

C O N T E N T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATEMENT OF:

PAGE:

DR. FLOYD RIDDICK,
Senate Parliamentarian

23

1 S. RES. 370

2 DIRECTING THE SENATE COMMITTEE ON RULES AND
3 ADMINISTRATION TO STUDY THE SENATE RULES AND
4 PRECEDENTS APPLICABLE TO IMPEACHMENT TRIALS

5 - - -

6 EXECUTIVE SESSION

7 - - -

8 WEDNESDAY, JULY 31, 1974

9 - - -

10 United States Senate
11 Subcommittee on Standing Rules of
the Senate and the Senate Rules
12 Committee
Washington, D. C.

13 The joint meeting of the Subcommittee on Standing Rules of
14 the Senate and the Senate Rules Committee convened, pursuant to
15 call, at 4:10 o'clock, p. m., in Room 301, Old Senate Office
16 Building.

17 Present: Senator Robert C. Byrd, (Chairman of the Sub-
18 committee on Standing Rules of the Senate); Senator Howard W.
19 Cannon, (Chairman of the Senate Rules Committee); Senator
20 Claiborne Pell; Senator James B. Allen; Senator Marlow W. Cook;
21 Senator Hugh Scott; Senator Robert P. Griffin; and Senator
22 Mark O. Hatfield.

23 Staff present: William M. Cochrane, Esq., Staff Director;
24 Hugh Q. Alexander, Chief Counsel; Joseph E. O'Leary, Profes-
25 sional Staff Member (Minority); John P. Coder, Professional

1 Staff Member; Jack L. Sapp, Professional Staff Member; James H.
2 Duffy, Esq., Chief Counsel, Subcommittee on Privileges and
3 Elections; James F. Schoener, Minority Counsel, Subcommittee on
4 Privileges and Elections; Peggy Parrish, Assistant Chief Clerk;
5 and John K. Swearingen, Staff Director, Subcommittee on Computer
6 Services.

7 Also present: Floyd M. Riddick, Senate Parliamentarian,
8 and William Ticer, Esq., Office of Legislative Counsel.

9
10 Senator Cannon. The Committee will come to order.

11 I have taken the liberty of inviting Dr. Riddick, ~~from~~ the
12 Parliamentarian, ~~standpoint~~ to assist us and also Mr. Ticer from
13 the Legislative Counsel's Office.

14 At this time I would like to turn the meeting over to
15 Senator Byrd.

16 But before I do so, the TV people outside would like to
17 come in and make a shot before we get started.

18 Is there objection to that?

19 Without objection, so ordered.

20 Senator Matfield. Mr. Chairman, would we want to check
21 with Senator Williams' office to see if he is on his way down
22 first?

23 Mr. Cochrane. He cannot be here today.

24 (Brief recess for picture taking.)

25 Senator Byrd (presiding). Mr. Chairman, I left the

1 meeting this morning a little before the decision was reached
2 on the question that was pending at the time I left. And I
3 would like to know what my duties are at this point.

4 Senator Cannon. Well, we had concluded that we would have
5 the Rules Subcommittee meet jointly with the entire Rules
6 Committee and start ~~them~~ out in that fashion, so we will not be
7 going around on the jurisdictional problem.

8 And I would like to suggest that you preside.

9 Senator Byrd. Is that the unanimous feeling of everybody
10 present, Mr. Chairman?

11 Senator Cannon. Well, there was no objection^{ed} to that.

12 Senator Scott. I think it was unanimous.

13 Senator Byrd. Mr. Chairman, I would have this question
14 which may have been resolved at that time on matters requiring
15 a vote in the Subcommittee during its deliberations and prior
16 to the time that it makes whatever recommendations are made to
17 the full Committee.

18 Would members of the Subcommittee have a vote?

19 Senator Scott. That was decided this morning, that we
20 are serving ad hoc as members of the full Committee.

21 Was that not your understanding, Jim?

22 Senator Allen. Yes.

23 Senator Cannon. I would assume we would have the vote of
24 the entire Committee.

25 Senator Byrd. Very well.

1 Senator Cannon. If there is no objection, we will proceed
2 in that fashion.

3 Senator Byrd. Then, Mr. Chairman, I suggest that we
4 proceed this afternoon to get the views of the members of the
5 Subcommittee and those of the full Committee as to where we go
6 from here.

7 My thought would be that we begin tomorrow with our
8 meetings, that we have the Parliamentarian and those of his
9 assistants whom he may wish to draw upon. I think they should
10 be here.

11 I know that Mr. Dove has done considerable research.

12 The Parliamentarian may wish to have Mr. Dove present.

13 In any event, I would also suggest with the approval of
14 the Committee that we ask one or two people from the Library
15 of Congress who have done considerable research in connection
16 with the precedents involving all of the eleven impeachment
17 trials that have been conducted in the Senate to be present at
18 the same time.

19 Is there objection to that suggestion?

20 If there is no objection, then that will be done.

21 I would hope that by tomorrow we can have the comparison
22 of the proposal that was submitted by the Majority Leader and
23 the Senate Rules so that we could begin giving some considera-
24 tion to the Majority Leader's proposal.

25 I am informed by staff that these were given to the GPO

1 last evening and the GPO has not yet had time to report back.

2 I would also like to know what the wishes of the Committee
3 are with respect to when we would begin to hear other Senators.

4 I believe it was the feeling of the Committee, as I under-
5 stood the consensus this morning, that the Committee would not
6 hear outside witnesses but would only hear Senators.

7 That being the case, it is my feeling that we ought not
8 to hear them until we have had an opportunity to talk among
9 ourselves, hear what the Parliamentarian has to say, and ask
10 questions of him, ask questions of the people from the Library
11 of Congress, and get some feeling of our own as to what the
12 precedents are as to what the proceedings were in the various
13 impeachment trials with respect to evidentiary rules before we
14 begin to hear Senators.

15 This would enable us to inform Senators that they would
16 be given an opportunity, that we can set aside a day, or if
17 necessary, for more than one day, for other Senators to appear
18 and give their testimony.

19 I would also assume to be the wish of the Committee that
20 we record the testimony of Senators, and it may be the wish of
21 the Committee to have that testimony printed and later made
22 public.

23 Senators would certainly have the right, I assume, to make
24 their own testimony public, and as far as I am concerned, I
25 feel that we ought to hear them and have this testimony printed.

1 Is that agreed upon?

2 Senator Scott. Yes.

3 I would suggest that in addition to Senators, we reserve
4 the right to call officials of the Senate because we might want
5 to have Mr. Valeo here on the TV matter and other Senate
6 officials.

7 In the Mansfield draft there are proposals that certain
8 functions which appear previously to have been exercised by the
9 Presiding Officer be exercised by the Secretary of the Senate,
10 for example, so I would add to it if there is no objection that
11 we reserve the right to take testimony of any of the Senate's
12 duly elected designated officials.

13 Senator Byrd. Very well.

14 Is there a contrary viewpoint on the part of any Senator?

15 Mr. Griffin. Mr. Chairman, I certainly think, of course,
16 that we ought to hear from Senators and I would frankly have
17 nobody in mind who is not a Senator, but is there any particu-
18 lar reason why we should make a decision at this time?that under
19 no circumstances would we call anybody else?

20 I do not know whether in the course of our studies and
21 deliberations it is conceivable that we can reverse our deci-
22 sion there if we want to.

23 Senator Allen. Even call from the floor Senator Javits
24 and the Majority Leader.

25 Senator Griffin. I know the Majority Leader's view.

1 He does not think anybody other than Senators. Maybe that
2 is all right.

3 I do not see any reason.

4 I would be against any long list of witnesses, certainly.

5 Senator Byrd. Senator Cannon?

6 Senator Cannon. I think it might be wise to reserve that
7 issue until later.

8 There is no real reason that we have to decide that
9 particular issue now, even though I am personally opposed to
10 calling anybody outside, but if a valid reason should develop
11 we might determine at that time that we needed to call some-
12 body.

