

# IMPEACHMENT

The Senate has a special set of rules, 26 in number, which define its proceedings when sitting as a court for impeachment trials, set forth below.

The sole power of impeachment is conferred on the House of Representatives, and even if the Senate in an impeachment trial should find the person not guilty, that does not alter the fact that the said person had been impeached by the House, as was the case with President Andrew Johnson.

Once the House of Representatives has voted to impeach an officer of the Government, the Senate is informed of that fact by a message from the House of Representatives, announcing to the Senate that a committee has been appointed by that body to go to the bar of the Senate "and in the name of the House of Representatives and of all the people of the United States, to impeach . . ." the said person and "to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him" for the Senate's consideration in the determination of whether or not said official is guilty.

At a later date, the Senate is informed that managers on the part of the House of Representatives have been named "to conduct the impeachment against" the said official and that the said managers are directed to carry to the Senate the articles agreed upon by the House.

It requires a two-thirds affirmative vote by the Senate in the adoption of at least one of the articles of impeachment submitted to the Senate by the House to find a person guilty of "treason, bribery, or other high crimes and misdemeanors."

The Constitution provides that "the Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation."

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## Constitution, Article I, Sections 2 and 3

### [Impeachment Trial by Senate]

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any

Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

## Rule IV, Paragraph 1(d)

### [Journal of Proceedings of Impeachment Trial]

The legislative, the executive, the confidential legislative proceedings, and the proceedings when sitting as a Court of Impeachment, shall each be recorded in a separate book.

### [Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials\*]

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against \_\_\_\_\_;" after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles, and shall continue in session from day

\*In 1974, pursuant to S. Res. 370, the Committee on Rules and Administration filed a report (S. Rept. 93-1125) to accompany an original resolution (S. Res. 390) proposing amendments to the impeachment rules but the Senate never acted on the resolution. The report noted the following:

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

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

to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

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

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said

articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail to service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

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

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

XI. That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality as having

been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate prepared with accommodations for the reception of the House of Representatives that the Senate is ready to proceed upon the impeachment of \_\_\_\_\_, in the Senate Chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

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

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

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

XVI. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

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

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

XIX. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

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

XXIII. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles

presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

XXIV. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment.

XXV. Witnesses shall be sworn in the following form, viz: "You, \_\_\_\_\_, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States and \_\_\_\_\_, shall be the truth, the whole truth, and nothing but the truth: So help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

*Form of a subpoena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel.*

To \_\_\_\_\_, greeting:

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

Fail not.

Witness \_\_\_\_\_, and Presiding Officer of the Senate, at the city of Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_  
Presiding Officer of the Senate.

*Form of direction for service of said subpoena*

The Senate of the United States to \_\_\_\_\_, greeting:

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

Dated at Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_  
Secretary of the Senate.

*Form of oath to be administered to the Members of the Senate sitting in the trial of impeachments*

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of \_\_\_\_\_, now pending, I will do impartial justice according to the Constitution and laws: So help me God."

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

THE UNITED STATES OF AMERICA, ss:

The Senate of the United States to \_\_\_\_\_, greeting:

Whereas the House of Representatives of the United States of America did, on the \_\_\_\_\_ day of \_\_\_\_\_, exhibit to the Senate articles of impeachment against you, the said \_\_\_\_\_, in the words following:

[Here insert the articles]

And demand that you, the said \_\_\_\_\_, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice,

You, the said \_\_\_\_\_, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the \_\_\_\_\_ day of \_\_\_\_\_, at 12:30 o'clock afternoon, and then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness \_\_\_\_\_, and Presiding Officer of the said Senate, at the city of Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_  
Presiding Officer of the Senate.

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

THE UNITED STATES OF AMERICA, ss:

The Senate of the United States to \_\_\_\_\_, greeting:

You are hereby commanded to deliver to and leave with \_\_\_\_\_, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least \_\_\_\_\_ days before the appearance day mentioned in the said writ of summons.

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

Witness \_\_\_\_\_, and Presiding Officer of the Senate at the city of Washington, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States the \_\_\_\_\_.

\_\_\_\_\_,  
Presiding Officer of the Senate.

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

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

### Attendance of Senators at Impeachment Trial:

*See also* "Attendance of Senators," pp. 171-180.

A quorum not having appeared on a call, the Sergeant at Arms of the Senate may be directed to request and subsequently to compel the attendance of the absent Senators.<sup>1</sup>

### Commission To Take Deposition of a Witness:

The matter of the issuance of a commission to take the deposition of a witness in an impeachment trial should be determined by the Senate, and not decided by the Presiding Officer.<sup>2</sup>

### Committee Appointed To Receive Evidence:

In 1935, a resolution was adopted by the Senate, to authorize the appointment by the Presiding Officer of a committee of 12 Senators to receive evidence and take testimony in the trial of an impeachment, as follows:

*Resolved*, That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of 12 Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

<sup>1</sup> May 23, 1933, 73-1, *Journal*, p. 337, *Record*, p. 3971.

