

Floyd M. Riddick

Senate Parliamentarian, 1964-1974

Interview #6

The Impeachment Process

(September 28, 1978)

Interviewed by Donald A. Ritchie

Ritchie: This afternoon we planned to talk about the impeachment process, something that the Senate does not usually have to deal with, but which did become almost a reality in 1974, and about your work in connection with that.

Riddick: I might say, while the impeachment process is used very seldom, it is most seldom used in the case of a president, and that's what the committee was considering in this instance.

Ritchie: Had there been any other impeachments during the period that you were here, other than the Nixon impeachment?

Riddick: Proposed impeachment. No, [Halsted L.] Ritter was the last judge that was impeached [in 1933], and that was before I came aboard. I was doing research on Congress by that time, but I was not here.

Ritchie: In recent years it has become such a little-used practice that some thought that it would never be used again.

page 284

Riddick: That's right. As a matter of fact, I think I have a place in here that we will hit a little later, that when the Rules Committee was considering this issue they discussed a proposed amendment to the Constitution to shift the impeachment of judges to some other process, as opposed to a Senate trial, because there were so many judges involved all the time that it would take too much time of the Senate if they continued this way.

Ritchie: I guess, then, you first became deeply involved in this during the summer of 1974, when it began to look that the House of Representatives would go ahead and impeach the president. Was that about the time?

Riddick: That is correct. The Senate did not start until the second session of the 93rd Congress to take it seriously. Early that spring there was talk of the possibility, but the Senate really didn't get down to brass tacks until later in the

summer. As a matter of fact, the issue had been raised that since the impeachment process had not been used much, and since this was most vital if they did get down to considering the impeachment of President Nixon that this set of rules that had been in existence for roughly a hundred years should be reexamined as far as procedure was concerned. And as a consequence, the Senate, on July 29, 1974, adopted Senate Resolution 370, directing the Committee on Rules and Administration to review "any and all existing rules and precedents that apply to impeachment trials with a view to recommending any revisions, if necessary, which may be required if the Senate is called upon" to try President Nixon.

Ritchie: Did you talk to Senator [Mansfield](#) and others before they adopted that resolution about the problems? Did they express their concern to you?

Riddick: Oh, yes. They raised questions as to what would be the established procedure, which I might mention later caused me to start preparing and consolidating information that the Rules Committee later wanted, which was printed as a Senate Document entitled "Procedures and Guidelines for Impeachment Trials in the United States Senate." So way in the early part of the summer I began to do research in this regard, and even instructed one of my assistants, Bob Dove, to spend full time practically on doing research and getting stuff together for me to work with him on later, when we got the Congress out of the way and had more time to do it.

Well, that Resolution provided that such review be held entirely in executive session, and that the Committee on Rules and Administration report its recommendations back to the Senate not later than September 1 of '74. It was a good thing, because

you see the reason for wanting to keep it in closed session was to give it very little publicity as to what they were going to do, or when they were going to meet, and so forth, because the Committee didn't want the public to think that the Senate had made a foregone conclusion that there was going to be an impeachment. But at the same time, the Senate didn't want to wait until an impeachment occurred and then find itself not ready and equipped to do the job properly. Now, such questions arose; you see this was July the 29th when the Senate adopted that

resolution. Well, that was late on into the second session of the ninety-third Congress, and the Senate raised such questions, as the committee did later with me: if this Congress should not complete the impeachment trial before January 3 of next year, what would we have to do? Would we have to start over again? Or would the Senate,

page 288

even if it were in the middle of the trial, have to do it all over again since a third of the senators would have gone up for reelection, and many of them may not necessarily have been returned, so you would have new personnel. These questions were being considered, and that's why the Senate really wanted to be ready if impeachment should occur to go ahead without delaying another couple of months before they were ready to start the trial.

Ritchie: On that question, what was your conclusion on the changing Congress and the effect that would have on the trial?

Riddick: Well, our feeling was that, after all, it's sort of like a treaty in that regard. If the House has impeached, it becomes a Senate responsibility to try. And if it hasn't finished the trial, then it should go ahead and continue until it is finished. The leaders were hopeful, however, that they would finish

page 289

under any circumstances. But it would cause some difficulty to start your proceedings with two-thirds of the Senate which had heard the first part of the trial, and then suddenly you might find twenty or more new senators having been elected since the trial began to come in and with just the remaining part make their decisions as to whether the President should or should not be impeached. But it did show that they were alerted to the problems and wanted to do the best they could to meet them.

Ritchie: I suppose the concept of the Senate as a continuing body also played a part in that.

Riddick: That would sort of sustain that situation, that you would continue it until you had concluded it with any new members.

Ritchie: I know in the McCarthy censure, he objected that some of the charges against him were about actions that had taken place in the previous Congress, but the Senate overruled him on that.

Riddick: That's correct. That was in the prerogative of the Senate to condemn him on the basis as a senator not necessarily what had been transacted in that particular Congress.

