

IMPEACHMENT PROCEEDINGS

State of Vermont vs. Sheriff Malcolm Mayo

DATE: Monday, May 17, 1976
TIME: 10:00 A.M.
PLACE: Senate Chambers
State House
Montpelier, Vermont

LT. GOV. BURNS: Pursuant to the provisions of J.R.H.81, I hereby call the Senate to order. The devotional exercises will be conducted by the Reverend Gerald R. Fitzpatrick from Montpelier.

REV. FITZPATRICK: God is our refuge and strength, the very present help in the hour of trouble. Therefore, will not thee fear. Though the earth be removed, and though the mountains be carried into the midst of the sea, though the waters thereof roar and be troubled, though the mountains shake the swelling thereof, the Lord, our God, is with us. Beloved, be not ignorant of this one fact, that one day is to the Lord as thousand years and a thousand years as one day. The Lord is not slack concerning His promise as some men count slackness, but is long suffering to usward, not willing that any should perish, that it all should come to repentance; for the day of the Lord will come as a thief in the night in which the heavens shall melt with fervent heat. Hereth also the works that are therein shall be burned up.

Seeing then that all these things shall be dissolved, what then that all these things as part of the matter of persons ought to be in Holy conversation and Godliness. Looking for and hastening unto the coming day of God wherein the heavens be among fire shall be dissolved and the elements shall melt with fervent heat. Nevertheless, we, according to His promise, look for new heavens and a new earth wherein dwelleth righteousness forever. Wherefore beloved, seeing that He look for such things, be dilligent, that ye may be found of Him in peace without spot and without blemish. Will you join with me in the spirit of prayer?

Almighty God, our Heavenly Father, in whom we live, that move and have our being, provide for us, we ask, that which shall sustain us in days to come, in the meditation the hours which are to be, so that our will and our way shall be Thy will and Thy way for all mankind. We ask these blessings in the spirit of Him who taught us to say:

Our Father, who art in heaven, Hallowed be Thy name, Thy Kingdom come, Thy will be done on earth as it is in heaven, Give us this day our daily bread and forgive us our trespasses as we forgive those who trespass against us; and lead us not into temptation but deliver us from evil, For Thine is the Kingdom, and the power, and the glory forever more. A-men.

LT. GOV. BURNS: Will the Senator from Essex-Orleans please escort the newly appointed Senator from Lamoille County to the rostrum to receive the oath of office from the Secretary?

SEN. BOYLAN: Mr. President.

LT. GOV. BURNS: The Senator from Essex-Orleans.

SEN. BOYLAN: The newly appointed Senator from Lamoille County, Senator Esther Westphal.

MR. GIBSON: Raise your right hand and repeat after me:
(The oath of office was administered to Sen. Esther G. Westphal by Secretary Robert Gibson at this time.)

LT. GOV. BURNS: The Senator from Rutland, Senator Bloomer.

SEN. BLOOMER: MR. PRESIDENT, I MOVE THE SENATE SHALL NOW GO INTO IMPEACHMENT SESSION.

LT. GOV. BURNS: The Senator from Rutland has now moved that the Senate go into impeachment session. Are you ready for that question? If so, all those in favor say aye.

MEMBERS: AYE.

LT. GOV. BURNS: All those opposed say nay. The ayes have it. The Senate stands in impeachment session. Will the Senator from Lamoille please rise and receive the oath of office for the impeachment proceedings from the Secretary.

MR. GIBSON: Would you raise your right hand?

(The oath of impeachment was administered to Sen. Esther G. Westphal by Secretary Robert Gibson at this time.)

LT. GOV. BURNS: Announcements - the doorkeepers have said that there will be no announcements or messages delivered to the Senate during the impeachment trial. If there is any objection to this, please speak to the doorkeeper immediately after. If you have private calls, check with the office on your way out.

SEN. J. O'BRIEN: Mr. President.

LT. GOV. BURNS: The Senator from...

SEN. J. O'BRIEN: What was it you just said? I didn't hear you.

LT. GOV. BURNS: The messages, Senator - we usually have pages run back and forth with the messages. They will not be delivered during the impeachment trial. They will be kept for you in the Clerk's office.

SEN. J. O'BRIEN: Thank you.

SEN. MANDIGO: Mr. President,

LT. GOV. BURNS: The Senator from Essex-Orleans.

SEN. MANDIGO: Would there be an exception to that in case of an emergency?

LT. GOV. BURNS: Yes, there certainly would be, Senator.

SEN. MANDIGO: Thank you.

LT. GOV. BURNS: The general concensus of the daily schedule runs something like this. We will convene every morning at 9:30 and go until 10:45. At 10:45 there will be a 15-minute break for coffee and for you to get your messages. We'll reconvene at 11 o'clock and go until about 12 o'clock. We'll then break for lunch until 1:30 in the afternoon. At 1:30 we'll then go until 3 o'clock in the afternoon, take a 15-minute break until 3:15, which time we'll reconvene and we'll run until 4:30. If there is any objection to this schedule, please speak to your President Pro Tem. The next item is the impeachment rules that we're operating under which were passed by the last session. Is there any discussion of the impeachment rules? The Senator from Rutland.

