes the duties of the Presiding Officer of the Senate in preparing the Chamber for trial, and the duties of the Presiding Officer on the trial respecting the conduct of proceedings and ruling on questions of evidence and incidental questions, is *amended* in several vital particulars. The second sentence of Rule VII presently provides in part:

* * * 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.

The Committee amends this clause by inserting the word "on" between the words "rule" and "all" and by inserting between the words "questions" and "of" the phrase "of evidence including, but not limited to, questions of relevancy, materiality, and redundancy." Also, the phrase "without debate" was inserted immediately before the semicolon. As thus revised the clause would read as follows:

* * * and the Presiding Officer on the trial may rule *on* all questions of evidence *including, but not limited to, questions of relevancy, materiality, and redundancy* 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 *without debate*; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate.

This revision in large measure is intended to clarify the role of the Presiding Officer on the trial—whether Vice President, President Pro Tempore, or a member specially selected to preside, or, in the case of an impeached President, the Chief Justice of the United States—respecting particularly the admissibility of evidence. Under the present rule, the Presiding Officer may initially rule on questions of evidence and on incidental questions or, at his option, submit any or all of them to the Senate for a determination.

If he chooses to do the former, his ruling stands unless the Senate votes otherwise. The language illustrating evidentiary questions covered by the rule adopted by the Committee is intended neither to alter this procedure nor to limit the scope of the Presiding Officer's power to make initial determinations. Rather, its purpose is to manifest the Committee's concern, and the concern of many witnesses who testified during the hearings, with two controversial practices,

viz: the practice of admitting hearsay and the practice of putting on an endless parade of witnesses whose repetitive testimony could conceivably prolong a trial for months. In Senator Scott's words, "What is of * * * concern * * * is to be sure that we eliminate that kind of hearsay which is deemed by the Chief Justice not to be relevant or that kind of redundancy which involves somebody offering 200 witnesses." When concern was voiced by some of the members of the Committee that the wording of the original amendment in question might be interpreted as limiting the Presiding Officer's authority to rule initially on questions of evidence and on incidental questions, its chief sponsor declared that it was intended to "retain[] the original power but * * * [to] spell[] it out" more clearly in order to preclude the aforementioned concerns. In order to ensure this result the amendment revising the second sentence of Rule VII was modified by inserting the phrase "including, but not limited to."

The insertion of the phrase "without debate" in the second sentence is intended to make it clear that a decision by the Senate whether sustaining or overruling the Presiding Officer's initial ruling on a question of evidence or on an incidental question is not to be deliberated in open session. As such, the amendment makes more explicit the requirements of the present rules (see Rule XXIV) which provide that decisions on these and other matters shall be "without debate, except when the doors shall be closed for deliberation."

The final change made by the Committee to Rule VII is the deletion of the last sentence thereof which effectively requires the Senate to arrive at its decisions by voice vote unless the yeas and nays are demanded. Instead the Committee substituted language which allows the Senate to vote its decisions "in accordance with the Standing Rules of the Senate," that is, by voice vote or by a division or, when requested by one-fifth of the members present, by the yeas and nays.

Rule VIII

Rule VIII, which provides for issuance and service of summons and related matters, is *amended* in four places to substitute the phrase "person impeached" for the word "accused" or the phrase "person accused". The Committee's purposes in making this amendment are various. To begin with, the change in the language of Rule VIII would bring it in line with that of Rule X which refers to the person named in the articles of impeachment as the person impeached. Next, there was a general feeling among the members of the Committee that the language of the rules should accord with the *sui generis* nature of impeachment and should, therefore, avoid terminology closely allied with criminal proceedings. At the same time, Committee members were concerned lest this language change be interpreted as a subtle or indirect shift away from the quantum of proof necessary to sustain a conviction. Although statements in past impeachment trials as well as sentiments expressed during the hearings indicated a preference for judging the weight of the evidence on the final question in line with the criminal standard ("beyond a reasonable doubt") as against the ordinary civil standard ("upon a preponderance of the evidence"), there was general agreement with the frequently expressed view that this issue, in the final analysis, involves a subjective determination by each Senator. This matter aside, however, it was

universally agreed that the change in designation from "accused" or "person accused" to "person impeached" is intended neither to erode nor to enlarge the quantum of proof necessary to convict on the article or articles, whatever that standard might be.

Additionally, it was the judgment of at least one member that the phrase "person impeached" was both more correct and appropriate since it is consistent with the view that a person may be removed from office for offenses against the state which offenses need not be violations of the criminal laws.

Finally, the change in terminology approved by the Committee more accurately describes the person named in the articles since regardless of the outcome of the trial in the Senate, a person impeached by the House of Representatives remains forever impeached. (See Riddick, Senate Procedure 495 (1974).)

Rule IX

Rule IX, which specifies the time for and manner of effecting return of the summons against the person impeached, is *reported without change*.

Rule X

Rule X, which sets out the procedure for filing the answer to the articles, is *reported without change*.

Rule XI

Rule XI, which provides for the appointment of 12 Senators to a committee to receive evidence and to take testimony "upon the order of the Senate" is *amended* in two relatively minor particulars. First, the Committee substitutes the phrase "if the Senate so orders" for "upon the order of the Senate" relating to the utilization of the committee device which was added to the rules in 1935 (S. Jour. 391, 74-1, May 13, 1935). The reason for this language change is to make it doubly clear that when the committee device authorized by the rule is desired, it *must* be ordered by the Senate.

During consideration of this amendment to Rule XI, the Chairman observed that the committee authorized by the rule was an extremely valuable device in impeachment trials of lesser civil officers, since in periods of extreme legislative activity it enables the Senate to discharge both its legislative and impeachment responsibilities. However, nothing but action by the full Senate on all aspects of a presidential impeachment was conceivable. Senator Scott, who along with other Committee members endorsed the Chair's views, asked that the legislative history on the resolution directing the review of the rules clearly reflect that this was the general understanding of the members of the Committee.

The Committee also removes the requirement that the committee authorized by the rule be fixed at twelve Senators. It was the consensus of the members that the committee's composition should be left open and thus allow the Senate to appoint members in accord with the needs of the situation.

Rule XII

Rule XII, which deals with the conduct of the trial, including the preparation of the Senate Chamber in order to accommodate the

House of Representatives, is *amended* in two places. Under the present rule, time to suspend legislative and executive business and begin the trial is fixed at "12:30 o'clock afternoon." In order to allow additional flexibility in fixing the time for trial, the Committee inserted immediately after the phrase "At 12:30 o'clock afternoon" the phrase "or such other hour as the Senate shall order."

The other change in Rule XII approved by the Committee is the deletion of final clause following the phrase "in the Senate Chamber," which clause reads: "* * * which chamber is prepared with accommodations for the reception of the House of Representatives." The elimination of the clause which formalized frequent, if not uniform, past practice of attendance by the House of Representatives at trial³ was widely thought impracticable since the Chamber would not readily accommodate 435 members, diplomatic and other officials, and representatives of the general public. A consensus of Committee members supported the idea that the rules should remain silent in this regard and recommend that the Senate modify the tradition to the extent of accommodating a delegation from the House of Representatives.

Rule XIII

Rule XIII, which sets the hour for resumption of the trial, as well as the procedure for commencing the business of the trial and adjourning the Senate when sitting for such purpose, is *amended* in several minor particulars. The Committee strikes out the phrase "for such thing" following the first semicolon and the phrase "the Presiding Officer of the Senate shall so announce; and thereupon" which follows shortly thereafter. As thus modified the first sentence of Rule XIII would read as follows:

The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) twelve o'clock meridian and when the hour shall arrive the Presiding Officer upon such trial shall cause proclamation to be made and the business of the trial shall proceed.

The phrase "for such thing" was apparently intended to be "for such sitting", an error perpetuated by the rules since they were formalized for the Johnson trial. (See 3 *Hind's Precedents of the House of Representatives* Sec. 2069.) There was general agreement that either way the phrase was written, it did not materially add to the meaning or clarity of the rule. Accordingly, it was eliminated altogether.