Well, with that assignment, the resolution having been adopted on the 29th, the committee began meeting on July the 31st, two days later, to do their job. The committee met in executive session, as they were authorized, and they held meetings on August 1, August 5, 6, 7, 8, 14, and 21. The report omits August 8th, but I thought it should be mentioned that they did also meet on August 8. It was proposed in the committee, as soon as they began to meet, that they would study their instructions by the Senate as set forth in S. Res. 370, that they would consider S. Res. 731, which was concerned with televising it, and that they would consider a Mansfield proposal for changes in the impeachment rule. Now on the first day's

meeting, the 31st, they introduced Senator Mansfield's letter and his proposal for changes, and discussed mostly during that session whether the subcommittee on rules should conduct the preliminary investigations and report back to the full committee, or whether to avoid duplicating the procedure, they should consider the whole proposition by the full committee in the first instance. This took up most of the first day's session.

They finally resolved it as follows when the chairman made this statement: "If there is no objection, we will consolidate the rules subcommittee with the full committee for the purpose of considering the proposed rules, and we will have the first meeting here at 4:00 o'clock this afternoon." There was no objection, so that is exactly what they did, allowing every member of the full committee to vote with the subcommittee. Now, they started off this procedure

with the present majority leader, Mr. [Byrd](#), who was chairman of the subcommittee on rules, chairing the proceedings, but after the first day's session with everybody present including the chairman, Mr. Byrd insisted that the chairman of the full committee should preside, and he did for the remainder of the proceedings. As a matter of fact, you couldn't tell the difference between any regular full committee meeting and the way they proceeded with the consideration of the changing of the impeachment rules.

Also, during this first meeting, they raised some questions about what should be the role of the chief justice if he should come to the impeachment trial, because this was the first time since the so-called [Johnson](#) impeachment trial that the chief justice would have had to preside over an impeachment trial.

Ritchie: Normally in the cases of judges it would just be the presiding officer?

page 293

Riddick: The presiding officer of the Senate, whomever he was.

At the very beginning of the consideration of the proposition, I raised the question as to what procedure they should follow, as to whether they should take up the Mansfield proposals, which had been submitted to the committee, or whether they should consider the existing rules with possible amendments. Now the Mansfield proposal was practically a re-write of the impeachment rules, and I pointed out to the committee that as far as I was concerned as parliamentarian it would be better, from my point of view, if they would consider the existing, rules and if they were unhappy with them or they thought they should be modified, that they propose amendments to the existing rules, because that part of the rules which were not changed would leave us with some precedents to follow. Whereas, if they made a complete re-write

page 294

it might give me no precedents to follow in case such a trial should come about. I might say, at this stage of the game, that this was what the committee followed. I stated specifically to the committee: "Well, I think that it might be very well if you leave the existing rules and supplement them with rules for this specific case. This has been the practice in the last several cases, that in addition to the body of rules that they have adopted a special set of rules to apply to the particular case that they were then considering." For example, when it came to the question of what hour you were going to meet, the rule says that you would meet at 12:00 o'clock, but in the Ritter case the Senate adopted a rule that would specify the hours that the Senate should hold meetings for the trial as opposed to what the rules provided -- 12:00 o'clock.

page 295

So the Senate would come in at a different hour and go until a specific hour, pursuant to an order adopted in the form of a resolution.

Also at this first meeting they took up the documentary material that I had collected on the various impeachment trials and after prolonged discussion

decided that this material should be printed as a Senate Document so that they would have something available with which to work if a trial should occur.

Ritchie: I have a question I wanted to ask about Senator Mansfield's role in this. It struck me as unusual that Senator Mansfield wasn't a member of the Rules Committee. Usually, the majority and minority leaders are both on it, it's true right now, and Senator [Hugh Scott](#) was on the committee, but Senator Mansfield wasn't.

Riddick: He had been a member of the Rules Committee and at one time was

page 296

chairman. But his role as majority leader became so involved that he found that he couldn't attend meetings and so forth, and therefore just withdrew, thinking that his role as majority leader was enough for him to manage. I might say that even now Senator Byrd is finding it very difficult, even though he's a member of the Rules Committee, to attend the meetings. I try myself to report to him each time after a meeting as to what the committee did, because he's unable to be there.

Ritchie: Now, Senator Mansfield seemed to have pretty strong opinions on what should be done. You said his letter was almost a re-write of the proceedings. Do you think that if he had been there as a member of the committee he would have enforced that position? Or was his not being a member of the committee a detriment to him in that respect?

page 297

Riddick: Well, I'm not sure that he had drafted all that. The resolution was drafted under his instructions, but there were a lot of interested parties who wanted to see a considerable change in the impeachment procedure, if there was going to be a trial. I think what he did was just farther the resolution as opposed to setting forth all of his ideas as to how the trial should be conducted. Now, I do positively know that Senator [Hugh] Scott made a statement once or twice to the effect that he wasn't sure when we'd be considering a particular provision of the proposed resolution whether that was Mr. Mansfield's opinion or not. So I deducted from that assertion that somebody else had drafted the resolution but that to get it before the committee Senator Mansfield merely wrote the letter and submitted the whole resolution to the committee for its consideration.

