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EXECUTIVE SESSION

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REVIEW OF EXISTING RULES ON IMPEACHMENT

AND PROPOSED CHANGES

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THURSDAY, AUGUST 8, 1974

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

The Committee met, pursuant to recess, at 10:31 a.m. in Room 301, Russell Senate Office Building, the Honorable Howard W. Cannon, Chairman, presiding.

Present: Senators Cannon, Pell, Byrd, Allen, Cook, Scott, 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 K. Swearingen, Staff Director, Subcommittee on Computer Services.

Also present: Dr. Floyd Riddick, Senate Parliamentarian; and Mr. Wilmer Ricer, Office of Legislative Counsel; Raymond Celada, Esq., American Law Division, Library of Congress.

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The Chairman. The Committee will come to order.

Each of you have a working print in your folder, and if we can work through that I think I can move us along quite fast, particularly as to the items that are in controversy, and we want to have some discussion on.

In the first place, I see no necessity for any changes in Rule I.

Does anyone have any other ideas on that?

Is there objection then to the approval of Rule I as it now stands?

Without objection, that will be approved.

On Rule II I would raise this question, and this is on page two, line seven, I raise the question as to whether or not we could strike out after the word "Senate" down to and including the word "Senate" that starts on line 14 and ends on line 15.

That would just simply eliminate the old traditional announcement of remaining silent on pain of imprisonment.

I think it is really not necessary, and the rule would read as follows:

"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 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

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Representatives."

Does anyone desire that we retain that traditional announcement there?

Senator Scott. I think it is archaic.

The Chairman. I do, too, and that is why I wondered if we should not make this elimination.

Is there objection to making the elimination I suggested?

Senator Allen. I will not object, but I really hate to see it go as part of giving up the old landmarks. I kind of have some reluctance to see it marked out. We still keep over in the Supreme Court the oh yeas, the oh yeas.

Senator Pell. Maybe if we knock out the phrase "on pain of imprisonment."

Senator Allen. Knock it all out, or keep the whole thing.

The Chairman. If you are going to keep it, keep the whole thing in.

Senator Allen. I hate to see it go.

The Chairman. I do not have a strong feeling about it.

I will accept the wishes of the body.

Senator Pell. I sort of sympathize with Jim here.

Senator Scott. I have no strong feeling. I would be content to see ig go because I think it is archaic, but if the sense of tradition is relevant, that is all right with me.

Senator Pell. If you have tradition you cannot help having it archaic.

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Senator Allen. That is a good point.

Senator Pell. It is good to show that we still have some of the traditions left.

The Chairman. The Chair will accept the motion.

Senator Allen. Let us keep it, Mr. Chairman.

The Chairman. The motion is that Rule II is approved as is.

Is there objection?

Without objection, Rule II will be approved as is.

On Rule III the suggestion has been made that we might want to change the second line of Rule III where it says (Sunday excepted) to say ("Saturdays, Sundays and legal holidays excepted.)"

Now, the reason for the addition, or the proposed addition of Saturday was pointed out by Senator Brooke, you will recall. It was pointed out that it would be very difficult to maintain a trial on a six day week basis and to be kept up to date and be prepared at all times.

I do not have any strong feeling about this.

What are your wishes?

Senator Scott. Let me contribute something to that. We had a policy luncheon Tuesday week ago at which that question was raised, and a number of Senators said that a day for reflection was to them far more important than a six day week with no way to sit down quietly with their staff and legal

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1 advisors to give thought to what they had done that week, and
2 what they would do the next week, and they all argued, and there
3 was no dissent, however not everyone spoke, but all those that
4 did speak urged me to go to Senator Mansfield and say please
5 do not have Saturday sessions, and Mike said to me, well, per-
6 haps that is what we can do.
7 Senator Mansfield said if they want to do without Satur-
8 day sessions maybe we can do it.
9 Senator Pell. When people are uncomfortable and under
10 pressure they tend to move along a little faster, and on this
11 whole question the country will be in sort of dead water, and
12 if you have a five day week the trial can stretch for months
13 and months and months.
14 Senator Scott. Well, I agree with that. Whether it
15 were changed, would it not still be up to the Senate?
16 The Chairman. We would still leave in "unless other-
17 wise ordered by the Senate."
18 Senator Scott. Because what I have just said runs
19 counter to the remark I made the day before yesterday, and that
20 is St. Claire said to some of us the trial up here could take
21 six months. There would be another five-six interval between
22 the House and Senate, so they have seven months and one week,
23 and some Senators said why not consider over at the Rules Com-
24 mittee means of expediting this.
25 The Chairman. Well, the Chair will entertain a motion.

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If we leave Rule III exactly as is the Senate would still have the authority to otherwise order, order that we have no sessions on Saturday, and that has happened in the precedents where they did not meet six days a week, is that not correct?

Senator Allen. To make the change would kind of look, like as Senator Scott said, a kind of loosening up of the desire to get on with this, you know, and say well, those fellows in the Senate they are trying to cut it down to a five day week, and Mr. Chairman, we may never use the Saturdays.

Why not just leave it in the hands of the Senate?

The Chairman. Business as usual?

Senator Scott. I do not feel it is logically politically a good thing to do.

Senator Pell. Even rationally. Let us look at how it will really work. We have Saturdays and Sundays off, and most people are going to go planing back to their home States.

If we only have Sundays off they are going to stick around, and are not expected to be back.

Saturday sessions will end up like in World War II where we all worked on Saturdays, not the most vigorous day of the week, but there will be more focusing on the trial, and it brings the trial, willy-nilly, to a speedy end, and that would not be the case with the five day week.

Senator Scott. As long as the Senate can change that.

Senator Allen. Leave it alone, and leave it with the

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joint leadership, just like the sessions now.

The Chairman. The Chair will entertain a motion.

Senator Allen. I move to leave it like it is.

The Chairman. All in favor signify by saying "aye."

(Chorus of "ayes.")

The Chairman. Those opposed signify by saying "no."

(No response.)

The Chairman. The motion is carried. Rule III is retained as is.

Rule IV, the suggestion was made, and it was pointed out there is no provision here for the 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 word, "and the said Chief Justice" the following, "shall be administered the oath by the Presiding Officer of the Senate," 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 an oath, and give that duty to the Presiding Officer of the Senate.

Senator Scott. I can say, to my own knowledge, that Senator Mansfield definitely wants that change made.

Senator Mansfield believes that this is a Senate process,

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8 1 and rather than have the Chief Justice select the next senior
2 judge, the Senate propose having the President Pro Tem of the
3 Senate.
4 I have no feelings myself one way or the other, but that
5 is Senator Mansfield's thinking.
6 Senator Pell. May I ask a technical question?
7 What happens in an impeachment proceeding if the Chief
8 Justice's job is either vacant, or he refuses to do it?
9 The Chairman. Well, I can answer that.
10 The Office of the Chief Justice, if he should raise a
11 question as to whether or not it had to be filled for the trial
12 could go ahead, or whether the Acting Chief Justice would serve,
13 if the Chief Justice refuses to act it would be grounds for
14 impeachment, because he is charged with that duty under the
(2) 15 Constitution.
16 Senator Scott. If his senior assistant was the Acting
17 Chief Justice, unless a new Chief Justice was appointed?
18 Senator Allen. There is nothing we can do about that
19 any how. We cannot broaden or narrow that.
20 There is one thing I would like to inquire about. I
21 believe we need to specify the form of oath.
22 I think we might say the same oath as provided herein
23 as given to Senators.
24 The Chairman. I have that covered later on, if you
25 will accept this amendment.

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1 Senator Scott. I move acceptance of the amendment.

2 The Chairman. All in favor signify by saying "aye."

3 (Chorus of "ayes.")

4 The Chairman. Those opposed signify by saying no.

5 (No response.)

6 The Chairman. The motion is unanimously approved.

7 On Rule V, it does not appear that there is any necessity

8 for change in Rule V.

9 Is there any objection to Rule V?

10 Without objection, Rule V is approved.

11 It does not appear that there is any necessity for a

12 change in Rule VI.

13 Is there any suggestion for any change in Rule VI?

14 Without objection then, Rule VI will be approved.

15 All right now, we have Rule VII.

16 Hugh, did you have a suggestion?

17 Senator Scott. I am not sure yet as to how it goes in,

18 but given the concern over the right of counsel at either table,

19 unless some check is provided to call duplicating witnesses,

20 repetitive testimony, redundancy of testimony, the statement of

21 St. Claire is that this would take six months.

22 At this point I want to go off the record.

23 (Discussion off the record.)

24 Senator Scott. We can go back on the record now.

25 Now, Mr. Chairman, this appalls a lot of us, because

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1 it would indicate that counsel here on one side or the other,
2 perhaps for the respondent might call 200 witnesses, and no
3 right exists to stop them except a vote of the Senate each time.
4 A vote of the Senate for what? This is what I think we
5 ought to say something about, the redundancy, or the irrele-
6 vancy.
7 The best I have on it at this time is something like the
8 Presiding Officer may make a preliminary ruling on any disputed
9 question as to the relevancy or redundancy of evivence, or he
10 may immediately submit any such questions to the Court, and
11 here I shall say Senate, for decision.
12 Any such preliminary ruling may be set aside, and the
13 question decided pursuant to -- and here we can eliminate the
14 (b) of the rule. Well, it would go back. Any such preliminary
15 ruling may be set aside, and the question decided pursuant to
16 Subdivision (b) of this rule.
17 This is the subdivision which takes away the Presiding
18 Officer's time limit. I would eliminate "unless the members
19 be required."
20 All right, we can exclude (b) then.
21 The rule would be the Presiding Officer of the Senate
22 shall direct all necessary preparations in the Senate Chamber,
23 and the Presiding Officer on the trial shall direct all the
24 forms of proceedings while the Senate is sitting -- and inci-
25 dentally, on general questions of evidence he may rule, and

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and also on incidental questions.

Why not consider something like line 17, "may rule on all questions of evidence and incidental questions, including questions as to the relevancy or redundancy of evidence."