The second phrase eliminated from the rule, viz: "the Presiding Officer of the Senate shall so announce; and thereupon" is regarded as being unnecessary, if not redundant. As explained by Senator Allen, it is not needed—

³ The House of Representatives has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, and Archbald; and after attending at the answer of Belknap, decided that it would be represented for the remainder of the trial by its managers alone. At the trial of the President the House, in Committee of the Whole, attended throughout the trial, but this is exceptional. In the Peck trial the House discussed the subject and reconsidered its decision to attend the trial daily. While the Senate is deliberating the House does not attend; but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend. While it has frequently attended in Committee of the Whole, it may attend as a House. (Constitution, Jefferson's Manual and Rules of the House of Representatives. 92-2 at sec. 617.)

because if he is there, he is going to be there, and he does not need to make the announcement about it, and when the time comes, the Presiding Officer of the trial will make a proclamation. You do not need two proclamations there. If the Presiding Officer of the Senate is there for legislative business good, but if you do not have any legislative business there is no need for him coming in and making an announcement.

Rule XIV

Rule XIV, which requires the Secretary of the Senate to record and report proceedings in impeachment cases in the same manner as legislative proceedings, is *reported without change*.

Rule XV

Rule XV, which provides for representation by and participation of counsel for the parties, is *reported without change*.

Rule XVI

Rule XVI, which requires the parties to address all motions to the Presiding Officer and, upon demand of a Senator, that they be reduced to writing, is *amended* by striking out the first part thereof down to the conjunction, viz: "All motions made by the parties or their counsel shall be addressed to the Presiding Officer, * * *" In place of the deleted clause the Committee substitutes the following:

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, * * * This revision is largely intended to clarify the practice under the rules and to ensure that all remarks are addressed to the Presiding Officer.

The balance of Rule XVI which provides that the Presiding Officer or any Senator may require that specified actions, such as motions, etc., be reduced to writing and read from the Secretary's table, remains unchanged.

Rule XVII

Rule XVII, which provides for direct and cross examination of witnesses, is *reported without change*.

Rule XVIII

Rule XVIII, which provides that a Senator who is called as a witness shall give his testimony standing in place, is *reported without change*.

Rule XIX

Rule XIX, which provides that if a Senator wishes to make a motion or an order or to question a witness, he must reduce his demand to writing and submit it to the Presiding Officer, is *amended* twice. The Committee adopts an amendment which inserts after the word

"witness" the phrase "or to a manager, or counsel of the person impeached." A technical correction adds the word "to" before the word "counsel."

The Committee adds three new sentences to Rule XIX which read as follows:

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.

Both changes to Rule XIX approved by the Committee largely formalize practices under the existing rules. Thus, with respect to Senators questioning managers and counsel as well as witnesses, it has been noted that—

Contrary to Rule XIX, for impeachment trials the Senate has allowed Senators to interrogate the managers and counsel for the respondent.

While the Senate was sitting for the Belknap trial, arguments, continuing from May 4 to May 8, 1876, were offered by the managers on the part of the House of Representatives and the counsel for the respondent on the question of the jurisdiction of the Senate to try a citizen not in civil office at the time of the presentation of articles of impeachment. In the course of these arguments, members of the Senate frequently interrupted the managers and counsel for respondent with questions¹⁸⁷ relating to various points touched in the argument. These questions were generally presented in writing.

On July 20, 1876,¹⁸⁸ in the same trial, Mr. Manager William P. Lynde was submitting an argument in the final summing up of the case, when Mr. Eaton, a Senator from Connecticut, interrupted by saying:

"Mr. President, is it proper that I should ask the manager a question?"

The President pro tempore (T. W. Ferry, of Michigan) said: "It has been so ruled by the Senate."

Thereafter, both the managers and counsel for respondent were interrupted by questions.¹⁸⁹

On July 12, 1876, in the trial of Belknap, Senator Edmunds, of Vermont, following the practice during that trial, proposed a question to counsel for the respondent.

Senator Conkling, of New York, raised a question of order as to the right of a Senator to interrogate counsel.

The President pro tempore (T. W. Ferry, of Michigan) said:

"The Senator from New York calls the attention of the Chair to the fact that the rule does not authorize the questioning of counsel, but of witnesses. * * * The rule will be read.

"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.

¹⁸⁷ May 4-8, 1876, 44-1, *Record of trial*, pp. 33, 42, 43, 47, 60.

¹⁸⁸ July 20, 1876, 44-1, *Record of trial*, p. 296.

¹⁸⁹ *Ibid.*, pp. 296, 297, 315.

"* * * The Chair will state that in administering the rule he would not feel authorized to permit a question to be put to the counsel or the managers, for the rule provides only for Senators to question witnesses, and not counsel or managers to be questioned by them. * * * The Senator from New York has stated the point of order, and the Chair simply holds that under the rule No. 18, and which is the only one bearing upon the subject and upon which he rules, the Chair sustains the point of order."

Mr. Edmunds appealed, and on the question, "Shall the decision of the Chair stand as the judgment of the Senate?" there appeared 18 yeas, 21 nays. So the Chair was overruled, and the question proposed by Mr. Edmunds was put to counsel.¹⁹⁰

On July 11, 1876, in that trial, several Senators had addressed verbal questions to the managers and to counsel for the respondent. Mr. Roscoe Conkling, a Senator from New York, having called attention to the rule, which he condemned as absurd, the President pro tempore (T. W. Ferry, of Michigan) said:

"As the Senator from New York has alluded to the fact that the question was not put in writing, the Chair will say that it has not been done in order to facilitate business, and a moment ago one of the Senators was about to reduce a question to writing and the Senator from New York stated that the practice had been otherwise. * * *

"The Chair to facilitate business has allowed questions to be put without being reduced to writing by the propounders."

Later, colloquies and objection having arisen, the President pro tempore ruled:

"The Chair will enforce the rule. Colloquies must cease. Objection has been made, and the Chair must enforce the rule. He will state that on the part of Senators, to guard against any breach of the rules and unpleasantness, he will require all questions to be reduced to writing; and then certainly there can be no debate. The counsel will proceed."

Mr. Richard J. Oglesby, a Senator from Illinois, asked:

"Does the decision of the Chair, that no questions can be put hereafter without being reduced to writing, cover questions put by the court to one of the counsel?"

The President pro tempore said:

"It covers all questions put by members of the Senate. The rule does not require the questions on the part of the parties to be reduced to writing unless so requested by the Chair or a Senator; but all questions put by members of the Senate the rule requires shall be put in writing.¹⁹¹"

Again, on July 19, 1876, John S. Evans, a witness on behalf of the respondent, was on the stand, when Mr. Randolph, a Senator from New Jersey, proposed to ask orally a question. The suggestion being made that the question should be reduced to writing, Mr. Randolph urged that such had not been the practice.

The President pro tempore (T. W. Ferry, of Michigan) said:

"The Chair will observe at this time that so far as questions have been put to witnesses by Senators the rule in the recollection

¹⁹⁰ July 12, 1876, 44-1, *Senate Journal*, pp. 976, 977; *Record of trial*, pp. 258, 259.

¹⁹¹ July 11, 1876, 44-1, *Record of trial*, pp. 248, 249.

of the Chair has been observed until this time, and the Chair called the attention of the Senator from California, who put a question just now without reducing it to writing, to the fact that the rule required it to be done. The question having been put and it having been reduced to writing, by calling the attention of the Senator to the rule the Chair did his duty. Heretofore no questions have been put to witnesses, as the Chair recollects, without having been first reduced to writing.¹⁹² 4

¹⁹² July 19, 1876, 44-1, *Record of trial*, p. 275.

Similarly, with respect to objections to Senators' questions, the precedents disclose that—

During the trial of Andrew Johnson, the Chief Justice upheld the right of the managers to object to a question propounded by a Senator with the following statement:

"When a member of the court propounds a question, it seems to the Chief Justice that it is clearly within the competency of the managers to object to the question being put and state the grounds for that objection, as a legal question. It is not competent for the managers to object to a member of the court asking a question; but after the question is asked, it seems to the Chief Justice that it is clearly competent for the managers to state their objections to the questions being answered.¹⁵⁴ "

On another occasion the Senate decided that it might allow questions from a Senator to a witness even though both the managers and the counsel for the respondent objected.¹⁵⁵ 6

¹⁵⁴ April 13, 1868, 40-2, *Congressional Globe Supplement*, pp. 169-170.

¹⁵⁵ July 11, 1876, 44-1, *Senate Journal*, p. 973.