Ritchie: And the committee, in effect, decided not to follow that recommendation.

Riddick: Well, the first thing the committee did was to order a comparative print set up of the Mansfield proposition and the existing rules, so that the whole matter could be before the Senate as to what should be done, whether it should be amendments to the old rules, or whether they should give a re-write of all the rules.

Ritchie: When you say there were other parties interested, do you mean other parties inside the Senate or outside the Senate?

Riddick: I don't know as they were outside, but it had to be fed through the senators under any circumstances. I thought it probably came from the Policy Committee.

I might supplement what I said about printing up the procedures and guidelines for impeachment trials in the Senate that the committee discussed that at some length, as to whether they should print it simply as a committee print, for the use of the committee, or whether they should print it as a document. But finally

it was decided that it would be printed as a document, and it was never set up as a committee print. The reason for debating which way it should be printed was if they had to have it printed up as a document it would take longer, and they wanted to have the use of it while the committee was discussing the procedures. But finally it was printed as a Senate document anyhow.

Jumping out of context just a moment I might say that there was a question raised, although the committee was meeting in closed session, as to whether they should admit into the committee room for a little while members of the Recording Studio for several minutes of silent footage for historical purposes. And they came in for it.

Ritchie: Oh, you mean photographing the session.

Riddick: Yes.

Ritchie: You said silent, so there weren't any sound recording devices there.

Riddick: No, just silent movie taking, as I recall.

On August 1st when the committee met the chairman suddenly interrupted the committee as follows: (reading) "The Chairman. Excuse me, may I interrupt for just a moment? We have a request from the Senate Recording Studio to be permitted to come in and take five minutes of silent footage for historical purposes, either now or on Monday. Does anybody have any objections?" Well, there were several excuses made. Some were not present that day, and so on and so forth, but finally, as I recall, they went on ahead that day and did that. At the afternoon session on July 31st, they started off by getting me to give some resume information about the procedure in the Johnson trial. Some of the information which I brought to them caused considerable discussion later on. I

page 301

raised this question: "Well, the Senate, if it's going to adopt any special rules to supplement the existing rules, it should take into consideration what occurred at the impeachment of Johnson." In this instance, at the Johnson trial, they received the impeachment proceedings from the House and took a lot of action before they started the proceedings, and they did this without the chief justice present. It was done even before the oath was administered to the senators. They debated and changed the rules.

In the impeachment of Johnson there was a little conflict between the chief justice [[Salmon P. Chase](#)] and the Senate as to how this impeachment should start off and when the chief justice should be called in. The chief justice said the Senate had gone on and received the articles of impeachment and set arrangements to begin the hearings without letting him know about it. The chief justice sent

page 302

a letter over to that effect, and to the effect that "the Constitution says that I as chief justice must preside at the impeachment trial and you are going ahead without my being present." Well, the Senate referred that letter from the chief justice to a committee, and nothing was ever done about it. But when the chief justice came in he very cleverly presented the case to the Senate by saying "without objection the Senate will use the rules which the Senate adopted the other day." That gave him approval as if he were there when the rules actually were adopted.

Also in that particular meeting questions were raised as to whether the chief justice should be allowed a vote in case of a tie, and what should constitute a quorum of the Senate, whether it would be a quorum of all the senators or a quorum of those senators who had taken the oath to participate in the trial. The assumption

concluded was that it would take a quorum of all the senators, the only thing was that a senator who had not taken the oath could not participate in the trial. That would be the senator's way of avoiding participation, whereas he would have to account for it when he went back up for reelection, if he bucked his responsibility to help try a president.

At the beginning of the August 1st session, the chairman stated: "Gentlemen, you have a copy of the comparative print before you, and I am wondering as long as we had yesterday Dr. Riddick starting to explain some of the matters that we are concerned with, I wonder if we might first perhaps, I can ask him now: Dr., are you familiar with the proposed rules and the so-called Mansfield proposal?" I said, "no, sir, I have just seen it and have not had a chance to read it." So without further ado Senator Byrd said: "Mr. Chairman, I suggest we proceed in the way you

directed, and the rest of us can comment. I think that is the right way to proceed." The chairman stated: "Very well, Doctor, why don't you just start down the proposed rules, if you don't mind reading. It is just a reading job at first, and you can call on Bob Dove to assist you there if the reading gets too much for you, and we will ask any of the members to make any comments or to ask any questions as they go along. But the first portion of these, until we get down to page 2, the proposed rules are not covered in the present impeachment rules that are in existence before the Senate, so would you go through those Doctor." Well, I proceeded to read the comparative prints for the rest of that day's session and discuss these various provisions, raising some questions that they should take into consideration if they were going to operate with the old rules as opposed to the

re-write of the rules as submitted to the committee by Senator Mansfield. Finally, on August 1, after we had gone through and discussed this at great length, comparing them and making comments, etc., the committee by a unanimous vote adopted a motion by Senator Byrd, when he stated: "I move in the next working session the committee proceed on the basis of using the standing impeachment rules as working text to be amended, modified, revised, or approved as the committee sees fit." So at the end of the August 1 session the committee unanimously voted to work with the old rules, modifying them, as opposed to taking a complete re-write.