The Chairman. Is that not covered by "all questions of evidence?" Would that not be a question of relevancy or redundancy?

Senator Scott. Let me see. In ruling on all questions of evidence now, is that intended to mean admissibility, or does the word "all" mean exactly what it says?

If it does, we are probably all right.

The Chairman. I would think it is all inclusive.

Senator Allen. Where is that now?

The Chairman. Line 16 on your print there.

Senator Scott. Page four.

The Chairman. Page four, line 16, which says, "the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling" et cetera, and it would seem to me that would give him the authority to rule on questions of relevancy or redundancy of admissibility, in other words, all questions of evidence that normally arise in this trial.

Senator Scott. What do you think, Jim? Do you think that includes the right to rule on redundancy?

Senator Allen. It is more than an incidental question

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there, and all questions in evidence, yes, that would seem to me to take in all questions. It is not just the relevancy and these words that appear here are restrictive in nature; relevancy or redundancy, but this says all.

Senator Scott. You do not think that the word "all" simply refers to admissibility?

Senator Allen. No, sir, I do not think so.

One thing that disturbs me, not necessarily that, but it is at a little variance with what we have been trying to do, I believe, and that is to keep the Senate status as the Senate, and I notice this amendment all the way through refers to "the Court," that the Court does this, and the Court does that.

Senator Scott. You mean Rule VII?

Senator Allen. Your amendment.

Senator Scott. That was hastily drafted. I have just caught it. It should be Senate throughout wherever Court appears.

I tried to catch it, and I did not. This amendment is designed to take the place of a full amendment to Rule VII.

This is really a substitute since it substitutes for the Presiding Officer and his right to direct all necessary preparations, the provision that preparations in the Chamber prior to trial, and administration during the trial shall be supervised as provided by order of the Senate which is governed

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1 by the rules we discussed yesterday.

2 It says, "the Senate shall act, issue orders and decide
3 all questions other than final questions by a majority of the
4 members present.

5 "The Presiding Officer shall have no vote thereon unless
6 the yeas and nays may be demanded by one-fifth of the members
7 present, or may be called for on such other basis as the Court
8 may by order shall provide."

9 It goes on to say that:

10 "Such votes shall be taken without debate and in the
11 most expeditious manner possible. The Senate may not proceed
12 in the absence of a quorum. The quorum of the Senate shall
13 constitute a quorum of the Court."

14 That leaves all that study and diligence stuff, and goes
15 on to add preliminary rulings as to redundancy, and he may invite
16 counsel for the managers and others.

17 I am really not sure that we need go beyond the trial or
18 other aspects. I suspect in our previous discussion it is not
19 going to be favored by this Committee to lead into this business
20 of trial order.

21 We have a phrase here, second page, promoting a just and
22 expeditious trial. We can cover that in administrative language.

23 I can see why the supporters of the Mansfield draft would
24 want this whole thing, but I myself feel disposed only to bring
25 it up through Section d) and consider covering the relevancy

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and redundancy, and striking out of lines about number of avoidable accidents, shall study dilligently -- that is too school teacherish.

Senator Allen. Yes, it is.

Senator Scott. I do not think we are going to in this Committee agree on this trial order.

Senator Allen. I would offer this suggestion, Mr. Chairman. It might be well to go through all of the amendments and see if we can approve the vast majority of them without change first.

Senator Scott. And then to come back.

Senator Allen. Where the discussion is going to be.

Senator Scott. Why not go over them?

The Chairman. Let us pass Rule VII for the moment.

Senator Allen. That is what I suggest be considered

The Chairman. All right, let us go to Rule VIII.

In Rule VIII, consistently there, the word "accused" is used, and the question was raised by some of the staff as to whether we ought to use instead of the word "accused" the "person impeached."

Senator Scott. There was some sentiment expressed by the members of the Committee.

The Chairman. What is the feeling on that?

Would you feel we should keep the word "accused," or would "the person impeached" substituted for the word "accused"

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-15 1 where it is used in four places in Rule VIII would be a satis-
2 factory substitute?
3 Senator Scott. The reason for proposing the change is
4 that this is not a criminal proceeding.
5 The Chairman. Anybody have a comment on that?
6 Senator Allen. I do not see that it is going to make a
7 whole lot of difference.
8 The Chairman. I do not think it is going to make a lot
9 of difference.
10 Senator Allen. This thought occurs to me, Mr. Chairman.
11 It would lead to controversy in that some might contend
12 that changing the word would be an effort to substitute a law
13 for measure of proof; changing the status of a person being
14 accused to a person being impeached, and it would appear to be
15 an effort to reduce the standard of proof required for con-
16 viction.
17 Senator Scott. Well, in contravention of that, Jim, my
18 attention has been called, by staff, to the fact that this is
19 simply to bring this rule into accord.
20 As you can see, Rule X calls it the "person impeached."
21 Rule VIII says "the accused."
22 Senator Allen. Well, that is fine.
23 Senator Scott. "The person impeached shall be called
24 to answer the articles of impeachment."
25 Senator Allen. If we could go back for a minute, it is

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1 not a really substantial change, and I wonder what is to be
2 accomplished here.
3 I think it would be a lot better to go back to the
4 Senate and say look, we were able to prove all of these, and
5 only changes are made in these. This does not change it a great
6 deal.
7 Senator Pell. I think the person impeached is the
8 respondent, and I think the word "accused" is not proper.
9 Senator Scott. The word "accused" is not, to my mind,
10 a proper term. The term "person impeached" seems to me to be
11 better.
12 Senator Pell. Or let us say the respondent.
13 Senator Scott. Or the respondent, because it is not
14 a criminal trial, and I think it is simply something that the
15 original rule drafters never addressed themselves to.
16 The Chairman. Well, I do not have a strong feeling one
17 way or the other, personally. I will leave it up to the Com-
18 mittee.
19 The question is, in Rule VIII the word "accused" is
20 used in the present rule.
21 In Rule X the words "person impeached" is used, and for
22 conformity some of the staff suggested we might want to change
23 this term "accused" here in these four instances where it appears,
24 to "person impeached."
25 Senator Byrd. Oh, yes, I so move.

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Senator Scott. Well, I would second it.

The Chairman. All in favor signify by saying "aye."

(Chorus of "ayes.")

The Chairman. All those opposed signify by saying "no."

Senator Allen. No.

Senator Byrd. I have not heard Senator Allen's comments.

Senator Allen. I thought it brought us back to the discussion we had here on proof required.

This changes the status to something bland or mild by using the words "person impeached," or the "respondent," whereas the word "accused" here might imply the higher degree of proof required, and a relaxation of that term would indicate that possibly we are looking toward reducing the standard of proof required.

Senator Byrd. Mr. Chairman, may I be heard on that?

The Chairman. Yes, sir.

Senator Byrd. I can see that Senator Allen's point is considerably well taken. However, I do not believe that changing the words would have that result. I feel that in my own case this would not have any bearing upon the standard of proof that I would apply, and I am disposed to say that I do not believe it would have any bearing upon any other Senator's standard of proof that he individually would apply.

It not only has a better sound, but I think it has a more precise application. If it is a person impeached, he not need

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be needlessly accused here in my view, and here again some Senators would differ with me; he need not be accused of statutory offense, or having committed a crime indictable in common law.

That is my own feeling, shared by a great number of people in the country who happen to be Constitutional scholars, while the opposite view is likewise shared by Constitutional scholars.

That being my view, I think a person can be impeached and convicted for offenses that are not crimes, either statutory or common law crimes.

Therefore, I think the word "accused" which carries that connotation that he is being accused of the commission of a crime in either of those two contexts is the wrong word and should be substituted.

Senator Scott. The difference of being impeached for offenses against the State as opposed to the difference of being accused of a crime.

Senator Allen. You used the word there "convict" which would seem to go pretty well hand in hand with the word "accused."

I was not suggesting that it would make any Senator change his standard of proof that he would require.

Now, the public generally looking at our efforts here, and having had the discussion, and the witnesses on the measure

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of proof would say well, here these fellows can change the measure of proof required, but they are eroding it, and are biting into it with little deft moves in a change in the rules.

Senator Scott. I think you could construe the word "convicted either way.

If a person can be convicted of an accusation, or he can be convicted of just this unique charge, and I do not think the word "convicted" necessarily is hitched up in all honesty with the word "accused." It could be equivalent.

The Chairman. We could go in presenting these rules to the Senate as we report them back, and point out that the change in language here was not intended to change the standard of proof, but conform it to language used elsewhere in the rules.

Senator Scott. I agree with that.

Senator Byrd. I like that.

Senator Scott. I vote Senator Hatfield for that.

The Chairman. The proposed amendment is agreed to.

Now, on Rule IX?

Senator Allen. That is in several places here.

The Chairman. There are four places in the substitution of Rule IX.

In Rule IX I see no reason to change it, unless the Committee disires to change or fix the time to some other time other than 12:30 o'clock of the afternoon of the day appointed, and there has been historically, and perhaps in lieu of Senator

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Allen's statement, we should leave Rule IX as it is.

Senator Byrd. First, let others be heard.

Senator Scott. I have no objection to leaving it as is.

Senator Pell. I agree.

The Chairman. Senator Byrd. I agree.

The Chairman. Jim?

Senator Allen. It is all right.

The Chairman. Without objection, then Rule IX will be approved as is.

Now, Rule X is the rule I referred to earlier. That does use the term "a person impeached."

I see no other need for a change in Rule X.

Senator Scott. No.

The Chairman. Claiborne?

Senator Pell. No.

The Chairman. Bob, any proposed change?

Senator Byrd. No, sir.

The Chairman. Jim?

Senator Allen. No.

The Chairman. Without objection, Rule X will be approved as is.

Now, Rule XI. This is the authorizing provision for the appointment of a committee of 12 Senators to receive evidence and take testimony.

It simply gives authority for that purpose. It is

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1 discretionary with the Senate.

2 I see no reason for making any change in it, even though
3 it is obvious that the Senate would not desire to use it, cer-
4 tainly in the case of impeachment of the President.

