

EXECUTIVE SESSION

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REVIEW OF EXISTING RULES ON IMPEACHMENT

AND PROPOSED CHANGES

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WEDNESDAY, AUGUST 7, 1974

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

The Committee met, pursuant to recess, at 10:20 a.m., in Room 301, Russell Senate Office Building, the Honorable Howard W. Cannon, Chairman, presiding.

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

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

Also present: Dr. Floyd Riddick, Senate Parliamentarian, and Wilmer Ticer, Officer of Legislative Counsel.

1 The Chairman. The Committee will come to order.

2 The purpose of the meeting today is to consider Resolution
3 S 371, that was introduced by Senator Byrd for himself and Mr.
4 Mansfield, raising the question of whether television and radio
5 coverage of any impeachment trial may occur with respect to
6 Richard M. Nixon.

7 As you know, if it is to be broadcast, that would be a
8 variation from the Senate rules at the present time.

9 We have a sort of recap here now of the Senators who
10 testified before us on the various issues that we raised, and
11 in reviewing that recap, it appears that there were four
12 Senators who testified and felt that the proceedings should not
13 be open to broadcast. The remaining number of Senators testi-
14 fied that they thought it should.

15 Yesterday, I requested representatives from the networks
16 to get together with me on an informal basis to explore some
17 of the problem areas, and I want to report to the Committee on
18 that.

19 I raised a number of questions to them that had been
20 raised as a result of Senator Mansfield's proposal, where he
21 suggested that if it be televised, that it have only one
22 camera and that be in black and white, and so on.

23 First, with respect to whether it ought to be in color or
24 black and white, the networks have all said that it would
25 require no more lighting for color than it would for black and

1 white with the electronic advances that they now have, and
2 they believe it would require some additional lighting over and
3 above what they have in the Senate today.

4 It would not require the so-called hot lights, the high
5 intensity lights, that are going to raise the temperature in
6 there and have everybody sweating under the TV lights.

7 Senator Byrd. Mr. Chairman, I think we could use a little
8 additional lighting in there anyhow. It can be very dim for
9 reading.

10 The Chairman. Their recommendation was that, of course,
11 we do permit broadcasting, but they recommended that if we are
12 going to try to present a historical occurrence to the American
13 people that it would be a serious mistake to try to present it
14 only in black and white, because the American people are used
15 to seeing color; that a much better presentation can be made if
16 it is in color.

17 Now, with respect to the number of cameras, whether one
18 camera would suffice, they were of the unanimous view, and I
19 may say this included not only the networks but included public
20 broadcasting as well, they were of the unanimous view that they
21 could not factually and fairly present a historical picture to
22 the American people of what was going on with only one camera
23 fixed on the so-called well of the Senate which would cover the
24 Chief Justice as the Presiding Officer, the managers on the
25 part of the House, the counsel on the part of the defendant,

1 and the witness chair; that that could not possibly present a
2 factual occurrence.

3 I asked them how many cameras they felt would be needed,
4 and their uniform considered judgment was that five fixed
5 location cameras would be needed; one in the Diplomatic Gallery,
6 one in each corner on the same side as the Diplomatic Gallery,
7 and one very near each corner directly across the chamber.

8 In other words, on the side of the Press Gallery, they
9 would have a camera, and that with those five cameras, they
10 could cover everything, including Senators that might present
11 motions from the floor. And they point out that it would be a
12 mistake to not include this, because the public would not know
13 what is going on if they would have to be told by somebody
14 what was taking place if they could not actually see this.

15 I explored a number of other areas with them. For example,
16 would there be any problem if the Senate prohibited so-called
17 broadcasting from the Senate Chamber, that is prohibited
18 anchoring from the Senate, and they said that created no
19 problem because they normally do not do that anyway. They do
20 that in their own studios; that they would propose to do the
21 same thing here, to do anything of that sort in their own
22 studios, but they would not propose to give commentaries while
23 the proceeding was in process unless it was for the purpose of
24 explaining something that was taking place so that people
25 would understand it.

1 They assured me that there would be a minimum of intrusion
2 on the proceedings of the Senate itself, and directed our
3 attention to the fashion in which they handled the Watergate
4 proceedings, that is the Select Committee's hearings, which
5 they televised, and also the Judiciary Committee meetings on
6 the House side.

7 They also stated they would not like to have a prohibition
8 against panning because sometimes it is necessary to sweep
9 across or go across to someone that is involved in the proceed-
10 ing. But they assured me that there would be a minimum of that
11 sort of thing, and then only for the purpose of explaining what
12 was going on; that they would not expect to pan on to individ-
13 ual Senators to create embarrassment, show somebody that might
14 be taking a little nap or might be engaging in other activities,
15 or things of this sort; that they felt that they themselves
16 would be on trial in this presentation to present it in a dig-
17 nified and a completely factual manner.

18 They did request, if we permit them to do this, and inci-
19 dentally if we permit it, they would do this on a pool basis,
20 one network would do the actual photography and it would be
21 made available to all of the networks, including the radio
22 broadcast stations, because they would be picking up the sound.

23 This would be made available to public television. And I
24 told them that we would certainly expect that they would make
25 copies available for the Senate, for the Library of Congress,

1 and for the Archives, and such other copies as we might deem to
2 be necessary, and that we would expect that to be done without
3 any copyright problems or any difficulties of that nature. And
4 they assured me that there would be no problem with respect to
5 that.

6 They did request that in the event we permitted broad-
7 casting, that we try to provide them with a room over in the
8 Capitol where they could set up and could do interviewing if
9 they invited people to come in and interview during the pro-
10 cess of the proceedings, and not while the proceedings were in
11 process, but at other times when there may be breaks in the
12 proceedings, or at the conclusion of the day or before the day
13 starts.

14 Now, I think that about covers it, Bill, the things I
15 have gone over with them.

16 Mr. Cochrane. Yes, sir, it does very completely.

17 The Chairman. I just throw that out so that everyone can
18 be informed on it.

19 I think that my suggestion would be that the order of pro-
20 ceeding here ought to be one to decide, first, whether we
21 ought to have the proceedings broadcast.

22 Once we make that decision, then I would suggest that we
23 prepare a report to accompany whatever resolution we might
24 report back to the Senate and, in that report, that we spell
25 out the things that we want to spell out precisely, and that

1 other matters we leave to be administratively handled as we go
2 on.

3 Now, I will throw the matter open for discussion.

4 I covered the interviews. I raised the question of com-
5 mercials.

6 Now, I said would we be assured that no commercials would
7 be flashed on in the middle of these proceedings, and they said
8 absolutely not, that the only time the commercials would be
9 presented would be if, for example, we were in a recess in the
10 proceedings, or at the conclusion or at the beginning of the
11 day. They would not expect to have commercials of any sort as
12 an interruption or concurrent with the presentation of the
13 proceedings themselves.

14 Now, I do have one further thought.

15 By the way, I also asked for their views on this issue of
16 interviews in the hallways and things of that sort. And they
17 unanimously agreed that we ought to prohibit that completely,
18 but that it ought to be prohibited not only from the TV and
19 radio but from the normal reporters and the still photographers
20 so that you are not going to have a mob of people running
21 around in the corridors trying to nail a Senator down to get a
22 particular interview.

23 I can foresee that we will probably have to adopt some
24 guidelines on that. And if we do provide a room, if we do
25 decide to go this route and provide a room in which they could

1 set up so they could conduct interviews at the proper time, we
2 might likewise be confronted with the problem of are we going to
3 provide the room where the written press can have the opportu-
4 nity for interviews, and where the still photographers can have
5 the opportunity to work, because if they are going to be tele-
6 vising their interviews in a particular room, it would not be
7 conducive to have the written press there while they are doing
8 it, or have the still photographers shooting.

9 Senator Pell. We can use the TV room, the new room
10 upstairs in the gallery.

11 The Chairman. They say the recording studio upstairs is
12 not big enough and would not be adequate for this purpose.

13 And it is my guess they would need something bigger than
14 that.

15 Well, the matter is open for discussion.

16 Senator Byrd. Mr. Chairman, I commend you on the fore-
17 sight in discussing this with representatives of the networks.

18 I think you are right in presenting the outline first with
19 regard to the decision by the Committee as to whether or not
20 the trial, if held, will be televised and broadcast, and it
21 then goes from there, the regulations that might be recommended.

22 At the moment, did the question come up in your discussion,
23 Mr. Chairman, with regard to their opinion whether it would be
24 possible to print additional aspects of this televising and
25 broadcast?

1 The Chairman. No, I did not discuss that with them because
2 I thought that was probably out of their line of business.
3 And that is a determination we will have to make as to possi-
4 bilities in light of the Estes case, and in light of the dis-
5 cussion that we had on the part of the witnesses that appeared
6 here so far.

7 Senator Byrd. Fred Graham, a lawyer, was he in the group?

8 The Chairman. No.

9 Senator Byrd. Well, I guess we will have to wait until
10 Senator Griffin gets back with us to begin a discussion on this
11 resolution.

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1 The Chairman. Gentlemen, what is your pleasure?

2 Again, to sort of recap, I have suggested that we have
3 under consideration a resolution of whether we ought to broad-
4 cast the proceedings or not.