Rule XX

Rule XX, which requires the doors of the Senate to be open upon trial of an impeachment unless ordered to be closed for purposes of deliberating any order or decision as provided in Rule XXIV, is amended by adding the following new sentence:

A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record.

This revision to some extent formalizes the precedents under the existing rules. For example, during the Johnson trial, Chief Justice Chase cast a tie-breaking vote thus enabling the Senate to deliberate behind closed doors.⁶ Although the legislative rules (XXXV) permit the Senate to go into closed session when a motion to that effect is seconded, the practice on impeachment trials has been to vote the question by voice vote or by the yeas and nays. Accordingly, the Committee for all practical purposes revises the rule to blend the precedents with unanimous consent procedures. As such, the Senate upon proper motion may proceed behind closed doors unless objection is heard, in which case the yeas and nays shall be ordered.

⁴ Procedure and Guidelines for Impeachment Trials in the United States Senate, *supra*, at pp. 53-55. Footnote numbers of that document maintained here.

⁵ Procedure and Guidelines for Impeachment Trials in the United States Senate, *supra*, at pp. 47-48. Footnote numbers of that document maintained here.

⁶ *Ibid.*, p. 31.

Rule XXI

Rule XXI, which fixes the time for debate on preliminary and interlocutory questions and all motions at one hour unless extended by Senate order, is *amended* by striking out the final phrase, viz: "unless the Senate shall, by order, extend the time" and inserting after the word "hour" and before the phrase "on each side" the phrase "(unless the Senate shall otherwise order)." Under the wording of the present rule, argument on these matters may be had for at least one hour on each side and that time extended by order of the Senate. Committee members unanimously agreed that the Senate should have the flexibility to contract as well as to extend the time for these matters in light of circumstances during trial.

Rule XXII

Rule XXII, which provides the procedure for opening and closing arguments, is *reported without change*.

Rule XXIII

Rule XXIII, which deals generally with voting the final question, is *amended* in several important ways. A pair of new restrictions is added at the beginning of the rule. These read as follows:

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 adjourns sine die.

The portion of the amendment effectively enjoining the division of an individual article into separate specifications is adopted to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles impeaching President Richard M. Nixon voted by the House Committee on the Judiciary. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by "one or more of the" enumerated specifications. The general view of the Committee was expressed by Senators Byrd and Allen, both of whom felt that division of the articles in question into potentially 14 separately voted specifications might "be time consuming and confusing, and a matter which could create great chaos and division, bitterness, and ill will * * * ." Accordingly, it was agreed to write into the rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was "guilty" of one or more of the enumerated specifications.

The provision requiring the Senate to dispose of the final question once it has commenced voting the articles of impeachment or, alternatively, either adjourn for 24 hours or without day, is intended to prevent a recurrence of the incident during the Johnson trial when the Senate having failed to convict on the first article to be voted (No. 11)

proceeded to adjourn for fourteen days before considering the other articles. Thereafter, when the Senate again failed to convict on two of the remaining 10 articles, it adjourned without day. Committee members were agreed that such a course of action could have unsettling consequences which should be avoided at all costs.

The provision of the present rule which requires that the yeas and nays be taken on each article is retained. Similarly, the rule would continue to provide that a judgment of acquittal shall be entered if none of the articles is voted by two-thirds of the members present. However, in place of the provision that reads:

* * * but if the person accused in such articles of impeachment shall be convicted upon any of said articles 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.

the Committee substitutes the following:

* * * but if the person impeached shall be convicted upon any such article by 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.

As will be observed the present text of Rule XXIII virtually requires the Senate to enter judgment "if the person accused * * * be convicted upon * * * articles by the vote of two-thirds of the members present." Under terms of the amendment the Senate may take up such matters as the desirability of voting on all of the articles after conviction on one of them before entering a judgment of conviction. It is expected that flexibility allowed by the change will expedite the proceedings. Since under the prevailing view a two-thirds vote to convict on any article operates as an automatic removal from office, the Senate may not wish to vote the other articles. Also, it is contemplated that the Senate, in the interval allowed by the amended version of the rule, may wish to consider whether or not to vote the additional consequence provided by the Constitution in the case of an impeached and convicted civil officer, viz: permanent disqualification from elected or appointive office.

A new sentence is added at the end of the rule providing that "A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order." The purpose of this restriction is to obviate the confusion that would invariably attend a reversal of a vote to convict when, according to most authorities, such a vote operates automatically and instantaneously to separate the person impeached from the office. Under ordinary circumstances the Senate has two days for reconsideration. Since the trial rules are silent with respect to a motion to reconsider, the rules of the Senate applicable to legislative matters would apply.⁷ Consequently, the effect of this change is to preclude the operation of the normal rule in the context of a vote on the final question, whether such vote is to convict or to acquit. As explained during the hearings:

The critical thing arises * * * in this way * * * It [separation of the man from the office] becomes irrevocable according to the

⁷ See Procedure and Guidelines for Impeachment Trials in the United States Senate, *supra*, at p. 61.

Constitution, [as viewed] by most authorities and the President is out as of that second. * * * And if a motion to reconsider is in order, the Senator might be coming in the door, and the Senate is ready to vote. * * * Then he [a Senator] comes in. He is allowed to vote. And he casts his vote. And it could possibly put the President back in. * * * Well, the President is out. The Vice President is in. And here we have two claimants to the office.

The Committee added a new paragraph to Rule XXIII whose heading reads "Form of putting the question on each article of impeachment." This addition largely formalizes the fairly simple practice in putting the final question in the two most recent impeachment trials, the Louderback and Ritter impeachment trials. It provides that "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." This contrasts with the more cumbersome and time consuming procedure used at an earlier time, such as during the Johnson trial, when the Chief Justice directed the Secretary of the Senate to call the names of the Senators, and as each rose in his place, the question was repeated anew to him as well as soliciting his position thereon.

Rule XXIV

Rule XXIV, which deals with voting on orders and decisions and the procedure for going behind closed doors in order to deliberate these and other matters, is *amended* to incorporate the unanimous-consent procedure proposed to be added to Rule XX. Since many orders and decisions are believed to involve noncontroversial matters, it is the Committee's belief that they may be dispensed with without objection. However, in the event of objection, the yeas and nays may be had. Under the present rule "All orders and decisions shall be made and had by yeas and nays." In place of this language the Committee substitutes "All 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'." The qualification "without debate" that appeared in connection with the orders and decisions being made and had by the yeas and nays is deleted as unnecessary since notwithstanding some discrepancy between the requirement of the rules and actual practice on legislative matters, the rule does not allow for debate when a motion is made without objection.

Rule XXV

Rule XXV, which contains the forms of oath, process, and the like, is *amended* in several small particulars. A technical correction in the heading changes "Form of a subpoena be issued," so as to read "Form of a subpoena *to* be issued," etc.

The Committee initially inserted the phrase "and the Chief Justice" after the word "Senate" in the heading relating to the form of the oath to be taken by members. Briefly, it is intended that the Chief Justice take the same oath in conformity with the change to Rule IV. Subsequently, the words "and the Presiding Officer" were substituted for "and the Chief Justice" to make the provision accord with the intent of the Committee which is to have any Presiding Officer, whoever he may be, take the oath.

The form of the summons was amended in order to delete the precise hour, viz: "12:30 * * * afternoon", when the person impeached or his counsel is to file his answer. This technical correction is designed to effectuate the Committee's desire to give the Senate ample flexibility in setting times.

As its final amendment, the Committee substitutes the word "Senate" for the word "court," the last word in Rule XXV. This change corrects an obvious oversight made at the time of the Johnson trial when the Senate undertook to eliminate all references to itself as being a court.

Rule XXVI

Rule XXVI, which provides that if the Senate fails to sit as scheduled for consideration of articles of impeachment, it may adopt an order fixing the time for resuming such consideration, is *reported without change*.

APPENDIX

EXHIBIT 1

The following excellent summary of the twelve¹ American impeachment trials is excerpted from "Presidential Impeachment—An American Dilemma," by Walter Ehrlich. The summary is included here with the kind and courteous permission of the publisher, the Forum Press of St. Charles, Missouri.

1. William Blount

Position: United States Senator from Tennessee.

Date: 1797–1799.