13 Now, getting back to the Senators situation, I received
14 a letter from Senator Clark, Senator Kennedy, Senator Mathias,
15 and Senator Javits, in which they point out the problems that
16 we are going to be considering and they enclose a copy of the
17 preliminary staff memorandum which they hope that we might find
18 useful in our review of the rules, and I have talked to Senator
19 Javits and Senator Hart, and that group of four Senators would
20 like the opportunity to appear and present their views to us.

21 Senator Javits suggested that they might appear as a
22 group together to present their views and be available for us
23 to question as we saw fit or if we saw fit and I took it upon
24 myself to ask them if they could be ready by possibly Wednesday
25 of next week.

1 He said that he was sure that they could be or would be if
2 we desired to proceed in that fashion.

3 Senator Cook. I have requested Bob Taft.

4 He could be ready at any time if he was given advance
5 information relative to his appearance.

6 Senator Byrd. Very well.

7 Is it the view of the Committee then that the Committee
8 will not at this time take the position that would preclude
9 witnesses other than Senators, but that there may be an occa-
10 sion where and when the Committee would feel it advisable to
11 have someone outside the Senate.

12 I personally feel as the Majority Leader does that this
13 is an internal matter and while we may want to have Dr. James
14 Curlin to come in and answer questions, I do not think we ought
15 to have others coming in because the line has to be drawn
16 somewhere, and once we start down that road it is pretty
17 difficult to draw the line.

18 But that can be a matter for later decision.

19 Now, the question occurs as to whether or not, gentlemen,
20 that the Committee would want any additional staff.

21 Senator Allen. I do not see any need for that myself.

22 It is a Senate matter, testimony by Senators, and I
23 believe the very able staff that we have already can render
24 all the assistance that is needed.

25 Senator Byrd. Would there be any objection to any member

1 of the Subcommittee or full Committee having his own staff
2 member sit in at the meetings?

3 Senator Allen. I would have none.

4 Senator Byrd. Then, without objection, that can be done.

5 Senator Griffin. Mr. Chairman, I suggest, however, that
6 as we did when we had the hearings on the Vice President, that
7 the Senator designate to the clerk that somebody, whoever it
8 is from his office that is going to be here, so we just do not
9 have people coming and going.

10 Senator Byrd. Yes.

11 Is there objection to the suggestion from Mr. Griffin?

12 The Chair hears none, and it is so ordered.

13 I would like Tom Clark, who is a member of the Committee
14 staff as my representative to be the single representative of
15 the staff as far as I am concerned, and other Senators may let
16 the clerk know their wishes in that regard.

17 Senator Griffin. Mr. Chairman, the matter of the Resolu-
18 tion, on whether to televise, maybe you are coming to that.

19 It would seem to me that unless you are going to wait un-
20 til after you hear all of the witnesses to take that up perhaps
21 you have a plan somewhat in mind.

22 The other possibility would be to proceed to that and have
23 testimony on that and then have witnesses who are going to
24 testify as far as other rules are concerned.

25 I do not know what you have in mind, but I do think that

1 whether or not we agree on television coverage, at least in my
2 mind we will have some impact and effect on how the other rules
3 may be drafted.

4 Senator Byrd. Well, it is a matter for the Committee.

5 I would like to know what the Chairman thinks as to whether
6 or not that matter should be first taken up.

7 Senator Cannon. This would involve a rules change just as
8 the rules that we are considering.

9 My suggestion would be that we ought to consider this
10 along with the other rules at the time that you take the testi-
11 mony, whatever testimony we are going to receive, and then we
12 can make our judgment after we have heard from the various
13 witnesses.

14 We have requests from a lot of witnesses to be heard.

15 I have already had one member of the Minority tell me
16 today he did not care to come over as a witness, but did want
17 to express to me the view that he was opposed to televising the
18 hearings.

19 This member thought it might develop into sort of a side-
20 show atmosphere.

21 I would make that a part of the record.

22 Senator Cook. May I say, Mr. Chairman, I think the
23 situation resolves itself as we take up the proposals.

24 It became a matter of any individual member of the
25 Committee or the Ad Hoc Committee as such, to raise the point

1 whatever he wishes to discuss, and it seems to me if that is
2 what you wish to discuss and lay on the table to begin with,
3 then I think that is what you ought to do.

4 You have expressed the feeling that your reservation and
5 slant or concern about some of the other rules are directly
6 affected by a decision whether television is or is not permit-
7 ted in these proceedings.

8 Therefore, it would seem to me it would be incumbent on
9 you to move to discuss that matter first.

10 Senator Scott. I would like to add a comment.

11 Senator Cook. And take it up in that particular sequence.

12 Senator Scott. I would like to add, Bob, this thought
13 that the timetable on the Resolution before us calls for a
14 report by September 1.

15 If we do not act on the television aspect of this prior
16 to September 1, we are all going to be pushed very hard by the
17 networks as to how much time they have for advance planning
18 because should the House vote on August 23 or 24 in that last
19 week, we would be very much under the gun, and they would have
20 a minimum of time should the Senate elect to televise the
21 proceedings.

22 I am only suggesting that maybe whatever order you take
23 it up, you may be able to report on the television aspect be-
24 fore you make your report on anything else, simply to
25 accommodate the concerns of the networks involved.

1 I have no special feeling about it except to mention there
2 is a timetable.

3 Senator Griffin. I guess that is what I was trying to
4 point out.

5 I personally am against televising and do not think we
6 should, but if we are going to, I realize I am probably in the
7 minority.

8 I would like to get the decision made so that we can then
9 do the best job we can operating under those circumstances.

10 Senator Cook. Would the Senator yield?

11 Senator Griffin. Yes.

12 Senator Cook. The letter I received from Senator Taft
13 is specifically on this matter, desires to testify before the
14 Committee on the issue of televising the procedures in the
15 Senate should the President be impeached in the House.

16 He says, this is to confirm the conversation with you and
17 ask to be notified of the time and date when I will appear
18 before the Committee.

19 Now, it seems to me under the circumstances, having had
20 a request on that issue, we ought to proceed to put notifica-
21 tion in the record to hear members of the Senate in relation
22 to this and set down a date for hearing.

23 The Senate is then on notice and we, at least, know that
24 we will be available to hear one witness and then also the
25 views of any other members of this Committee.

1 Obviously, if there are any other Senators who wish to
2 testify, they will be put on notice.

3 Senator Allen. I notice that Senator Byrd has accepted
4 a Resolution on the television and it also is wrapped up in the
5 rules.

6 It could be considered, could it not, on the Byrd Resolu-
7 tion rather than going back into it as part of the rules?

8 Senator Cook. That may be a very easy reason to overcome
9 the concern and we could proceed on the hearings and Senate
10 Resolution 371, submission of the Resolution to permit tele-
11 vision and radio coverage of the impeachment trial.

12 This would not be connected with the rules and we could
13 proceed on that at the convenience of the members of the
14 Committee.

15 Senator Griffin. You would make that decision first and
16 then proceed to other changes in the rules in light of the
17 decision that is made.

18 Senator Cannon. There would be no reason I see that we
19 could not settle that issue first at the time we are ready to
20 settle it. But obviously, you cannot settle it until you have
21 heard from the Senators who want to appear and testify.

22 I will not presume that every one of them that wants to
23 appear would want to express their views or the other on
24 television.

25 I, for one, would like to hear their views before I make

1 the decision, but once we have heard from the Senators we want
2 to hear from on it, then I think that we could decide that as
3 a first order of business because of time constraints and, say,
4 let us settle this issue as one of the rules, and then go on
5 from there.

6 Senator Griffin. And report out a Resolution on that
7 subject.

8 Senator Cannon. Right.

9 Senator Scott. That is the extent of my thinking on it.

10 Senator Byrd. What is the opinion of the Committee as to
11 whether or not, a moment ago I suggested that we proceed with
12 discussing this among ourselves and asking questions of Dr.
13 Riddick, and representatives from the Library of Congress, as
14 early as tomorrow.