5 I gave a report to the Committee on the meeting I had
6 with the broadcast people yesterday, and I can enumerate that
7 as we go through and discuss it, but I thought first we ought
8 to decide the basic issue of are we going to permit the broad-
9 casting, and once we decide that, then I suggested that we
10 could, in our report, if we decide that we permit broadcasting,
11 spell out the restrictions and conditions that ought to be
12 attached.

13 Senator Griffin. It goes without saying, and I take it
14 that it would be subject to some rule by some body.

15 The Chairman. Certainly. I would assume that we would
16 file a report with the resolution, and in that report we would
17 spell out the items that we wanted specifically covered, and
18 leave the other uncovered items that we do administratively
19 handle by administrative action.

20 Senator Griffin. I rather expect that that will be a
21 factor in some Senators voting, what sort of regulations we
22 had.

23 Now, I am going to vote against the idea of televising,
24 but I think at least on the floor, I think with Senator Scott,
25 he is interested also how it would be regulated, but I do not

1 know how far you have to go in spelling that out.

2 Is it the intent to take this to the floor in advance of
3 other possible rule changes?

4 The Chairman. I would expect so. Timewise, I would think
5 that if we make the decision here today that we would have
6 broadcasting, and if we can agree on our rules here today that
7 we would write in the report, and have three or four days to
8 get the report ready before we report this back to the Senate,
9 and in the meantime we would be working on the other rules.

10 Senator Griffin. You know, I just hate to suggest this,
11 but we are just in a very awkward situation on our side with
12 that caucus going on, and I know that Senator Scott in particular,
13 and I am sure Senator Cook and Hatfield, which have a real
14 interest in this question, I am afraid the thing is going to
15 go right up until 11:30 or 12:00 o'clock.

16 The Chairman. If you could get some precise estimate as
17 to the time, and let me say I agree with you, that this is some-
18 thing we ought to have substantially all of the Committee
19 deliberating on, and if you could find out say precisely what
20 time they could be here, we could maybe recess until 11:30,
21 if we could have some assurance that they could be here at that
22 time, so that we can move along and settle the issue.

23 Senator Byrd. Mr. Chairman, if we could report the
24 resolution which simply states the proceedings shall be covered,
25 may be broadcast, and then get consent to submit a report within

1 a week, and put in our report the recommendations that the Com-
2 mittee feels advisable, it seems to me would be a wise course.

3 I think it would be unwise to attempt to write many, if
4 any, provisions into the resolution; that we try to outline
5 restrictions, et cetera.

6 The Chairman. Would you yield?

7 Senator Byrd. Yes.

8 The Chairman. I completely agree with you, and one of
9 the staff people has just handed me what I think is a pretty
10 good proposed amendment to the resolution, and if we were to
11 say after the word "broadcast" insert "by radio and television"
12 and then insert the following:

13 "Such broadcasting shall be accomplished and in conformity
14 with regulations thereon promulgated by the Committee on Rules
15 and Administration."

16 Senator Byrd. Radio and television?

17 What about still photography?

18 The Chairman. Well, I would think that we would have to
19 permit still photography.

20 Senator Griffin. Throughout the proceedings?

21 The Chairman. No, that would mean they would have to
22 have flashes, and this sort of thing. I do not really know how
23 we are going to handle that, but I do not see how we could
24 permit one form of coverage, and not permit another, at least
25 for some form of coverage.

1 Senator Pell. I think they could take flashes.

2 Senator Allen. To turn it wide open you would probably
3 have hundreds of still photographers, and only one system of
4 coverage. I do not see why it is necessary to have a hundred
5 people roaming around in there snapping pictures, and you are
6 going to have to be able to draw the line.

7 This is for the information of the full country, and I
8 do not believe selected pictures would be for the benefit of
9 the country. That is what we are trying to avoid, let them
10 have the whole picture, and not just little fragments of it
11 by the still photographer.

12 The Chairman. The still photographer can only present
13 one particular view at a time.

14 Senator Byrd. Can still photographs be taken off these
15 films for the purpose of reserving for historical value pictures
16 that were taken of the Senate at the time it was done?

17 The Chairman. I cannot answer that.

18 Senator Byrd. Mr. Duffy?

19 Mr. Duffy. Yes, sir, he can take a photograph itself,
20 and develop it from that.

21 Senator Griffin. From the film?

22 Mr. Duffy. Not necessarily from the film itself.

23 Senator Griffin. Taking pictures of the scene?

24 Mr. Duffy. Yes, sir.

25 Senator Griffin. Do those come out very well?

1 Mr. Duffy. They are not the best, but it is a clear re-
2 production.

3 Senator Griffin. Let me make another suggestion. If you
4 had a small area up in the gallery that was enclosed perhaps,
5 or even if it was not enclosed, and maybe you might want two
6 or three places where a small number of still photographers
7 would have a pooling arrangement, and just like television does,
8 and with their zoom lenses, and closeup lenses, and that sort
9 of thing, somebody could get from one angle or another a picture
10 of almost anything, and they would not be running around on
11 the floor.

12 We might do something about that.

13 Mr. Chairman, I know Senator Scott in particular has some
14 strong views on this. I would hate to have us act before he
15 got here.

16 The Chairman. Perhaps we could have other discussion at
17 the moment, and then when we run out of discussion we could
18 recess until 12:00 o'clock, if there is no objection, so that
19 we can get the other Republican members here.

20 Senator Griffin. This may be a little bit premature, but
21 I think if we televise it, and we surely will, that we ought to
22 think in terms of the same concept for the television cameras,
23 having a little glass cage built, or something like that, and
24 you might have two or three places where you would have them,
25 but not let them move around. Make them stay in one place.

6
1 The Chairman. With the proposal here that we went over,
2 and you may not have been here when I discussed my discussions
3 with them yesterday, they suggested five cameras, fixed loca-
4 tions.

5 Senator Griffin. Up in the gallery?

6 The Chairman. In the gallery, and there would be a
7 minimum of intrusion that way.

8 There should be no noise, and they would not be in any-
9 body's way in those locations, and they could cover everything
10 that took place.

11 Senator Allen. We can decide who it would be, wire
12 services.

13 The Chairman. The networks have agreed that they would
14 form a pool, and one network would handle the whole thing, but
15 the product would be available to all the networks, including
16 public television, and they would be furnished copies for the
17 Library of Congress, for our own use, for whatever uses that
18 were needed of them, and without any copyright problems, as I
19 pointed out.

20 They also agreed that the pool would make the radio
21 broadcast available to all the radio companies, whoever wanted
22 the radio broadcast.

23 Senator Allen. I see nothing wrong with that.

24 Senator Byrd. Does the verbage in the resolution ade-
25 quately do the job, or should we specifically refer to Rule 4

1 of the Regulations, the Senate Rules?

2 Senator Griffin. Does Rule 4 include still pictures?

3 Senator Byrd. It deals with photographers.

4 The Chairman. Making a picture of any kind is prohibited
5 in the Senate Chamber, Senate Readingroom, and so on.

6 Senator Griffin. Perhaps we should suspend Rule 4 for the
7 purposes of the trial. That gives us more flexibility.

8 The Chairman. I am advised that Legislative Counsel has
9 informed us that if you adopted this resolution, that in and of
10 itself would suspend or supersede Rule 4.

11 Senator Griffin. Even though it does not apply to still
12 pictures?

13 The Chairman. For this purpose, and we would not have
14 to specifically address ourselves to Rule 4.

15 Senator Byrd. Except this would allow the taking of still
16 pictures.

17 The Chairman. Yes, unless we insert something.

18 Senator Byrd. One other provision, Mr. Chairman.

19 Would it be necessary, in order to prohibit the use of
20 any section of this film for political purposes by any Senator
21 in the future, or any candidate, to prohibit that, would it not
22 be necessary to put it in the resolution rather than just in
23 the report?

24 I am afraid putting it in the Committee Report is not
25 sufficient.

1 Senator Allen. I agree with that. I think it ought to be
2 in the resolution.

3 Senator Byrd. That it would be a violation of the law.
4 If I cannot be allowed to use a clip, my opponent should not
5 be allowed to use a clip.

6 May I suggest we get Legislative Counsel to prepare a
7 proviso for that section?

8 Senator Pell. Once it is in the public domain it is out
9 of your hands.

10 Senator Byrd. If you wrote it into the law it would not
11 be.

12 Senator Griffin. Robert, just another extension of that
13 concern, what about a network taking bits and pieces of this and
14 putting together something that they think is an interpretation
15 of what happened?

16 They might do that, too, and I do not know if we want that
17 done, or whether we are televising it only for this one purpose
18 only, and nothing else.

19 The Chairman. Is that a Constitutional matter with respect
20 to censorship?

21 Senator Byrd. I do not think it would be, as I interpret
22 it.

23 I do not think it would be.

24 Senator Allen. I do not believe you can purchase from the
25 stations newsclips that they use in the news. I do not believe

1 you can buy those from the stations. I think they have that
2 themselves, the right of censorship. They will not sell you
3 views broadcast in advertising.