Description of Case: On April 21, 1797, Senator William Blount, former Commissioner of Indian Affairs, wrote to James Carey, a government interpreter to the Cherokee Nation, of his plans to organize Creek and Cherokee Indians and frontiersmen, aided by a British fleet, against Louisiana and Spanish Florida. England was at war with Spain; Blount's filibustering expedition would help England to gain control over those two areas. Carey turned the letter over to President John Adams. On July 3, 1797, Adams sent copies to both the House and the Senate, informing them of Blount's conspiracy.

In the Senate, Blount's letter was sent to a select committee which duly recommended his expulsion for "a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator." The Senate expelled Blount on July 8, 1797, by a 25–1 vote.

In the House, meanwhile, a special committee had recommended that Blount be impeached. On July 7 the House approved that resolution, and on the same day appointed a committee to prepare formal articles of impeachment. Five articles were adopted on January 20, 1798. The trial in the Senate began on December 17, 1798; it concluded on January 11, 1799.

Summary of Charges: Article 1: Conspiring to carry on a military expedition against Spanish territory in violation of the laws and the obligations of neutrality of the United States.

Article 2: Conspiring to incite the Creek and Cherokee Indians to warfare in furtherance of the above mentioned scheme and in violation of the laws of the United States and of a treaty between the United States and Spain.

¹ A thirteenth, United States District Judge Mark Delahay, was impeached by the House in 1873, but the case was dropped before articles of impeachment were drawn up. Those cases not resulting in impeachment were disposed of in various ways. In most instances the person under inquiry resigned, resulting in the proceedings being discontinued. In some instances the investigatory committee either filed a report recommending against impeachment or dropped the investigation without even filing a report. In other instances the committee recommended censure rather than impeachment. (Paul S. Fenton, "The Scope of the Impeachment Power," in *Impeachment—Selected Materials*, 663.)

Article 3: Attempting to diminish and destroy the influence with the Creek and Cherokee Indian tribes of the principal Federal agent in the area against the laws of the United States.

Article 4: Attempting to "seduce" a Federal agent stationed at a trading post in the Cherokee Indian territories into assisting Blount in his "criminal intentions and conspiracies," against the laws and treaties of the United States.

Article 5: Attempting to impair the confidence of the Cherokee Indians in the United States and to "create and foment discontents and disaffection among said Indians" toward the United States.

Disposition: Acquitted of all charges on the ground that a United States Senator is not a "civil officer" of the United States as that term is used in impeachment clause of the Constitution.

2. John Pickering

Position: District Judge, District Court for the District of New Hampshire.

Date: 1803-1804.

Description of Case: On February 4, 1803, President Thomas Jefferson sent a complaint to the House of Representatives, citing Judge Pickering for irregular judicial procedures, loose morals, and drunkenness. The complaint was referred to a special committee, and on March 2, 1803, the House adopted that committee's resolution of impeachment. Not until October 20 was a committee appointed to prepare articles, but these were adopted by a voice vote on December 30. The trial began in the Senate on March 8, 1804, and lasted until March 12.

Summary of Charges: Article 1: In the course of proceedings by the United States to condemn a ship and its cargo for violation of custom laws, Judge Pickering delivered the ship to the claimant without requiring a bond, as required by law.

Article 2: In the same case, he refused to hear certain testimony offered by the government.

Article 3: In the same case, he refused to grant an appeal by the government, contrary to federal statute.

Article 4: "Being a man of loose morals and intemperate habits," he appeared on the bench on November 11 and 12, 1802, "in a state of intoxication * * * and there frequently, in a most profane and indecent manner, [invoked] the name of the Supreme Being."

Disposition: Judge Pickering did not appear to defend himself, but his son, Jacob S. Pickering, testified that the judge had been insane and "wholly deranged" for at least two years, "incapable of corruption of judgment * * * and his disorder has baffled all medical aid." Pickering was convicted by a vote of 19-7 on each of the four articles.

3. Samuel Chase

Position: Associate Justice, United States Supreme Court.

Date: 1804-1805.

Description of Case: On January 7, 1804, by an 81-40 vote, the House of Representatives adopted a resolution by John Randolph of Virginia calling for an investigation of Justice Chase and of District Judge Richard Peters for their conduct in the 1798 treason trial of

John Fries. Fries had organized the farmers in western Pennsylvania to resist certain taxes, a protest reminiscent of the Whiskey Rebellion, but on a smaller scale. The House dropped action against Judge Peters by a voice vote on March 12, but on the same day, by a 73-32 vote, it adopted a resolution to impeach Justice Chase. Along with the Fries case, the House considered Chase's conduct in three other instances. One was the trial of James T. Callender, a Virginia printer accused under the Sedition Act. The others were grand jury hearings in Delaware and Maryland, also involving the Sedition Act. Formal articles were finally agreed to in a series of votes on December 4. The trial began in the Senate on February 9, 1805, and lasted until March 1.

Summary of Charges: Article 1: "Highly arbitrary, oppressive, and unjust" conduct at the trial of John Fries, delivering an opinion on a question of law before defendant's counsel had been heard, restricting defense counsel from citing English authorities and certain statutes of the United States on treason, and denying defendant's constitutional right to argue (through counsel) questions of law before the jury.

Articles 2-6: These dealt with the Callender case. Refusing to excuse a juror who had already made up his mind; refusing to allow a defense witness to testify; "manifest injustice, partiality, and intemperance" in compelling defense counsel to submit in writing questions to be asked a witness; "rude and contemptuous expressions" toward defense counsel; denial of bail in violation of the law; "repeated and vexatious interruptions" of defense counsel; and "an indecent solicitude * * * for the conviction of the accused * * * highly disgraceful to the character of a judge."

Article 7: Improperly attempting to induce a grand jury to indict a newspaper editor for violation of the sedition laws, and refusing to discharge grand jury when they refused to do so.

Article 8: Delivering to a grand jury "an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of said grand jury and of the good people of Maryland against their State government and constitution * * * [in a manner] highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan."

Disposition: Acquitted. The Senate failed to produce a two-thirds majority on any of the eight articles because no indictable crime could be proved. "Not guilty" outnumbered the "guilty" votes on five articles.

4. James H. Peck

Position: District Judge, District Court of Missouri.

Date: 1826-1831.

Description of Case: A land claims case decided by Judge Peck in 1826 resulted in such criticism that he published an article in a St. Louis newspaper explaining his decision. Luke E. Lawless, lawyer for the losing litigant, the socially prominent Souldard family, countered with another article listing eighteen legal errors in Peck's decision as well as other allegations about Peck's judicial behavior. In a very stormy court session, Judge Peck declared Lawless guilty of contempt, ordered him to prison for twenty-four hours, and suspended him from

practicing in federal court for eighteen months. On December 8, 1826, Lawless wrote a "memorial" to the House of Representatives, detailing what he described as violation of speech and press freedoms, and requesting an investigation. The request died in the House Judiciary Committee. A similar petition in 1828 met the same fate. The reason was political; the status of western land grants had become a volatile issue in Congress. When the election of Andrew Jackson in 1828 changed the composition of Congress, a third "memorial" resulted in action. Following a Judiciary Committee investigation, on April 24, 1830, the House voted a resolution of impeachment, 123-49. A single Article was approved by a voice vote on May 1. The trial in the Senate began on December 20, 1830, and lasted until January 31, 1831.

Summary of Charges: Gross abuse of power as a judge in sentencing an attorney to twenty-four hours imprisonment and suspending him from the bar for eighteen months for writing and publishing a letter criticizing the judge's decision in a case in which the attorney had appeared.

Disposition: Acquitted, 21 Senators for conviction, 22 for acquittal because criminal intent could not be proved. Among the prominent persons involved were James Buchanan, one of the House Managers, and Daniel Webster and William Wirt, defense counsel.

5. West H. Humphreys

Position: District Judge, District Court for the District of Tennessee.
Date: 1862.

Description of Case: During the Civil War, Judge Humphreys accepted an appointment as a Confederate judge without resigning from his United States judicial assignment. On January 8, 1862, by a voice vote, the House adopted a resolution authorizing the Judiciary Committee to investigate. It reported on May 6, and by another voice vote adopted a committee resolution impeaching Humphreys. Articles of Impeachment, drafted by a committee appointed May 14, were adopted by voice vote on May 19.

Summary of Charges: Article 1: Giving a public speech on December 29, 1861, declaring the right of secession.

Article 2: Unlawfully supporting and advocating the secession of Tennessee from the Union "along with other evil-minded persons."