15 It may be better to proceed to set aside a couple of days
16 for hearing Senators, let them appear and make their presenta-
17 tion concerning television and rules of evidence or whatever
18 other matters they wish to speak to, address themselves to,
19 before we get down to making our decisions one way or the other.

20 We would have already had their input before we then
21 start taking the thing apart by nuts and bolts, and trying to
22 put it together again.

23 What would the Committee have to say on this?

24 Mr. Chairman, how do you feel?

25 Claiborne, any comment?

1 Senator Pell. No.

2 Senator Byrd. We can proceed in either way that you think
3 best.

4 Senator Allen. I think initially we ought to discuss it
5 among ourselves before we are in the position to absorb the
6 testimony of the Senators.

7 That would be my judgment.

8 I think we ought to get a judgment of the Committee on
9 the present rules and proposals and hear from the Senators.

10 Senator Cook. Would the Senator yield?

11 Senator Allen. Yes.

12 Senator Cook. Are you saying that what you are talking
13 about is the proposed changes as a result of the adoption of
14 the Mansfield proposal?

15 Senator Allen. Yes.

16 Senator Cook. Do you also mean that that should apply
17 itself to the Senate Resolution 371 as it applies as to whether
18 or not we ought to televise or not televise, or you feel that
19 can be handled separately?

20 Senator Allen. Yes.

21 That can be handled separately.

22 Senator Cook. We can set that down for a hearing next
23 week.

24 Senator Allen. Are you confining the Senators to testi-
25 mony on that subject?

1 Senator Cook. It would seem to me if that is what you
2 call the hearing for, that is what you would do and move later
3 in the week to proceed on this subject.

4 Senator Allen. And in the meantime doing our private work
5 and study.

6 Senator Hatfield. I would like to add that someone from
7 the Library of Congress ought to be prepared to give us a brief
8 historical resume of the role of procedures in the Johnson
9 impeachment because I think to look at a page of rules of
10 procedure unrelated to the one precedent we have involving the
11 President, would be less meaningful and it seems to me since
12 that was so replete with evidence on how the rules of procedure
13 were either ignored or were totally inadequate to begin with,
14 it would have far greater meaning to us as we develop these
15 rules and procedures and someone from the Library of Congress
16 could give us that historic summary or brief along with the
17 regular changes proposed here.

18 Senator Byrd. Very well.

19 The Parliamentarian, I think, is in the position possibly
20 to begin to do that at any time.

21 He has been working on that.

22 Senator Hatfield. Fine.

23 Senator Byrd. So I think we are prepared, Mark, at any
24 time to proceed along that line.

25 Now, what is the wish of the Committee as to where we

1 should meet daily?

2 Should we meet here or should we meet in the Capitol?

3 We are going to be very busy over there as we proceed
4 with our hearings and there are going to be roll call votes
5 and, Mr. Chairman, it may be more convenient for all concerned
6 if we met in the Majority Leader's office, so it would be close
7 to the floor.

8 Senator Scott. I think so.

9 Senator Cook. As long as we are not so packed full of
10 people.

11 Senator Hatfield. That room gets awfully crowded.

12 Is there a Committee Room?

13 The Appropriations Committee and the Foreign Relations
14 Committee are the only two major Committees over there, but we
15 are each going to have a staff person along with the Committee
16 staff, and it can get awfully crowded.

17 Senator Byrd. Let us check that out.

18 If it is the will of the Committee that we seek a meeting
19 place in the proximity of the Chamber, we ought to try to do
20 it.

21 Senator Pell. Mr. Chairman, would it not be the ideal
22 thing to meet in the morning over here when we do not have any
23 roll calls and meet over there in the afternoon?

24 Senator Byrd. We are probably going to have roll calls in
25 the morning also.

1 Senator Griffin. Claiborne, I think one of the problems is
2 that the floor leaders will be here and we are going to have
3 to be on the floor some of the time.

4 Senator Cook. I think the convenient thing would be to
5 meet in the Capitol.

6 Right now, you do not know when that bell is going to
7 ring and it is so much more convenient to be near the floor.

8 Senator Allen. How about Room 207?

9 Senator Cook. I think you ought to reserve 207 other
10 than on Tuesday at noon.

11 Senator Byrd. What goes on Tuesday at noon?

12 Senator Cook. Minority luncheon and under the circum-
13 stances we could use that as our meeting place.

14 It is right off the floor.

15 It is a good-sized room.

16 Senator Hatfield. If that room isn't available there in
17 the small rotunda before you get into the big one, there is a
18 couple of steps down on the right as you move towards the main
19 rotunda, a room that has been used frequently.

20 Senator Cannon. We use that during the inaugural.

21 Senator Scott. That is Room E-100.

22 Senator Cook. E-100 is much smaller than the other two
23 rooms.

24 Senator Scott. We have had forty or fifty people in there.

25 Senator Byrd. The Chairman has suggested that the

1 Committee meet here tomorrow morning and then we would go from
2 there for the next meeting.

3 In the meantime, we could do some exploratory work and
4 possibly have something further by the Committee tomorrow
5 morning.

6 Senator Cannon. Mr. Chairman, I am advised now that the
7 comparative print should be ready and in our hands by the time
8 that we meet.

9 Senator Scott. I would like to make one suggestion if it
10 is desired by the Majority Leadership and that is that if he
11 wishes someone on his staff to make the rule by rule analysis
12 instead of doing it himself, if the Committee can agree to that,
13 if he wants to designate some one as this is his working draft,
14 and he has supplied all of us, I understand, with this analysis
15 and you may not need anybody here, but I would like to know
16 whether he wants to have somebody come in and analyze this for
17 us.

18 This document is representing his views.

19 Senator Byrd. May I suggest this agenda for tomorrow
20 morning, then?

21 That we meet here at ten o'clock, and I would hope that we
22 would meet on time.

23 We all know what our problems are.

24 What is a quorum of this Committee to be?

25 Senator Scott. Five.

1 Senator Byrd. Five?

2 If the Subcommittee itself is going to be held up in its
3 responsibilities because of the lack of a quorum of the full
4 Committee, what is the situation?

5 Senator Pell. I will be at the Law of the Sea Conference
6 over the weekend.

7 Senator Byrd. Yes.

8 Senator Griffin. Mr. Chairman, I would think that for
9 purposes of holding hearings, for purposes of listening to
10 presentations, and also things like that, it certainly would
11 not require a quorum, maybe one from each side or something
12 like that. But I think only when you are actually going to
13 make some decision, it would be a problem of a quorum.

14 Senator Pell. I think this question has come under the
15 reorganization of the rules and I do not think you need more
16 than one, frankly.

17 Senator Griffin. I would think that most of the time you
18 could operate even if you only had one.

19 Senator Cook. Every day I am here I will be here.

20 Senator Byrd. I think this is worthy of a decision because
21 I can envision our being delayed many times by virtue of the
22 lack of a quorum of the full Committee, and if we could have
23 them understanding that we could proceed with our work, not
24 with votes, not with decisions, but certainly proceed with the
25 general work of this body, with a quorum of how many, two or

1 three?

2 Senator Scott. I think we could provide one member from
3 the majority and one member from the minority, which will be
4 a quorum except for the purpose of decision making or votes.

5 Senator Pell. Let us follow the Reorganization Act.

6 Senator Cook. Yes.

7 I think that is what the Reorganization Act provides, if
8 I am not mistaken.

9 Senator Pell. You do not have to make a decision.

10 Senator Byrd. What is the Act?

11 Senator Pell. My recollection is, you cannot report a
12 bill out, you cannot take action on amendments on a bill, and
13 technically you can meet with two.

14 Senator Hatfield. A hearing can technically be conducted
15 by one person.

16 Senator Pell. If a decision goes out, it would be five,
17 but a quorum for the amendments would be two.

18 Senator Byrd. I have a feeling there should be in this
19 present situation a representative of both sides here.

20 Senator Hatfield. Mr. Chairman, that is what the ranking
21 minority member is here for, to keep his side covered, and the
22 majority is to keep his side covered and proceed on the basis
23 as we do in any other Committee.