5 Senator Scott. I have no objection, but I would suggest
6 that in making legislative history the Chairman of this Com-
7 mittee be requested to say exactly what.

8 Senator Byrd. Mr. Chairman, this rule was adopted in
9 1935 when there was noiimpeachment proceedings before the
10 Senate. It was used in the Ritter trial in 1936.

11 I would only suggest that the word "shall" on line 23
12 be changed to read "may."

13 Senator Scott. That has occurred to me, too, Bob, and
14 the reason I did not offer it, this was going so well I did not
15 want to add anything.

16 Mr. Chairman, I think the word "may" is better.

17 The Chairman. Well, of course, if it is upon order of
18 the Senate, he shall. If the Senate orders him to, he is going
19 to have to do it.

20 Why do we want to tinker with it? We say in the trial
21 of impeachment the Presiding Officer of the Senate, upon the
22 order of the Senate, shall appoint a committee, so it would
23 require the Senate to order him to do that, and I do not think
24 it could be left to his discretion.

25 I was just thinking do we want to tinker with it? It

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1 seems to me 12 Senators is quite a big body.

2 Senator Scott. What do you think of removing the 12,

3 and just have a committee of Senators?

4 Senator Allen. A lot of reason for knocking the whole

5 thing out, it seems to me.

6 Senator Byrd. There is.

7 The Chairman. Yes, there is.

8 Senator Allen. Actually, the Senate should never resort

9 to a thing like that.

10 Senator Scott. This is the chicken-out rule. No ques-

11 tion about it.

12 The Chairman. I think what this intends there, and I

13 am just conjuring this up myself, if you can envision a case

14 of impeachment of a Federal Court Judge that is out on the West

15 coast, and that the Senate might decide that it would be

16 advantageous to send a Committee of Senators out there and take

17 some testimony from the people that were not necessarily thought

18 necessary to bring back here, that would argue for it.

19 Senator Scott. Yes, that does argue for it.

20 It does also argue against the number of 12.

21 The Chairman. Right.

22 Senator Scott. Which has your floor leadership, and take

23 the Federal Judge case, if they are out there a month, it is

24 going to pose a problem for the rest of us trying to get a

25 quorum.

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You need flexibility in the number, Mr. Chairman.

Senator Pell. I agree, Mr. Chairman.

Senator Byrd. Mr. Chairman, may I go back to my previous proposal, where I said substitute the word "shall"?

The Chairman. Yes, but could I read a note from the Legislative Counsel first?

He says the rule was probably adopted for use during impeachment of judges, in which case attendance of the full Senate has been burdensome.

He says see the comment by Congressman Robertson on the Ritter trial, page 81 at the Congressional Record.

Senator Scott. He was in the Senate.

Senator Byrd. Mr. Chairman, I agree that the present verbage makes the appointment of a committee contingent upon an order of the Senate.

I would like, however, to propose, so that the intent will be even more clear, that we strike the words, "upon the order of the Senate" and substitute therefore these words, "if the Senate so orders, shall * * *."

Again, "if the Senate so orders, shall * * *."

The Chairman. What you are saying is if the Senate so orders, shall appoint a committee.

Senator Byrd. And strike out the number 12.

The Chairman. So it would read that in the trial of any impeachment the Presiding Officer of the Senate, if the

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Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony.

Senator Byrd. Right.

Senator Scott. I second that.

The Chairman. Is there objection to that language?

Without objection then, Rule XII will be amended accordingly.

Rule XII, my only questions on that were as follows:

First, the question of whether we want to leave the 12:30 o'clock stand, and then in the next to the last line, where it says the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives, it is quite clear that we cannot provide for the reception of the House of Representatives over there, and I was suggesting the possibility of eliminating the word "reception" and insert "a delegation of members of the House of Representatives," because we will provide for a delegation of members.

Senator Byrd. Mr. Chairman, may I be heard?

The Chairman. Certainly.

Senator Byrd. I agree with the Chairman that it is imperative that something be done here.

My thought was that we merely put a period after the word "chamber" and strike out the rest of the sentence.

The Chairman. Reading "in the Senate Chamber?"

Senator Byrd. Yes, sir, because it will be, I think,

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-25 1 up to the Rules Committee in consultation with the leadership
2 to make whatever arrangements are required.
3 Senator Scott. Yes, and if we give any leeway here at
4 all, the House is going to try to interpret as many ways as
5 suits them, and we have problems enough under the present space
6 conditions where it would be 68 members in the gallery and 50
7 behind some red ropes in the Chamber.
8 The Rules Committee in consultation with the leadership
9 or the staff as the case may be, ought to work out something
10 like that.
11 The Chairman. Is there a motion then to strike the
12 following part after the words "Senate Chamber?"
13 Senator Byrd. I so move.
14 The Chairman. Is there objection?
15 Without objection, the rule is so amended.
16 Senator Byrd. Mr. Chairman, I would not want to quibble
17 over this time of 12:30, but there could be some circumstance
18 which would militate against that particular hour.
19 Should we not leave some flexibility for the Senate to
20 meet at twelve, or 11:30, or 11:00 o'clock?
21 The Chairman. We could insert after the word "impeach-
22 ment," the words "unless otherwise ordered," so it would read
23 "at 12:30 o'clock of the afternoon of the day appointed for
24 the trial of impeachment unless otherwise ordered the legislative
25 and executive business of the Senate shall be suspended, * * *"

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Senator Byrd. The only problem I would have with that would be that it might be interpreted to modify something in that preceding phrase "other than the time."

Senator Scott. Why not do it this way, "at 12:30 o'clock of the afternoon of the day appointed, unless otherwise ordered" and there you are modifying the time, "unless such time shall be otherwise fixed."

Senator Byrd. At 12:30 o'clock on the afternoon and then put a comma, or such other hour as the Senate may order and then another comma.

The Chairman. Of the day appointed for the trial of impeachment the legislative and executive business of the Senate shall be suspended.

I think that makes it quite clear that would relate only to the time.

Senator Byrd. That is right.

The Chairman. Is there objection to that language?

Senator Scott. No.

The Chairman. Without objection then, that language will be inserted on Rule XII.

On Rule XIII, two provisions there. One is on the question of whether we want to use twelve o'clock, and then immediately following that there has apparently crept into the rules a mistake, and I would suggest that we strike out "for such thing."

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Senator Scott. What line?

The Chairman. Line eight.

Senator Scott. The words "for such thing?"

The Chairman. Yes.

Senator Scott. Why not first adopt the same time amendment as in Rule XII, so that it would read "shall?" We do say "shall be unless otherwise ordered, twelve o'clock noon."

The Chairman. Let us strike out "for such thing" and it would read "when the hour shall arrive the Presiding Officer of the Senate shall announce."

The only change is you eliminate "for such thing."

Senator Pell. The Presiding Officer of the Senate shall. That means what it says, and does not mean the Chief Justice, right?

Senator Byrd. That is right.

Senator Pell. So we go back to Rule XI, where the reference there "Presiding Officer of the Senate shall appoint a committee of Senators," that does not mean the Chief Justice.

Senator Byrd. That is right.

The Chairman. All right.

Senator Allen. Just a moment on that. That is going to be kind of a confusing situation.

What it looks like they are doing at that time, they are having a two track system. I mean there is nothing new under the sun, Senator Byrd, because this looks like we are having a

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1 two track system.

2 Senator Byrd. Except that the Chief Justice and Judges.

3 Senator Allen. So here we have a legislative session

4 there, and the Presiding Officer says well, it is time to go,

5 that is the Presiding Officer of the Senate says it is time to

6 go into the other business.

7 If we are on the impeachment to the exclusion of legis-

8 lative business, is this not going to require that the Presiding

9 Officer of the Senate rush in there, even though they started

10 the impeachment at ten, then this requires the Presiding Officer,

11 even though the impeachment is going on, this would require

12 Senator Eastland to rush in at twelve o'clock and say all

13 right, the hour of twelve has arrived and we are going into

14 the impeachment trial.

15 The Chairman. Well, if we were in legislative business

16 before that I think that is proper.

17 Senator Allen. What if you started the impeachment at

18 ten o'clock?

19 The Chairman. Well, except it says unless otherwise

20 ordered.

21 If you started at ten o'clock, that would be as otherwise

22 ordered.

23 Senator Allen. As to the time?

24 The Chairman. As to the time.

25 Senator Allen. Then this hour rolls around, the

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29 1 Presiding Officer of the Senate is supposed to announce it.

2 Senator Scott. Staff suggested instead of striking out
3 "for such thing," they suggest "when the hour for sitting shall
4 arrive."

5 The Chairman. Is this not covered in the last sentence,
6 the adjournment of the Senate sitting in said trial shall not
7 operate as an adjournment of the Senate.

8 I believe that would cover it.

9 Senator Byrd. I can see one problem which Senator Allen
10 has anticipated.

11 When we adopt a resolution in the beginning at each
12 Congress that the Senate shall meet at the hour of twelve noon
13 unless otherwise ordered, that means that we have to do it by
14 unanimous consent from day to day, if say we want to meet at
15 11 o'clock.

16 There could be a situation arising during the impeachment
17 trial when although the desire is to meet at 11:30, and dispense
18 with the reading of the Legislative Journal, and pick up a
19 little morning business, and so on, there might be an objection,
20 and we would be held to the twelve o'clock meeting.

21 That being the case, we would be required to come in at
22 twelve o'clock, and this would require us to, if we decided that
23 the hour of the day at which the Senate shall sit upon the
24 trial of impeachment shall be at twelve o'clock noon on that
25 date, then we are confronted with a dilemma wherein we have the

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-30 1 trial of impeachment which has to go forward, and it might be
2 imperative that the Senate meet before that hour of twelve noon
3 and conduct some other business, so the hour of twelve noon,
4 this would require that the Presiding Officer of the Senate be
5 presiding at that moment.