Article 3: Unlawfully aiding in the organization of an armed rebellion and levying war against the United States.

Article 4: Conspiring to oppose the authority of the government of the United States by force contrary to the laws of the United States and his duty as judge.

Article 5: Refusing to hold court in his district as required by law.

Article 6: Unlawfully acting as judge of a Confederate court; and as judge of that court, requiring a man to swear allegiance to the Confederacy, ordering confiscation of property belonging to American citizens, and causing people to be arrested and imprisoned because of their allegiance to the United States.

Article 7: "Without lawful authority and with intent to injure," causing a citizen of the United States to be arrested and imprisoned.

Disposition: The trial lasted one day, June 26, 1862. Humphreys was convicted by a 38-0 vote.

6. Andrew Johnson

Position: President of the United States.

Date: 1867-1868.

Description of Case: First Attempt: Radical Republicans in Congress and President Johnson carried on a running battle over postwar Reconstruction programs. Some scholars have described Johnson's policies as conciliatory and lenient. Congress' as repressive. Others point to such aggressive Southern measures as "Black Codes," election of ex-Confederate leaders to positions of new leadership, and the determination of many Southerners to achieve through Reconstruction what they had failed to win either by secession or on the battlefield. Complicating the situation were inter- and intra-party squabbles as well as the persistent conflict of executive *versus* legislative prerogatives. Johnson's use of a number of executive devices, especially the veto, convinced many that the President was obstructing and by-passing important Congressional measures and preventing the implementation of necessary programs. At the same time, Radicals were also uncompromising and exceedingly severe in some of their attitudes. President Johnson carried these issues to the electorate in the mid-term elections of November 1866. The outcome was a crushing defeat for him and an overwhelming victory for his opponents. On January 7, 1867, two Radical Republicans, Representatives James M. Ashley (Ohio) and Benjamin F. Loan (Missouri) introduced resolutions calling for Judiciary Committee investigations of possible impeachment of the President. The Committee spent almost a full year gathering testimony, much of it highly critical of the President, and by a 5-4 vote recommended impeachment. On December 7, 1867, however, the House turned down the Committee proposal, 57-108. One important reason for the close vote in Committee and the rejection in the House was that the President was not alleged to have committed any specific crime.

Second Attempt: Relations between the President and Congress continued to be strained. Johnson vetoed a number of measures, only to have them overridden by Congress. The President also continued executive practices which counteracted or by-passed acts of Congress. In spite of the earlier failure to impeach, in January 1868, the House by a 99-31 vote adopted a resolution authorizing the joint committee on Reconstruction to "inquire what combinations have been made or attempted to be made to obstruct the due execution of the laws." To help the committee, the House made available the impeachment evidence gathered by the Judiciary Committee in 1867.

Then on February 21, 1868, President Johnson dismissed Secretary of War Edwin M. Stanton, a leading Radical sympathizer, and appointed General Lorenzo Thomas in his place. The dismissal violated the Tenure of Office Act of March 2, 1867, which required Senate concurrence in the removal of certain officers, and which made violation of the act a "high misdemeanor." The day after Johnson dismissed Stanton, the joint committee on Reconstruction recommended impeachment; now the President had committed a crime. Two days later, on February 24, 1868, by a 126-74 vote, the House adopted an impeachment resolution by Representative John Covode (Pennsylvania), and appointed a committee to draw up formal charges.

In a series of votes on March 2 and 3, eleven Articles were approved. The trial began in the Senate on March 30, and ended on May 26, 1868.

Summary of Charges: Articles 1-8: These dealt with the attempted removal of Stanton. Each itemized a separate crime—"unlawfully" removing Stanton, "violating" the Constitution, acting "with intent" to violate the Constitution, "conspiring" to violate the Constitution, "unlawfully" appointing General Thomas to an office where no vacancy legally existed, and similar detailed offenses.

Article 9: Directing the military commander of the Department of Washington to take orders directly from the President, in violation of an act of Congress that they be issued through the General of the Army.

Article 10: Intending to set aside the authority of Congress; attempting to bring Congress into contempt and reproach by "intemperate, inflammatory, and scandalous harangues" which were highly critical of Congress; degrading the Presidency "to the great scandal of all good citizens" and thereby being "guilty of a high misdemeanor in office."

Article 11: This is sometimes called the "omnibus article." It repeated in slightly different language the charges of the others, adding that Johnson also denied the validity and authority of certain Congressional measures because Congress represented "only part of the States."

Disposition: President Johnson did not appear to testify. His legal counsel was a team headed by Henry Stanbery, who had resigned as Attorney-General to lead the defense. Associated with him were Benjamin R. Curtis (formerly an Associate Justice on the United States Supreme Court), Jeremiah S. Black (formerly Attorney-General in the Buchanan administration), William M. Evarts (later Attorney-General in the Grant administration), Thomas A. R. Nelson (later a judge on the Tennessee supreme court), and William S. Groesbeck (former Congressman and eminent Ohio lawyer). House Managers were led by George S. Boutwell and Benjamin F. Butler (both of Massachusetts) and Thaddeus Stevens (Pennsylvania), and included John A. Bingham (Ohio), James F. Wilson (Iowa), Thomas Williams (Pennsylvania), and John A. Logan (Illinois).

After weeks of intense and acrimonious argument and testimony, the first test came on May 16, on Article XI, regarded by the Radicals as the most likely to produce a vote for conviction. With thirty-six "guiltys" needed for the necessary two-thirds, the vote fell one short, 35-19. Stunned by the setback, House Managers put off further action until May 26. During the ensuing ten days tremendous pressures were brought to bear, especially on the seven Republicans who had voted with the Democrats for acquittal—William P. Fessenden (Maine), James W. Grimes (Iowa), John B. Henderson (Missouri), Joseph S. Fowler (Tennessee), Lyman Trumbull (Illinois), Peter G. Van Winkle (West Virginia), and Edmund G. Ross (Kansas).

On May 26, 1868, the Senate voted on Articles II and III. The intense drama of that episode has since become almost legendary. By identical 35-19 votes Johnson was acquitted on both articles. Recognizing the futility of balloting on the other articles, the Radicals promptly adjourned the proceedings *sine die*.

7. William W. Belknap

Position: Secretary of War.

Date: 1876.

Description of Case: Aroused by charges of widespread corruption and incompetence among high officials in the Grant administration, the House on January 14, 1876, adopted by voice vote a resolution authorizing various committees to conduct investigations. Subsequently the Committee on Expenditures in the War Department reported major improprieties on the part of Secretary of War Belknap and recommended his impeachment. This was acceded to on March 2, 1876, by a voice vote of the House. Only hours earlier, though, President Grant had accepted Belknap's resignation. Nevertheless, the Judiciary Committee drew up five Articles of Impeachment, which were approved by the House on April 3. Considerable debate ensued in the Senate over the issue of jurisdiction, since Belknap had resigned prior to being impeached. On May 29 the Senate decided, 37-29, that it did have jurisdiction, and the trial was set.

Summary of Charges: All five articles dealt with graft involving the post-trader of Fort Sill, Oklahoma (John S. Evans), a middleman influence peddler (Caleb R. Marsh), and Belknap. In return for obtaining the very lucrative appointment, Evans periodically paid Marsh approximately \$12,000 annually over a period of several years, of which Marsh paid off Belknap approximately \$6,000 each year.

Disposition: The trial ran from July 6 to August 1, 1876. A majority of the Senators voted "guilty" on each count, but since it was short of the required two-thirds, Belknap was acquitted. Many Senators stated later that they voted for acquittal because they still doubted jurisdiction, Belknap having resigned earlier. They feared that if the Senate convicted Belknap, it would be tantamount to a bill of attainder, specifically prohibited by the Constitution.

8. Charles Swayne

Position: District Judge, District Court for the Northern District of Florida.

Date: 1903-1905.

Description of Case: Responding to requests of some of his constituents, Representative William B. Lamar (Florida) ascertained that Judge Swayne had taken undue personal advantage of his judicial post and had also dealt improperly with some attorneys who practiced in his court. On December 10, 1903, Lamar introduced a resolution, adopted by voice vote, for a Judiciary Committee investigation of Judge Swayne. The committee duly recommended impeachment, and on December 13, 1904, the House by voice vote approved the resolution. Twelve formal articles were approved a month later, on January 18, 1905.