24 Senator Byrd. As long as there is a member of the
25 minority and majority here.

1 Senator Cook. What does the Reorganization Act say?

2 Senator Cannon. The Senate rules provide pursuant to
3 Section 133(d), five members of the Committee shall constitute
4 a quorum for the reporting of legislative measures.

5 Pursuant to Rule XXV, Section 5(a), that the standing
6 rules of the Senate, three members shall constitute a quorum
7 for the transaction of routine business.

8 Pursuant to Rule XXV, Section 5(b), three members of the
9 Committee shall constitute a quorum for the purpose of taking
10 testimony under oath, provided, however, that once a quorum is
11 established, any one member can continue to take such testi-
12 mony.

13 Senator Scott. That is all right.

14 Senator Pell. If you are not under oath, you do not even
15 have to have two members.

16 Senator Byrd. Then the Committee will follow the rules
17 as laid down by the Reorganization Act, and our understanding
18 of it.

19 Does any member have anything else to bring up at this
20 time?

21 Senator Cook. Ten o'clock tomorrow morning?

22 Senator Scott. Well, do you want to hear Dr. Riddick on
23 the broad general subject tonight or want to defer that until
24 tomorrow?

25 Senator Byrd. What are the wishes of the Committee?

1 Senator Hatfield? Do we have any more roll calls today,
2 Mr. Chairman?

3 Senator Byrd. We may have.

4 Senator Hatfield. Then let us utilize his time.

5 Senator Byrd. Dr. Riddick is present.

6 What would you like to hear from him as a preliminary
7 comment today?

8 Senator Hatfield. Mr. Chairman, I would like to have a
9 historical prospective here in terms of procedure.

10 We know the gist of it and some have read the books on the
11 political implications but it seems to me in reference to
12 procedure we ought to have some historical presentation at some
13 point and the earlier the better to my mind.

14 Senator Byrd. Doctor, why not begin by simply stating
15 the chronology of events as they occurred in the Johnson trial.

16 Would that be a good starting point here?
17
18
19
20
21
22
23
24
25

1 STATEMENT OF DR. FLOYD RIDDICK,

2 SENATE PARLIAMENTARIAN

3 Dr. Riddick. Well, I wonder if you would want to follow
4 the Johnson trial as contrasted to the more recent developments
5 in this regard.

6 Senator Byrd. Well, you are raising another question now.

7 Why can you not start with the Johnson trial?

8 We are going to hear all of it.

9 Dr. Riddick. Because you are going to hear a different
10 procedure as a result of what the House is going to do.

11 Senator Byrd. I understand that.

12 Dr. Riddick. You see, in the Johnson trial, the Senate
13 was first informed that the House had impeached the President
14 and that a Committee would report later, a Committee of two
15 would report to the Senate later and the Committee of two came
16 over and made the report to the Senate that they had been im-
17 peached and that the Articles of Impeachment would be drafted
18 and presented at a later date.

19 That took quite a little while to draft these Articles of
20 Impeachment.

21 But now we have moved into another procedure where they
22 adopt the Resolution of Impeachment with the Articles of
23 Impeachment included, so you cut short those two or three steps.

24 That is why I was suggesting that and as I get it, this
25 is exactly what they are going to report this time.

1 Senator Cook. Was there any debate within the framework
2 of the Senate as a result of that procedure?

3 Do you not ultimately get to that point and the Senate
4 starts anyway?

5 Dr. Riddick. Well, the Senate, if it is going to adopt
6 any special rules to supplement the existing rules, would take
7 that into consideration after it had been informed that the
8 impeachment had occurred.

9 It was done before the oath was administered. They debat-
10 ed and changed the rules. The only thing was in the impeach-
11 ment of Johnson, there was a little conflict between the Chief
12 Justice of the United States and the Senate.

13 He said the Senate had gone on and received the Articles
14 of Impeachment and set arrangements ready to begin the hearings
15 and the Chief Justice sent a letter over to the effect that,
16 look here, the Constitution says I'm going to preside at the
17 impeachment trial and you all are going ahead without my being
18 present.

19 Well, the Senate referred that to a Committee and never
20 did anything about it.

21 They went ahead and proceeded to the extent that they
22 adopted a notice to be submitted to the Chief Justice for him
23 to show in the Senate at a set date to begin the trial.

24 Now, before this occurred, they had adopted this set of
25 rules that we have here which have been modified somewhat since

1 that time, but basically, the twenty-six rules in the Manual
2 today are the same as they were adopted before the start of the
3 trial of the President.

4 Senator Cannon. They readopted them.

5 Dr. Riddick. That is what I was getting ready to say.

6 We adopted them, but the Chief Justice, having thought he
7 had been shunted and not been given his due consideration, put
8 the question very peculiarly when he took over the Chair and
9 said without objection the rules that had been adopted by the
10 Senate will apply in this case and nobody ever made any issue
11 of it. So that is what they did.

12 Whether this Chief Justice presides or the case should
13 arise whether he is going to insist on the same precedent and
14 insist that we readopt them after we come into the trial is
15 another question, it seems to me.

16 The only thing is, the oath having been given to the
17 members sitting as a court, until we do something about the
18 rules, it would seem to me we would have to fall back on the
19 existing rules that we have got which would prohibit Senators
20 from speaking.

21 All they do is vote.

22 Senator Byrd. Doctor, would it be beneficial or could
23 this be done fairly quickly, could there be a comparative lay-
24 out of the procedures and the events in each of the eleven
25 trials so we could see the different procedures that occurred.

1 in some of the later trials?

2 Dr. Riddick. Well, this is off the record so I might say
3 pursuant to your suggestion I have concocted this paper here
4 that sets forth the preliminaries in each of the cases.

5 I have used as a model for the guidelines and the pro-
6 cedures the cases of Rivers, Lauterbach, and the footnote I have
7 cited, the preliminaries to each of the other cases that set
8 forth exactly how they went about to get this accomplished.

9 Senator Cook. Could those be available tomorrow or are
10 they available now?

11 Dr. Riddick. I prepared them for Senator Byrd.

12 Whether he wants to release them or not I do not know.

13 Senator Byrd. Let us put it in the record tonight and we
14 could get it printed as a Senate document if you like, and it
15 would be available for all the members of the Committee in the
16 Congressional Record tomorrow.

17 Senator Cook. Is that all of it?

18 Dr. Riddick. I have capsulized them just as brief as
19 possible.

20 The main thing that I have attempted here as opposed to
21 a historic tracing of the procedure is to set forth the steps
22 that are normally followed in a trial giving the format for
23 subpoenas, the format for oaths, the format for the proclama-
24 tion of the Sergeant at Arms and the actions of the Secretary
25 and everything else.

1 I have tried to give it as if a person needed this to see
2 what he was going to do next.

3 Senator Griffin. Printed as a Committee document.

4 Senator Byrd. All right.

5 Have it printed as a Committee document.

6 Senator Scott. That comes back to the same question.

7 I agree with the Committee document because we ought to
8 try through Executive Session not to be in a position publicly
9 as competing, and I think the more we keep to the Committee
10 the better.

11 Senator Griffin. Ofttimes staff work is printed for
12 Committee use and Committee prints and things.

13 Senator Hatfield. Mr. Chairman, do you recall, Dr. Riddick,
14 offhand, how many times the appeal from the ruling of the Chair
15 occurred in the Johnson case?

16 Dr. Riddick. I think I am having that checked out right
17 now.

18 The facts that I have in mind are seven times the Senate
19 overruled his decision.

20 Senator Scott. Overruled, but there were forty-four
21 votes, were there not?

22 Dr. Riddick. I forget that.

23 Senator Hatfield. The question I have following that
24 and I am a non-lawyer so that is why it concerns me, but can
25 you give an evaluation as to how many of those appeals were

1 due to a lack of clarity of procedures and about how many were
2 due to political motivation and so forth?

3 Can you make a distinction here?

4 Dr. Riddick. That is a tough one for me to try to answer.

5 I do not think I should, Senator.

6 Senator Hatfield. Historically, this is not a strange
7 question.

8 We have had five books written on that case in which they
9 line up one side or the other and they interpret these pretty
10 well.