Ritchie: Looking over some of the minutes for that session, it seems like some of the issues that were coming up in terms of modifying the rules were designed to make it seem less like a trial, or a court. They wanted to replace the term "accused" with the

page 306

term "respondent"; they wanted to replace the term "court" with the term "Senate"; they questioned the appropriateness of the terms "judge" and "chief judge" when applied to Senate leaders. It seems like they were particularly concerned with focusing back on the fact that it was the Senate that was doing it.

Riddick: Yes, they definitely wanted to get it away from court procedure. While it was the Senate sitting as an impeachment court, I suggested that it was not a criminal trial, because you do not convict a person of a crime; the only thing you can do in an impeachment trial is to remove the man from office. If there is to be any trial of misconduct or the breaking of any laws, that would then have to go to the court after the trial. But the impeachment trial is solely to see whether he is going to be removed from office. I might say, in response to your point about changing

page 307

the word "court" to "Senate I made that recommendation, which I think I include later in reading some notes from the transcripts.

After they had agreed to operate on the existing rules, amending them as they saw fit, or changing them as they saw fit, and after we went over all of these rules, discussing them one by one in detail, the committee agreed that the next two days of meetings, August 5 and 6, they would hear senators only. At the first meeting the first senator to be heard was Senator [\[Sam\] Ervin](#) of North Carolina. At the opening of these hearings when they received testimony from the senators, the chairman made the following statement, which I think is sufficiently enlightening as to their approach to be read in full here. After he called the committee to order, Senator [Howard Cannon](#) said: "This meeting of the Committee on Rules and Administration has been called to hear testimony from members of the

page 308

United States Senate with respect to certain aspects of an impeachment trial which may occur.

On Monday, July 29th, the Senate unanimously approved Senate Resolution 370, which was introduced and sponsored by the joint

leadership of the Senate, Senators Mansfield, Byrd, Scott, Griffin, and the majority and minority leaders, and the assistants to the majority and minority leaders.

Pursuant to Senate Resolution 370 this Committee has been directed to study the Senate and precedents applicable to impeachment trials.

In respect to this investigation the Committee is instructed to report back to the Senate no later than September 1st, '74, or on such earlier date as the majority and minority leaders may designate.

It has further been directed by the Senate that such review of this Committee shall be held entirely in Executive Sessions.

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

Today we are hearing testimony from members of the Senate and we welcome both oral and written statements from our colleagues, all of which will, without objection, be made a part of this hearing record.

Any written statements submitted by senators on or before August 9th will be printed in the record.

page 309

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

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

After Senator Ervin concluded his statement, the chair announced, and there were several senators present in addition to the members of the Committee. The Chair said:

I may say that the Committee did make the determination last week that we would proceed on the existing rules rather than attempt to set forth a new body of rules, and we would then attempt to determine whether there ought to be any changes or additions to those rules, for example, in the areas where the rules may be soft, and we went through them quite carefully from beginning to end, with the advice and the assistance of the Parliamentarian because many of the areas where existing rules are soft

have been covered by precedent in the past, and so we did find that they are not as lacking as some people might assume.

Ritchie: I wanted to ask you about the physical set-up in there. It was an executive session, there was no one there, I assume, except for a limited number of

page 310

staff people, and then they were hearing witnesses who were all other United States senators. Did they sit around a common table? Did they have witnesses sitting at a witness table? I'm trying to see in my mind how formal this situation was, or informal.

Riddick: Now, I'm talking from memory. As I recall, we had two different set-ups. Number one, we met in the committee room most of the time, and as I recall we sat around long tables as opposed to the podium, or main desk that the senators sit around with the mikes and so forth. As I recall we just sat around a big table with chairs all around and the presiding officer sitting at the middle of one side of the long table. But I just don't recall exactly.

Ritchie: I also get the feeling from the pieces that you have read that there was a great sense of solemnity to those meetings.

page 311

Riddick: That's absolutely true. They got in some dickering between the two sides, the two parties, but as I recall in final analysis after they would have a little somewhat heated discussion, they would resolve it back down to: "After all the thing we want to do is work out a set of rules that will give a fair and equitable trial if such should occur."

As I said, the senators were heard on August 5 and 6. After that, they met again on August 7th.

Ritchie: On August 7th they talked primarily about radio and television coverage.