SEN. BLOOMER: Mr. President, the Rules Committee did have several meetings and we have four suggestions, which are on your desk. You also have a copy of the Rules which are in Thursday, March 25th's Journal, and they start on page 462. The rules, to begin with, are self-explanatory, and we'll turn first to 4(b). This has to do with the ruling on evidentiary questions. We propose that the rule be amended - this is rule 4(b) on page 464, 4(b)(2), line two where it states, "...disputed question other than a final question,...", that there be inserted after the rule the words final or evidentiary. And then at the very end of that paragraph, 4(b)(2), add, All evidentiary questions shall be submitted to a member of the Senate Rules Committee designated by it for that purpose, and whose ruling shall be final unless appealed to the Senate by a Senator in accordance with this rule. The Senate Rules Committee considered that the attorneys on the Senate Rules Committee should be of assistance to the members of the Senate and to the presiding officer. The presiding officer, of course, will be the Lieutenant Governor. But on evidentiary questions, if some come up that the presiding officer could not freely handle, they would be referred to an attorney member designated by the Rules Committee, who will probably be sitting up in the front. However, the preliminary questions will all be put to the presiding

officer and the designated members of the Rules Committee - and they will fluctuate; they won't be the same person all the time - who will make the rulings on evidentiary questions. I'd be glad to try to answer any questions that anyone has in connection with that proposed change.

LT. GOV. BURNS: Senator, you said something about a Senator who will be sitting up front?

SEN. BLOOMER: Yes. It is proposed so that everyone will know the designated member rather than just wondering whether it's going to be Senator Cummings or Senator Niquette or Senator Bloomer, or whomever - Senator Gannett. They would have a particular place to sit. We haven't designated a - not with you.

LT. GOV. BURNS: I'd suggest you change the rules so your Senator can be out of his seat and still speak.

SEN. BLOOMER: All right. Thank you. We'll work on that. He will be sitting somewhere in front so that each member of the Senate will know who the designated Senator is each day as will attorneys for both the respondent and the House Managers.

SEN. SMITH: Mr. President.

LT. GOV. BURNS: The Senator from Washington.

SEN. SMITH: Since the Senator invites questions, I would appreciate it if he would speak in a little more detail about what an evidentiary question is. I'd like to know if that is a question of the admission of evidence, perhaps.

SEN. BLOOMER: Yes.

SEN. SMITH: And then if it is, what happens if some piece of evidence was - if the Senator in question from the Rules Committee decided, for instance, that it could or could not be, if the Senators did not agree, would we then overrule him?

SEN. BLOOMER: Oh, yes. The Senate is always supreme, and the purpose of having a member of the Rules Committee designated is merely to assist the Senate and to assist the presiding officer. And he would make a ruling, if requested. If a Senator wondered about it, then the Senator could question the ruling, just as he can any ruling, and have a debate on it. And, of course, we'd vote on it by roll call if necessary. But the Rules Committee is certainly not going to usurp any power of either the presiding officer or the Senate as a whole.

SEN. NEWELL: Mr. President.

LT. GOV. BURNS: The Senator from Caledonia.

SEN. NEWELL: Shall these questions be submitted orally or in writing by a member of the Senate Rules Committee?

SEN. BLOOMER: These evidentiary questions?

SEN. NEWELL: Yes.

SEN. BLOOMER: These would be in the form of an example. Let's assume that this afternoon when we start the House Managers ask a question and defense counsel jumps up and objects and says, "I object on the basis that this is heresay", and, if necessary, the presiding officer could then refer that question to the designated member of the Rules Committee, who will be sitting right here. You'll hear the whole thing. And that designated member would then make the ruling and assistance. If you disagreed with that, you as a Senator could stand up and say, "No, I think that I would like to hear it even though it's been excluded, and I put the question to the Senate".

SEN. NEWELL: But your reply to me was speaking of the attorneys who will be present.

SEN. BLOOMER: Yes.

SEN. NEWELL: This ruling wouldn't apply to me?

SEN. BLOOMER: Oh, no. These are evidentiary questions by the attorneys. If you want to ask a question - and we're going to get into that rule eventually. If you want to ask a question, and we discussed that this morning, that will be put to the President and we'll handle that just exactly as we would handle any other matter before the Senate. These would not be considered evidentiary so far as the attorneys are concerned. This would be purely Senate. It's a little confusing, and we don't claim to have all the answers but we are doing the best we can.