4 I believe this is a reasonable request.

5 Senator Byrd. There are people here from the American
6 Law Division who say it could be a statute violation.

7 The Chairman. If you do it by statute and prohibition,
8 would you not have to provide a penalty as well?

9 Senator Byrd. Yes.

10 The Chairman. Is there further discussion?

11 Do you want to recess now until 12:00 o'clock?

12 Senator Griffin. Maybe we should not televise.

13 Senator Byrd. Well, I frankly had some ambivalent feel-
14 ings in this. I think I come down to this.

15 I see the problems myself.

16 Senator Allen. Me, too.

17 The Chairman. I do, too, but you are given this background.

18 In the first place, the Watergate hearings by the Select
19 Committee have been completely televised with respect to this
20 matter.

21 In the second place, the House Judiciary Committee's
22 decision-making process has been completely televised.

23 Now, it appears that the House wants to televise their
24 proceedings, and I think it would be very difficult for us to
25 defend against not televising in the Senate, given that background.

1 We know that the historical background is available along
2 that line. We would find that very difficult.

3 Senator Byrd. Mr. Chairman, one of the things that bothered
4 me in regard to televising this trial, if we maintain the present
5 rules, I am not talking about allowing at this time for debate
6 over what is allowed in the present rules for the final question,
7 but I think there should be ample time, and I repeat, ample time.
8 The present rules do not allow any Senators to debate any partic-
9 ular article except the final question, and he has only 15
10 minutes on that.

11 I think a Senator ought to have, and I will just pull the
12 time out of the air, let us say 30 minutes to state his position
13 on every article. That is 100 times 30 minutes. That is four,
14 eight hour days perhaps. That may be off, however.

15 I do not have any problem with that, but I thought I had
16 some indication from the hearings that there were some Senators
17 who would want the whole thing closed, and others who would
18 want it all to be out in the open.

19 It seems to me that our time honored precedent with
20 respect to juries, and this is where we have a quasi jury,
21 where they have their consultation in sequester chambers and
22 in secret, Mr. Chairman.

23 Mr. Chairman, the American people ought to understand
24 what they are doing. They are all familiar with jury practices.
25 I am concerned that if we have the fixture of saying all right,

s-11 1 we are going into closed session, and the television cameras
2 are still there and still showing it, and Senators are then at
3 liberty to get up and debate as they are in legislative sessions,
4 but being restricted to speaking only once on any one question,
5 and a limitation of ten minutes, there is the prospect and the
6 possibility that any of us, myself, included, could do some
7 posturing play to the cameras and create what we have said all
8 along that we would not create, to wit, a circus atmosphere by
9 television.

10 This is the thing I am concerned about. If we indeed
11 stick with these rules in connection with that I think that we
12 can handle this thing, and the Senate can come off in a dignified
13 way.

14 But if we are going to open up the closed sessions, that
15 is another matter.

16 Senator Griffin. If we are going to televise it I cer-
17 tainly agree with you. You would have every Senator feeling
18 that he would have to get up and give a speech just like every
19 one of the Judiciary Committee members did. They could not
20 pass up the opportunity.

21 If they were not to be televised you would not have had
22 as much discussion, but everyone has to put on his own little
23 show.

24 Senator Byrd. I hope if we do televise this that we will
25 stick to that one rule, at least that closed sessions will be

3-12 1 closed sessions, and just what the rules are concerning closed
2 sessions.

3 People understand what a jury does when it is sequestered.

4 Senator Griffin. There are two alternatives, the jury
5 room and the judge going into chambers during the trial.

6 Senator Allen. Will the closed sessions be open to the
7 press, or the Executive Sessions?

8 Senator Byrd. I think a closed session ought to be closed,
9 but with the record there.

10 I have no objection to the record coming out the next
11 morning as to what was said, and frankly, I have no objection
12 to one camera, Mr. Chairman, for the use of the Library of
13 Congress, or the National Archives, to preserve for history
14 what actually went on in that closed session.

15 Senator Griffin. I have to get my place in history then.
16 I will have to get up and make a speech.

17 Senator Byrd. That may or may not be a good idea.

18 The Chairman. If we are going to have closed sessions
19 it is going to have to be a closed session, no cameras, or any-
20 thing else.

21 I have a feeling, irrespective of whatever rule we report
22 out here, that there will be a move made on the floor to open
23 up those closed sessions, so that the entire proceeding will
24 be available for the public to see.

25 Senator Griffin. I think then you ought not to televise

13
1 it.

2 Senator Byrd. If you are going to do that I may change
3 my vote on it, Mr. Chairman.

4 The Chairman. Well, I think that is a reasonable assump-
5 tion that rule will probably be made.

6 Senator Byrd. I think you are right.

7 Senator Griffin. I was going to say if twelve o'clock is
8 not convenient, Mr. Chairman, we might consider the possibility
9 of meeting again this afternoon, off of the floor, in Senator
10 Mansfield's office, or somewhere like that.

11 Senator Byrd. I have a problem this afternoon, Mr.
12 Chairman. I am a conferee in the Public Works Program.

13 The Chairman. What time is that?

14 Senator Byrd. At two o'clock, and I do not want to imply
15 that I do not want the Committee to meet when I am not able to
16 meet, but I do feel I have a heavy responsibility to meet here
17 with this Committee when it is meeting.

18 The Chairman. I would not want to have our meetings con-
19 flict. I would hope that we could settle the basic issue.

20 If we can recess now until twelve o'clock, and at twelve
21 o'clock we would settle the basic issue, and from there we could
22 go over until tomorrow, and start meeting to settle what are
23 the groundrules.

24 Senator Allen. In the floor sessions will it be contem-
25 plated that if somebody wants to argue an appeal that that would

14 1 be closed?

2 From the public relations standpoint you are going to have
3 this thing on TV, and up to a point it goes televised, and then
4 we break in and say now we have to go behind closed doors until
5 we decide this point. You are going to have 50 or 100 breaks
6 in the thing saying look, we are going to go behind closed doors.
7 Let the Senators have their say, and we will come back in a
8 little while, but we do not know when.

9 You see, it is kind of disjointed.

10 Senator Griffin. If the counsel for the parties argue
11 the point, that would be in open court, would it not?

12 Senator Byrd. Yes.

13 Senator Griffin. They would see that and get the rationale.

14 Senator Allen. If a Senator gets up and wants to dis-
15 cuss it they black out the camera while the Senator makes his
16 point.

17 Senator Byrd. Mr. Chairman, Senator Allen raises a valid
18 point here, but I think Senator Griffin has apprehended the
19 argument here that the Senate appeals the ruling of the Chair,
20 and that is decided without debate.

21 Senator Griffin. By anyone at the present time, or just
22 by Senators without debate?

23 Senator Byrd. By Senators. It is apparent that questions
24 ought to be asked of counsel on both sides. Presumably, they will
25 have already made their arguments before the Chair rules. They

5 1 will make their arguments and then the Chair will rule, and we
2 will have had an opportunity to hear them.

3 We ought to make up our own minds. We can vote nay or
4 aye without going into session. If the Senator wants to appeal
5 it and get the vote of the Senate, fine, without any debate.

6 I do not believe that in many instances, and if he asks
7 for yeas and nays, if he wants to go into closed session he
8 would have to ask for the nays and yeas, and it may be that he
9 would not be sustained, but if he did, and we probably would in
10 some instances, I do not believe that that would happen as often
11 as it could happen, but there is that possibility.

12 Senator Allen. Now, Senator Javits was suggesting, any
13 Senator could jump up a specified time and put the questions,
14 and I asked him what about 100 Senators. He said well, we will
15 have to use some restraint, or words to that effect, but if we
16 just move from full coverage to noncoverage, I cannot imagine
17 the coverage too much of the frequent roll calls we are going
18 to have that take at least ten or 15 minutes. It is going to
19 be so disjointed that I do not know just how the thing is going
20 to work out.

21 Senator Byrd. Even if a Senator wishes to put a question,
22 as I understood Senator Javits, he would be allowed to stand and
23 address the Presiding Officer, and say, Mr. Chief Justice, Mr.
24 President, I wish to put a question to the witness which I have
25 handed to the desk in writing.

1 He then takes it to the desk, or otherwise, if he has to
2 write it first, the train will have passed him by, as Senator
3 Javits said.

4 When he does that he has no right under the Federal Rules.
5 The question would be put, and the witness would answer it, or
6 the counsel on one side or the other would object to the ques-
7 tion being asked.

8 Senator Allen. That would be closed.

9 Senator Byrd. No, sir, that would be open, because the
10 Senator is not doing anything there. He is merely sending up
11 his question.

12 Senator Allen. What would be closed then?

13 Senator Byrd. Well, at some point after the hearing of
14 the arguments of counsel on what the Senator considered to be
15 a very important question, and they were not ready to vote,
16 the Chair made a ruling, sufficient Senators were discordant
17 with that ruling they might feel it wise to close the session
18 and hear further arguments by counsel, and in that instance it
19 would be closed if the majority decides to close it.

20 I would hope that if we are going to have television,
21 once that we could have a joint meeting of all Democrats and
22 Republicans, or at least a separate meeting of the two Parties,
23 that there be some urging on the part of the leadership in both
24 Parties that we not take undue advantage of an opportunity to
25 put the thing into closed session without real reason.