11 Dr. Riddick. I frankly do not think I should get into
12 the political aspects.

13 Whenever you get into this editorial concept you leave
14 yourself open for criticism.

15 I think my job is such that I should not make the general-
16 ization of any type that would subject me to such criticism.

17 Senator Hatfield. Mr. Chairman, the reason the question
18 is pertinent is that I think we have to analyze whether or not
19 there were procedures under impeachment trial which were set
20 forth initially and in good faith, hoping that they would be
21 adequate, and then during the trial they proved to be either
22 inadequate or there was a certain lack of clarity.

23 Forty-four appeals were made. I think historians have
24 done a pretty fair job in classifying them; whether it was a
25 bias for or against Mr. Johnson; as to how many were moved by

1 political considerations and how many of them were questions
2 that legitimately could be made because of a lack of procedure
3 therein.

4 Dr. Riddick. They knocked him down so many times he began
5 to submit the questions to the Senate in the first instance.

6 Senator Hatfield. I realize that, but you can go to the
7 biography, the two volumes of Charles Sumner, and pretty well
8 find out how those were provided.

9 Dr. Riddick. That is true.

10 Senator Hatfield. I think we have to have some kind of
11 analysis because we do not want to get into forty-four rulings
12 of the Chair, appeals and rulings of the Chair, if we get into
13 this case, if they were due to technicalities or inadequacies
14 of procedures.

15 If they were primarily politically motivated, of course,
16 let us forget it.

17 I think that analysis can be made by fair and just people.

18 Senator Byrd. Well, the document that Dr. Riddick has
19 prepared, it really lays out the procedures from beginning to
20 end, and it footnotes how those procedures vary from case to
21 case.

22 It would be helpful, I think, to have it printed for each
23 of the members of the Committee, very, very helpful.

24 Senator Scott. Let me ask Dr. Riddick a question.

25 Are these rules over one hundred years old?

1 Dr. Riddick. Yes.

2 Senator Scott. I would assume you would agree that there
3 is no question that we do need to consider revision of the
4 rules.

5 Dr. Riddick. Well, I do not know, Senator.

6 I tell you, it depends on who is going to have to inter-
7 pret the rules.

8 You see, if we use the existing rules we have with
9 modifications, at least we have precedents to bridge those gaps
10 that might be in the rules.

11 I do not think anybody can sit down and write a set of
12 rules that can anticipate all the things that will arise there-
13 under and if you do not have any precedents to support or
14 sustain you, then you have to arbitrarily say this is just my
15 opinion.

16 Senator Scott. You say this is the result, do you not?

17 Dr. Riddick. Well, I say you cannot anticipate everything
18 that might come up.

19 Senator Scott. I grant you that the moment we get the new
20 rules we create new problems.

21 Dr. Riddick. That is right.

22 Senator Scott. Basically, according to the Parliamentarian,
23 and we all come to you for help, but I do not think that answers
24 my question.

25 Are you satisfied with the rules as they are?

1 Dr. Riddick. Oh, well, I think that it might be very well
2 if you leave the existing rules, to supplement them with rules
3 for this specific case.

4 Now, this has been the practice in the last several cases,
5 that in addition to the body of rules that they have, they
6 adopt a special set of rules to apply during that case.

7 For example, just as the thing as to which hour you are
8 going to meet each day. The rule here says twelve o'clock.
9 In one case they agreed to come in at twelve, meet until 1:30,
10 come in at two and go to five.

11 Senator Cook. These are not substantial changes to the
12 rules.

13 They are technical changes to the rules.

14 Dr. Riddick. That is correct.

15 Senator Byrd. Those are orders adopted on the floor at
16 the time.

17 Senator Scott. Let me cite what I am getting at.

18 Unless we have up-to-date rules a hundred years after the
19 other ones, there are many questions which the Senators are
20 going to contest on the floor.

21 This is going to delay the proceedings. It is going to
22 lead to more appeals from rulings of the Chair. It is going to
23 complicate the process unnecessarily and in a very lengthy way.

24 I will give you one illustration.

25 The only precedent that the presiding officer can break a

1 tie vote that I know of is in the Johnson case when Chief
2 Justice Stewart did break the tie and it suddenly dawned on the
3 Senators the next day what had happened.

4 And then they began debating it and they argued it and put
5 the question to a vote or the Chief Justice did, and the Senate
6 sustained the Chief Justice's right to break the tie.

7 Now, in the Mansfield working draft, the right of the
8 Chief Justice to break a tie is specifically included.

9 I happen to feel that, though I do not think it is, you
10 know, a world shaking problem.

11 Is it included or excluded?

12 Senator Pell. Precluded.

13 I do not think it is a world beater, but it is a good
14 illustration.

15 If the Senate does not adopt the rule on whether the
16 presiding officer can break a tie or not break a tie, we are
17 going to go through probably hours of debate and appeals from
18 the ruling of the Chair, etc., to a simple question of whether
19 the Chief Justice can break a tie.

20 Therefore, why not have a ruling?

21 Why do we not decide here whether we want a rule or not,
22 because as I understand what you are saying, Floyd, you are
23 leaving a great many things in a gray area and up in the air on
24 cloud nine because it is better not to try to define the rule
25 because that leaves you without precedent.

1 Every new rule leaves you without precedent as I see it.

2 Dr. Riddick. You might be interested in knowing that I
3 have put down a few notes to bridge gaps that are in the rules
4 and the first point I have got, I mean it would be something
5 for the Committee to consider as to whether the Chief Justice
6 should vote or not vote, and do it before you get into the heat
7 of debate or politics and then you will know whether you will
8 allow him to vote or not.

9 Another point that is a little cloudy is, you see under
10 the Senate rules that is something the Chief Justice ruled
11 while the President's trial was going on, that if the impeach-
12 ment rules were not sufficient, that he was going to fall back
13 on the existing Senate rules.

14 Now, under the Senate rules we have a right to demand a
15 division.

16 Now, it presents a little problem if, for example, an
17 article is pending before the Senate for a vote, I mean a
18 division is demanded, you get three votes, two of them you fail
19 to convict and the other one you convict.

20 The rule itself or the rules of impeachment do not say
21 positively the whole or the part. It says any one of the
22 articles of impeachment.

23 Now, I think that could be clarified on the whole article
24 or any portion thereof, if a two-thirds vote is forthcoming.

25 Senator Scott. That is what the Constitutional lawyer,

1 Mr. Black, said on television gave him trouble, the one or more
2 phrase.

3 Dr. Riddick. I am still working on that aspect of it.

4 I think there are a number of these things that should be
5 corrected or clarified, even if you do not change the rules as
6 a whole, but if you leave the existing rules then I have
7 precedent.

8 That is the only thing I say from my point of view as
9 having to start interpretations.

10 Senator Cook. What you are saying is you want a clarifica-
11 tion by this Committee for the benefit of sustaining your
12 point.

13 Dr. Riddick. Exactly.

14 Senator Griffin. I wonder if the House Committee on the
15 Judiciary which is drafting these impeachment articles is aware
16 of the Senate's existing rules on that point.

17 Dr. Riddick. I am not sure.

18 You know, that volume they put out on impeachment is a
19 question that Senator Hatfield raised there.

20 They have one section in that volume that sets forth
21 every day's procedure, a detailed breakdown of what they voted
22 on and how they acted; whether it is in that volume or not I
23 do not know.

24 Senator Griffin. They might be drafting the articles a
25 little differently.

1 Senator Byrd. According to the way they have drafted
2 their articles that the House leaves them, as the Judiciary
3 Committee has adopted them, and there are nine segments of that
4 first article, the Senate could ask for a division on a vote
5 on each of those nine charges and a vote for conviction on any
6 one of the nine charges in the first article would be conviction.
7

8 Senator Scott. At the present.

9 Senator Griffin. I did not understand the doctor to say
10 that.

11 Dr. Riddick. We have one precedent on it where this was
12 the case.

13 There they divided the article into three parts.

14 Then they voted on three of them, one carried, the other
15 two lost.

16 They held him as guilty on that article, but that is the
17 only precedent we have on that and it is a good basic question.