LT. GOV. BURNS: To give you a little broader view of this as we get into it, it's the purpose of the Chair not to interfere with the judges and the jury, but to move as many questions as possible to the Senate because you are supposed to make the final determination on most of the questions. I will only make sure things run smoothly. On the questions of evidence, it's the Rules Committee's feeling that the questions can come so often and so quickly that rather than throw it to the whole Senate and rather than leave it with the Chair on a discretionary matter, that they would appoint one

of their own body to act in your behalf. If you then disagree with your own Senator, you can always appeal his ruling. But what he is doing is not usurping any power, but you are appointing one member to act in your behalf so that he can act more quickly and make decisions more quickly than 30 members in toto. These are only on questions on rules of evidence, whether you'll hear certain documentation, whether you'll hear what certain witnesses have to say, and it's just to make the matter run more quickly.

SEN. JANEWAY: Mr. President, may I question the President Pro Tem? I'm sure I'm being stupid. I don't quite follow this thing, but I'm curious about the use of the words "other than a final question". Now, does that mean a final question being one that has to come to a vote of the Senate?

SEN. BLOOMER: Yes. The final questions are: Shall Sheriff Mayo be impeached under Article I? That's the final question.

LT. GOV. BURNS: Are you ready for the question?

SEN. J. O'BRIEN: Mr. President.

LT. GOV. BURNS: The Senator from Chittenden.

SEN. J. O'BRIEN: May I interrogate the lawyer from Rutland?

Page 462 - as I understand it, one of the attorneys is right and one of them is wrong. If the question is asked by the prosecution and the defense objects, who's going to make the decision, the Senate?

SEN. BLOOMER: Well, ultimately, the Senate can, but the preliminary ruling will be made by the Chair and the secondary ruling will be made by the designated member of the Senate Rules Committee, and then if any Senator disagrees with the ruling of the designated member of the Senate Rules Committee that, of course, can be appealed to the entire Senate under our rules; so the Senate always has the final say.

LT. GOV. BURNS: The question is: Shall the Senate Rules be amended as recommended by the Committee on Rules as firstly recommended? Are you ready for that question? If so, all those in favor say aye.

MEMBERS: AYE.

LT. GOV. BURNS: All those opposed, say nay. The ayes have it, and the rules are amended. The second question is on the second ruling, the second amendment.

SEN. BLOOMER: Mr. President, that has to do with Rule 6 which is

found on page 466 of the journal, which you have. It amends the title so the title will merely read "Conference" and strikes everything out after the word trial which is in the third line of the first paragraph found on page 467. You will find that it provides for a trial order, and this was taken from a procedure we thought might require more complicated rules than are going to be required here. It would provide for a proposed order which would recite - and I'm certainly not going to read all these things that it would recite. But the Senate Rules Committee thought that we could well do without the proposed trial order, so we have stricken out that portion of it about the trial order. But it does call for a conference, to appear for a conference - this is on the top of page 467 - "...a conference with the Rules Committee or a member thereof designated by the chairman to consider such matters as will promote a fair and expeditious trial." We hope to have that conference this morning in Room 5 at 11:30 with members of the Managers for the House and the attorneys for the respondent.

LT. GOV. BURNS:

The question is: Shall the rules be amended as recommended by the Rules Committee in their second recommendation in Rule 6? Are you ready for that question? If so, all those in favor, say aye.

MEMBERS: AYE.

LT. GOV. BURNS: All those opposed say nay. The ayes have it and the rules are amended. The question now is on the third recommendation, Rule 11(d).

SEN. BLOOMER: Mr. President.

LT. GOV. BURNS: The Senator from Rutland.

SEN. BLOOMER: 11(d) is found on page 470. It has to do with opening arguments - usually called in Vermont opening statements by counsel. And the purpose of the amendment is to limit the time that they would have to make their opening statements, so that the opening statements don't run ad infinitum. I think that there would be no objection by counsel for either side to confining their arguments to one hour. More than one person for each side could talk. This is unusual. I mention it only because it is unusual. Usually, one person is designated to make the opening statement. However, I understand that different Managers are going to present evidence for the House, and therefore different Managers probably would want to make part of the opening statement and talk about the portion of the proceedings they were going to handle. The same would go for the attorneys for the respondent. So more than

one person may give the opening statement. It's contemplated here that the arguments total from one side an hour. It may be that the opening statement for example, to be given this afternoon by the House Managers, if they are only going to talk about Article I, it may consume only half an hour, which would leave them another half, which they could take up at a later date when they get into the second article and the third article. The one hour is cumulative, and the one hour is total which will be allowed for the three articles, the opening statements for the three articles.

LT. GOV. BURNS: The question is: Shall the rules be amended as recommended by the Rules Committee on the third recommendation of amendment, which is to Rule 11(d)? Are you ready for that question? If so, all those in favor say aye.

MEMBERS: AYE.

LT. GOV. BURNS: All those opposed say nay. The ayes have it, and the rules are amended. The question now is the Rules Committee's fourth recommendation of amendment. Are you ready for that question? Rule 12(a) - are you ready for that question?

SEN. BLOOMER: Mr. President,

LT. GOV. BURNS: The Senator from Rutland.