1 I think most Senators would understand that, Mr. Chairman.
2 The Chairman. Well, this Rule 20 provides that at all
3 times while the Senate is sitting upon the trial of impeachment
4 that doors of the Senate shall be kept open unless the Senate
5 shall direct the doors to be closed while deliberating upon its
6 decisions.

7 Senator Allen. Take a roll call everytime you go into
8 closed session?

9 The Chairman. If you are deliberating you presumably
10 will not be deliberating on your proceedings until you are ready
11 to decide on that precise issue.

12 Senator Allen. Then you have to have a roll call to know
13 whether you are going to have a closed session or not.

14 The Chairman. I think not. I think we earlier indicated
15 the way it is now you could have a voice vote, or roll call,
16 but the suggestion was made that we make that so that you can
17 have a provision for a roll call but, of course, if the pre-
18 scribed number of Senators demanded a roll call, it could be
19 had.

20 Senator Allen. I tell you these Senate Rules were not
21 made with a view to having television.

22 The Chairman. That is true.

23 Senator Griffin. Jim, that is the reason we should decide
24 this question first.

25 Once we decide it, I think we ought to really take a good

1 look at it in light of what you say.

2 The Chairman. We may have to modify a number of these
3 rules if we make that decision, and I think there is one other
4 thing that is not covered here that I think we ought to cover
5 to make it absolutely clear that in the event matters involving
6 national security would be discussed, that the closed session
7 could be had irrespective of whether we are deliberating upon
8 the decision.

9 Senator Byrd. I think that Senate Rule 35 would apply
10 there.

11 Senator Allen. What I am afraid of is we are going to
12 be so broken up there it will not be anything from the listener's
13 point of view that is going to reflect on the Senate. The
14 Senate Rule is not made for television coverage, and it is going
15 to be these roll calls, these quorum calls, and all the while
16 they have got this national TV on, and it is going to make us
17 look pretty out of date there with some of these rules. It is
18 just not made for television.

19 The Chairman. Well, of course, the argument there is not
20 that the rules do not fit the television.

21 If we are going to have television, let us make the rules
22 fit it.

23 That is why I suggested we ought to decide the television
24 issue first, and if we decide we are going to have it, then
25 that is when we are going to start through these rules, and we

-19 1 are going to have to consider all these matters and make that
NS-3 2 recommendation to the Senate.
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Senator Allen. You cannot get around a demand for a roll call 20 percent of the time. That is in the Constitution. You have that, and that is in a closed session.

Again, this is going to be very disjointed.

The Chairman. In my own view, I do not envision we will have an awful lot of roll calls outside of the roll calls on the substantive issues themselves, the number of the subdivisions you have in the first article, second and third articles, and I do not envision that there will be many procedural matters that we really will have to have a roll call for.

Senator Byrd. It seems to me that the Senators would be willing if, after hearing the arguments of counsel on both sides, the Chair rules and the Senator wished to appeal that ruling, then if someone moved to go into closed session to further discuss the point in question, it would seem to me that they could remain open, and that Senator could ask the counsel for both sides to please further discuss whatever point it is that he was unclear about, and let them discuss it back and forth, and then the Senate could vote.

Senator Allen. He would give the question to the Chief Justice?

Senator Byrd. To the Chief Justice, or ask the secretary to read the question.

If I had something like that, I would not be prepared to debate it before the Senators. I have never had any courtroom

1 practice.

2 But I might have a question. And I would simply ask it
3 to the Chief Justice, and ask counsel for the defense to
4 further explain this or the reasoning.

5 Senator Griffin. I think your idea of having indoctrina-
6 tion or orientation sessions, or whatever you call them, in
7 advance would be very good. And in that way you could lay the
8 groundwork for discouraging this as much as possible.

9 Senator Allen. And have the Chief Justice over there also.

10 The Chairman. This is one of the reasons I raised that
11 question with some of our witnesses, what is the proposal of
12 the Senate. And I think if we do anything in the rules, then
13 we ought to clarify that, that the Senator is not an advocate
14 for or a defender of, but he is there to listen and to make a
15 decision on the evidence.

16 And if he has questions, he can submit them. But I hope
17 we get away completely from the idea that the Senators are
18 going to be advocates in any sense of the word.

19 Maybe we cannot do that, but I would hope we can.

20 Senator Griffin. The jurors might argue among themselves
21 in closed session but not in open court.

22 Senator Byrd. Yes.

23 Mr. Chairman, I move the adoption of the resolution with
24 the inclusion of the proviso prohibiting the use of any of the
25 film -- and we can work this out -- by any candidate in any

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1 political campaign with the further understanding that any
2 Senators who are here absent at this moment may still, before
3 this resolution is reported from the Committee, may still move
4 amendments thereto, and that the measure, if reported, be
5 accompanied with a request that the Committee be allowed one
6 week in which to submit an accompanying Committee report.

7 I want to leave all Senators with their rights, but at
8 least the motion is before the Committee, Mr. Chairman.

9 Senator Griffin. But not to proceed forward. Fine.

10 The Chairman. Well, do you desire to discuss the matter
11 further now, or shall we just recess until 12 o'clock?

12 Senator Byrd. Twelve o'clock is all right with me.

13 Senator Griffin. Are you going to come back here?

14 The Chairman. Right here, because we will be meeting at
15 12 o'clock and will not go to the extent that it interferes
16 with Senator Byrd's conference this afternoon.

17 If we are not finished by then, we will go over.

18 The Committee will stand in recess until 12 o'clock.

19 Let me suggest this.

20 There have been some questions raised here in our discus-
21 sion that this will give us the opportunity to get at least
22 some preliminary action.

23 Senator Byrd. Mr. Chairman, can someone check, though,
24 to see if all Committee members can be here?

25 The Chairman. Yes.

-4 1 (Whereupon, at 11:15 a.m., the Committee recessed, to
2 reconvene at 12:00 Noon, the same day.)

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AFTERNOON SESSION

(12:03 p.m.)

The Chairman. The Committee will come to order.

Gentlemen, this morning we had a general discussion of the subject of proposed broadcast coverage and made the determination that we would settle that issue first. And after that issue was settled, then we would go on to, if we decide to have our press coverage, along with the proposed rules covering it, and also, then, after that is out of the way, we could go to proposed modification of impeachment rules.

Now, Senator Byrd did offer a motion for consideration, and I wish he were here now.

When he comes in, I will ask him to restate his motion, because I think he can do it better than I.

We had a general discussion as to a proposed resolution, modification of his resolution.

We discussed the question of whether the still photography ought to be permitted during the proceedings, as well as the broadcasting, if we were to have it.

Senator Scott. As to what?

The Chairman. Still photography.

And in the suggested amendment that was offered for consideration, and which would be Senator Byrd's amendment, on line 4, after the word "may be," insert "photograph," and after "broadcast and," add the following, "Such photographing and

1 broadcasting shall be accomplished in conformity of regulation
2 promulgated by the Committee on Rules and Administration."

3 Senator Scott. Can I have the first part of his amendment?

4 Was it more to the amendment than this?

5 The Chairman. No. That was all.

6 And I do not know that that amendment has actually been
7 offered as such, but it was discussed.

8 Senator Scott. Well, I will repeat this when Bob comes in,
9 but I just want to say something, perhaps to bring to the Com-
10 mittee's information, and that is, for some months, at Senator
11 Mansfield's direction, the Staff Committee comprised of Mr.
12 Valeo, Mr. Kimmet, Mr. Farris, Mr. Hildebrand and Mr. Davis,
13 have been recommending the housekeeping aspects of an impeach-
14 ment trial as against the rules, and that, of course, is while
15 Senator Mansfield indicated to me that he had requested that
16 this resolution be kept brief and simple as it is without get-
17 ting into housekeeping arrangements.

18 I would like to respect his wishes there, as I realize that
19 we have a function on the Rules Committee, and it has been
20 argued here that we should not tamper with the rules beyond the
21 necessary features.

22 I think the same might be true with regard to the televi-
23 sion report that the function of leadership extends to determi-
24 nation once the Senate adopts the provision for television and
25 radio coverage as to how the cameras shall be in place, as to

-7 1 what they shall do with the cameras, et cetera.

2 It is a good idea, I think, Bob, to suggest to include
3 still photography, at least for the purpose of making pictures
4 at the beginning of the session and perhaps at the end, perhaps
5 at the beginning of the voting, but it was the thought of this
6 staff, as I read their report -- and they made a rather full
7 report which can be made available to this Committee and, in
8 fact, I think it should be made available -- indicating some of
9 the disadvantages of still photography because of the scurrying
10 around and the numbers of pictures taken and the general dis-
11 ruption as against the fixed aspect of the television cameras.

12 They have also made recommendations having to do with the
13 tickets and space allocation, and matters of that kind, and I
14 would hope this Committee would leave some functions to the
15 leadership.

16 I hope you do that in deference to the Majority Leader.

17 I want to do what we can to work this out at this end, and
18 I have discussed that with him again this morning. He repeats
19 to me that that is his understanding.

20 In between, I will ask for this Committee's appearance
21 here. And I am not saying we should adopt their rules. I am
22 not saying we should not include something about still cameras.
23 But if you do not want the Senate Staff, the elected officers,
24 to have anything to do, I think it would be well for the Rules
25 Committee to say so, so the Majority Leader and Minority

1 Leader can react or not react.

2 The Chairman. Well, our discussion this morning, we
3 envisioned that there would be a lot of things that would be
4 covered administratively as housekeeping matters, but certainly
5 not the basic decisions.