6 I think that is what Senator Allen has in mind.

7 Senator Allen. That is right.

8 The Chairman. May I ask, Dr. Riddick, what has been
9 the procedure in the past?

10 Dr. Riddick. Well, we have selected Presiding Officers
11 other than the President Pro Tem. You have your two sessions.
12 That is definitely a two track system, and when you come in,
13 say for example, you come in at twelve o'clock for legislative
14 business you might meet until 12:30, and then you go into the
15 trial.

16 Then if you go until four o'clock, and you adjourn the
17 trial, you are still back in legislative session to transact
18 further legislative business during that day if you wanted to.

19 That has been the practice.

20 To resolve what Senator Byrd might be thinking there,
21 certainly to make it crystal clear, if you said unless othe -
22 wise ordered by the adoption of a motion, or words to that
23 effect.

24 Senator Byrd. It might be difficult to adopt a motion.

25 Why could we not simply resolve it like this, Dr.?

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1 You could say the Presiding Officer of the Senate, and
2 then put a comma in the event of a legislative or executive
3 session having preceded, and that means if you have had a
4 legislative session and executive session to take up nominations,
5 or something preceding that, it is possible that you would have
6 an executive session to take up the nomination of a Vice
7 President, for instance.
8 You might be willing to do it by unanimous consent, in
9 which case the Presiding Officer of the Senate would have been
10 presiding, and in that event then he would announce, shall so
11 announce when that hour occurs.
12 If there had been no legislative or executive session
13 preceding that, and we had come in for this, then it is clear
14 that he is not in the Chair at that moment.
15 Senator Scott. Could I ask you to indulge me a moment?
16 We had this Party leadership meeting at 11:30. I know
17 generally you want to sit with the members of the Minority side.
18 I would like to say that I have no objection to what you
19 do here, or with the remaining sections with the exception of
20 the fact that Rule XIV and Rule XXIII generally I would like to
21 be heard, and I would like to reserve the opportunity for other
22 Senators on this side and myself to be here to discuss the
23 question of hearsay, the question of the division or nondivision
24 of articles of impeachment.
25 This also involves Rule VII, Rule XXIII and Rule XXIV.

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Senator Byrd. These two other amendments which I intend to offer, at least propose, Senator Scott, I would want you to be here.

Senator Scott. Could we just reserve it as to whatever you gentlemen would see to be likely controversial, those are the only ones I would like to be here on.

These drafting changes I have no objection to.

The Chairman. When would you suggest that we meet again? I would like to get into that.

Senator Scott. We can try for two this afternoon.

The Chairman. Very well, when we recess, we will recess until two this afternoon.

Senator Scott. I specifically say for the record, that on these suggestions by the staff of changes, with the exception of the potentially controversial ones, I have no objection.

The Chairman. Let me ask Dr. Riddick a question here.

Dr. Riddick, did any problem ever arise under Rule XIII?

Dr. Riddick. I do not think so, but Legislative Counsel and I sort of worked out a phrase that would certainly alleviate any such. It reads:

"The Presiding Officer of the Senate" strike out line six down through, and including the semicolon on line ten, and insert, "The Presiding Officer of the Senate in the event a legislative or executive session has preceded the beginning of a daily session of a trial of impeachment shall announce

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-33 1 the beginning of the trial at the time fixed therefore."

2 Senator Allen. Let me suggest this, Mr. Chairman, and

3 Dr. Riddick.

4 I believe it would take care of if if you just knock out

5 "the Presiding Officer of the Senate shall so announce" because

6 if he is there, he is going to be there, and he does not need

7 to make an announcement about it, and when the time comes, the

8 Presiding Officer of the trial will make a proclomation.

9 You do not need two proclomations there. If the Pre-

10 siding Officer of the Senate is there for legislative business

11 good, but if you do not have any legislative business there is

12 no need for him coming in and making an announcement.

13 Just knock him out there. He does not have any place

14 there.

15 The Chairman. Do I correctly understand then that your

16 suggestion would be on line eight, to eliminate the words "for

17 such thing?"

18 Senator Allen. On line 12.

19 The Chairman. Well, on line eight you would eliminate

20 the words "for such thing."

21 Senator Allen. Oh, yes, that has already come out.

22 The Chairman. And then?

23 Senator Allen. I have line 11 on that. I must have

24 a different print here.

25 The Chairman. Line nine you would eliminate the

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words "the Presiding Officer of the Senate shall * * *?"

Senator Allen. I must have a different print here, because these lines are different.

The Chairman. Shall so announce.

Senator Allen. I have it now, Mr. Chairman.

The Chairman. We would eliminate then the words "for such thing," and then eliminate the next following, "the Presiding Officer of the Senate shall so announce and verify."

That would be the entire elimination.

Senator Byrd. No, leave in "and thereupon."

The Chairman. You would say "when the hour shall arrive the Presiding Officer upon such cause shall cause such proclomation to be made?"

We can read the whole thing.

"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 proclomation to be made and the business of the trial shall proceed.

"The Chairman of the Senate sitting in such trial shall not operate as an adjournment of the Senate, but upon such adjournment the Senate shall resume the consideration of its legislative and executive business."

Any objection to that amendment?

Senator Dell. Is there not some thought about the

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1 traditional lack of the Presiding Officer turning the gavel over
2 to the Chief Justice?
3 The Chairman. We do not have to spell that out in the
4 rules.
5 Without objection, the amendment will be approved.
6 Rule XIV?
7 Now, I see no necessity for any change there.
8 Is there objection to any of Rule XIV?
9 Without objection, it will be approved.
10 Senator Byrd. May I ask, Mr. Chairman, and Dr. Riddick,
11 would it serve possibly a good purpose to strike the word "shall"
12 on line 4 and insert the word "may?"
13 It may be more convenient just to adjourn the Senate
14 sitting at the trial until the next day until the hour it is
15 to resume.
16 Dr. Riddick. Under the rule you would have two immediate
17 adjournments. One, you would adjourn the trial, and immediately
18 adjourn the session.
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1 Senator Byrd. Why not have it "may"?

2 Dr. Riddick. I see.

3 The Chairman. "but on such adjournment the Senate may

4 resume the consideration of its legislative and executive

5 business."

6 Is that it?

7 Senator Byrd. Yes.

8 On this rule, it is forced to go back into legislative

9 or Executive Session.

10 Dr. Riddick. The only thing, if you went into it, it

11 would be like unfinished business, and you would immediately

12 make another motion to adjourn, if you did not want to trans-

13 act any business.

14 Senator Byrd. You see some harm that would be done if

15 we changed "shall" to "may"?

16 Dr. Riddick. Yes.

17 It takes two adjournments.

18 Senator Byrd. Under the present rules.

19 What I am saying is, why is it necessary that we not

20 change the rules so as to allow for the Senate to adjourn

21 sitting as a trial at 5:30 today until the hour of 12 o'clock

22 tomorrow, sitting again as a trial?

23 Dr. Riddick. Then you might have to be compromising

24 because it says, "The adjournment of the Senate sitting in said

25 trial shall not operate as an adjournment of the Senate."

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You are going to have to have two adjournments.

Senator Byrd. That is true, you would. That is all right. Let us leave it as it is.

The Chairman. As is.

Rule XIV will be approved.

Is there any objection to any part of Rule XV?

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

Without objection?

Senator Byrd. Wait a minute.

Rule XIV, did we give consideration to that?

The Chairman. Yes.

We approved that a moment ago before you went back to XIII.

Senator Byrd. We did?

The Chairman. If you desire to reopen it, we will.

Do you have any question on Rule XIV?

Senator Byrd. If the Chair will just indulge me a moment.

It is talking about reading of the Journal, is it not?

The Chairman. No.

I think it is talking about the reporting of it, the same as you record and report the normal proceedings.

Senator Byrd. The reporting of would be the reading of the Journal the next morning, or the dispensing of the reading of the Journal.

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That is all right.

The Chairman. All right.

Rule XV, we have approved.

Rule XVI?

Is there any objection to any part of Rule XVI?

Senator Byrd. I see no objection.

The Chairman. Without objection, Rule XVI will be approved.

Rule XVII?

Are there any suggested changes to Rule XVII?

Senator Allen. To what extent is this rule qualified then by other desires of Senators that Members might ask questions?

In other words, this just seems to contemplate a direct-cross without, for instance, questions by Members?

The Chairman. We do have elsewhere the provisions -- I think this would refer directly to the examination and cross-examination, but we do have provision for Senators to submit questions elsewhere.

Senator Allen. I see.

Senator Byrd. Mr. Chairman and Dr. Riddick, is there any reason why we should be concerned about the limitation to one person on behalf of the party producing them of the examination of the witness?

Dr. Riddick. The only thing was time saving, I think.

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I think we adopted orders, as I recall, to the contrary that we have allowed more than one.

Senator Allen. That is custom in court.

The Chairman. Customary.

Senator Pell. After being cross-examined, what if the other side wants to go back and forth?

The Chairman. They can do that.

Senator Pell. They have that right?

The Chairman. Without objection, that rule will be approved then, Rule XVII.

Rule XVIII, any objection to Rule XVIII?

Senator Allen. I think it is interesting to note, having read some of the proceedings in some of these other impeachment proceedings that this rule means just what it says.

The witnesses apparently do stand rather than sit at the witness stand.

I noticed that in one of the impeachment proceedings, if this is to be taken literally, the witness stand.

Is that correct, Dr. Riddick?

Did you notice that?

Dr. Riddick. Yes.

Senator Byrd. The present rules require the Senator to stand when he addresses the Chair.

I have noticed a few times that Senators will object while sitting. Often an objection will not stand.

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I think we ought to all stand when we address the Chair.

Dr. Riddick. It is contrary to the rules.

We had one experience when Senator Langer got permission to sit in his seat and talk for hours. And when the Majority Leader came back in, he nearly blew his top.

Senator Byrd. By the way, Mr. Chairman, as an aside here, I think it would be conducive to the better decorum and order in the Senate -- we need not do this now -- to require that when a Senator votes, he votes standing in his place.

I think we would have less of that New York Exchange atmosphere with all Senators in the well, and get to their seats and stay there.

The Chairman. Without objection, Rule XVIII will be approved.

Rule XIX?