SEN. BLOOMER: Rule 12(a) has to do with public access to information. We thought that it would be well to provide by rule the situation that's going to exist with the news media. We thought the time to do it was right at the very beginning of the proceedings, and as a matter of fact before it begins. The order of business is that at 1:30 this afternoon the actual impeachment proceeding will begin. The proposal is that no still or motion pictures, television or recording, except for transcript purposes which you see here, shall be allowed while the proceedings are in progress. This would not preclude any member of the press, or anyone else for that matter, from coming into the Senate prior to the actual fall of the gavel, or during recess, or after the proceedings are over for the day, or during the noon hour and taking pictures and recording anything that they want to. But the Rules Committee unanimously felt that moving pictures and TV and recordings should not be allowed during the course of the proceeding itself. I'll try to answer any questions as to any further reason for it, but I'll just stop right there.

LT. GOV. BURNS: The Senator from Chittenden.

SEN. J. O'BRIEN: I've got a question to ask. If my memory serves me

correct, I believe in 1961 we passed a bill or a resolution defining just what the television could do here. Your father and I believe Senator Boylan and Senator Janeway were here at that time. Do you remember that? Is that still on the books?

SEN. BLOOMER: I don't remember that.

SEN. J. O'BRIEN: If it's still on the books, it's going to interfere with this, isn't it?

SEN. BLOOMER: Of course, I wouldn't think that would apply to impeachment proceedings. One of the things we're concerned about here, Senator, is that persons other than Senators are going to be here. There are going to be persons who will be here under subpoena. They will be testifying before us, and you and I certainly don't mind having the press in taking pictures, etc., but perhaps some of them would. The courts do not allow it, generally. The courts do not allow television or pictures to be taken while the proceeding is in progress, and we're acting in the nature of a court.

SEN. J. O'BRIEN: Then, the resolution we passed in 1961 has no affect on the present situation, does it?

SEN. BLOOMER: If it were a resolution, I think it would not. I know of no law which requires it, and, frankly, I don't - I'm not familiar with it anyway.

LT. GOV. BURNS: Okay. To explain to you what happens, if this move passes, all pictures and recordings will immediately cease at your vote. It's not just because there's a witness in the room. It is as soon as we are in impeachment trial, and that is now. So if this passes, there will be no discretion - there will be no pictures or recordings, except what we have here. The Senator from Washington.

SEN. SMITH: Mr. President, I'd like to ask another question of the Senator from Rutland. I'd like to be assured that someone on the Rules Committee has spoken with Sheriff Mayo, or his attorneys or somebody, relative to these rules so what we do adopt we've considered their wishes.

SEN. BLOOMER: The Chairman of the Rules Committee has not discussed it with Sheriff Mayo. I don't know Sheriff Mayo, and I wouldn't know him if he came in.

SEN. SMITH: I'm not sure it's necessary, but I think that some thought ought to be given to the fact that they ought to have the opportunity to present their case in whatever way would be consistent with the usual practices.

SEN. BLOOMER: I can tell you that the usual practice is that television and pictures are not allowed in a court room. You probably remember seeing pictures in Time, Newsweek, etc., which are sketches. They are not photographs.

SEN. SMITH: It seems to me that - in the past I've felt that it is all right to take pictures here and make recordings by the press, then I feel myself that an impeachment proceeding is just a little different. Perhaps in this case the Sheriff has a right to that privacy.

SEN. JANEWAY: I'd merely like to say in response to the Senior Senator from Chittenden that my recollection was that as we began to get into the mid 1960's or the early 1960's that the question of what photographs and what activities should be permitted in the Senate Chamber became a matter of some consequence and interest. Therefore, either through some resolution or I'm sure through some expression the concensus of the Senate determined that either the President Pro Tem or the presiding officer would be the ones to whom permission must be granted, say, to have pictures taken during ordinary sessions of the Senate. And I agree with the President Pro Tem - this is by no means an ordinary session of the Senate; it's very extraordinary. Now I was going to ask him - that is, it's my understanding,

and he's already expressed it, that the courts do not permit this and we are really sitting as a court. It seems to me it's more dignified if we followed that procedure, so I would support this particular rule.

LT. GOV. BURNS: The Senator from Windsor.

SEN. ALDEN: Senator, the question is on the right of privacy, as brought up by the Senator from Washington County. And in your explanation of this amendment you said that this will not preclude any member of the press from coming in when we are recessed, or something like that, and taking a picture; and I accept that conclusion reached by you. But I just wonder if the matter of privacy being brought up by the Senator follows along the same lines. You are certainly not precluding any member of the press from coming in and reporting the goings on of what we are doing to the public.

SEN. BLOOMER: The balcony is reserved for the press during the entire proceedings.

SEN. ALDEN: So the only matter of privacy that is raised I guess by the Senator would relate to the privacy of not having a picture taken when you're in this hall.

SEN. BLOOMER: Well, I didn't mention privacy.

SEN. ALDEN: No, I know you didn't.