Riddick: On August 7th the day was spent considering S. Res. 371, to authorize televising of the impeachment trial; and finally they voted to report S. Res. 371 by a vote of 7 to 1. I might read this resolution, if you are interested: The Chairman said: "And the Chair votes aye." (There was only one no vote. "Suppose I read

this through once to be certain now that we have all mistakes taken care of."

To permit television and radio broadcast of impeachment trials.

Resolved that:

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

Such broadcasting and photography shall be accomplished in conformity with procedures thereon agreed upon by the Committee on Rules and Administration in consultation with the Joint Floor Leadership. The implementation of such procedures shall be effected by the Joint Floor Leadership after consultation with the Chairman and Ranking Minority Member of the Committee on Rules and Administration.

And the Minority Leader, Mr. Scott, and Mr. Byrd said that was their understanding, as to what they had approved.

Ritchie: I would guess that the proceedings of the House Judiciary Committee, which were getting very favorable attention at that point, influenced their desire to break down the usual reluctance to televise any Senate proceedings.

Riddick: Well, I don't know that that alone was the reason for the decision. I am inclined to think that they were so anxious to make it a fair trial, that they wanted the whole world to be able to look in on what was going on. I think perhaps that was the strong incentive that made them vote that way.

Ritchie: Despite all their general prejudices against televising.

Riddick: That's right.

Ritchie: You mentioned one vote against it. That was Senator Griffin, wasn't it?

Riddick: That is correct.

Ritchie: And you said there was some tension between the two parties. You had people like Marlow Cook and Hugh Scott who had long been defenders of [Richard Nixon](#). How much tension was there on the committee?

Riddick: Well, it wasn't strictly on the basis of Nixon versus the Democrats. It wasn't quite that way. The things that they got sort of testy on were as to how these rules should be

page 314

amended, if amended, to give a fair trial. So it was sort of an impersonal matter as opposed to a defense of the president himself. It was sort of an objective concept that these rules would have to be such that it would give the Anglo-Saxon concept "not-guilty until proven guilty." You didn't go in on the presumption of guilt.

Ritchie: Was there any sense of the desires of the president's lawyers? Did they make their feelings known through any of the committee members?

Riddick: As far as I know, there was nothing at all said about his defense lawyers, except to the extent when we talked about the managers of the House, if impeachment should occur, the question was raised as to the counsel for the respondent and for the counsel for the managers. This was a definite issue, you see, because they wanted to be

page 315

sure that each side had sufficient lawyers of their choice to defend or prosecute as the case might be.

Ritchie: That's right, the House members do come over, don't they?

Riddick: They come over as the prosecutors.

Ritchie: And the role then of the Senate is really as judge.

Riddick: Well, they're sort of the jury.

The committee met on August 2 to start a mark-up of the proposed changes in the impeachment rules. It was a long session and there was quite a bit of detailed discussion of the various proposed amendments. To give you an idea, which would also expose some of my activity with them, I'm going to read two or three excerpts.

The Chairman. May I ask Dr. Riddick what has been the procedure in the past?
They were talking about, as I recall, well I think the colloquy will show what it was about.

Dr. Riddick. Well, we have selected presiding officers other than the president pro tem. You have your two sessions. That is definitely a two-track system, and when you come in, say for example you come in at twelve o'clock for legislative business, you might meet until twelve thirty, and then you go into the trial. Then if you go until four o'clock and you adjourn the trial you are still back in legislative session to transact further legislative business during that day if you wanted to. That has been the practice. To resolve what Senator Byrd might be thinking, there is certainly, to make it crystal clear, if you said "unless otherwise ordered by the adoption of a motion" or words to that effect.

Senator Byrd. It might be difficult to adopt a motion. Why could we not simply resolve it like this, Doctor; you could say "the presiding officer of the Senate," and then put a comma "in the event of the legislative or executive session having preceded" and that means if you have had a legislative session, and executive session to take up nominations or something preceding them, it is possible you would have an executive session to take up the nomination of a vice president, for instance. You might be willing to do it by unanimous consent, in which case the presiding officer of the Senate would have been presiding, and in that event then he shall so announce when that hour occurs. If there had been no legislative or executive session proceeding that, and we had come in for this, then it is clear that he is not in the Chair at that moment.

Senator Scott. Could I ask you to indulge me a moment? We have this

party leadership meeting at eleven thirty. I know generally you want to sit with the members of the minority side. I would like to say that I have no objection to what you do here, or with the remaining sections with the exception of the fact that Rule XIV and Rule XXIII generally. I would like to be heard, and I would like to reserve the opportunity for other senators on this side, and myself, to be here to discuss the question of hearsay, the question of the division or non-division of articles of impeachment, this also involves Rule VII, XXIII, and XXIV.

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.

page 318

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

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 read:

"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 the beginning of the trial at the time fixed therefore."

Senator Allen. Let me suggest this, Mr. Chairman, and Dr. Riddick.