Summary of Charges: Articles 1-3: Making various false and fraudulent expense account claims against the government.

Articles 4-5: Appropriating for his own use, without compensating the owner, a railroad car belonging to a railroad company in the hands of a receiver whom he had appointed.

Articles 6-7: Violating for six years a federal statute requiring a district judge to live within his judicial district.

Articles 8-12: "Maliciously and unlawfully" adjudging three lawyers in contempt of court and imposing on them unwarranted fines and prison sentences.

Disposition: The trial ran from February 10-27, 1905. The substantive evidence against Judge Swayne was very weak, and many observers were not surprised at a majority vote of "not guilty" on each article. Judge Swayne was therefore duly acquitted.

9. Robert W. Archbald

Position: Circuit Judge, United States Court of Appeals for the Third Circuit, serving as Associate Judge of the United States Commerce Court.

Date: 1912-1913.

Description of Case: Judge Archbald served on the United States District Court for the Middle District of Pennsylvania, and then was appointed Circuit Judge of the Third Judicial Circuit. In the latter capacity, he was also assigned to the United States Commerce Court. There he committed a number of indiscretions which resulted in a House Judiciary Committee investigation. On July 11, 1912, by an overwhelming 223-1 vote, the House adopted the committee's resolution for impeachment, which included thirteen articles of alleged improprieties. The trial in the Senate began on December 3, 1912, and concluded on January 13, 1913.

Summary of Charges: Articles 1-6 listed specific improprieties and misconduct while Judge Archbald was on the Commerce Court; Articles 7-12 detailed offenses committed earlier while on the District Court. Article 13 was a general listing of offenses committed on both.

Articles 1-6: Using his position to influence the sale price of a coal dump which he purchased, the seller being a litigant before him; "gross and improper conduct" in favoring an attorney in a case before him by communicating secretly to receive certain information after the completion of the trial; accepting money from one railroad company for his support in its litigation with another railroad over the transfer of coal leases in which the judge had an interest; accepting money to intervene in cases before the Interstate Commerce Commission; speculating in culm bank (coal dump) properties of companies in litigation in his court.

Articles 7-12: Accepting financial and other favors from companies engaged in various litigations before him; participating in an investment, in a manner particularly advantageous to himself, with the owner of a company in litigation before him; improperly influencing a party in a litigation before him; accepting financial favors from lawyers in litigation before him.

Article 13: Obtaining credit from and through persons in litigation before him; attempting to influence litigations before the Interstate Commerce Commission for a financial consideration; using his influence and position to induce various railroads to enter into business contracts from which he profited; using his position to influence speculative business ventures for his own profit.

Disposition: Judge Archbald was convicted on Articles 1, 3, 4, and 5 dealing with specific misconduct on the Commerce Court, and on

Article 13 dealing more generally with offenses committed on both the Commerce Court and the District Court. He was removed from the Bench and disqualified from further office.

10. George W. English

Position: District Judge, District Court for the Eastern District of Illinois.

Date: 1925-1926.

Description of Case: During the summer of 1922 the *East St. Louis (Illinois) Journal* and the *St. Louis Post-Dispatch* published a series of articles denouncing the disbarment by Judge English of Charles A. Karch, a lawyer practicing in English's court. The judge summoned the reporters into court and threatened them with imprisonment if they continued to publish such stories. Refusing to be intimidated, the *St. Louis Post-Dispatch* exposed several more instances of English's misconduct amounting virtually to a bankruptcy ring. Accordingly, on January 13, 1925, Representative Harry B. Hawes of Missouri introduced into the House of Representatives a resolution calling for an investigation. The House Judiciary Committee duly reported a resolution calling for the impeachment of Judge English, adopted by the House on April 1, 1926, by a 306-62 vote. Included in the resolution were five articles charging English with partiality and judicial tyranny and oppression. The Senate trial was set for November 10, 1926, but on November 4 English suddenly resigned.

Summary of Charges: Article 1: Suspending and disbarring several attorneys without charges being preferred against them, without prior notice, and without permitting them to defend themselves; summoning state attorneys and state sheriffs to appear in an imaginary and fictitious case and then denouncing them in open court in abusive and profane language; attempting to coerce jurymen by stating in open court that a defendant was guilty, and publicly threatening the jury if they did not find him so; summoning members of the press to appear in court and threatening them with imprisonment if they did not suppress publication of information about a particular disbarment proceeding.

Articles 2-3: Showing favoritism to a particular referee in a bankruptcy proceeding, to the personal profit of both himself and the referee; amending the rules of bankruptcy in his court to make the preceding possible.

Article 4: Directing that certain bankruptcy funds be deposited in banks in which he had an interest; securing employment for his son with certain banks by ordering bankruptcy funds placed in those banks, and in one instance with the interest to be paid to his son; borrowing funds with low or no interest charges from banks into which he directed bankruptcy funds be deposited.

Article 5: Mistreating members of the bar appearing in his court by arbitrary and tyrannical conduct; denying litigants the right to have counsel; denying defendants in criminal cases the right to trial by jury; showing favoritism toward certain bankruptcy referees; attempting to make a deal with a fellow judge whereby each would choose a particular relative of the other for certain receiverships and other appointments.

Disposition: After Judge English resigned, the House Managers recommended that the proceedings be discontinued. The earlier investigation leading to the House impeachment had convinced many that English was blatantly guilty (though only a Senate trial could legally declare him so). The Managers felt, however, that the Constitutional outcome (removal) had already been achieved since English was no longer on the bench. Many in both houses felt that English should not get off that easily, but it was agreed that too much time and public money would be spent for no apparently worthwhile purpose. The Senate was then engaged in such weighty issues as prohibition legislation and Muscle Shoals, and there was every expectation that Judge English would engage in many devious stratagems to drag out his trial in order to escape punishment. Some argued that the Senate no longer had jurisdiction anyway, but the Belknap case was pointed out as a precedent that a trial could occur even though English was no longer a "civil officer." Nevertheless, the attitude prevailed that Judge English had already been branded as so despicable a judge that the Senate could spend its time more profitably on other pressing affairs. On December 11, 1926, by a 290-23 vote, the House requested the Senate to drop the case, and two days later, by a 70-9 vote, the Senate acceded.

11. Harold Louderback

Position: District Judge, District Court for the Northern District of California.

Date: 1932-1933.

Description of Case: On June 9, 1932, Representative Fiorello H. LaGuardia of New York introduced a resolution calling for an investigation of alleged judicial improprieties committed by Judge Louderback in bankruptcy and receivership proceedings. The resolution was adopted by a voice vote. The Judiciary Committee investigation produced mixed results. The majority recommended censuring rather than impeaching Louderback, there being sufficient evidence for the former but not for the latter. However, Congressman LaGuardia's minority resolution calling for impeachment was approved by the House after considerable discussion, on February 24, 1933, by a vote of 183-142. The resolution included five formal Articles of Impeachment. The trial began in the Senate on May 15, 1933.

Summary of Charges: The five articles alleged "tyranny and oppression, favoritism and conspiracy, whereby he has brought the administration of justice * * * into disrepute" in appointing certain bankruptcy receivers; granting "exorbitant" allowances to some receivers and attorneys who were "personal and political friends and associates" and "displaying a high degree of indifference" to others; conduct on the bench such as "to excite fear and distrust and to inspire a widespread belief * * * that causes were not decided in said court according to their merits, but were decided with partiality and with prejudice and favoritism * * * all of which is prejudicial to the dignity of the judiciary * * * to the scandal and disrepute of said court and the administration of justice therein."

Disposition: The trial in the Senate lasted from May 15 to May 24, 1933. On only one article did a majority vote "guilty"; on all others

the "not guilty" votes outnumbered the "guilty." Apparently the majority of the House Judiciary Committee had surmised correctly that there was sufficient evidence to censure but not enough to convict. Accordingly, Judge Louderback was acquitted.

12. Halsted L. Ritter

Position: District Judge, District Court for the Southern District of Florida.

Date: 1933-1936.