LT. GOV. BURNS: To give the Senators a general idea of how we'd operate if this rule was not passed, the press has always been told that they would be allowed to take pictures until witnesses are called or testimony is heard. All cameras then would have to cease so that no witness would have his picture taken. But I would allow pictures taken and television coverage of your debate at the end of the testimony; so that's what you're precluding because that is the Senate's business. After your witnesses are gone and the defense is gone, and you people start debating the charges, I would - if this move is not passed, I will allow the press to cover that. So that is your alternative. But in either case there will not be any pictures allowed when the witnesses are in debate. Senator O'Brien.

SEN. J. O'BRIEN: I'd like to interrogate the President of the Senate.

LT. GOV. BURNS: You may, Senator.

SEN. J. O'BRIEN: When you mention the word press, did you include television?

LT. GOV. BURNS: Yes, Senator.

SEN. J. O'BRIEN: Then, they are not restricted? We're not restricting the news media.

LT. GOV. BURNS: Under this rule here, Senator?

SEN. J. O'BRIEN: Yes.

LT. GOV. BURNS: Under this rule here, only the written press will be allowed to use their weapons during the trial. The recording press would not be allowed to use their's. That means, Senator, that there will be no pictures and no cameras and no television coverage, if this passes, from immediately after the vote until after we go out of impeachment session.

SEN. J. O'BRIEN: Well, while this impeachment is going on, the newspaper people then can come right in here and they can take all the notes they want?

LT. GOV. BURNS: That's right, Senator.

SEN. J. O'BRIEN: But the television man can't come?

LT. GOV. BURNS: That's correct, Senator.

SEN. J. O'BRIEN: I don't think that's fair.

LT. GOV. BURNS: Well, that's your vote, Senator.

SEN. J. O'BRIEN: But he can't take pictures, the television man?

LT. GOV. BURNS: Oh, no, he can't take any pictures. If you pass this rule, there will be no pictures and no recorders or the radio or anything, from the moment this passes those people will be told to clear out.

SEN. J. O'BRIEN: May I interrogate the Senator from Rutland?

LT. GOV. BURNS: The Senator from Rutland is interrogated.

SEN. J. O'BRIEN: Senator, did you discuss this with the television people?

SEN. BLOOMER: Yes.

SEN. J. O'BRIEN: Were they satisfied?

SEN. BLOOMER: Well, they didn't express dissatisfaction. I think they were disappointed. I'm sure that they would like to film it, and that's why we thought it was appropriate to bring it up for debate right now. If the Senate wants to have the whole thing televised, and if they want to have it on the radio, why this is the decision the Senate makes.

SEN. J. O'BRIEN: Well, I don't see why the television men should be placed in a second class citizen in the news medium; they are here.

SEN. BLOOMER: No, they can come in just like anyone else, just like any spectators; it's wide open.

SEN. J. O'BRIEN: Yeah, they can come in, but what can they do? That's their living. They can't come in and do anything any more than a spectator.

LT. GOV. BURNS: The Senator from Chittenden.

SEN. CROWLEY: I would move that the fourth rule be struck.

SEN. BOYLAN: Mr. President.

LT. GOV. BURNS: The Senator from Essex-Orleans.

SEN. BOYLAN: As a member of the Rules Committee, and as a non-legal member of the Rules Committee, I think we are looking at this from the wrong angle here now. We have to remember that this is a serious proposition, this impeachment proceeding, and that we are going to have quite a number of witnesses who perhaps never before in their lifetime have appeared in the public as witnesses or in any other area of the public where

they had to make a presentation, I guess you might call it. I think if you would just try to imagine a witness sitting here with all the paraphernalia of cameras, flashlight bulbs, etc., I don't think that this would be fair to the impeachment proceedings or to the person who we are going to consider impeaching. The press certainly will be in here, the writing press. The television people will be in here who can do a story. They can take their pictures as the President Pro Tem has said before the impeachment proceeding begins, before the witnesses are here on the floor in the witness chair. And this is what this particular fourth proposal is for, to protect these witnesses and to give this person who we are going to consider a bill of impeachment a fair and impartial hearing so his witnesses can accurately present their testimony as they are interrogated by the attorneys involved. And this is why we don't want this kind of a disturbance. I think it would be a mistake to defeat this fourth proposal of amendment.

LT. GOV. BURNS: Senator, let me explain one more thing so you all know what you're talking about - the same thing. The present rule is - this is the present rule and we will be operating under it if this is defeated. "The presiding officer may make temporary or permanent arrangements for the use or non-use of any portion of the Senate Chambers

by members of the news media, including the press, television and radio, taking of pictures ~~on~~ the floor of the Senate during the session and machine recordings of these proceedings are prohibited except by permission of the presiding officer. There will be no permission given to take pictures of witnesses or to take pictures while we are in the judgment while the attorneys are arguing. There will be no pictures permitted then. So the argument given by the Senator from Essex-Orleans, there will be no pictures then under either rule because the Chair will not allow that. The Chair will allow, unless you restrict it by this rule, after all of the debate and the witnesses are gone and the Senators are debating, I will allow full pictures and press coverage. But there will be no press coverage allowed when the witnesses are here.