I would like to make this suggestion.

"If a Senator wishes a question to be put to a witness" -- the suggestion has been made that we then insert "or to a manager or counsel of the person impeached," and then go on, "or to offer a motion or order (except a motion to adjourn), it shall be reduce to writing, and put by the Presiding Officer."

Senator Allen. There is possibly one omission. It does not cover the counsel for the managers.

The Chairman. I suppose not. I would presume that the

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1 manager could speak to his counsel.

2 We could say manager or his counsel or counsel of the

3 person impeached -- does that cover it, Jim?

4 Senator Allen. Yes.

5 The Chairman. Is there any objection to that?

6 Dr. Riddick. The only trouble is that the managers speak

7 for the House completely.

8 The counsel generally assists the managers without par-

9 ticipating like the counsel for the respondent who takes the

10 whole burden and addresses the Chair and everything else.

11 The Chairman. Yes.

12 It really is the managers that speak on the part of the

13 House rather than the counsel for the managers.

14 Senator Allen. Where you would not feel that the counsel

15 for the managers would be asking questions and so forth?

16 The Chairman. From the precedence, the managers them-

17 selves have been the active managers.

18 Senator Allen. He is just sitting there, carrying books?

19 The Chairman. I think he is there to confer.

20 Senator Allen. I do not make any point of it. I thought

21 it would be well to complete it.

22 The Chairman. Is there any objection to that amendment,

23 to the insertion after the word "witness" -- "or to a manager

24 or to a counsel of the person impeached"?

25 Without objection then, the amendment will be approved,

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Rule XIX.

Senator Byrd. Before you go to Rule XX, Senator Javits raised a matter in his testimony that by the time a Senator could reduce a question to writing, the train may have passed him by.

He preferred that a Senator be allowed to stand and address the Chair and say, "Mr. President, I have a question of the witness."

Then he would sit down and propose it in writing, but he would have announced that, and things would abate until he had had time to write it.

The Chairman. Is that not implicit?

If you send a written question in, would you not address the Chair?

You have got to get the Chair's attention.

Would you not say, "Mr. President, I have a question I wish to submit to the witness"?

Senator Byrd. I think it is implicit, but I think Senator Javits did raise that.

The Chairman. Otherwise, you cannot get the Chair's attention.

If you have a question, you cannot just wave it up in the air.

Senator Byrd. Do you agree, Doctor, that that really raises no problem?

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Dr. Riddick. It depends on what the policy of the Committee would be in that regard.

It would seem to me that just reading the past cases, Members of the Senate have written out questions and sent them to the desk, and maybe they were not answered then.

The concept I got from Senator Javits was that he was calling attention to the Chair that he wants to put this question right now and not let the Chair hold it up for a few minutes later while some others might be pursuing a question or thought that they were interested in.

The Chairman. But he still proposed to send it forward in writing, you see.

Dr. Riddick. That is right.

The Chairman. I think that is the only way a person could get the attention of the Chair, that he has a question.

Senator Allen. During the testimony, there may be an interruption on a different point, even on that point, and it might confuse the counsel in the line of questioning he was engaged in. That was one of the provisions of the proposed rules that I liked rather well, where they provided that the Chief Judges should receive these questions from the Members and put them after the direct and cross.

What Senator Javits has in mind is something might occur to a Senator that is not being covered, and he should have a right to put it in. But it does present problems.

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I do not have any suggestions on it, but it sure could upset counsel, if he is asking a series of questions and a Senator butts in and says I have got a question to ask, and says wait a minute while I write it down, and goes up there. And they look at it and ask it. By that time, the witness may have recovered his cool and decided his answer to this series of questions.

Dr. Riddick. You could put it in but it might be redundant. But you could add a new sentence, "A Senator may stand and, upon obtaining recognition, inform the Presiding Officer of his intention to submit a question."

The Chairman. I think we had better hold that question for further discussion.

Senator Allen. I think so.

The Chairman. If we are going to make it so that the Senators can be popping up all over the floor and addressing the Chair, again we are going to run into some problems, I think.

Senator Byrd. No. XIX is over?

The Chairman. It will be subject to reconsideration if we discuss that issue further when we have the minority representative.

Now, with respect to Rule XX, I would suggest that we add Rule XX to those to be held for further consideration with the minority because, in this one, I think we have several questions

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1 to be resolved.

2 One, we have the question to resolve whether we are going
3 to go into closed session while deliberating upon our decisions
4 And a suggestion has been made that that be open as well, as
5 the rest of the proceedings.

6 Then the additional question will arise as to whether we
7 are going to provide that we shall go into closed session in
8 the event that matters of national security are to be discussed

9 The third question relating to this would be to determine
10 if we are going to have a provision for closed session to make
11 the decision as to what is requires to go into closed session.

12 I think that subject matter should be discussed with our
13 colleagues.

14 Rule XXI, I would suggest that at the bottom of Rule XXI,
15 we strike the words "by order, extend the time," and insert in
16 lieu thereof "otherwise ordered."

17 I say that for this reason. We say "and all motions,
18 shall be argued for not exceeding one hour on each side, unless
19 the Senate shall, by order, extend the time."

20 In other words, we have no provision for shortening the
21 time.

22 I can well envision the fact that we might want to adopt
23 a rule saying you shall have 15 minutes to discuss this matter.
24 This would give us that prerogative.

25 Senator Allen. It says "not exceeding one hour" though.

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1 The Chairman. Yes.

2 But it says "unless the Senate shall, by order, extend

3 the time."

4 It does not say that the Senate can shorten the time less

5 than one hour.

6 So if we insert the word "otherwise ordered," that would

7 give the Senate the right to extend as well as to shorten.

8 Senator Byrd. That is a good suggestion -- well, what

9 were the words you were inserting?

10 The Chairman. "otherwise ordered."

11 Senator Byrd. That we put those words immediately after

12 "one hour"?

13 The Chairman. That would be fine -- for not exceeding one

14 hour -- wait a minute.

15 You still have got "on each side."

16 Senator Byrd. I would not want these words to be

17 interpreted as modifying anything else in that rule other than

18 the one hour.

19 The Chairman. Well, it follows "shall be argued for not

20 exceeding one hour on each side, unless the Senate shall other-

21 wise order."

22 Senator Byrd. For not exceeding one hour unless the

23 Senate shall otherwise order on each side.

24 It can be set out in commas.

25 Otherwise, it could be argued that your modification --

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1 well, it could be argued that the Senate could order that one
2 side not have an opportunity to argue.
3 The Chairman. All right.
4 Shall be argued for not exceeding one hour unless the
5 Senate shall otherwise order -- out of brackets -- on each
6 side.
7 Is there objection?
8 Without objection, approved.
9 Rule XXII?
10 Is there anyone that has any desire to make any change in
11 Rule XXII?
12 Senator Allen. Well, I have an inquiry.
13 At what stage would the Members of the Senate have an
14 opportunity to speak?
15 The Chairman. That is the issue we have remaining under
16 one of the other rules.
17 Senator Allen. Would not the Senators have an opportunity
18 to have their input at this time?
19 Senator Byrd. I would not think so.
20 The Chairman. Not at this time.
21 This is the argument to the Senate. The Senate will have
22 the opportunity to debate during their deliberations.
23 Senator Allen. Would this come before or after the argu-
24 ments by the Senators then?
25 Senator Byrd. Before.

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1 The Chairman. This would come before?

2 Senator Allen. And at what stage do the Senators come in?

3 Senator Byrd. When all the arguments are closed.

4 Senator Allen. After this, though, there would be an

5 opportunity for the Senators to be heard?

6 The Chairman. Well, among themselves or openly if we

7 decide to have it open, that is the issue that is covered in

8 Rule XXIV which is to be reserved when our colleagues are with

9 us.

10 Senator Allen. I see.

11 The Chairman. As a matter of fact, Rule XXIII and XXIV

12 both -- and Rule XXIII gets to the question of whether we are

13 going to have a division of the charges under an article, and

14 whether or not we have a division if a conviction on any one

15 of those divided portions is adequate.

16 There are a lot of questions there to be resolved with

17 that one, so XXIII and XXIV will be held over for consideration

18 with our colleagues.

19 Senator Byrd. Did we approve Rule XXII?

20 The Chairman. Yes, we did approve Rule XXII.

21 Senator Allen. There is no limit placed on the length of

22 the argument here?

23 Senator Byrd. Right.

24 Senator Allen. Should that be limited?

25 Senator Byrd. I do not believe so.

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1 Now, the Senate may, depending upon the circumstances at
2 the time, decide to work out with the parties a stipulation
3 and then enter an order to that effect.
4 Is that not right, Doctor?
5 Dr. Riddick. That is correct.
6 The Chairman. The Senate could enter orders to that
7 effect.
8 Now, XXIII and XXIV will be held for further consideration
9 by our colleagues.
10 On XXV, I assume there is no reason for modification of
11 Rule XXV, although in the forms that are set out in connection
12 there, I would like to suggest that when you come to the
13 "Form of oath to be administered to the members of the Senate,"
14 that there be inserted immediately after the word "Senate,
15 the words "and the Chief Justice," so it would read, "Form of
16 oath to be administered to the members of the Senate and the
17 Chief Justice sitting in the trial of impeachments."
18 So that means that the Chief Justice would take the same
19 oath that the Senators would take.
20 Is there any objection to that?
21 Senator Allen. There has been the possibility raised of
22 the Chief Justice being ill, and so could you not word the
23 "Presiding Officer of the trial" to take care of that con-
24 tingency?
25 It is not important.

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The Chairman. Well, the Constitution says the Chief Justice shall be the Presiding Officer.

Senator Allen. I was thinking though of someone else might be filling that role as was suggested, the Senior Judge might take over in the event of his ability --

The Chairman. I do not think it is too important.

Senator Byrd. Then the person impeached may be a judge and it would not be the Chief Justice presiding.

Senator Allen. That is what I say.

The Chairman. You are suggesting what?

Senator Allen. "and Presiding Officer of the trial."

The Chairman. "and the Presiding Officer of the trial" -- "at the trial."