6 If we are going to decide, as is our prerogative here, to
7 change the rules and say that the proceedings should be broad-
8 cast, then some broad general rules ought to be laid down by
9 this Committee and not leave it to administrative employees to
10 make those determinations.

11 I reported to the group this morning that I had met with
12 representatives of all the networks and explored a lot of the
13 areas as to how this could best be presented historically for
14 the American people and what recommendations they had, and
15 there are some specific ones that I think we should cover,
16 either by precise rules and regulations, or the Committee
17 report go to the Senate to accompany the resolution that we
18 agree on.

19 I do not think this should be left to administrative
20 employees of the Senate to make these basic determinations.

21 Certainly, beyond that, I think that would be proper.

22 Senator Scott. Well, first, I agree with you as to the
23 broad controlling features of television and still photography,
24 that the Rules Committee should cover that in its resolution,
25 that this Ad Hoc Committee are acting only by direction of the

1 Majority Leader with the approval of the Minority Leader, and
2 that their recommendations, I think, would be useful to this
3 Committee. And you should request Mr. Valeo to be present, or
4 someone else, to give you that information so that you will be
5 able to determine whether that impinges upon the functions of
6 the Rules Committee.

7 Mr. Chairman, that is my concern here. I do not think that
8 the Rules Committee can anticipate every single situation. I
9 do not think, for instance, the Rules Committee wants to pass
10 on the color of the tickets to be used for that kind of thing.

11 The Chairman. Or the number of tickets to be used, I
12 would not think.

13 Senator Scott. I would rather have the Majority Leader
14 to decide whether the House of Representatives is going to sit
15 or stand. It is that kind of thing, Mr. Chairman.

16 I doubt if we are really very far apart on it.

17 The Chairman. What we were talking about is broad rules
18 precisely relating to the broadcasting.

19 For instance, in Senator Mansfield's proposal, his pro-
20 posal was that we have one camera, and that it only be fixed
21 on the well, and that it be in black and white.

22 Well, I have gone over that issue quite thoroughly with
23 the networks.

24 In the first place, they say they cannot present a direct
25 picture to the American people if there is only one camera;

1 that the presumption black and white should be used because
2 color would require high intensity lights is not so.

3 I am informed by the networks meeting together that they
4 will not require any more lights for the present technology of
5 color camera than they will for black and white. So, there-
6 fore, if we are going to have photography, we ought to present
7 it in the best light for the American people.

8 With respect to the one camera, they say they can present
9 five fixed camera locations with no intrusion into the business
10 of the Senate, and these are the sort of things that I have
11 gone over with them informally and reported to the group this
12 morning.

13 Furthermore, they would have a pooling arrangement, and
14 through the pool, the television film would be made available
15 for everybody so that all of the networks, including public
16 broadcasting, would be made available for the radio people as
17 well, because the sound is taken from there.

18 Further, that they would make this available to us for the
19 Senate and for the Library of Congress and to such other places
20 as we direct copies without any copyright problems so we would
21 have this historical film.

22 Senator Scott. You surely do not want to write all that
23 in here?

24 The Chairman. No.

25 I think that in our report that should be covered.

11 1 I think we ought to say, rather than having somebody else
2 say how many cameras we should have. I think we ought to make
3 the basic decision of whether it can or cannot be in color.

4 I do not think we need to make that basic decision in the
5 resolution itself.

6 Of course, if we decide against the resolution, then this
7 all goes by the board anyway.

8 I think those basic decisions ought to be made by this
9 body. This is the responsibility of the Rules Committee, this
10 sort of thing, and we have handled it in the past.

11 We handled it with respect to the inauguration of the
12 President, and I think maybe we can handle it with respect to
13 the removal of the President.

14 Senator Scott. Well, I have reservations about it because
15 I think if you seek to fix whether it shall be in black and
16 white or color, or how many cameras you allow, whether cameras
17 shall be fixed or not, how much space shall be given to the
18 House of Representatives, how much space shall be given to the
19 press, you have, in my mind, clearly removed that function from
20 the Majority Leader and the Minority Leader, and they can say
21 as far as they are concerned, it is all right.

22 Take his authority away if you wish. I can only say as of
23 this morning I regard it as in dereliction of his function.

24 And I have talked to him and he did not know that this was
25 the matter when I talked to him.

1 I do not attempt to quote him or anything. I do think you
2 ought to hear from this Ad Hoc Committee in deference, at least,
3 to the facts rather than proceed with what might seem in a
4 fashion without hearing from them, because they have made many
5 recommendations and they have met with some of the network
6 people also.

7 Senator Hatfield. Mr. Chairman, may I ask a question here?

8 The Chairman. Yes.

9 Senator Hatfield. This resolution that has been presented
10 to us by Senator Byrd on behalf of himself and Mr. Mansfield,
11 what, in effect, are we doing in passing that resolution?

12 Are we adding a new rule?

13 Are we amending existing rules?

14 What are we actually doing?

15 As I look here, we have three specific rules that bear on
16 this question. We have the Standing Rules of the Senate, Rule
17 35, and then if you will turn in your book, we have what is
18 called the Rules of the Senate Wing which has a bearing on it
19 about use of the Senate, taking pictures. That is Rule 4.

20 Then you turn over to another place and we have the rules
21 for impeachment, and Rule 20 in that section.

22 We, in effect, have three bodies and sets of rules that
23 have some present statement relating to the question of open
doors, photography, and what have you.

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te 1 Senator Scott. We also have a Committee, and I cannot
ms 2 give you the exact title, but the Committee involves the use of
l 3 space in the Capitol, on which Senator Mansfield is Chairman,
4 and I am Vice Chairman of that Committee.

5 Senator Hatfield. These three separate sections are under
6 the Rules and Manual of the United States Senate.

7 Now, my question is just what are we in the process of
8 doing, adding one that supersedes all of these, or are we
9 amending, or what?

10 The Chairman. It depends on what we are going to do.

11 Senator Hatfield. I am taking the resolution that you
12 have here, this resolution before us under pending business.

13 The Chairman. Well, Rule 4 would be suspended with
14 respect to these items by the adoption of this resolution.

15 Senator Hatfield. Which rule?

16 The Chairman. Rule 4.

17 Senator Hatfield. In which section?

18 The Chairman. The taking of pictures is prohibited. That
19 is rules for regulation of the Senate wing.

20 Mr. Alexander. Page 120.

21 The Chairman. That says the taking of pictures of any
22 kind is prohibited in the Senate Chamber, the Senate Reading-
23 rooms, (Marble Room and lobby), the Senate cloakrooms, and the
24 private dining room of the Senate.

25 Senator Hatfield. That is the Senate wing?

1 The Chairman. That is correct.

2 Senator Hatfield. What about Rule 35 in the Standing
3 Rules of the Senate?

4 Senator Byrd. May I respond?

5 The Chairman. Yes.

6 Senator Byrd. I think Senator Hatfield raises a valid
7 question.

8 The intention of this was only to suspend Rule 4 of the
9 Standing Rules as to taking pictures, but this verbage as it is
10 written would certainly leave room for argument that the closed
11 sessions of the Senate, which under the present impeachment
12 rules are provided for, and under Rule 35 it is provided for
13 upon the demand of one Senator.

14 It certainly leaves room for argument that even those
15 could be dealt with, that the Senate may decree that is all
16 right. I am personally against televising the closed sessions.
17 Juries go into closed sessions, and I think in the Senate we
18 want to do the same thing, but I would want to modify my
19 language in light of Senator Hatfield's doubts and questions
20 to read as follows; that in the event the House of Representa-
21 tives should impeach President Richard M. Nixon, that in the
22 impeachment in open session of the Senate -- those three key
23 words there -- with respect to the trial of impeachment, the
24 trial of impeachment may be broadcast.

25 Senator Cook. Photographed, is that what you want?

3 1 Senator Byrd. I am afraid if you say photographed and
2 maybe broadcast you get into another problem.

3 Senator Cook. I thought this is the change that you pro-
4 posed.

5 The Chairman. No, this is just the discussion.

6 Senator Byrd. I have another suggestion on that point,
7 if I may read it. It reads:

8 "May be broadcast by radio and television," and then
9 "Rule 4 of the Standing Regulations of the Senate is also in
10 this instance suspended for still photography."

11 The reason I would not want to put the word "photographers"
12 before the word "broadcast" if we do that we are leaving open
13 the proceedings in open session, all the proceedings in open
14 session with respect to the trial would be open to still photo-
15 graphy.

16 My feeling is that I think we are going to have problems
17 if we do not allow them, some of these people, some of them
18 that the Rules Committee, or the Joint Leadership, in consulta-
19 tion with the Rules Committee, in consultation with the Chairman
20 and Ranking Minority member, or whatever the Rules Committee
21 wants to do, may want to limit still photography to certain
22 areas.

23 We can have the whole Senate sit at the trial, and still
24 photographers could come in.

25 We can have certain points during the trial where still

1 photographers could be permitted, but I do feel that there ought
2 to be some limit.