18 At least it could run you into a great deal of debate.

19 Senator Byrd. Well, it is not exactly a precedent because
20 under the standing Senate rules any Senator may demand division
21 on any question that is divisible.

22 Senator Griffin. You are not determining somebody's
23 guilt.

24 Senator Cook. It becomes a matter whether the item is
25 divisible.

1 First of all, I would assume that there would be a vote on
2 whether it would be divisible, and if, in fact, it was divisible
3 you voted on them separately and you would be voting on guilty
4 or innocence.

5 Senator Pell. But if you do disagree you are voting on
6 dividing.

7 Senator Scott. You have under the present rule fifteen
8 opportunities to find guilty.

9 Senator Pell. But if the vote were made there would be
10 no division.

11 Dr. Riddick. That would lock it up.

12 Senator Byrd. That would have to be determined by the
13 Senate at that time, that under these standing rules any
14 Senator has the right to ask for division and in the impeach-
15 ment trials there is at least that one precedent in which they
16 did divide.

17 Dr. Riddick. They have divided resolutions, for example,
18 that they adopted at the end.

19 They divided them two or three times, so there is no
20 question but what they allow division under the existing rules
21 in the impeachment trials.

22 The point that I was suggesting is that we made it
23 definite what step you were going to follow, what procedure
24 you are going to follow. Then you would have something defin-
25 ite to depend on.

1 Senator Scott. Suppose we do not do anything that the
2 Mansfield Resolution suggested affirmatively that we do, but
3 suppose we did not do anything to equate the rulings of evi-
4 dence with the Federal Code of Procedure, and the question
5 arises in the Senate as to the test of evidence which Senators
6 shall apply as between beyond a reasonable doubt and a pre-
7 ponderance of the evidence, or a fair and convincing proof,
8 which I believe is the ground that the Mansfield document
9 chooses, and we do not have any rule, how are you going to rule
10 as Parliamentarian?

11 How are you going to rule on what is the standard?

12 Dr. Riddick. I think the Chief Justice as the presiding
13 officer would fall back on that.

14 The rule as now written in that regard allows the Senate
15 to appeal from the Chair.

16 It allows the Chair to submit it to the Senate in the first
17 instance and under the rule it will allow you to make these
18 decisions after the Chair has ruled without a roll call vote.

19 Senator Scott. That is the point I am making, that you
20 enter this trial without the Senate knowing or the public know-
21 ing what is the standard of evidence which they must apply.

22 You are saying they can do it after they start the trial.

23 Senator Byrd. Hugh, may I address myself to that?

24 Senator Scott. Yes.

25 Senator Byrd. I do not care what standard you apply.

1 This is not a civil trial.

2 It is not a criminal trial.

3 It is an impeachment trial, and I do not care what
4 standard you apply, whether it is preponderance of evidence or
5 whether it is beyond a reasonable doubt or whether it is clear
6 and convincing proof, every Senator is going to apply his own
7 standards and his own mind and his own heart, and he will either
8 vote guilty or acquittal, regardless of what kind of standard
9 we may lay down here.

10 That Chief Justice is not going to address that jury over
11 there and say, now, gentlemen, you will vote to convict if in
12 your mind there is a preponderance of the evidence, or if there
13 is evidence beyond a reasonable doubt.

14 He is not going to do that because Senators are going to
15 make their own judgment and apply their own standards.

16 That is one aspect of the proposal here that I think is
17 clearly unworkable and I doubt that we ought to go down that
18 road.

19 Any Senator can adopt his own standard if he wants to
20 adopt a standard and he will have to prove beyond a reasonable
21 doubt that is his standard.

22 I think we are getting to a very difficult and unworkable
23 thicket if we attempt to lay down a standard here by which the
24 Senate will reach its judgment.

25 Dr. Riddick. Well, even if you adopt the admissibility of

1 evidence rules of the Federal Court, the Senate could still
2 take an appeal every time regardless of what the Chair ruled.

3 Senator Cook. Absolutely.

4 Senator Scott. There is no question of that whatever,
5 but you would have established a standard to which people would
6 feel that they would be obliged to repair.

7 You would have established an ideal situation.

8 You cannot bar the Senate from doing foolish things. We
9 demonstrate that daily, but you could at least establish what
10 is fair.

11 Dr. Riddick. In the trials we have had on numerous
12 occasions, the presiding officer has stated he was going to
13 follow the rules of evidence as found in the courts and so
14 forth.

15 Senator Scott. You see, we have a whole lot of new rules
16 of evidence in the 20th century that did not exist in the 19th
17 century.

18 Senator Cook. Floyd, are you not saying, in effect, that
19 the Chief Justice of the Supreme Court, if that be the case,
20 can open this matter in the Senate and say it will be the
21 opinion of the Chair that the civil rules of evidence will
22 prevail and that on every instance where that is not the case,
23 or let me say this, that in every case where that is not satis-
24 factory to any particular member of the Senate, that he will
25 then automatically appeal the ruling of the Chair?

1 Dr. Riddick. That is exactly the way the rule is set now
2 and that is the way the procedure has been.

3 Senator Byrd. Hugh, my suggestion would be that we have
4 got a set of rules that were drawn up one hundred six years ago.

5 The fact that they are over a century old does not de-
6 nigrate them in any way in my judgment.

7 The Constitution is older than that, but the rules are
8 loose. We have to have a simple, flexible set of rules and in
9 the final analysis the Senate is going to be the judge of
10 every question that arises.

11 I think we would make a mistake if we, as a Committee,
12 attempt to lay out a very strict set of evidentiary rules or
13 say that we ought to follow the Federal rules of criminal
14 procedure or Federal rules of civil procedure.

15 In my judgment the presiding officer is there to preside
16 and maintain decorum and order in that Senate and rule on
17 incidental questions and on questions involving evidence and
18 if the Senate wants to appeal this ruling it can do it, and
19 no matter what rule we draw up here the Senate is going to do
20 that and the Senate will override him.

21 I think when it all boils down, Hugh, we are going to have
22 to come to grips with certain very clear questions; one, the
23 one that you brought up first, as to whether or not the
24 presiding officer will be allowed to vote.

25 That is one we can establish a rule here, take it to the

1 Senate, and if the Senate wants to adopt it, fine.

2 I would hope that we start with the rules that we have and
3 as we go down we determine whether or not we want to recommend
4 a change in that particular one.

5 For example, Rule 11 was established in 1935 and never has
6 been used, the rule providing for the establishment of a com-
7 mittee of twelve, but we could go down the list keeping in mind
8 that somebody has to rule on every question that arises.

9 In my judgment, Hugh, that is the Chief Justice.

10 That is what he is there for and that set of rules has
11 been used with certain slight variations from time to time in
12 the trials that have occurred since 1868 and even during 1868
13 they changed the rules in that trial.

14 I think we ought to start with that set of rules and if
15 the Committee wants to consider locking in the Federal rules of
16 criminal procedure, it can do so, and can take it to the
17 Senate.

18 If the Senate wants to do that I think it will be making
19 a terrible mistake but the Senate in the final analysis is to
20 be the judge of every decision that is made.

21 I think if we have a flexible set of rules like we start
22 with you can make a few changes and let the Senate decide daily
23 as circumstances arise, as to what its decision ought to be on
24 whatever comes up.

25 Senator Scott. That, of course, leaves the Senate free

1 not having set up any standard of evidentiary conduct to vote
2 as they have the power to do, no question about it, to vote
3 every day, anytime it suits the majority.

4 There you have King Caucus coming in and every time it
5 suits the majority that it will admit the most grievous type of
6 hearsay evidence, the public has no way of knowing whether it
7 is hearsay or not, except as columnists might tell them.