Senator Allen. That would be superfluous there, I think. No, that is all right.

"Presiding Officer sitting in the trial of impeachments."

The Chairman. Just say "and the Presiding Officer sitting in the trial of impeachment."

Without objection, then, that will be so amended.

Senator Byrd. Mr. Chairman, while we are at that point, unless I forget this thought later, would the Chair feel that it would at least be worthy of consideration to this Committee to recommend to the Judiciary Committee that a constitutional amendment be considered to provide for an emergency in the event the Chief Justice of the United States was not available

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to preside over the trial of impeachment of the President?

He might die, and that would put us in one tremendous bind because the Constitution says that the Chief Justice shall preside.

The Chairman. It would certainly be worthy of suggestion that they give it some consideration.

Senator Byrd. I wonder if the Chairman and the Committee might not want to address a letter at some future time to the Chairman of the Judiciary Committee calling attention to it?

I do not think it would be presumptious because we have been involved in these rules, and it is a matter of concern for me, at least.

Senator Allen. I agree.

Another thing occurs to me, as the Rules Committee might possibly recommend a constitutional amendment providing for alternate methods of impeaching Federal Judges, or an exclusive method. They ought to be tried in District Courts, it seems to me, or some other way rather than making the House impeach and the Senate try.

There are so many of them.

The Chairman. There are certainly a lot of them.

Senator Allen. Four hundred or more.

The Chairman. We hope they would not all be impeached at the same time.

Senator Byrd. Would you have the Clerk make a note of

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that?

The Chairman. Yes, sir.

The remaining one is Rule XXVI, and I have no proposal to make there.

Dr. Riddick. There is one other point under XXV. It is the last word.

The Chairman. Yes, the last word of the form on Rule XXV, "unless otherwise ordered by the court" -- strike the word "court" and insert the word "Senate."

It would read "unless otherwise ordered by the Senate."

We have tried to conform.

Senator Byrd. Where is that?

The Chairman. That is just before the start of Rule XXVI, "unless otherwise ordered by the Senate."

We have gotten away from the use of the word "court."

Senator Byrd. Mr. Chairman, may I interject this reminder that Chief Justice Chase took strong exception to certain actions that had been taken by the Senate at a time when it was not sitting as a court.

There may be a time during the conduct of the trial -- I think I am nitpicking -- there may be a time during the conduct of the trial when it certainly would be -- when the Sergeant at Arms would be called upon to serve a writ of some kind. And while perhaps it is a fiction, this order would not be by the Senate sitting as the Senate, unless it would be ordered by the

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1 Senate sitting as a court -- do you see any problem there?

2 I do not see a great problem.

3 Dr. Riddick. They eliminated the word "court" in all other

4 places in the rules for the Johnson trial except here.

5 The Chairman. You see, even the form -- the direction for

6 the service of the subpoenaing says, "The Senate of the United

7 States to _____ _____, greeting:"

8 Senator Byrd. What was your proposal?

9 The Chairman. Was just to eliminate the word "court" and

10 insert "Senate" -- "unless otherwise ordered by the Senate."

11 Senator Byrd. Okay.

12 The Chairman. Without objection, that will be approved.

13 Is there any objection to Article XXVI?

14 Without objection, then, Article XXVI will be approved.

15 Now, that takes us through the articles. It leaves four

16 of them for further discussion with the remaining members.

17 I would invite the members to consider whether they want

18 to add any additional articles covering items that will not

19 be covered in these four that will be taken for further con-

20 sideration.

21 Senator Byrd. I have thought of at least two other

22 amendments, and they might better be presented in the form of

23 additional articles. I will not do it at this point.

24 The Chairman. I was not suggesting that you be required

25 to present these now. These are matters that are held open for

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1 further discussion.

2 We will resume at 2 o'clock this afternoon.

3 I would like to raise one question, though.

4 Does the Committee wish to print its Executive Hearings

5 of August 5 and 6?

6 That was the testimony of other Senators in order that

7 they could be released to the public?

8 Senator Byrd. I so move.

9 Senator Allen. Yes.

10 The Chairman. Without objection, then that is approved.

11 Senator Allen. At the conference, several Senators said

12 that they hoped that we would not take final action until they

13 had an opportunity to present statements. I am not sure whether

14 they meant orally or submit written statements.

15 But Senator McClellan wanted the opportunity, and I believe

16 at least one other Senator expressed the same view.

17 The Chairman. We did announce that the record would be

18 held open until August 9 for the submission of statements by

19 additional Senators, and I think they have all been notified to

20 that effect.

21 Senator Allen. Good.

22 The Chairman. Senator McClellan's people are working with

23 the staff.

24 Senator Byrd. Mr. Chairman, Rules I through VII were

25 discussed before I was able to get here.

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1 May I have the approval of the Committee to examine these
2 rules and perchance offer some minor amendments in the next
3 meeting?
4 The Chairman. Certainly.
5 I can go through those very briefly.
6 The first three were approved as is.
7 On Rule IV, after the words "said Chief Justice," it was
8 amended to insert "shall be administered the oath by the Pre-
9 siding Officer of the Senate and."
10 That simply provided for administering of the oath.
11 Rule V was approved as is.
12 Rule VI was approved as is.
13 And for Rule VII, we have held that over for further con-
14 sideration.
15 Senator Byrd. Fine.
16 The Chairman. We will reopen any of those that you desire
17 to consider.
18 Senator Byrd. Very well. Thanks.
19 The Chairman. The Committee will stand in recess until
20 2 o'clock this afternoon.
21 Thank you very much.
22 (Whereupon, at 12:02 p.m., the Committee recessed, to
23 reconvene at 2:00 p.m., the same day.)
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1 AFTERNOON SESSION

2 (2:45 p.m.)

3 The Chairman. On the record.

4 Senator Byrd. Mr. Chairman, I offer the following amend-
5 ment, to-wit: Rule XXIII is amended by inserting at the
6 beginning of the text the following new sentence:

7 "An article of impeachment shall not be divisible for the
8 purpose of voting thereon at any time during the trial."

9 May I just say at the moment, so that Senators and staff
10 will be thinking about it, my reasons for offering this amend-
11 ment are as follows:

12 We have, for example, in the first article of impeachment,
13 as reported to the House of Representatives by the House
14 Judiciary Committee, nine specific charges.

15 Under our present standing rules, which would be followed
16 inasmuch as the impeachment rules are silent thereon, the ques-
17 tion would be divisible.

18 Consequently, Article I, as submitted by the House
19 Judiciary Committee, would be subject to division and voting
20 in nine separate instances. In other words, nine votes could
21 be requested on those nine charges contained in Article I.

22 Also, a vote for conviction on any one of those nine
23 separate provisions would fulfill the constitutional require-
24 ments for conviction, and the respondent would be automatically
25 removed from office, without further votes on the other

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provisions of the article and also, of course, upon other articles.

I feel that it would not only be time consuming and confusing, and a matter which could create great chaos and division, bitterness, and ill will if the President in this instance should be convicted on one only of those nine separate charges. The country would remain divided, and many people would feel he had been railroaded out of office; that the Senate had taken undue advantage of him, and that the Senate had been unfair.

I therefore do not believe that the charges should be divisible within an article and notwithstanding that rule among the Standing Rules of the Senate which permits a division, I move at such appropriate time, will move at such appropriate time for the adoption of my amendment, as amended, if amended at that time.

I am not saying that it shall not be divided at any time during the trial because the House of Representatives -- we really have no control over that. If the House of Representatives wants to amend its own articles after they have been submitted to the Senate, it could do so and could not only divide them, it could strike them out or change them. So I would rather insert the written words for the purpose of voting thereon at any time during the time of trial.

The Chairman. Any discussion?

Senator Hatfield?

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1 Senator Hatfield. I do not have any questions.

2 I wonder if maybe the Parliamentarian might comment on

3 that.

4 Oh, I see. I do not have the updated document.

5 Has there been a change?

6 Senator Byrd. I had better let all the members know that

7 I have written in these words following the word "divisible" --

8 "for the purpose of voting thereon."

9 Senator Hatfield. I am impressed by the argument that

10 has been presented by Senator Byrd. I do not quite follow what

11 the procedure is, Mr. Chairman, when Senator Byrd says he will

12 make that as a motion at the proper time.

13 Are we thinking in terms of a quorum?

14 Do we have a quorum?

15 The Chairman. We have a quorum.

16 Senator Byrd has offered it as an amendment. I do not

17 know whether we will vote on it unless we have --

18 Senator Hatfield. I would be very reluctant to cast other

19 than my own vote, even if I had the proxies of other colleagues,

20 because I really do not know on a matter of this kind.

21 Senator Byrd. I would prefer to have the others here at

22 such time as we vote, Mr. Chairman.

23 Senator Pell. I would support it.

24 I have thought about it before, and I think it makes

25 sense.

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1 The question that we ought to always bear in mind on these
2 rules, as we are changing them, is that it would more than
3 likely apply to some lesser official than the President.
4 The Chairman. Senator Allen, I think, had something to
5 say.
6 Senator Allen. I certainly agree with this amendment.
7 As a matter of fact, it came up for discussion at one of
8 our earlier meetings, and I expressed my support of it at that
9 time.
10 I recall that Senator Scott was of the same opinion, and
11 I heard him say earlier today that he was going to draw up or
12 offer an amendment of this sort.
13 I think it is eminently fair because Senator Byrd said
14 it could conceivably allow conviction on a minor specification,
15 and that conviction would, without further ado -- well, it
16 would, without further ado, result in taking the official out
17 of office.
18 I might say that the way these articles are worded, as I
19 recall, it would, in effect, give a member of the Senate a
20 division of the question in his own mind because it says that
21 they support these articles by saying that the official has
22 been guilty of one or more of these specifications.
23 So, really, he has a division in his own mind. To vote
24 for it, all he has to find in his own mind is that he is
25 guilty of one of those.