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

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

The Chairman. Do I correctly understand then that your suggestion would be on line eight, to eliminate the words "for such thing?"

Senator Allen. On line twelve.

page 319

The Chairman. Well, on line eight you would eliminate the words "for such thing."

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

The Chairman. And then?

Senator Allen. I have line eleven on that. I must have a different print here.

The Chairman. Line nine you would eliminate the 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 proclamation 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

page 320

when the hour shall arrive the Presiding Officer upon such trial shall cause proclamation to be made and the business of the trial shall proceed."

"The 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."

Ritchie: I have a question on the role of the chief justice as the presiding officer, and the role of the parliamentarian. You would, in effect, be sitting in front of the chief justice, aware of the precedents in the Senate. Would your role to the chief justice be the same as to the presiding officer? And would he be bound to go along with the precedents and the suggestions you passed on to him?

Riddick: You anticipate, and I haven't said a word to you about this, the same question that the committee asked me. They inquired: Who would assist the chief justice? Would I assist the chief justice as I do the presiding officer of the Senate? I said, Well, senator,

page 321

I don't know." That would depend in part I guess as to what the chief justice wanted. When the last trial, the Johnson trial, took place, the only time the chief justice presided, we didn't have a parliamentarian of the Senate. So I had no precedent to support me that the parliamentarian of necessity would sit next to the chief justice and aid him as the parliamentarian aids the presiding officer in regular session of the Senate. I assumed, since I had had a few calls from the court on different matters, that they anticipated that the chief justice would call on me for any advice that I was able to give him. But I had no way of knowing.

Ritchie: The chief justice is not as familiar with the precedents of the Senate, and you pointed out that Chief Justice Salmon Chase was quite indignant when the Senate seemed to be acting independently.

Riddick: And overruled him.

Ritchie: And I would think that the current. chief justice would have bristled a little bit at the Senate presuming to tell him anything. It would have put you in a very difficult position.

Riddick: Well, I'm not sure. My reaction would be that the chief justice, on that very grounds, would delight in the parliamentarian assisting him because the Senate would feel then that they were getting the same kind of advice for the procedure for the impeachment that they themselves would get when acting on legislation. This raises an interesting question that I informed the senators about when they were discussing these aspects, namely that Chase himself had said when the impeachment rules were not sufficient to cover the situation that he would fall back on the rules of the Senate for his guidance. So I would assume that the chief justice,

whether he always followed the advice of the parliamentarian or not, would at least want him there to give him the benefit of what the practices of the Senate had been, and then he would have the same right that all presiding officers have to ignore the advice of the parliamentarian and rule as he wanted. But generally speaking I think he would find, just like the senators find, that it's better to follow the practices and precedents of the Senate which are told him by a non-political person, rather than to go out on a limb on his own, as Chase did frequently, and get overruled by the Senate. And there's no question but what the vote of the Senate is going to determine the procedure, regardless of what the chief justice would rule, even though he be the presiding officer for such an impeachment trial.

Ritchie: That's a good point.

Riddick: Now, another instance that I might cite to you. I'm just trying to

pick one or two illustrative cases to show you how carefully they went over all of these rules for impeachment to see how they should or should not change them. Let me finish reading that last case.

The Chairman. Any objection to that amendment?

Senator Pell. Is there not some thought about the traditional lack of the Presiding Officer turning the gavel over to the Chief Justice?

The Chairman. We do not have to spell that out in the rules.

Without objection, the amendment will be approved.

Rule XIV?

Now, I see no necessity for any change there.

Is there objection to any of Rule XIV?

With objection, it will be approved.

Senator Byrd. May I ask, Mr. Chairman, and Dr. Riddick, would it serve possibly a good purpose to strike the word "shall" on line four and insert the word "may"?

It may be more convenient just to adjourn the Senate sitting at the trial until the next day until the hour it is to resume.

page 232

Dr. Riddick. Under the rule you would have two immediate adjournments. One, you would adjourn the trial, and immediately adjourn the session.

Senator Byrd. Why not have it "may"?

Dr. Riddick. I see.

The Chairman. "but on such adjournment the Senate may resume the consideration of its legislative and executive business."

Is that it?

Senator Byrd. Yes.

On this rule, it is forced to go back into legislative or executive session.

Dr. Riddick. The only thing, if you went into it, it would be like unfinished business, and you would immediately make another motion to adjourn, if you did not want to transact any business.

Senator Byrd. You see some harm that would be done if we changed "shall" to "may"?

Dr. Riddick. Yes. It takes two adjournments.

Senator Byrd. Under the present rules.

What I am saying is, why is it necessary that we not change the rules so as to allow the Senate to adjourn sitting as a trial at 5:30 today until the hour of 12:00 o'clock tomorrow, sitting again as a trial?

Dr. Riddick. Then you might have to be compromising because it says,

page 326

"The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate."

You are going to have to have two adjournments.