Description of Case: On May 29, 1933, Representative J. Mark Wilcox of Florida requested the House of Representatives to investigate alleged improprieties committed by Judge Ritter during the preceding four years. That resolution was adopted by a voice vote on June 1. The House Judiciary Committee investigation dragged on for almost three years, until it reported a resolution recommending impeachment. That resolution was adopted by the House on March 2, 1936, by a 181-146 vote. It included four formal Articles of Impeachment, three dealing with specific misdeeds allegedly committed, and a general article that was the sum of the first three. On March 30, before the trial in the Senate began, the articles were amended by House Resolution 471 (74th Congress, 2nd Session), adding three more specific charges and enlarging the last general article. The trial began in the Senate on April 6, 1936.

Summary of Charges: Articles 1-2: These were in the original charges. Conspiring in a champertous suit and corruptly and unlawfully receiving \$4,500 from a former law partner whom Ritter had appointed as receiver in a bankruptcy case. The receiver's fee had been set originally by another judge at \$15,000; Ritter raised it to \$75,000.

Articles 3-4: These together had comprised the original Article 3; they were now separated. Engaging in the private practice of law while on the bench, in violation of federal law, and receiving fees for this illegal practice.

Articles 5-6: These were added to the original articles. Failure to pay income tax on \$12,000 for 1929 and on \$5,300 for 1930, the incomes referred to in Articles 1-4.

Article 7: By committing the "high crimes and misdemeanors" detailed in Articles 1-6, "the reasonable and probable consequence of the actions or conduct of Halsted L. Ritter * * * 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 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. * * * Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors."

Disposition: The trial in the Senate lasted from April 6 to April 17. There were more "guilty" than "not guilty" votes on all except one of the first six specific articles, but these majorities all fell short of the two-thirds required for conviction. On the seventh article, however, with 56 votes required for conviction, the vote was 56-28. Thus Ritter was convicted and removed from office.

EXHIBIT 2



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EVOLUTION OF THE "RULES OF PROCEDURE AND
PRACTICE IN THE SENATE WHEN SITTING ON
IMPEACHMENT TRIALS"

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by

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September 3, 1974

Generally speaking, the "Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials" are in the same form in which they were adopted preparatory to the trial of President Andrew Johnson. A few changes were made during the course of that trial and Rule XI was added in 1935. The following material is intended to indicate the source of those Rules as they now exist and, where applicable, briefly describe how they arrived at their present form.

RULE I

Whenever 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 Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

This rule, which was adopted for the trial of Justice Chase in 1805,^{1/} formalized the practice followed in the trials of Senator Blount and Judge Pickering. For the trial of President Andrew Johnson in 1868, the rule was adopted with only slight change.^{2/}

^{1/} Senate Journal, pp. 509, 510, Eighth Congress, Second Session; Hinds' Precedents of the House of Representatives, Vol. III, Section 2078 (hereinafter referred to as Hinds' Precedents).

^{2/} Fortieth Congress, Second Session, Journal, pp. 248, 811; Globe, p. 1521; Senate Report No. 59.

RULE 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.

The second rule has its origins in the impeachment trial of Senator William Blount held in 1797.^{3/} For the impeachment trial of Judge Pickering in 1804, the committee in charge of the rules made a change in the wording of the Sergeant at Arm's proclamation enjoining all persons present to remain silent. In the Blount trial the proclamation was as follows:

All persons are commanded to keep silence while the Senate of the United States are receiving articles of impeachment against _____, on pain of imprisonment.

The change, offered by the committee and adopted by the Senate for the Pickering trial, read:

All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the

^{3/} Fifth Congress, First Session, Senate Journal, p. 433; Annals, p. 498; Hinds' Precedents, Vol. III, Section 2126.

United States, sitting as a court of impeachments,
 articles of impeachment against _____ 4/

The rule was adopted in much the same form for the trial of Justice Chase in 1805 except that the phrase "sitting as a court of impeachment" was omitted.^{5/} As for the trial of President Andrew Johnson in 1868, the rule was reported in the form adopted for the Chase trial.^{6/} However, the language to be used after proclamation was altered during debate to its present form when objection was made to the "high sounding" reference to the House of Representatives as the "grand inquest of the nation", adopted for the Chase trial. Accordingly, the words "grand inquest of the nation" were stricken and "House of Representatives" substituted.^{7/}

RULE 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

4/ Eighth Congress, First Session, Senate Journal, pp. 382, 383; Annals, p. 225.

5/ Eighth Congress, Second Session, Senate Journal, pp. 509, 510.

6/ Fortieth Congress, Second Session, Senate Report No. 59, Senate Journal, pp. 246, 248, 811; Globe, pp. 1521, 1522, 1594.

7/ Fortieth Congress, Second Session, Senate Journal, p. 246; Globe, p. 1594.

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.

This rule, added to the rules adopted for the trial of President Andrew Johnson, was a codification of the practice followed in earlier trials. As reported by the committee to the floor, in 1868, the rule contained references to the "high court of impeachment" which were deleted and the word "Senate" substituted therefor. Language which would have required the oath to be administered to the presiding officer by the Secretary of the Senate was similarly stricken.^{8/}

RULE 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.

^{8/} Fortieth Congress, Second Session, Senate Report No. 59; Globe, pp. 1521 et seq., 1602, 1603; Hinds' Precedents, Vol. III, Section 2079.

The form of the present rule was adopted in 1868 after lengthy discussions of the constitutional status of the Senate in impeachment proceedings. Debate on the rule indicates an understanding that the Chief Justice was not to be notified to attend and preside until after the articles of impeachment had been exhibited in the Senate chamber.^{9/}

RULE 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.

The fifth rule was reported in nearly its present form by the committee in charge of the rules to be adopted for the trial of President Andrew Johnson. The only change made by the Senate involved substituting the word "Senate" for the word "court".^{10/}

RULE 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

^{9/} Fortieth Congress, Second Session, Senate Journal, p. 812; Globe, p. 1602, 1603; Hinds' Precedents, Vol. III, Section 2082.

^{10/} Fortieth Congress, Second Session, Senate Journal, pp. 230, 812; Globe, pp. 1526, 1602; Hinds' Precedents, Vol. III Section 2083.

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 lawful orders, mandates, writs, and precepts of the Senate.'

This rule was adopted in 1868. As reported by the committee the rule would have authorized the Presiding Officer to call upon all federal employees, civilian or military, to assist in carrying out orders of the Senate adopted while sitting on a trial of impeachment. After extensive debate, this provision was eliminated and the rule was adopted in its present form, i. e., charging the Sergeant at Arms of the Senate with responsibility for carrying out orders of the Senate.^{11/}

RULE 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

^{11/} Fortieth Congress, Second Session, Senate Report No. 59, Senate Journal, pp. 238, 812; Globe, pp. 1526-1533, 1602; Hinds' Precedents, Vol. III, Section 2158.

without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken.

This rule was adopted in its present form in 1868. The first sentence of the rule is the substance of Rule VII adopted in 1805 for the trial of Justice Chase.^{12/} During debate on this rule in 1868 much attention was given to the role of the Presiding Officer in an impeachment trial.^{13/} The last sentence of the rule was adopted during the trial of President Andrew Johnson when a question arose regarding the method of voting on appeals from rulings by the Presiding Officer.^{14/}

RULE 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

^{12/} Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92; Hinds' Precedents, Vol. III, Section 2084.

^{13/} Fortieth Congress, Second Session, Senate Journal, pp. 247, 248, 867-870; Globe, pp. 1595-1603.

^{14/} Fortieth Congress, Second Session, Senate Journal, pp. 874, 878; Globe Supplement, pp. 70, 77, 92.

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 therefor 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.

The form of the present rule was adopted in 1868 preliminary to the trial of President Andrew Johnson.^{15/}

RULE 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.

^{15/} Fortieth Congress, Second Session, Senate Journal, p. 246; Globe, p. 1594; Hinds' Precedents, Vol. III, Section 2127.

The ninth rule was first adopted for the Chase trial ^{16/} in 1805 and took on its present form in 1868. ^{17/}

RULE 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.

This rule first adopted for Chase trial in 1805, ^{18/} was part of the rule revision for the trial of President Andrew Johnson. ^{19/}

RULE 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,

^{16/} Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92; Hinds' Precedents, Vol. III, Section 2128.

^{17/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 813; Globe, p. 134.

^{18/} Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92; Hinds' Precedents, Vol. III, Section 2129.

^{19/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 813; Globe, p. 1534.

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.