8 It seems to me that we ought to consider in the Mansfield
9 draft the adoption of the standards of Rule 1 or some other
10 standard and I cite this as an illustration, Rule 1 of the
11 Federal Rules of Civil Procedure and Rule 1 of the Federal
12 Criminal Procedure, but this is subject to debate.

13 Senator Cannon. Any rules that we adopt are not going to
14 preclude the sort of situation that you suggest.

15 Senator Scott. That is right.

16 Senator Cannon. Because they are not going to be binding
17 on the Senate if the Senate wants to act to overrule them.

18 It is just like here I was relating to this one on page
19 288, now, of the Johnson trial.

20 You talk about hearsay evidence, the question shall a
21 newspaper report offered by the Managers and objected to by the
22 Counsel for the President be admitted in evidence.

23 Well, a newspaper report is not exactly the best evidence.

24 Senator Scott. I would gather that.

25 Senator Cannon. It was admitted to the Senate.

1 The Chief Justice admitted it to the Senate and it was
2 approved by 35 to 11.

3 Any rule you want to adopt or anything you want to say in
4 these rules you are not going to preclude that sort of situa-
5 tion.

6 Senator Scott. And the Senate, of course, is the master
7 of its own house and can do anything it wants.

8 I am arguing we need guidelines of the kind which will
9 satisfy the American people that we are proceeding justly
10 throughout this whole trial.

11 That is all I want.

12 I am not even saying that any given wordage is the best.

13 I am simply saying where we can preclude endless days of
14 argument, we ought to try to do it where we can preclude the
15 funneling of an emotional majority deciding something which the
16 next day it reverses, which happened in the Johnson case, I
17 think. Not really the next day but they were not always con-
18 sistent in their forty-four votes that we ought to do it.

19 The Senate can refuse the respondent the right to call a
20 given witness whom the respondent claims may exonerate him in
21 a certain situation.

22 They can refuse to do it but we ought to have some
23 guidance in the right to call witnesses, for example, and if
24 the Senate is going to deny these things they ought to deny
25 contrary to the recognized general ruling of the Senate.

1 In other words, let them do whatever is wrong or whatever
2 jogs their conscience, but let them do it in violation of what
3 the Senate has said is the right thing to do or the fair thing
4 to do.

5 That is all I am arguing as a matter of policy.

6 Senator Byrd. I am afraid if we attempt here to say what
7 the Senate shall do and shall not do, we are going to limit the
8 Senate in circumstances which we cannot foresee at this time.

9 I trust the majority of the Senate to do the right thing
10 in the great majority of instances.

11 If the Senate wishes to appeal a ruling of the Chair it
12 can do it, and that is to be decided right there without
13 debate, am I not right?

14 Dr. Riddick. That is right.

15 Senator Cannon. It can be decided without debate, so
16 there is really not room for prolonged argument, arguments by
17 counsel and my managers on the part of the House are limited to
18 one hour on each side, is that not correct, and if the Senators
19 wish to debate the matter, they can move to go into closed
20 session and they are limited once on any question to ten minutes
21 only unless otherwise ordered by the Senate.

22 Senator Scott. Well, there is another question there, I
23 think.....

24 Do we want to consider whether or not Senators should
25 have the right to debate any questions of any kind on the floor?

1 I do not know whether they do or not, but we are not
2 necessarily bound by the fact that we cannot debate now, are
3 we?

4 Dr. Riddick. You can change the rule and debate if you
5 want to.

6 Senator Cannon. You can change it but it would be the
7 first jury I ever heard of to be entitled to debate the issues
8 as they came up.

9 Senator Cook. We can get into a big argument about that
10 anyway.

11 I do not think we are a jury.

12 I think we are a judge.

13 If you read the Mansfield rule, the Chief Justice becomes
14 the moderator and we are the judges.

15 Senator Byrd. Well, these are things that we can debate
16 as we go along on that particular thing.

17 I think we ought to stick pretty close to the present
18 rules because they will prevent filibuster, and if Senators
19 want to allow any debate, a Senator can speak a second time
20 for fifteen minutes and they can do that.

21 They do it every day, but I would hope we would not change
22 those rules here but it may be the desire of the Committee to
23 do it.

24 Senator Pell. Mr. Chairman, a question here with regard
25 to the Chief Justice.

1 Would you have a Parliamentarian advisor that he would
2 bring over?

3 Dr. Riddick. Senator, I have no idea.

4 Senator Pell. What happened before in the last impeach-
5 ment trial?

6 Dr. Riddick. At that stage of the game the Senate had no
7 Parliamentarian.

8 Senator Pell. So, in this case?

9 Dr. Riddick. This would be the first time that the Chief
10 Justice has presided when they had a Parliamentarian.

11 Senator Pell. So he could presumably choose whoever he
12 wants to give him advice.

13 One other question. I noticed there are two paperback
14 books on this subject, one by Black and one by Burger.

15 Who has read both, and which is the best?

16 Senator Byrd. I have read Burger and part of Black.

17 I like Burger the better of the two.

18 I have also read Irving Brandt. I disagree with Ralph
19 Burger. I do not agree with him and he does not state flatly
20 that the decision of the Senate can be appealed but he leaves
21 that question hanging.

22 I do not agree that there is any question, but that is
23 neither here nor there.

24 Senator Griffin. Mr. Chairman, I am going to throw out a
25 radical suggestion which probably will be immediately shot down,

1 but you might want to think about it.

2 And that is the possibility at some point of consulting
3 with the Chief Justice of the Supreme Court.

4 I would not concede, of course, that he would be able to
5 determine this matter, but it might be of some merit in con-
6 sidering that.

7 I do point out, as I said this morning, that it is in the
8 Constitution that the Chief Justice presides in this situation.

9 What the word "presides" means is one of those things that
10 we could get into quite a debate on.

11 We could conceivably, and I am not saying we will, but we
12 could conceivably try to clip the wings of the Chief Justice
13 to such an extent that there could even be a challenge to the
14 proceeding if the Senate would go that far.

15 Senator Scott. Or refuse to officiate.

16 Senator Byrd. Who would refuse to officiate?

17 Senator Scott. Chief Justice Burger.

18 Senator Byrd. The Constitution says he shall preside.

19 Senator Scott. He has the right to preside.

20 Senator Cannon. That would be grounds for impeaching him.

21 Senator Scott. He has the right to know what "preside"
22 means.

23 Senator Griffin. We may not want to decide that question
24 but I just throw it out as something to think about.

25 Senator Byrd. I make a suggestion, after having heard

1 the discussion.

2 Let us begin tomorrow by taking the present rules, start
3 with the first one, have our discussion both from beginning to
4 end.

5 You can take the Mansfield proposal as it affects each
6 rule and go through them.

7 That would give us an orderly procedure and the Committee
8 could work its will on each of the rules.

9 If it wishes to recommend a change it can do it.

10 Senator Cannon. I would agree with you on going through
11 them, but I do not think we are to work our will on them at
12 that time until we hear from the Senators that we are going to
13 have in next week, and once we have included that, then we can
14 do that.

15 Senator Scott. Senator Hart, Senator Mathias, and
16 Senator Kennedy had at least fifty-six questions as I recall
17 it that are not clearly understood right now on the impeachment
18 procedures, and they ask for an answer to them.

19 That is going to be a can of worms right there.

20 They have asked some very good questions.*

21 Senator Griffin. I want to say again I think a lot de-
22 pends on whether or not we decide to televise.

23 Senator Cook. I was about to raise the question.

24 Could we proceed if it is the desire of the Committee
25 that we set the day for hearings on the Senate Resolution 371

1 so we can start to get those hearings and start to get that
2 information on the availability and the desire of the Senate
3 to proceed to go, be ready for television coverage of the pro-
4 ceedings in the Senate, and then we can take up the rules as
5 track 2, as the case may be, while we proceed on that matter.

6 Senator Griffin. Well, I do not know that your suggestion
7 about familiarizing ourselves with the rules -- we would want
8 to have something to do tomorrow.

9 Senator Cook. No, this is going to be a rule.

10 You can read all the rules you want to and you are not
11 going to familiarize yourself, whether the proceedings in the
12 Senate are or are not going to be televised.