<sup>2</sup> May 15, 1933, 73-1, *Journal*, p. 328, *Record*, p. 3397.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.<sup>3</sup>

### **Debate on Impeachment Trials:**

See "Impeachment Proceedings, Debate in," p. 598.

### **Floor Privileges Granted to Persons To Sit With House Managers:**

During the Louderback and the Ritter impeachment trials, the Clerk of the Committee on the Judiciary of the House of Representatives, by unanimous consent, was given permission to sit with the managers on the part of the House.<sup>4</sup> Likewise, a special agent of the Federal Bureau of Investigation and an assistant to the counsel for the respondent were granted floor privileges during the Ritter impeachment trial.<sup>5</sup>

### **Leave To Print Opinions Granted:**

In the Louderback impeachment trial, Senators, by order of the Senate, were granted permission to file opinions in writing "within 2 days after the final vote," for publication in the printed proceedings of the case.<sup>6</sup>

### **Legislative Business by Unanimous Consent:**

The Senate, by unanimous consent, interrupted its impeachment proceedings to receive messages from the President, to receive messages from the House and to transact legislative business.<sup>7</sup>

<sup>3</sup> May 28, 1935, 74-1, *Journal*, p. 391, *Record*, p. 8309.

<sup>4</sup> May 15, 1933, 73-1, *Journal*, p. 326, *Record*, p. 3395; Apr. 8, 1936, 74-2, *Journal*, p. 497, *Record*, p. 5132.

<sup>5</sup> Apr. 8, 1936, 74-2, *Journal*, p. 497, *Record*, p. 5132.

<sup>6</sup> May 24, 1933, 73-1, *Journal*, p. 339, *Record*, p. 4083.

<sup>7</sup> Apr. 17, 1936, 74-2, *Journal*, p. 217; Apr. 15, 1936, 74-2, *Journal*, p. 218; Apr. 16, 1936, 74-2, *Journal*, p. 219.

### Oath for Trial:

In the impeachment trial of Halstead L. Ritter, the oath was administered to the Vice President by Senator Borah, by order of the Senate, and then by the Vice President to the Senators.<sup>9</sup>

### Papers Filed as Evidence Returned to District Court:

The Senate, by order, directed certain original papers filed as evidence in the Louderback impeachment trial returned to the United States District Court for the Northern District of California.<sup>9</sup>

### Procedures Applicable to Impeachment Trial Studied by Rules:

On July 29, 1974, the Senate considered and adopted the following resolution:

#### S. RES. 370

*Resolved*, That the Committee on Rules and Administration is directed to review any and all existing rules and precedents that apply to impeachment trials with a view to recommending any revisions, if necessary, which may be required if the Senate is called upon to conduct such a trial.

*Resolved further*, That the Committee on Rules and Administration is instructed to report back no later than 1 September 1974, or on such earlier date as the Majority and Minority Leaders may designate, and

*Resolved further*, That such review by that Committee shall be held entirely in executive sessions.<sup>11</sup>

### Questions Submitted in Writing:

Questions submitted by a Senator during an impeachment trial on objection must be in writing.<sup>10</sup>

A request to abrogate the rule requiring questions by Members of the Senate during an impeachment trial to be in writing is not debatable.<sup>11a</sup>

### Quorum:

A quorum call is in order during an impeachment trial,<sup>12</sup> and the Sergeant at Arms of the Senate may be directed to request or compel the attendance of absent Senators.<sup>13</sup>

<sup>9</sup> Mar. 9 and 10, 1936, 74-2, *Journal*, pp. 473-478, *Record*, pp. 3423, 3485-89.

<sup>10</sup> May 25, 1933, 73-1, *Journal*, p. 200, *Record*, p. 4142.

<sup>11</sup> May 15, 1933, 73-1, *Journal*, p. 328, *Record*, p. 3408.

<sup>12</sup> July 29, 1974, 93-2, *Record*, p. 25468.

<sup>11a</sup> See Apr. 8, 1936, 74-2, *Record*, p. 5164.

<sup>13</sup> See May 15, 1933, 73-1, *Record*, p. 3412.

<sup>13</sup> May 23, 1933, 73-1, *Journal*, p. 337, *Record*, p. 3971.

### Senators Excused From Trial Proceedings:

In the impeachment trial of Harold Louderback in 1933, certain Senators by unanimous consent, prior to the administration of the oath to Senators, were excused from participating in the proceedings of the Senate sitting for said trial.<sup>14</sup>

### Voting at Impeachment Trials:

Certain Senators by unanimous consent were excused from voting on various articles of impeachment in the trial of Harold Louderback in 1933.<sup>15</sup>

<sup>14</sup> Mar. 9, 1933, 73-1, *Journal*, p. 307. *Record*, pp. 47, 49.

<sup>15</sup> May 24, 1933, 73-1, *Journal*, pp. 333-344, *Record*, pp. 4082-88.