SEN. NEWELL: From what are you quoting?

LT. GOV. BURNS: The Senate Rules. That's a regular Senate Rule, Senator, which we operate under when there are no other rules. The Senator from Rutland.

SEN. PARTRIDGE: Mr. President, I'd like to point out that not all reporting by television after all is by picture.

They do have news reports, and the like, which do not involve a picture. By the same token, the newspaper people do do some reporting with pictures, but under this proposed rule they would be barred from that. This is relatively fair all around.

LT. GOV. BURNS: The Senator from Orange.

SEN. R. O'BRIEN: I don't like the present rule nor do I like the amendment. It seems to me that there are two factors that ought to be considered. First, the location of the impeachment hearing hasn't finally been settled, as I understand it. It's still open whether we may move to the House. If we should remain in here, space limitations will prevent the public from having as much access to the impeachment trial as they would in a larger chamber. So I think we really should give consideration to those who would like to follow the progress of this trial. It has generated a great deal of interest in the state. And I cannot understand why television shouldn't have the same opportunity for reporting this that the press does. I had another point, and I'll talk later on that.

LT. GOV. BURNS: Thank you, Senator. Are you ready for the question?
The question is: Shall the rule be amended?

SEN. GRADY: ROLL CALL.

LT. GOV. BURNS: A roll call is requested. The question is: Shall the rule be amended as recommended by the Committee on Rules in their fourth recommendation of amendment, which is Rule 12(a)? Are you ready for that question?

SEN. J. O'BRIEN: Senator Crowley made a motion.

LT. GOV. BURNS: Senator, that was a motion we voted on when we reversed.

SEN. J. O'BRIEN: Say that again.

LT. GOV. BURNS: Senator Crowley's motion was that we defeat the amendment, which we're going to vote on now, Senator. A yes will pass the amendment; a no will vote for Senator Crowley's motion.

SEN. J. O'BRIEN: I hope the Senate votes for Senator Crowley.

LT. GOV. BURNS: Are you ready for the question? If so, the Secretary will please call the roll.

YES

Sen. Beauchamp
Sen. Bloomer
Sen. Boylan
Sen. Cummings
Sen. Delaney
Sen. Gannett
Sen. Gibb
Sen. Hewitt
Sen. Howrigan
Sen. Janeway
Sen. Mandigo
Sen. Morse
Sen. Newell
Sen. Niquette
Sen. Ogden
Sen. Partridge
Sen. Reynolds
Sen. Smith
Sen. Soule
Sen. Wallace
Sen. Westphal

NO

Sen. Alden
Sen. Crowley
Sen. Doyle
Sen. Grady
Sen. Jack O'Brien
Sen. Robert O'Brien
Sen. Sorrell

LT. GOV. BURNS: This is the result of your votes - Ayes, 21; Nays 7. Motion passes. All recordings and cameras will please leave the Chambers. If there are any cameras in the Chambers, the Sergeant At Arms will please, ah, remove them. They can be left at the Clerk's Office which the Sergeant At Arms will have someone watching them so that you don't get them ripped off - that happens in my office. Are there any other amendments to the Rules? Senator from, ah, Chittenden-Grand Isle.

SEN. DELANEY: Mr. President, I would like to question the Chairman of the Rules Committee on, ah, Rule 8 Sec. (b)(2) - "If a Senator wishes a question or a series of questions to be asked a witness, he shall reduce such questions to writing and transmit them to any member of the Rules Committee. Such committee member may ask any such questions of such witness, together with any questions he may propound, at the conclusion of the direct examination and cross-examination of such witness." The question I would like, if I have a question of a witness, I must submit them to a member of the Rules Committee?

SEN. BLOOMER: That's - that's this proposal. You remember when I reported the Rule...

SEN. DELANEY: Yes.

SEN. BLOOMER: ... I said this was very controversial, and I expected that rule to come up today.

SEN. DELANEY: Well -

SEN. BLOOMER: This does restrict you if you would like to ask questions of a witness. No question about that.

SEN. DELANEY: Well, the only question I have on this is say a senator does submit a question through a member of the Rules Committee, but there may be one or two continuing questions that he might want to ask because of the answers to the questions. Still have to wait - you know - to ask, say, a second series of questions that may relate to the first series?

SEN. BLOOMER: Well, it would be a little cumbersome, but generally speaking, you could visit with a member of the Rules Committee who is asking the questions and say I would like to have you go into such and such a subject. The reason for that is that hopefully the members of the Rules Committee who would ask the questions would be trained in the field of asking questions, and we wouldn't be asking questions which may be objected to by counsel, if it's possible to have counsel object to a senator.