Rule XI of the Senate Impeachment Rules was adopted on May 28, 1935 without Debate and without a report from the Senate Judiciary Committee.^{20/}

A form of resolution substantially similar to the present Rule XI was introduced in the second session of the 73rd Congress, in 1934, by Senator Ashurst, of Arizona, Chairman of the Senate Judiciary Committee. It was introduced as a result of the impeachment trial of Judge Harold Louderback in 1933, and when reported from committee was identical to the proposal adopted as Rule XI in 1935.

The purpose of the proposed rule was to permit the Senate, if it so desired, to make an order that the Presiding Officer

^{20/} Seventy-Fourth Congress, First Session, 79 Congressional Record, pp. 8309-10.

could appoint a committee of 12 Senators, who would go into the country and take the testimony rather than bring the witnesses to the Senate. The attorneys for the respondent and the managers for the House would have the right to appear before the committee and interrogate all witnesses. The testimony would be taken and reported by the committee to the Senate in writing in a certified copy of the transcript of the proceedings and the testimony. The Senate would reserve to itself the right to pass upon all questions of competency, relevancy, and materiality, and it would reserve the right to hear any one witness or all of the witnesses if it chose to do so. The committee would make no recommendations or conclusions and issue no report to the Senate except the certified copy of the transcript.

The transcript would be printed and copies made available to all Senators. Arguments would be presented by the House managers and counsel for the respondent before the entire Senate.

A quorum of the twelve members of the committee would be sufficient for it to conduct business.

The respondent would be entitled to be heard before the committee in person, by attorney, and to summon any witness he would see fit to have subpoenaed, to cross examine all witnesses for the prosecution, and to have the right to ask the Senate to hear one witness, or all of them, in open Senate; and the Senate would then determine whether it wished to hear these witnesses, or all of them, in open session.

The Senate would have the right to give the respondent the privilege of being heard before the full Senate.^{21/}

The resolution amended, as reported from the Judiciary Committee in 1934 in the 73rd Congress, was worded precisely the same as it was in 1935 when it was adopted by Senate. The resolution was not passed in the 73rd Congress because debate was cut short before all Senators who wished to had commented on it, and a subsequent opportunity to discuss it in that Congress did not arise.

RULE 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.

^{22/}

This rule, adopted in 1868^{22/}, is largely an amalgam of portions of rules 11 and 12 which had been framed in 1805 at the time of the trial of Justice Chase.^{23/}

^{21/} Seventy-Fourth Congress, First Session, 79, Congressional Record, pp. 9431, 9432, 9828, 9927, 9929.

^{22/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 813; Globe, p. 1534; Hinds' Precedents, Vol. III, Section 2070.

^{23/} Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92.

RULE 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.

This rule was adopted in 1868.^{24/} The form of the rule as reported was modified by eliminating the words "high court of impeachment" wherever found and substituting the words "the trial".

RULE 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.

This rule stands as adopted in 1868.^{25/}

24/ Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 813; Globe, pp. 1534, 1602; Hinds' Precedents, Vol. III, Section 2078.

25/ Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 813; Globe, p. 1568; Hinds' Precedents, Vol. III, 2090.

RULE XV

Counsel for the parties shall be admitted to appear
and be heard upon an impeachment.

Rule XV was adopted in 1868 and dates from the Chase
trial in 1805.^{26/} It formalizes what had been the practice in previous
trials.

RULE 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.

This rule was first adopted for the trial of Justice Chase
in 1805 and originally included a clause by which votes would be
taken on motions.^{27/} In 1868, the rule was adopted in its present
form; "Presiding Officer" being substituted for "President of Sen-
ate" and the words "or any Senator" being added.^{28/}

26/ Eighth Congress, Second Session, Senate Journal, pp. 511-
513; Annals, pp. 89-92; Hinds' Precedents, Vol. III,
Section 2130.

27/ Eighth Congress, Second Session, Senate Journal, pp. 511-
513; Annals, pp. 89-92; Hinds' Precedents, Vol. III,
Section 2131.

28/ Fortieth Congress, Second Session, Senate Report No. 59;
Senate Journal, p. 813; Globe, p. 1568.

RULE 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.

This rule was first adopted for the trial of Justice Chase ^{29/} in 1805. In the 1868 revision, cross examination was limited to "one person on the other side" in lieu of "in the usual form."^{30/}

RULE XVIII

If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

This rule dates from 1797 when it was adopted for the trial of Senator William Blount.^{31/} Some minor language changes were made for the Chase trial in 1805^{32/} and that form was adopted in 1868.

^{29/} Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92; Hinds' Precedents, Vol. III, Section 2168.

^{30/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 813; Globe, p. 1568.

^{31/} Fifth Congress, First Session, Senate Journal, p. 566; Annals, p. 2197; Hinds' Precedents, Vol. III, Section 2163.

^{32/} Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92.

RULE 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.

The substance of this rule was first adopted for the Chase trial in 1805.^{33/} In the rules revision of 1868 the form was modified by the exemption of the motion to adjourn from the requirement that motions and questions by Senators be reduced to writing and the substitution of the words "Presiding Officer" for President".^{34/}

RULE 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.

This rule was adopted in two stages. The first clause was adopted in 1805 for the Chase trial;^{35/} the second clause allowing for closed session was added in 1868.^{36/} An attempt to eliminate the

33/ Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92; Hinds' Precedents, Vol. III, Section 2176.

34/ Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, pp. 813, 814; Globe, p. 1568.

35/ Eighth Congress, Second Session, Senate Journal, pp. 511-513; Annals, pp. 89-92; Hinds' Precedents, Vol. III, Section 2075.

36/ Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 814; Globe, p. 1568.

provision for closed sessions was defeated in 1876 during the trial of William Belknap.^{37/}

RULE 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.

This rule was adopted in 1868 preparatory to the trial of President Andrew Johnson. As reported, the rule did not limit argument to one person. This limitation was added during floor consideration of the rule.^{38/}

RULE 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.

This rule was adopted in its present form in 1868. It was amended on the floor of the Senate to provide that "the case, on each side, shall be opened by one person"^{39/}

^{37/} Forty-Fourth Congress, Record of Trial, p. 341.

^{38/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, pp. 241, 242, 814; Globe, pp. 1568-1580; Hinds' Precedents, Vol. III, Section 2091.

^{39/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, pp. 242, 243, 814; Globe, pp. 1580-1585; Hinds' Precedents, Vol. III, Section 2132.

RULE 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 articles 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.

This rule was adopted in the 1868 revision of the rules. The rule as reported from the committee was altered considerably on the floor of the Senate. These revisions included the adoption of the requirement of a yea and nay vote on the articles, and insertion of the phrase "upon any of the articles presented" after the words "impeachment shall not" and after the word "convicted" insertion of the phrase "upon any said articles". The latter were intended to insure that conviction on any one article should be sufficient for judgment. References in the rule as reported to the Senate as a "high court of impeachment" were also stricken. ^{40/}

^{40/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, p. 243; Globe, p. 1585-1587; Hinds' Precedents, Vol. III, Section 2098.

RULE 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

The twenty-fourth rule was adopted in 1868^{41/} in the form reported by committee. During the course of the trial of President Andrew Johnson it was amended to make its operation subject to Rule VII.^{42/} The last sentence was added immediately before the Senate proceeded to pronounce judgment in the Johnson trial.^{43/}

41/ Fortieth Congress, Second Session, Senate Report No. 59; Hinds' Precedents, Vol. III, Section 2094.

42/ Fortieth Congress, Second Session, Senate Journal, pp. 824, 825; Globe Supplement, p. 6.

43/ Fortieth Congress, Second Session, Senate Journal, p. 937; Globe Supplement, p. 408.

RULE 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 whichever 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.

This rule is in the form agreed to in 1868. As reported the heading of the form of the oath for members included the Presiding Officer.^{44/} However, this was objected to on the floor on the basis that the Constitution only required Senators to be sworn. Accordingly, the words "Presiding Officer" were stricken from the heading.^{45/}

^{44/} Fortieth Congress, Second Session, Senate Report No. 59; Senate Journal, pp. 244-246; Globe, pp. 1590-1593; Hinds' Precedents, Vol. III, Section 2080.

^{45/} Fortieth Congress, Second Session, Globe, p. 1603.

RULE 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.

This rule was adopted in its present form in 1868. ^{46/}

^{46/} Fortieth Congress, Second Session, Senate Report NO. 59; Senate Journal, p. 252; Globe, p. 1603; Hinds' Precedents, Vol. III, Section 2076.