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

The Chairman. As is.

Rule XIV will be approved,

United States Senate Historical Office -- Oral History Project

www.senate.gov

During a later discussion, Senator Allen said: "Another thing occurs to me, as the Rules Committee might possibly recommend a constitutional amendment providing two alternative methods of impeaching Federal judges." This is what I told you about a while ago. They raised the issue of amending the Constitution so that the impeachment trials of judges, which might in the future take up much time of the Senate, so as the Senate wouldn't be bogged down with all of these trials. So this is what Senator Allen was talking to.

Senator Allen. 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.

page 327

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 that?

The Chairman. Yes, sir.

The remaining one is Rule XXVI, and I have no proposals 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."

That sustains your point, which you raised a while ago.

Ritchie: You were quoting from the transcript for August 8th, so the committee was meeting on the day that Nixon

page 328

announced he would resign the next day. Had you anticipated this?

Riddick: It wasn't definite. I might say that much of that day senators were going in and out of the White House. As I recall, Senator Goldwater went up that morning and talked with the president. They were going and coming and while we knew things were touchy, the president still had not said he was going to resign. If it hadn't have been so late in the session I think the Senate might have adopted these amendments to the impeachment procedure anyhow. Because they thought they should be for all times, to bring them up to date, in other words.

United States Senate Historical Office -- Oral History Project

www.senate.gov

Ritchie: Was there any sense of relief in the committee, perhaps, that they wouldn't have to follow through with all this?

Riddick: Well, we were still in session, as I recall, before he made his announcement that day, and had finished that day's proceeding. But then, to prove

page 329

my point that the senators of the committee were concerned with amendment of the rules, they went on and met again on August 14th and August 21st to finish, because they had a mandate from the Senate to file a report by the 1st of September.

Ritchie: Did you feel, or do you think there was a sense of the committee that perhaps it would have been better for the impeachment process to have worked its course, rather than to have the president resign?

Riddick: Frankly, I didn't take any poll on that, but my conversations with different senators, not only of the members of the committee itself but other senators, convinced me they were glad that they didn't have to be confronted with this trial. You know, this is a serious thing, and it's a sad thing, and it would not only throw a burden on them to cast their decisions in the Senate, but also made them feel that the country was so torn apart that any prolonged

page 330

trial would really upset the country. Now, this was the impression I got from talking to the different senators off record. And they were just tickled that they were not going to have to go through this trial: guilty or not guilty it was something that was rather awesome, when you think that you've got the president of the United States down on his knees being tried, and it doesn't matter whether it's Nixon or whomever it is, it's the top man in the country who is being humiliated to come down before the Senate for a trial as to whether he is guilty of any of these charges or not.

Ritchie: If the impeachment had run its course, was it anticipated that the president himself would actually appear at the trial?

Riddick: Some had said yes and some had said no. We had no way of knowing because our work was done completely independent of a case history. We weren't

just thinking of Nixon, we were thinking in terms of amending the impeachment rules to make a better procedure to give you a better trial. A few times in these meetings they would say "if the president should be impeached," or "should we try the president," things of that nature, but it was an assignment by the Senate, and they were looking at it as a general overall assignment.

The committee met again on August 14th when they heard three other senators and a James Thornton, staff member of the Senate Agriculture Committee, who was speaking in behalf of Senator [Humphrey](#), who was unable to be present. Then they started back further asking questions with me. But nothing particular was done that day, and they adjourned until August 21st for further questions and answers and proposed changes. There are two other pages that I

might cite very briefly here that would give some concept of what they were still working on.

On the 21st the chairman had raised a question about the proposed changes in Rule XX. "In other words," the chair said "that would get away from -- in the current rules, where a person who makes the motion to into closed session and has it seconded, it is a closed session."

Is that correct, Doctor?

Dr. Riddick. Well senator, I think that is true under our legislative rules, but I think under precedents this is what we followed before.

(That is, they would move to go into executive session and do it by majority vote.)

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

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

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

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

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

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

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

Dr. Riddick. That would be the only question.

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

Now, one last one.

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

The Chairman. The trial is already concluded on all of them. The trial is concluded on all of the charges, and then the jury may find him guilty on count Number 1 and count Number 3 and not guilty on count Number 2, 4, and 5.

Senator Hatfield. And the degree of punishment, then, is related to the--
The Chairman. That is correct.

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

page 334

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

Now, this is quite limited here. You will recall, I think Senator [Javits](#) raised the question that this was not adequate. And other people raised the question. Although we do have the escape clause there, ". . . unless by consent of the Senate."

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

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

Dr. Riddick. Yes.

Senator Byrd. How's that? "All the orders and decisions shall be made...?"

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

There are certainly some orders and decisions of the Senate as a body that you wouldn't want to run the risk of just, say, without objection.

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

Doctor, what do you think?

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

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

Senator Byrd. Do you see any problem with that?

Dr. Riddick. No, sir.