SEN. DELANEY: Well, it might be nice - say I had a series of questions - it might be best to write also the point that I'm trying to get at.

SEN. BLOOMER: Oh, yes.

SEN. DELANEY: Rather than just the question.

SEN. BLOOMER: Yes.

SEN. DELANEY: Thank you.

LT. GOV. BURNS: Senator from Windham.

SEN. JANEWAY: May I ask a question of the President Pro Tem. I think all of us have some questions, I'm sure. Just guessing, but I'm sure there would be some questions on this particular rule. It just seems to me that this seems awfully awkward. Well, it's - I mean - Is it contemplated at all that, for instance, a senator might have the opportunity of directly questioning a witness?

SEN. BLOOMER: Well, yes,

SEN. JANEWAY: That in itself - Is that in here? I have to look these over.

SEN. BLOOMER: No, that's what this is to preclude -

SEN. JANEWAY: To preclude.

SEN. BLOOMER: A senator directly questioning a witness.

SEN. JANEWAY: But, then, ah, in this instance, you have to give these questions to a member of the Rules Committee, and only that member then can ask it. "Such committee member" must be a member of the Rules Committee. Is that correct? It says here -

SEN. BLOOMER: The committee member, of course, must be a member of the Rules Committee, and for example, if you had some questions you'd like to ask, my suggestion would be that you just pass the subject matter over to a member of the Rules Committee on your left.

SEN. JANEWAY: Well, I happen to be conveniently located.

SEN. BLOOMER: It may be too cumbersome to work. I don't know, but we thought that it was worth a try to do in that manner rather than have 30 senators asking several questions a piece, some of which may be objected to by counsel, and we discussed that this morning, and we think the attorneys for the defendant, the respondent, and the House Managers cannot object to a question by a Senator.

Because we - They can't tell us what we are going to do. They can object to questions by other attorneys, but when we ask the same question, no one, certainly, is going to object to the way we run our own show.

SEN. JANEWAY: I don't know, Senator, anything about the law. The rules of evidence shall have some bearing on how these -

SEN. BLOOMER: That's why we thought it might be well if they were presented to the Rules Committee, and we'd do the best we could to comply with the rules of evidence as we know them.

SEN. JANEWAY: I quite honestly, Mr. President - I haven't a solution to this, but I think we do have an awkward rule, and I'd be delighted if we could get some discussion on this and hope we could bring some changes.

SEN. CROWLEY: Mr. President.

LT. GOV. BURNS: Senator from Chittenden.

SEN. CROWLEY: If we are - If we are to continue, in fact, in this manner, then I would suggest that the word "may" be removed where it is shown and the word "shall" be inserted. Perhaps, it's a little unnatural, but if a member of the Rules Committee decided in its

own mind, being an attorney and so on, that he felt that the question shouldn't be asked, the senator who has submitted the question feels that it should be, than, ah, he's entirely at the mercy of a member of the Rules Committee. I think the questions submitted in writing in proper form to a member of the Rules Committee that the question shall be asked, not "may" be asked.

LT. GOV. BURNS: Senator from Caledonia.

SEN. NEWELL: I was about to raise the same question. I would suggest that it should read, then, "shall", and then "shall in compliance with the rules of evidence to allow a member of the Rules Committee to read questions that are asked", and that's what the Senator from Rutland says is contemplated, so, I would rule that it be amended to read - strike the "may" and insert "shall" in compliance with the rules of evidence.

LT. GOV. BURNS: Senator, the rules of evidence are discretionary often.

SEN. NEWELL: Well, let's leave that discretion to a member of the Rules Committee.

LT. GOV. BURNS: There's also the other section - That's perfectly all right. There's also the other section that any senator does not have to follow the rules of evidence when he asks questions. Now, you can open up any gate that you wish.

SEN. NEWELL: Mr. President, this is, as I understand it, solely as pertaining to the witness. - the witness - This is only that section.

LT. GOV. BURNS: So, you wish to put - remove the word -

SEN. NEWELL: "May" and insert the word "shall".

LT. GOV. BURNS: May and insert the word "shall" be in compliance with the rules of evidence. "Shall be in compliance with the rules of evidence". "Ask any such question of such witness together with any other questions he may develop." Is that amendment satisfactory, Senator from Chittenden?

SEN. CROWLEY: Certainly.

SEN. NEWELL: Mr. President, I would like to hear from the Rules Committee.

LT. GOV. BURNS: Senator from Rutland. Senator O'Brien standing.
Senator from Chittenden.

SEN. O'BRIEN: Yes, I'd like to ask another question of Senator Bloomer.

LT. GOV. BURNS: Senator from Rutland.

SEN. O'BRIEN: You know as a lawyer if you ask a question, the answer you get to that question is going to lead to other questions you're going to ask. Is that right?

SEN. BLOOMER: That's right.

SEN. O'BRIEN: And you might be an hour asking questions. Now, if you had to write them out, how long would you be?

SEN. BLOOMER: Well, you would be.