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1 Even though I understand that the precedent is that these
2 specifications have been split, it seems to me they are
3 improperly split because this is, as I see it, final action on
4 a proposal, just like the bill up for final passage.
5 Well, you cannot give a division at that time when you
6 have the bill up for consideration.
7 You might have ten or fifteen divisible subjects, and
8 the same is true here.
9 The way the rule reads is that the yeas and nays shall be
10 taken on each article of impeachment separately, which would
11 seem to indicate that it should not be split any further than
12 that, that the bill of impeachment should be split as to
13 articles -- would have to have separate votes on those.
14 It does not seem, really, that it contemplates a division,
15 although I understand a precedent has been permitted.
16 I think it is something we very definitely need to write
17 into the rules, and I see the distinguished Republican leader
18 here, and I know that he is of the same opinion and plans to
19 offer an amendment on the non-divisibility of the article,
20 Senator Scott, that is under discussion for amendment by
21 Senator Byrd to that effect.
22
23
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25

Rules - fls.

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Senator Scott. We do not have that completed.

The Chairman. We can insert after the word "indivisible," for the purpose of voting thereon.

Senator Scott. I think that does it.

Senator Allen. Yes, I think so, too.

Senator Scott. That is all right with me.

We are writing for the future now.

The Chairman. Is there a second to that?

Senator Scott. I second.

The Chairman. All in favor signify by saying "aye."

(Chorus of "ayes.")

The Chairman. Those opposed signify by saying no.

(No response.)

The Chairman. The "ayes" have it and the amendment is adopted.

Are there other amendments to Rule XXIII?

Senator Byrd. Mr. Chairman, I have another amendment.

I will not speak ahead of anyone else if one has something to offer to that paragraph.

I have one which reads as follows:

Rule XXIII is amended by inserting immediately after the end of the text the following, "A motion to reconsider the vote by which any article of impeachment is sustained shall not be in order."

Senator Pell. Say that again.

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1 Senator Byrd. It reads:

2 "A motion to reconsider the vote by which any article of

3 impeachment is sustained shall not be in order."

4 The critical thing arises in my mind in this way.

5 Senator Allen. Final action.

6 Senator Byrd. Right.

7 It becomes irrevocable according to the Constitution. I

8 believe, by most authorities, and I believe the President is

9 out as of that second.

10 And if a motion to reconsider is in order, the Senator

11 might be coming in the door, and the Senate is ready to vote,

12 and the Senator might be coming in the door and, if sustained,

13 if he were allowed to vote, we would have one of the gravest

14 of all constitutional questions here, because the President is

15 out.

16 Then he comes in. He is allowed to vote. And he casts

17 his vote. And it could possibly put the President back in.

18 Well, the President is out. The Vice President is in.

19 And here we have two claimants to the office.

20 Senator Scott. Is that not true with a judge also?

21 Are we not also making the rules for the future?

22 Senator Hatfield. There is no succession.

23 Senator Byrd. That is right.

24 What I am so fearful of, the country would really be

25 upset with us.

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1 Dr. Riddick. They have two days for that reconsideration,
2 right?
3 Senator Byrd. That is right.
4 They have two days for the reconsideration.
5 Senator Scott. It could be an enormous thing because of
6 the various television coverage and, all of a sudden, the
7 announcement, Article I is sustained, the President is removed.
8 And then someone comes on and says, "Wait a minute, ladies and
9 gentlemen. Here comes another Senator."
10 The Chairman. Counsel, do you want to comment?
11 Mr. Celada. Just an observation.
12 If we get into a comparison with criminal proceedings by
13 the proposal, it would not be possible to reconsider a vote
14 of two-thirds, but presumably, by implication, a vote of less
15 than two-thirds might be reconsidered.
16 And I wonder if this does not have some kind of implica-
17 tion on this, although it does not literally apply to impeach-
18 ment, of placing an individual in the position of being recon-
19 sidered twice in jeopardy for the same accusation.
20 The Chairman. It says it cannot be reconsidered. That
21 would remove him twice from any Federal accusation.
22 Senator Allen. He is talking if he falls short of the
23 two-thirds, they might reconsider, and then have another vote
24 on the claimant to reconsider it with the majority vote.
25 Senator Byrd. I do not see that in that situation, the

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1 grave constitutional crisis arising.

2 I do not see any state being denied of its equal represen-

3 tation in the Senate without its consent.

4 I just do not see the double jeopardy.

5 The Chairman. Why can we not add they sustained or

6 rejected, and that would eliminate any reconsideration because

7 you really do not want a reconsideration.

8 Senator Hatfield. He was rejected.

9 Senator Byrd. I have no strong feeling in that direction.

10 I do have a very strong feeling on this.

11 Dr. Riddick, would you see any reason why we could not make

12 it in the alternative?

13 Dr. Riddick. I do not think we are at a criminal trial

14 here. You are just getting him out of office.

15 Senator Cook. Why not say the article of impeachment

16 voted on is not in order?

17 That could be voted up or down.

18 Senator Hatfield. Mr. Chairman, it seems to me in the

19 same case that Senator Byrd made awhile ago on that, whether it

20 is the Senate coming in late, or whether once we made a deci-

21 sion one way that we switched around the other way, I think you

22 could say that the President is still President after this

23 vote.

24 Senator Byrd. Now, wait a minute.

25 Senator Hatfield. There is a motion to reconsider.

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1 Senator Byrd. All right.

2 If that is the rule of the Committee.

3 The Chairman. Any article of impeachment sustained or

4 rejected.

5 Senator Hatfield. Or we could be conservative with our

6 words, as with Senator Cook's proposal.

7 The Chairman. Are you ready for the question?

8 All in favor signify by saying "aye."

9 (Chorus of "ayes.")

10 The Chairman. Those opposed signify by saying no.

11 (No response.)

12 The Chairman. The "ayes" have it.

13 Senator Byrd. It is sustained or rejected?

14 The Chairman. Yes, "shall" is not in order.

15 Senator Hatfield. Did we vote on the other one?

16 The Chairman. Yes.

17 Senator Hatfield. Can I be reported as voting "aye" on

18 it?

19 The Chairman. The vote was unanimous.

20 Senator Hatfield. I had to step out.

21 The Chairman. Are there further amendments to Rule XXIII?

22 Senator Byrd. There is one further amendment I would have,

23 but I am not sure as to the final wording of it, Mr. Chairman.

24 I would just as soon wait until such time as I have had an

25 opportunity to study the matter more carefully.

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1 It simply deals with the situation in which the Senate
2 votes to convict the person impeached.
3 I feel that the Senate ought to have the determination
4 right then and there whether or not as to whether it is going
5 to vote on the remaining articles after Article I has convicted
6 him.
7 Senator Pell. Once if you convict on Article I, then you
8 determine whether it goes to Article II or III?
9 Senator Byrd. Yes.
10 I do not think it should adjourn for one or two days and
11 come back.
12 If it votes on them, it ought to vote on them in succes-
13 sion.
14 Senator Scott. The question is the overkill.
15 Senator Pell. I would disagree with you a little bit
16 because I would visualize what I would want to do in an impeach-
17 ment trial.
18 I might want to vote against Article I and vote for Arti-
19 cle II. So I would be very upset, having that view in mind, if
20 no more votes were taken after Article I.
21 Senator Byrd. This would not do that.
22 Senator Pell. As I understand, you say it would.
23 Senator Byrd. No.
24 It would force the Senate to proceed right then and there
25 with Article II, or to make a determination as to what further

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1 proceedings with respect to such trial are essential and neces-
2 sary.
3 Senator Pell. I think it would be very important that
4 maybe the rule should be changed to provide for this.
5 Once you start voting on the articles, there may be no
6 possibility of the Senate sidestepping the voting on all of the
7 articles.
8 Senator Scott. Would you yield?
9 Senator Pell. Yes.
10 Senator Scott. What occurs to me is that you might be
11 moving against the intent of the Senate in the sense that the
12 Senate having normally enacted the removal, they do not wish
13 to go any further.
14 There should be something in the rules, like you say, pro-
15 viding the Senate to immediately determine what it will do on
16 subsequent articles. And we do not have to vote on them in
17 order.
18 At that point, Claiborne could be heard to say I wish to
19 vote on Article II.
20 Senator Byrd. Yes.
21 Senator Scott. And the Senate will make a decision and
22 they will decide to let you vote on it or not. And that gives
23 you your chance to say I want to vote on it, but the majority
24 of the Senate has still overruled you.
25 Senator Pell. I do not think that is fair.

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1 Senator Scott. That is the way it will work.

2 Senator Pell. When you start voting on it, it ought to
3 be looked on as an exercise that each of these votes will be
4 cast, so you make up your mind then and there.

5 Senator Cook. When you try a man in a court of law, if he
6 has five offenses that he has been charged with, the jury goes
7 back and finds for the first one, and they forget about the
8 others.

9 Senator Pell. They have to say acquitted on charges 2, 3,
10 4 and 5. And this is not a court of law.

11 Senator Cook. I know it is not. But what you are saying,
12 once the President, the Senate already having convicted under
13 a particular article, No. 1, what you want to do is let the
14 public know that somewhere along the line there is an article
15 you want to vote on. But, in the meantime, the President
16 basically has already been found guilty of an offense, removable
17 from office, and we have to find him removable on three or four
18 of them rather than on just one.

19 Senator Scott. Then you say you want to remove him twice,
20 and Bob's amendment gives you a chance to say that?

21 Senator Byrd. Do you have it in front of you?

22 Senator Cook. But if a person shall be convicted upon any
23 such article by the votes of two-thirds of the members present,
24 the Senate shall determine what further proceedings with
25 respect to such trial are essential or necessary.

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1 Senator Pell. What do the present rules provide?

2 Do you have to vote on all three?

3 Senator Scott. The rule is silent on that.

4 Senator Hatfield. On the Johnson case, as I recall, they

5 did not take Article I on the first vote.

6 Senator Byrd. They took Article XI.

7 Senator Hatfield. They took Article XI and had a vote.

8 Senator Byrd. They then adjourned for ten days.

9 Senator Hatfield. And they left off Article I.

10 Senator Byrd. Right.

11 Senator Hatfield. But they voted on how many, ten of the

12 eleven?