The Chairman. Do you see any difficulty there?

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

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

Dr. Riddick. No, because wherever there is a unanimous consent proposal, while we do tolerate "Mr. President, I reserve the right to object" the chair can say, as we have done, "This is not debatable. Is there objection?" But they normally let it run along, so they might resolve the solution quicker.

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

Ritchie: Now, the committee made its recommendations to the Senate, and all but one voted for televising and the committee agreed to report back S. Res. 390 with the proposed changes, but the Senate itself never acted.

Riddick: The Senate itself never acted on either. But they did report it back to the Senate unanimously with the proposed changes.

Ritchie: Now, should an impeachment occur in the future, would it be natural then for the Senate to go back to this proposal?

Riddick: They may or may not. If it's another trial of a judge they might just follow the existing rules as they did in the case of Judge Ritter, which was in 1933. But they might, on the other hand, if they get another impeachment trial, pick up these resolutions as they reported, S. Res. 390, as being a better procedure, and just adopt them when they find the occasion for another impeachment trial.

Ritchie: I have sort of theoretical question now. For about a hundred years after the Andrew Johnson trial, historians were almost unanimously agreed that it was almost impossible under any circumstances to impeach a president, and that the Andrew Johnson trial had proved that since he was not removed from office, and it was questionable whether he had gotten a fair trial in the House of Representatives, with the political pressures and everything else. Do you think that, given the circumstances of the Nixon case, that it would have been possible to impeach the president, and that the impeachment process is still a useful one, through which the Senate and the Congress can respond?

Riddick: I don't know. Your assumption is one way, and as a matter of fact they thought they would impeach Johnson. If it hadn't been for the courage of the senator from Kansas to vote against impeachment, Johnson would have been

impeached. Now, whether some senators would have changed their vote, or in final analysis after a trial would have voted not guilty, is a conjecture. I have no way of knowing. I do say that I think that these senators talking, and these senators who were in defense of the president, going down to the president and talking to him convinced the president that he didn't have much chance of a trial without being found guilty, which perhaps caused him to resign. Whether that's what made him resign, or whether after they put the seriousness of the situation to him he decided that the country would be better off if they didn't have to go through one of these impeachment trials, I don't know. It's all conjecture. But the things that I have mentioned do point up the issues that were confronting the country, that were confronting the senators, and that were confronting the president himself.

Ritchie: One other question. Senator Hatfield raised the question of punishments at one point. Is there any other punishment other than removal from office that the Senate can inflict?

Riddick: Not punishments. That is a punishment in a sense, but it really is not the levying of a punishment. Not only have they removed them from office but they have adopted resolutions on one or two occasions, I don't have the facts in front of me right now, which they included in the resolution, that that person should never again be eligible to hold public office. That's a hell of a penalty, in a

sense, but it's not levying a punishment as such. Now whether the Senate would have the right in that resolution to prohibit him, say the person impeached should ever challenge that later on, whether that would stand up in the courts that he couldn't run for office, I don't know. Because

page 340

that's done by simple resolution, and that's not law.

Ritchie: I understand that if the president had been removed from office it would also have affected his ability to collect his pension from the federal government.

Riddick: I don't know about that. I wouldn't want to say. That would be a legal interpretation, and I know that there are provisos in the pension laws to the effect that if you are convicted of felonies and so forth you are not eligible for pension, but whether the law would authorize that particular thing I just have never checked.

Ritchie: And if there had been several charges against the president, and the Senate had voted any one of those charges, he would have been removed from office?

Riddick: That is true, as they were told in these committee meetings. That's why finally they included in the rules that an article could not

page 341

be divided. I think you'll find that in the resolution as it was reported. Because it doesn't matter what part is good or what part is bad, if you find him guilty of any portion of that article that is sufficient. That issue was raised at some length, and we discussed the possibility if they should impeach the president, would you go any further? Well, the assumption is, and I think the committee agreed on this, I don't believe there was any vote on it at all, but I think they mentally were in accord on this, that if on any portion of an article they should have found Nixon guilty, then right then he was no longer president, that the vice president should be standing at the door, when the vote was announced, to take the oath of office.

Ritchie: It probably would have taken place right there.

Riddick: Because, as I pointed out to the committee, on various occasions in

the history of our country, when Inaugural day fell on Monday and the date of expiration of the president's term, which was March 4 before the last amendment, when the last day fell on Sunday, that is his term of office expired, the new president would take his oath of office independent of the Inaugural ceremony, because you must have a Commander-in-Chief in case there should be a crisis. There would be nobody to give the army orders if he had not taken the oath of office, and the Constitution specifically provides, in effect, that he's not president until he has subscribed to that oath of office. It doesn't matter if he's elected; he must take his oath of office -- and sometimes now, if they find that the inaugural ceremonies are going to run to 3:00 o'clock -- they give him his oath of office before that hour so there will be a Commander-in-Chief.

[end of interview #6]