13 You can spend all the time you want reading everybody's
14 decision but it seems to me if this is proper it presents it-
15 self to some of the members of the Senate, it seems to me if
16 I could suggest that we proceed to ask the respective individuals
17 to sit down for a day for public hearing on the question of
18 your resolution, so we can separate that particular subject
19 matter from these rules and have the delineation of those rules
20 in our mind and proceed to take the testimony on the tele-
21 vising.

22 Senator Cannon. Why try to separate that issue from the
23 other in the receiving of testimony?

24 These four Senators will, I am sure, want to express their
25 views on that as well as the other things, and let us not go

1 through an exercise of having a Senator come in and testify on
2 this very limited issue and then come back a day after tomorrow
3 and testify on something else.

4 Let us take the testimony that we want from them and then
5 when we have done that, decide this issue first, because that
6 other issue is going to take a lot of time.

7 Senator Cook. Well, it seems to me it is an issue that
8 can be totally and completely separated from these particular
9 rules just simply and purely by modern history alone, and if we
10 could have a record on this and made this presentation, then we
11 do not have to worry.

12 Senator Pell. Is there a need for that much hurry?

13 As long as the TV stations have a couple of weeks notice,
14 that is well and good.

15 Senator Cook. Tomorrow is August.

16 You are talking about eight weeks, total.

17 Senator Byrd. I would like to begin tomorrow to have the
18 hearings.

19 Some of the Senators are not ready.

20 Senator Cannon. I did not ask them if they would be
21 ready tomorrow.

22 I assumed they would all want to get this comparative
23 print and have the opportunity to study it a little, so I just
24 simply asked Senator Javits would they be ready by next
25 Wednesday, if we wanted them, and he said yes.

1 I did not offer to him the question, would they be ready
2 by Tuesday.

3 Senator Scott. Assuming they testify, it would be better
4 for all of us.

5 Bob, on your suggestion of taking the rules as they are,
6 I do not think anybody wants to impede the progress. If we do
7 that, could it be done with the understanding that it does not
8 operate as a policy, that again does not preclude the right to
9 start and consider all the rules, but in order to get some
10 starting point we accept your suggestion and go with the
11 present rules and see what we can do with them.

12 If we cannot or if it is too big a job, then we can move
13 to the question shall we revise the body of rules as a possible
14 topic.

15 I would like to say something off the record.

16 (Discussion off the record.)

17 Senator Scott. Back on the record.

18 Senator Hatfield. Mr. Chairman, can we get this dispatch
19 starting earlier?

20 Can we get this moving so we can get this a little more
21 quickly?

22 Senator Byrd. Yes.

23 How many sets of those do you have, Doctor?

24 Dr. Riddick. This is just one set.

25 This is a revision of the copy I gave you with a few more

1 points I have added.

2 Senator Hatfield. When can we get it to the printer?

3 Senator Scott. Let us send it the GPO tonight with the
4 Chairman's approval and get it back tomorrow.

5 Senator Cannon. I am advised that if we got that over to
6 the printer we could not get it back by morning. They are
7 working on this other one for us and with what they have ahead
8 of them they could not get it back by tomorrow.

9 They also have the appropriations bills that they are
10 having to get out.

11 Senator Scott. We could not get it done by tomorrow
12 morning?

13 Senator Byrd. No.

14 Senator Scott. It is important to get it over there I
15 think, so we can get it started.

16 Senator Cannon. Would you want us to go ahead and have
17 them Xeroxed, have enough copies Xeroxed so that the Committee
18 members would have them?

19 Senator Hatfield. I would say, let us get the printing
20 done as quickly as possible, and we will get other materials in
21 the meantime.

22 Xeroxing can be awfully expensive.

23 Senator Cannon. We can have it printed as a Committee
24 print and get one thousand copies of it and we would be lucky to
25 have it by the first of the week.

1 Senator Hatfield. Why one thousand copies?

2 Senator Cannon. It is a comparative print we are going
3 to have for you by morning.

4 The comparative print between the Mansfield proposal and
5 the old rules we will have.

6 Senator Hatfield. Let us get fifty made for our own
7 Committee work.

8 It is a Committee document anyway.

9 Senator Cannon. We will have this Kennedy combined
10 proposal available for you in the morning.

11 Senator Scott. That will take a couple of hours in the
12 morning to read it.

13 Senator Cannon. That is right.

14 Senator Byrd. Let us have the hearing on Monday.

15 Let Senators appear and get that behind us.

16 Senator Scott. I think that is a good idea.

17 Senator Cook. Better not waste any time.

18 Senator Scott. I have written all the members on our
19 side asking if they wish to be heard as witnesses, to notify
20 the Committee, so you may be getting some letters.

21 Senator Byrd. Could we then, Mr. Chairman, have the clerk
22 get a notice prepared to all Senators directed to their office
23 that if they wish to be heard in connection with the possible
24 revision of the rules and the use of television and broadcast-
25 ing in the Senate, that they immediately let the staff know and

1 be prepared to testify on Monday?

2 Senator Pell. A question.

3 Should not Senators be able to comment on the rules in
4 general?

5 Senator Byrd. No.

6 I do not think so, Claiborne.

7 I think that is for our work.

8 We are going to invite plenty of problems if we do that.

9 They have their own viewpoints and some of them I am sure
10 are prepared to state them today, probably.

11 My thought would be we wouldn't need to go to that extent.

12 Senator Scott. 10:00 a. m. Monday?

13 Senator Byrd. 10:00 a. m. Monday for the hearing.

14 Senator Hatfield. But we will still meet tomorrow at
15 10:00 a. m.?

16 Senator Byrd. We will meet tomorrow at 10:00 a. m.

17 We are going to meet here in Room 301 at 10:00 a. m.
18 tomorrow.

19 Shall we proceed tomorrow with a reading of the rules?

20 We will have the alternate proposal laid out.

21 Shall we proceed in that manner?

22 Senator Hatfield. Mr. Chairman, for clarification here.

23 I would suggest that we get this set up in the format of
24 a document rather than a Committee print. Then they only have
25 to set it up once.

1 Senator Byrd. As a Senate document?

2 Senator Hatfield. In that format as a Committee document,
3 but put it in the format of a document rather than a Committee
4 print, and you only have to set it up once.

5 Do you see the difference here?

6 Senator Byrd. What is the wish of the Committee with
7 respect to this material here and whether it should be sent to
8 the printers and printed and if so, how many copies?

9 Senator Pell. I think if we get one thousand copies by
10 Monday rather than xeroxing, have it printed.

11 Senator Hatfield. I would move we have it printed up as
12 a Committee document as soon as possible.

13 Senator Scott. Do we need one thousand copies?

14 Senator Hatfield. I raised that question as to whether we
15 needed one thousand copies.

16 Mr. Cochrane. That is the maximum number on this basis
17 just for the Committee's authority.

18 Senator Byrd. What about the cost?

19 Mr. Cochrane. If you go back to press it will cost a
20 great deal more.

21 I will yield to John now.

22 You have to go back to press if you do not have it all
23 done at that run.

24 Mr. Coder. The type remains standing but nevertheless it
25 would cost additional money to go back to press and to what

1 extent we can obviate it, I do not know.

2 Senator Hatfield. They keep the type set?

3 Mr. Coder. Yes.

4 It is the cost of putting the material back on the press,
5 Senator.

6 Senator Byrd. Is there objection to having one thousand
7 copies printed without knowledge at this time as to what the
8 cost is?

9 This is a useful document.

10 It can be put in public libraries all over the country.

11 Senator Scott. I think the Chairman is suggesting one
12 thousand copies.

13 That is fine with me.

14 Senator Byrd. Is there objection?

15 Without objection, it is so ordered.

16 The Subcommittee stands adjourned until 10:00 o'clock
17 tomorrow morning.

18 (Whereupon, at 5:35 o'clock, p. m., the Subcommittee
19 adjourned to reconvene at 10:00 o'clock, a. m., Thursday,
20 August 1, 1974.)

21

22

23

24

25