3 In the Estes case, that was one, if not the main objection
4 that the court had, and I have not read the Estes case, but I
5 have heard about it, and listened to discussions about it here.

6 One of the main problems was the moving around of camera-
7 men and disruption, and the cables lying around.

8 If you have still photography during the proceedings in
9 open session of the Senate they will have to move around. We
10 have to move around.

11 Senator Cook. They do not move around in the joint ses-
12 sions of Congress, Bob. They stay right there.

13 Senator Byrd. That is in a joint session, that is right,
14 but at least I think it is something we would have to consider,
15 and the wording of my amendment would leave it up to further
16 recommendations by this Committee, or by the joint floor leader-
17 ship.

18 The Chairman. Would you give us your language again?

19 Senator Byrd. On line three, after the word "proceedings"
20 write or insert "in open session."

21 Now, that would deal with Mark's point, and then if we
22 wanted to include still photography we could.

23 The Chairman. May be broadcast.

24 Senator Byrd. May be broadcast by radio and television.

25 Senator Allen. Should that not be televised and broadcast?

1 Senator Byrd. May be televised and broadcast.

2 Senator Scott. Broadcasting does cover both.

3 Senator Byrd. It covers both, and it is superfluous.

4 In any event, put a period there and say "Rule 4 of the
5 Standing Rules of the Senate * * *" also denoting that we are
6 suspending Rule 4, "* * *" is also in this instance suspended
7 for the purpose of still photography."

8 Senator Scott. Could I suggest a proposed amendment in
9 line with what I have said earlier, that we add a separate
10 paragraph?

11 Let me propose this amendment, Mr. Chairman.

12 Senator Byrd. Marlow, do you have any objection to what
13 I have read so far?

14 Senator Cook. No.

15 Senator Scott. I propose "such television, broadcasting
16 and photography shall be accomplished in conformity with stand-
17 ards adopted by the Committee on Rules and Administration."

18 I might add this, Mr. Chairman:

19 "The Secretary of the Senate, with the approval of the
20 Majority and Minority Leaders, is hereby vested with the admin-
21 istrative authority to execute and enforce these standards."

22 That is the end of the proposal. The reason I suggest
23 this is that the Rules Committee cannot function on a day-to-
24 day basis on the floor of the Senate, and we cannot rule as a
25 Rules Committee on every request made by the Committee on behalf

6 1 of still photography.

2 At some point you have to function within the system which
3 we have created for the coverage in the Senate.

4 The Chairman. We already have that. That is very accur-
5 ately covered under Rule 34.

6 Let me read that:

7 "It shall be the duty of the Committee on Rules and Admin-
8 istration to make all rules and regulations respecting such
9 parts of the Capitol, its passages and galleries, including the
10 restaurant and the Senate Office Building, as are or may be
11 set apart for the use of the Senate and its officers, to be
12 enforced under the direction of the Presiding Officer.

13 "They shall make such regulations respecting the reporters
14 galleries of the Senate, together with the adjoining rooms and
15 facilities, as will confine their occupancy and use to bona
16 fide reporters for daily newspapers and periodicals, to bona
17 fide reporters of news or press associations requiring telegraph
18 service to their membership, and to bona fide reporters for
19 daily news dissemination through radio, wire, wireless, and
20 similar media of transmission.

21 "These regulations shall so provide for the use of such
22 space and facilities as fairly to distribute their use to all
23 such media of news dissemination."

24 Senator Scott. Well, it does cover it as to the broad
25 authority of the Rules Committee.

1 It does not cover the day-to-day administration of those
2 rules. That is what I am concerned about. You cannot call the
3 the Rules Committee in session every morning.

4 The Chairman. I certainly do not want to.

5 Senator Scott. That is why I proposed that somebody have
6 the enforcement power.

7 Senator Byrd. May I throw this out for discussion, Howard?

8 The Chairman. Excuse me, if I may on that, while we are
9 on it, that authority is already given by another rule to the
10 Sergeant-At-Arms.

11 In here we said under the direction of the Presiding
12 Officer.

13 Now, the Sergeant-At-Arms, and this is Rule 1 of the
14 Senate, under the direction of the Presiding Officer shall be
15 the executive officer of the body for the enforcement of all
16 rules made by the Committee on Rules and Administration for the
17 regulation of the Senate wing of the Capitol and Senate Office
18 Building.

19 It goes on to say the Senate floor shall be at all times
20 under his immediate supervision, and he shall see that the
21 various subordinate officers of his department perform the
22 duties to which they are specifically assigned.

23 Senator Scott. Rule 1?

24 The Chairman. Rule 1 of the Senate Wing, United States
25 Capitol.

1 Senator Byrd. It is also one of the impeachment rules.

2 It is also one of the standing impeachment rules that the Pre-
3 siding Officer, not the Presiding Officer at the trial, but the
4 Presiding Officer of the Senate shall, and I do not know the
5 exact words, but shall see to the making of the preparations
6 for the trial.

7 What is the exact wording?

8 Dr. Riddick. Presiding Officer of the Senate shall direct
9 all necessary preparations.

10 Senator Scott. I am familiar with that.

11 Senator Byrd. There we have the impeachment rule that
12 says that the Vice President, or President Pro Tem shall do
13 this.

14 It seems to me, if I may throw out this approach, Howard,
15 for consideration, that we should write another proviso, which
16 I would think would meet Mr. Mansfield's feelings in the matter,
17 and Senator Scott's, and at the same time serve the authority
18 which presently rests on the Rules Committee; that Rule 7 of
19 the Impeachment Rules, to which some extent in my judgment
20 takes away from the Rules Committee its authority if made
21 available.

22 Senator Scott. No, no, I kind of agree with you.

23 Senator Byrd. I think it can be argued that that rule
24 in this instance supersedes the Standing Regulations of the
25 Senate.

9 1 Senator Scott. Exactly. That is what I am getting at.

2 Senator Byrd. Suppose we were to say that?

3 The Chairman. If you will just yield, and let me point
4 out that the rules of the Senate were adopted later than that
5 rule, so it would be a real question as to whether the rules of
6 the Senate superseded that.

7 Senator Scott. Before you read it, the point that I am
8 making is that the Sergeant-At-Arms, as the rules say, has cer-
9 tain functions to keep order and so forth, as stated in here,
10 but there still exists some function of the floor leadership,
11 and all I am suggesting is that whatever your wording, that you
12 do not take away the function of the floor leadership or its
13 right to consult the elected officers of the Senate.

14 I think you and I are both disposed to do the same thing,
15 that is reserve the establishment, the system under which we
16 operate.

17 Senator Byrd. I am not arguing against it.

18 I think the Standing Rules of the Senate, even though part
19 of the time may supersede the impeachment rules, the impeachment
20 rules are for the Senate sitting as a court.

21 That is neither here nor there, as far as I am concerned.
22 I think there could be some question, but could we, Mr. Chairman,
23 write into this as a second paragraph something like this, that
24 the implementation of the foregoing will, let us say, policies
25 and regulations, if you want to say that.

1 Senator Scott. How about procedures?

2 Senator Byrd. Policies and procedures for the implementa-
3 tion of the foregoing shall be --

4 Senator Scott. The responsibility of the Majority and
5 Minority Leadership?

6 Senator Byrd. Shall be the responsibility of the floor
7 leadership in consultation with the Rules Committee.

8 Senator Scott. I think that is proper.

9 Senator Allen. Under what authority is that?

10 Senator Scott. I am sorry, I do not follow you.

11 Senator Allen. That says the broadcasting will be accom-
12 plished with regulations under the rules and regulations promul-
13 gated by this Committee. You can put something in there.

14 Senator Byrd. That is what I am afraid of, Jim. I am
15 afraid if we do not either put it in the regulation, or submit
16 a report accompanying the resolution saying the implementation
17 of the resolution shall be carried out, or by the joint floor
18 leadership in consultation with the Rules Committee, I am afraid
19 Mr. Mansfield would possibly feel that there are certain things,
20 certain decisions shall be made by the leadership which has
21 the responsibility in this situation.

22 Senator Allen. I have no problem with that.

23 Senator Scott. I think Bob has put his finger on it.

24 Senator Byrd. I am afraid it is becoming a rather
25 sensitive matter.

1 1 Senator Scott. It is. That is why I wanted to caution
2 you.

3 Senator Byrd. And at the same time I think the Chairman
4 of this Committee has his responsibilities, but I would like to
5 see something if we can agree on it that will allow the joint
6 floor leadership to carry out the implementation of these things.

7 Senator Scott. I accept your approach, Bob, and your
8 phraseology. I think it is rather wise.

9 Senator Pell. Do you think another thought might be to
10 give the responsibility to the Sergeant-At-Arms, who reports
11 basically to the leadership and to the Rules Committee?

12 Senator Scott. He is basically a functionary.

13 Senator Allen. The leadership would be the chief judges,
14 and I think we should allow them to carry out the mandate given
15 them.

16 The Chairman. Well, I would like to have someone advance
17 language that might accomplish what we are talking about here.

18 Basically, I do not want to try to change the rules here
19 which give the Rules Committee the authority to promulgate
20 rules and regulations.