13 Senator Byrd. Three of the eleven.

14 Senator Scott. Then someone said I move the Senate

15 adjourn sine die.

16 Senator Cook. Basically, what you are saying here is that

17 you convict on the first one, why go through the agonizing

18 situation of going through all the rest of it.

19 Senator Byrd. They gave up even on acquittal, you see.

20 Senator Hatfield. The radical Republicans knew after that

21 second one, they came back because they thought they could get

22 a conviction on the second article.

23 They failed on that. They failed on the third vote and

24 then threw in the towel.

25 The Chairman. Well, we are going to have to go vote.

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Let us recess temporarily and vote and get back.

(Short recess.)

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1 The Chairman. The Committee will come to order.

2 Senator Pell. I think when the whole thing is being con-
3 sidered as a package for two months or a year, that then the
4 body as a whole should have the opportunity to express its
5 opinion on each of the counts.

6 Senator Byrd. This may be a protection for the respond-
7 ent, because if Senators get the idea that they can only vote
8 on that first article perhaps you would be disposed to vote
9 against it, but if you were going to vote on an article, if
10 you felt a vote of conviction on Article 1 was going to shut
11 you out of a chance to vote on Article 2, you might vote for
12 Article 1 just to get on the record as voting to convict.

13 Senator Pell. So that makes it harder in a sense.

14 Senator Byrd. All this provides is they will determine
15 that day, and not go home overnight, or wait two or three days
16 to come back and determine whether to disqualify him from
17 holding further office.

18 Senator Pell. Is there any way you can see that you can
19 assure once the voting process has started it can be impeded?

20 Dr. Riddick. You can take away the rights to determine
21 sine die, just move to adjourn sine die without ever voting,
22 but if you do this you tie into it and force them to vote, and
23 it might be in case of a President if you found him guilty you
24 do not want to waste any time to go any further.

25 This would apply to both Presidents and judges, too.

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1 Senator Byrd. Do we have copies of the amendment?

2 Mr. Ticer. No, we do not.

3 The Chairman. Bob, do you like this language any better

4 as to the last part of that sentence, the Senate shall determine

5 forthwith whether further proceedings with respect to such

6 trial shall be continued?

7 Senator Byrd. Whether what?

8 The Chairman. Whether further proceedings with respect

9 to such trial shall be continued.

10 Senator Byrd. I do not think that we have any alterna-

11 tive, Howard.

12 There is at least one other proceeding that has to be

13 done, and that is pronouncement of judgment. You have to get

14 that certified copy done so we are not left to choose.

15 Senator Allen. I question whether it takes any Senate

16 action to pronounce judgment.

17 The judgment is pronounced when the vote is taken, so

18 really no action is required to pronounce judgment.

19 Senator Hatfield. We do not have an option.

20 Senator Allen. It is an administerial act.

21 Dr. Riddick. I think that is in previous cases, but I

22 think Senator Byrd's point is it might go on further, and say

23 he shall never hold office again.

24 The Chairman. Or you might want to go on and have a

25 vote on the remaining articles.

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Is that not what Cláiborne's point was?

Senator Byrd. Right.

Let me offer a substitute amendment that would take care of Senator Pell's situation, and if someone wants to strike part or all, they may do so.

May I have copies made of this?

This will take care of Senator Pell's point.

Dr. Riddick, is it stated in any other place that a certified copy of such judgment shall be deposited in the office of the Secretary of State?

Dr. Riddick. It is in the existing rule.

Senator Byrd. I mean is it stated in any other place?

Dr. Riddick. No, I think this is the only place.

Senator Byrd. No other place?

Then you need that to be retained in the rule somewhere.

Why the words "upon pronouncing judgment?"

Is that just to preclude any inordinate delay of a month or two, that certified copy being prepared and sent down to the Secretary of State?

I suppose that is the purpose of that.

Dr. Riddick. I think so. Of course, the Senate has, on its own, and in its own wisdom, on different occasions adopted orders to notify the President, and somebody else, I forget which it was, in addition to this rule.

Senator Allen. Ordinarily on articles I would think they

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would be submitted in order, but who determines the order in which the articles are submitted?

Senator Byrd. The Senate would determine, if any, I suppose, it would be like in other matters, any other bill you would start at the beginning of it.

Senator Allen. As you pointed out in the Johnson trial.

Senator Byrd. That was by order. They adopted an order that we would vote on Article 11 first.

Dr. Riddick. That is right, and take the rest of them in series, and then they came back and reversed that order.

Senator Byrd. Came back and changed that.

Senator Allen. Well, without an order they would start with number one.

Senator Byrd. Yes.

Senator Allen. Here on this language, Senator Byrd, with respect to "shall determine what further proceedings with respect to such trial are essential or necessary," actually nothing would be essential or necessary.

I mean if they voted on one article, nothing else is essential or necessary to vacate the office.

Senator Byrd. That is true.

Senator Allen. Do you not think we ought to have another word in there in addition to that, or strike one of them, and substitute another word, or words to the effect that "no further proceedings shall be taken?"

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1 That would control whether to vore on any more articles
2 or not, but nothing else is essential after it.
3 Senator Byrd. Yes, I would accept that.
4 You might want to apply that to this new amendment I have
5 here.
6 For the purpose of the record, the substitute amendment
7 that I offer, and I withdraw the first one, and offer a second
8 amendment which has in part the same wording in essence as the
9 first one, and it reads:
10 "Rule XXIII is amended --
11 "(1) by inserting at the beginning of the text the
12 following: 'One voting has commenced on a first article of
13 impeachment, no recess or adjournment shall be taken after such
14 commencement un til voting on all articles of impeachment has
15 been completed except as provided herein.'; and
16 "(2) by striking our all after the last semicolon and
17 inserting in lieu thereof the following: 'but if the person
18 accused shall be convicted upon any such article by the votes
19 of two-thirds of the members present, the Senate may proceed
20 to the consideration of such other matters as may be determined
21 to be appropriate prior to pronouncing judgment. Upon Pronounc-
22 ing judgment, a certified copy of such judgment shall be deposited
23 in the office of the Secretary of State.'."
24 Now, that is it. I like this one, because it does
25 provide for a quick decision.

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In the case of the Johnson trial the Senate voted under the 11th article on the 16th day of May, and adjourned for ten days.

Well, the country was held in suspense. You can see what can happen today if the Senate were to adjourn for two days, or three days, or six days, or ten days before proceeding.

Mr. Chairman, I think the country wants a judgment one way or the other, in order to get the matter behind us. This would accomplish that.

We also achieve the wish of Senator Pell.

The Chairman. Well, are you not getting into a problem there?

I do not know what time limits we will eventually fix, but suppose you fix a time limit for debate on one article, and debate that one, and then take a vote?

I do not imagine you would debate all of them before you started to vote on any of them.

Senator Byrd. I am very glad you mentioned that, Mr. Chairman.

I intended to write in this. I am so glad you mentioned that.

I had another paragraph that the voting would be in rapid consecution.

Where is that now?

Mr. Chairman, I have another amendment. I do not readily

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1 find it at this point, but it was to the effect that once the
2 voting starts on the article the vote on each article follows
3 an immediate consecution so that there is no time between
4 articles.

5 Senators could debate articles for whatever length of
6 time the Senate decides in its rules it wants to give them.

7 In other words, it might give each Senator one hour for
8 the discussion of all of the articles before voting the article,
9 any or all, but once the vote on those articles is given we
10 have them back to back, one, two, three.

11 Now, I had another amendment, and I think I wrote it in
12 another book like this.

13 The Chairman. If I might suggest, we are not going to
14 get through all of this today. Why not pull your entire amend-
15 ment to Article 23 together, including the two provisions we
16 have adopted, so that you could offer a complete new, as amended,
17 Rule XXIII?

18 Senator Byrd. Very well.

19 The Chairman. Then we could see the whole thing, and
20 have it in front of us, and if we adopt that, then we know what
21 shape we are in.

22 Senator Allen. I wonder on the first line once voting
23 has commenced on a first article of impeachment, would it not
24 be a little bit more definite to say on an article of impeach-
25 ment, because we may never vote on the first one, you know.

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1 We might start with the second one, and we should say commence
2 on an aritcle, or any article would be better.
3 Senator Pell. Yes.
4 The Chairman. Let us say, "any" or "an."
5 Senator Byrd. That is good.
6 Senator Hatfield. Mr. Chairman, is there something you
7 need a quorum on? I have to go to a conference.
8 The Chairman. I think it is getting along in the day.
9 In light of the fact that we do not have time here on
10 some very important matters on these remaining issues, I would
11 like to suggest that we adjourn to a time certain, and try to
12 consider these matters, and tomorrow may not be a good day.
13 I would like to have suggestions as to what day next
14 week you would like to get started.
15 Senator Byrd. May I respond to that?
16 The Chairman. Certainly.
17 Senator Byrd. My suggestion is that we await the call
18 of the Chair.
19 In view of the circumstances I hesitate for us to set
20 an hour and date at this point.
21 The Chairman. Very well. That would be all right, but
22 let me ask, tentatively, would perhaps Wednesday of next week,
23 which would be a normal meeting day for us, would that be a
24 good day?
25 Senator Byrd. Certainly agreeable with me.

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1 The Chairman. This could be changed by events, but we
2 will try to pick out a suitable day.
3 Senator Byrd. Personally, I would prefer if other events
4 do not intervene that we proceed earlier than we usually do.
5 The Chairman. Monday or Tuesday?
6 Senator Pell. Yes, I like Wednesday, but Monday or
7 Tuesday is all right with me.
8 The Chairman. I would like to ask that all of us who
9 have proposed amendments, if we could have them drafted and
10 ready to pass out at that time on these four remaining rules,
11 it would help us very much.
12 Senator Byrd. Very well.
13 The Chairman. If there is no objection then, we will
14 recess subject to the call of the Chair.)
15 (Whereupon, at 3:55 p.m., the Committee recessed,
16 subject to the call of the Chair.)
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