21 Now, I am perfectly willing to consider that upon recom-
22 mendation of any ad hoc committee and a delegation of day-to-day
23 administrative duties to whoever you want to have them delegated
24 to.

25 My researchers do not want to sit here and make day-to-day

-12 1 decisions as they come up, but there are some basic decisions
2 that I think in this area we need to make.

3 Senator Scott. Bob has suggested that the Floor leader-
4 ship has certain functions, and it would be up to the floor
5 leadership to designate whether they go to the Secretary of
6 the Senate or Sergeant-At-Arms. It is something done every day
7 in lesser matters.

8 I would simply hope in the Committee Report that you do
9 not lock yourselves in so hard on the number of cameras or
10 their allocation that then the leadership finds themselves in
11 a position where it needs one more camera, and has to go back
12 to us to make the rule.

13 Senator Byrd. I think if the joint floor leadership
14 would sit down and agree, and in this Committee, you laid it
15 out on the table the reason why you had to have X number of
16 cameras, I think the joint floor leadership would do that.
17 It is going to be persuaded.

18 Senator Scott. I would like to have some staff advice
19 on this at the same time.

20 I would like to have Frank Faleo come in.

21 The Chairman. That is why I suggested we might want to
22 cover this in the report and not say anything in the resolution,
23 but in our report to the Senate say that we agree that these
24 things for good reason must be done.

25 Senator Scott. I do think, Bob, that is a good idea, in

1 adding that the day-to-day procedures shall be executed and en-
2 forced by the floor leaders.

3 Senator Byrd. In consultation with the Chairman and mem-
4 bers of the Rules Committee.

5 Senator Allen. With the Chairman.

6 Senator Byrd. Just with the Chairman as far as I am con-
7 cerned.

8 Senator Scott. The the Ranking Minority member.

9 Senator Byrd. And the Ranking Minority member, or you
10 could make it the full Committee. But I think this would meet
11 with Senator Mansfield's approval. I have not tested the language
12 with him, but I think it would.

13 Senator Scott. I have not, either, but I think it would.
14 He would be a little sensitive if we did anything that would be
15 interpreted by others as a diminution of his responsibility,
16 just as we have made the point that the Chief Justice might take
17 it rather hard if we tried to cut down his Constitutional auth-
18 ority.

19 Senator Byrd. I do think if we put that in that bill, if
20 we follow it up with a Committee Report that sets out one, two,
21 three, four recommendations, that would do it.

22 Senator Scott. You think what, now?

23 Senator Byrd. Now, personally, I think I can have a feel
24 of this whole thing a little better.

25 Personally, I would like to see, Mr. Chairman, the resolution

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1 passed out with this proviso which we have discussed, and that
2 we not submit it, but that resolution would leave in the hands
3 basically of the Rules Committee its authority, but it would
4 give to the leadership, it would authorize the leadership to
5 work out the policies and procedures in consultation with the
6 Rules Committee without our attempting at this point to write
7 into the Committee Report anything.

8 Senator Scott. I think that is good. You remember on
9 inauguration we had written in who shall serve on an inaugural
10 committee.

11 If we had written in that the Majority and Minority
12 Leaders shall be part, or that the Chairman and Ranking member
13 of the Minority side of the Rules Committee shall be, then I
14 foresee future trouble for us if we get too specific.

15 The Chairman. Let me read this and see if it covers it.
16 This has just been handed to me by one of the staff.

17 Listen carefully, because I want to be sure it has in
18 there the points.

19 "Resolved, in the event the House of Representatives shall
20 impeach President Richard M. Nixon, the proceedings in open
21 session in the Senate with respect to the trial of impeachment
22 of the President may be broadcast by radio and television.

23 "Rule 4 of the Standing Rules of the Senate is also in
24 this instance suspended for the purpose of still photography."

25 Senator Byrd. Standing Regulations.

5
1 The Chairman. "Such broadcasting shall be accomplished in
2 conformity with regulations thereon promulgated by the Committee
3 on Rules and Administration.

4 "The implementation of such regulations shall be effected
5 by the joint floor leadership after consultation with the Chairman
6 and Ranking Minority member of the Committee on Rules and Admin-
7 istration."

8 Senator Scott. All right with me.

9 Senator Byrd. All right with me, but I do not think it
10 is going to be what Mr. Mansfield wants. He can speak for him-
11 self, but I do not believe it is going to be what he has sug-
12 gested.

13 Senator Scott. You mean policies and procedures rather
14 than regulations?

15 The Chairman. Suggest the changes.

16 Senator Scott. I think the word "regulation" is a little
17 bit rough there. How about "policies and procedures?"

18 Howard, I just have to run.

19 Senator Byrd. Here is where I think the problem is. We
20 would say such broadcasting shall be accomplished in conformity
21 with regulations promulgated by the Committee on Rules and Admin-
22 istration.

23 We are leaving the implementation of the joint rules, but
24 the regulations thereunder promulgated by the Committee on Rules
25 and Administration and I feel, Mr. Chairman, that that

-16 1 phraseology is going too far.

fls 2 The Chairman. I see what you have in mind there.

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1 Senator Scott. Consultation is what you are after.

2 Senator Byrd. I think the joint leadership, not myself
3 included, would be included.

4 Senator Scott. Would be included, you and Bob Griffin?

5 Senator Byrd. I am not arguing this from my personal
6 standpoint.

7 I think the joint leadership will feel that it ought to
8 have some input into the regulations themselves.

9 The Chairman. Why not say this --

10 Senator Scott. Rather than taking the regulations that
11 are handed to them.

12 Senator Allen. Promulgated in consultation with.

13 How about that?

14 The Chairman. Let us do this.

15 Let us say:

16 "Such broadcasting shall be accomplished in conformity
17 with procedures thereon promulgated by the Committee on Rules
18 and Administration in consultation with the joint leadership.
19 The implementation of such proceeding shall be effected by the
20 further floor leadership after consultation with the Chairman
21 and Ranking Minority Member of the Committee on Rules and
22 Administration."

23 Senator Scott. If you add "floor leadership" firstly.

24 The Chairman. All right. I see.

25 Let us say:

1 "Such broadcasting shall be accomplished in conformity
2 with procedures thereon promulgated by the Committee on Rules
3 and Administration in consultation with the joint floor leader-
4 ship."

5 Instead of "joint," why not say "majority"?

6 Senator Scott. All right.

7 Majority and Minority Floor Leaders.

8 The Chairman. How does this sound?

9 "Such broadcasting shall be accomplished in conformity
10 with procedures thereon promulgated by the Committee on Rules
11 and Administration in consultation with the Majority and
12 Minority Floor Leaders.

13 "Implementation of such procedures shall be effected by the
14 joint floor leaders after consultation with the Chairman and
15 Ranking Minority Member of the Committee on Rules and Admini-
16 stration."

17 "Such broadcasting shall be promulgated by the Committee
18 on Rules and Administration after consultation with the
19 Majority and Minority Floor Leaders.

20 "The implementation of such procedures shall be effected
21 by the joint floor leaders after consultation with the Chairman
22 and Ranking Minority Member of the Committee on Rules and
23 Administration."

24 Senator Byrd. Are you saying "floor leadership" in both
25 instances?

1 That will show Mr. Mansfield the intent.

2 Senator Williams. This meets now the leader's feelings?

3 Senator Scott. Yes.

4 I have a slight problem with the word "promulgated," how-
5 ever, in an irrevocable sense.

6 That is the only problem I have.

7 The promulgated part of that has an air to it of irrevocable.
8 I thought that is what you were working on.

9 But if you say "rules adopted," that is it. That is what
10 they are.

11 The Chairman. Do you want to say, "Such broadcasting shall
12 be accomplished in confirmity with procedures thereon, approved
13 by the Committee on Rules and Administration in consultation
14 with the Majority and Minority Floor Leaders"?

15 Senator Scott. I think that is all right.

16 The Chairman. "Approved" rather than "promulgated"?

17 Senator Scott. Let us say "approved" or "adopted."

18 Senator Allen. Let us say "approved."

19 Senator Scott. What do you think is a better word? I am
20 not too satisfied with the word.

21 Senator Allen. I guess either "adopted" or "agreed upon."

22 Senator Scott. Let us say "agreed upon."

23 Senator Allen. "Fashioned by."

24 We could even say "agreed upon."

25 Senator Scott. Yes, let us say "agreed upon," or

1 "developed."

2 The Chairman. We are going to say, then, I take it,
3 "agreed upon" rather than "promulgated."

4 Senator Scott. I think "agreed upon" is better.

5 The word "promulgated" sounds like a manifest.

6 Senator Allen. A little too lofty.

7 The Chairman. Well, may I read this now, and if we vote
8 on this, I would still want to request that the Joint Staff be
9 able to have the right to clean up the language.

10 Senator Scott. As long as they do not change the meaning.

11 The Chairman. As long as they do not change the meaning
12 of it.

13 "Resolved, and in the event the House of Representatives
14 shall impeach President Richard M. Nixon, the proceedings in
15 open session of the Senate with respect to the trial of
16 impeachment of the President may be broadcast by radio and
17 television.

18 "Rule 4 of the Standing Rules of the Senate is also, in
19 this instance, suspended for the purpose of still photography.

20 "Such broadcasting shall be accomplished in conformity
21 with procedures thereon agreed upon by the Committee on Rules
22 and Administration in consultation with the Majority and
23 Minority Floor Leadership.

24 "The implementation of such proceedings shall be effected
25 by the Joint Floor Leadership after consultation with the

1 Chairman and Ranking Minority Member of the Committee on Rules
2 and Administration."

3 Senator Scott. You want to add "such broadcasting and
4 photography," because otherwise you are giving the photographers
5 a broader charter here.

6 Senator Byrd. Let us call Mr. Mansfield and get his
7 reaction.

8 Senator Williams. How about "consultation"?

9 Senator Byrd. Before I call him, Jim has an excellent
10 suggestion, and I would like to plug it.

11 Senator Allen. Mr. Chairman, I want to, but it looks to
12 me like it may sound a little better, to remove the President's
13 name from this and just say in the first line thereto, permit
14 television and radio coverage of impeachment trial, knocking
15 out his name.

16 Senator Pell. Impeachment trial is a judgment.

17 The Chairmen. Impeachment trial?

18 Senator Allen. Then a period.

19 You get down to the body of it and then resolved, and
20 strike out the rest of it. Impeachment trial, put a period,
21 and gets down in the body resolved that, and strike out the
22 rest of that line and all the next line through Nixon.

23 Senator Scott. Which can always be changed when you go
24 back to a judge or something.

25 Senator Allen. Yes.

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1 Then that would be the same.

2 The Chairman. Impeachment?

3 Senator Byrd. Any impeachment or trial.

4 Senator Allen. And strike out "of the President," and this
5 would be a permanent rule.

6 Senator Byrd. I would like to accept that modification.

7 The Chairman. And in the title there, would you accept to
8 changing the words "radio coverage" to "radio broadcast," to
9 permit radio and television broadcasting of impeachment trial?

10 Senator Byrd. What about still photography?

11 The Chairman. That was just the title. We have not
12 covered that in the body of it.

13 Senator Allen. It might cover some stuff they did not
14 broadcast. It does not matter to me.

15 The Chairman. In the body of it, you use "broadcast."

16 Senator Allen. That is all.

17 Senator Scott. That does not commit us to full coverage
18 or not, although I favor full coverage gavel to gavel. But
19 that does not force us to do it.

20 Senator Byrd. You do not think you need "still photography"
21 in that title?

22 The Chairman. Well, except that we may not commence still
23 photography of the entire trial.

24 Senator Byrd. I see your point.

25 Senator Scott. I do not know if you would put it in.

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1 Senator Cannon. Why not check that?

2 Senator Byrd. I want to be heard first.

3 Senator Scott. Bob, I would like to go over that part
4 again.

5 Senator Cannon. I would like to propose that we meet
6 tomorrow and start on the impeachment rules.

7 Any objection to that?

8 Senator Byrd. And let us go forward.

9 Senator Cannon. Is that agreed?

10 Senator Scott. Yes.

11 Senator Cannon. Then we will just recess until ten
12 o'clock tomorrow morning.

13 Senator Scott. I have problems with Friday morning.
14 Tomorrow is all right but we have a Conference potentially
15 coming up Friday morning.

16 What would you think of adopting the Resolution just
17 as a gentlemen's agreement?

18 We may want to add to Rule IV for the purpose of still
19 photography assuming say we had the moving pictures. We
20 may want to say for still purposes.

21 Well, whatever he says is all right with me.

22 Senator Cannon. Just for purposes of this by making
23 the suggestion also we might strike out in this instance so
24 it reads, "****is also suspended for the purpose of photography."

25 Senator Scott. It is all right with me.

1 However, we are trying to write permanent rules so I
2 think that is better, barring the use of this coverage in a
3 political campaign.

4 We have, of course, to consider the First Amendment.

5 I think you could do it with caution because you could
6 relate it to the practicalities at hand.

7 Senator Cannon. First, Legislative Counsel thinks we should
8 not make such a provision.

9 I took the liberty of checking on that and this manual
10 recording you are inquiring about is a formal restriction
11 and pointing out further the political use of TV coverage but
12 the networks are willing to accept some restriction themselves.

13 However, the networks want you to know they cannot be
14 responsible for those politicians who might use video tapes
15 at home and they say they cannot be held responsible in that
16 situation should subsequent use arise. However, they agree
17 not to release any part of the material.

18 Senator Scott. I think we are to apply the copyright
19 laws and even so our authority to regulate campaign financing
20 and practices could forbid that use provided it is for a
21 period of time, Bob.

22 I am now talking about copyright laws..

23 Dave here, my expert on copyright says it has to be a
24 period of time to permit waiver. Then if a candidate were to
25 video-tape he would be in violation of the law, would he not?

1 You cannot stop him, but the minute he uses it he is in
2 violation.

3 Senator Byrd. That is fine. I hate to leave that out
4 of this anyhow. He asked me if this was agreeable with you
5 and I said, yes, and O.K., if it is agreeable with you.

6 Senator Scott. It is agreeable with me.

7 Senator Byrd. I felt it was agreeable with you and I
8 felt it was agreeable with the Chairman and I felt it was
9 about the best we could do.

10 Senator Scott. I do, too.

11 Senator Byrd. Because we all agree to joint floor
12 coordination.

13 Senator Scott. That is right.

14 Senator Byrd. And all for joint floor coordination so
15 we ought to have some input so it seems to me the Senate
16 Rules Committee ought to retain its basic jurisdiction over
17 it, if that is all right with him.

18 Senator Cannon. There has been one suggestion, Bob
19 and that is the language that you inserted pertaining to
20 Rule IV, that we eliminate "in this instance," those three
21 words.

22 Senator Byrd. I would have to say for such trials
23 that could be a permanent suspension.

24 I would rather say for such purpose rather than such
25 trials.

1 Senator Byrd. I would want to still interpret this to
2 mean they could go in there any time, on any impeachment
3 trial and be --

4 Senator Scott. They cannot understand this provision.

5 Senator Byrd. Could we , "accordingly suspended"?

6 Does that appear to be excess verbage to you, Howard,
7 or do you think it carries weight?

8 Senator Cannon. We are talking about the open session
9 of the Senate with regard to Trials of Impeachment. I
10 certainly will not object to that.

11 Senator Scott. I have no objection to it.

12 Senator Cannon. The question has been raised as to
13 whether that term ought to be used in this case.

14 Have we anything else?

15 Senator Byrd. I think in experimenting you suspended
16 it.

17 Dr. Riddick. Does your paragraph not read as it was in
18 this trial.

19 Senator Cannon. Say that again.

20 Dr. Riddick. Is not the opening paragraph of the
21 Resolution still in effect?

22 Senator Cannon. That is all out.

23 Senator Scott. Now reads that the proceedings in open
24 session of the Senate may be broadcast by radio and television.
25 We made it very general but if we get into a judgment situation

1 situation we can always change it again.

2 The Chairman. And it is "may" as well. It is not
3 mandatory.

4 Senator Scott. I think it did, Bob, because "accordingly"
5 did put some weight to the sense of it.

6 The Chairman. That's right. It's there.

7 Is that language satisfactory now that we should take a
8 roll call vote?

9 Senator Byrd. I move the adoption.

10 The Chairman. You move the adoption of your Resolution
11 as amended.

12 Senator Byrd. I move the adoption of the Resolution with
13 amendments, en bloc; the amendments that were proposed.

14 The Chairman. Is there a second?

15 Senator Scott. I second.

16 The Chairman. Call the Roll.

17 (Mr. Cochrane called the roll)

18 Mr. Pell?

19 Senator Pell. Aye.

20 Mr. Byrd?

21 Senator Byrd. Aye.

22 Mr. Allen?

23 Senator Allen. Aye.

24 Senator Williams?

25 Senator Williams. Aye.

1 Mr. Scott?

2 Senator Scott. Aye

3 Mr. Cook?

4 Senator Cook. Aye.

5 Senator Griffin?

6 Senator Griffin. No.

7 Senator NHatfield?

8 Senator Hatfield. Aye.

9 The Chairman?

10 The Chairman. And the Chair votes aye.

11 Suppose I read this through once to be certain now that
12 we have all mistakes taken care of.

13 "To permit television and radio broadcast of impeachment
14 trials.

15 Resolved that:

16 The proceedings in open session of the Senate with
17 respect to the trials of impeachment may be broadcast by radio
18 and television. Rule IV of the Rules for Regulations of the
19 Senate Wing of the U. S. Capitol is also accordingly suspended
20 for the purpose of photography.

21 Such broadcasting and photography shall be accompli-
22 shed in conformity with procedures thereon agreed upon by
23 the Committee on Rules and Administration in consultation with
24 the Joint Floor Leadership. The implementation of such
25 procedures shall be effected by the Joint Floor Leadership

1 after consultation with the Chairman and Ranking Minority
2 Member of the Committee on Rules and Administration.

3 Senator Scott. That's my understanding.

4 Senator Byrd. And mine.

5 The Chairman. This committee will stand in recess until
6 10:00 o'clock tomorrow morning.

7 (The hearing was recessed at 1:23 o'clock p.m.
8 to be reconvened at 10:00 o'clock a.m. August 8, 1974)

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