SEN. O'BRIEN: Would be what?

SEN. BLOOMER: You would be an hour. We don't think that this rule is perfect, but I do think the suggestion made by the Senator from the Caledonia and the Senator from Chittenden is a good one in that the "committee member shall ask the question", not "may", but "shall ask the question"

SEN. O'BRIEN: He hasn't got to write it out?

SEN. BLOOMER: Yes, he should write it out, but what he should write out is the subject matter, so, that you would go into the subject matter trying to comply with the rules of evidence as best you could. That's the theory of it, and perhaps, it's a bad theory, but we thought that it would be much more expeditious if someone who was trained somewhat in the field were to do the asking of the questions, and the nice part of it is if this doesn't work, if we adopt the rule, and it doesn't work, say, this afternoon, amend the rule. These rules are all set to be amended, you know, by the Senate.

SEN. O'BRIEN: You said a very few minutes ago that it was very controversial.

SEN. BLOOMER: I did.

SEN. O'BRIEN: Yes.

SEN. BLOOMER: Well, certainly, it is.

SEN. O'BRIEN: In the Rules Committee?

SEN. BLOOMER: No, I thought that it would be right here in the Senate if it would - This would not allow the senior senator from Chittenden to ask questions himself; you'd have

to refer them to your attorneys as you frequently do.

SEN. O'BRIEN: I'd be glad to, but if I had to write them all out -
I don't write very good, you know. Probably he
couldn't understand them.

SEN. BLOOMER: That isn't the intent that we put you through an
exercise in question writing. It's just that you
get to Senator Niquette the questions that you'd
like to have asked, and then he would try to do them
in proper form. That's the purpose of it.

SEN. O'BRIEN: Even though we pass this amendment offered by Senator
Crowley and the senator from Caledonia -

SEN. BLOOMER: Yes, talk to - -

SEN. O'BRIEN: You still have to write out the questions.

SEN. BLOOMER: Yes, but it can be very short. You could send a letter
over to the -

SEN. O'BRIEN: A series of questions could take all day, but one
Senator couldn't.

SEN. BLOOMER: Yes. If you were to ask -

SEN. CROWLEY: Along the same line, Mr. President.

LT. GOV. BURNS: Senator from Chittenden.

SEN. CROWLEY: Which brings up another point. I see my lovely former secretary of Finance Committee sitting in front of me, so, perhaps she might be favorable to me and lug a message to Senator Cummings. And in that same line of thinking, are the senators allowed to walk over to a member of the Rules Committee and hand them a message? Is a senator allowed to go out and make a phone call at any time during the trial?

LT. GOV. BURNS: Yes, Senator. You judges and the jury must understand that - that every one of these rules that you are voting on you are giving up your rights.

SEN. CROWLEY: Obviously. That's why I'm asking.

LT. GOV. BURNS: And you have not given that one up yet. You can move around, Senator, as long as there is no distraction to the witnesses, the presiding officer who will try to keep the Senate as quiet as possible. If several senators start moving around - and you cannot talk. If you want to ask questions, it must be reduced to writing, because it would be very distracting if someone was asking the witness a question. It can be

distracting to the witness. If you start talking with the Rules Committee, you have to reduce it to writing. You can move. I wouldn't suggest you walk across the front of the Senate.

SEN. CROWLEY: No, but I mean you can go 'round back. I mean I'm going to vote that we have it here to avoid these Barnum-Bailey scenes that everybody wants, which I think would be much easier if we had it here, so, I'm going to walk around the back and walk over and slip a note to Senator Gannett or to Senator Cummings without bothering anybody, but my main point is are we restricted, once the gavel falls, are we restricted to the Chambers regardless whether it is here or in the House?

LT. GOV. BURNS: No, sir.

SEN. CROWLEY: To move around as we so desire.

LT. GOV. BURNS: That's correct, Senator. Senator from Rutland.

SEN. PARTRIDGE: Mr. President, I appreciate, I suppose, the Rules Committee making some response. It seems to me that this impeachment proceeding is a highly unusual kind of thing. It isn't strictly the normal court proceeding, and I don't understand why we must actually pay

attention to the rules of evidence that are practiced in a court. There is no further court to appeal to. The final result is what we do, and that's it, and I'm a little puzzled why we have to talk rules of evidence per se.

SEN. JANEWAY: Mr. President.

LT. GOV. BURNS: Senator from Windham.

SEN. JANEWAY: I just think that this procedure is awkward, and I can understand, believe me, the Rules Committee's intent to grapple with, but I can't imagine any member of this Senate viewing as you see in an irresponsible way. It would seem to me that any Senator should have the right to ask a question of a witness in his own manner. We do this in hearings all the time, and we expect to do it, and we're sitting as a whole, as the Senator from Rutland just said, in a very unusual manner. It would seem to me much simpler to permit questions - Now, I suppose that the lawyer for the defendant or whatever might well object, but I assume then that is dealt with through the evidential process somehow, which the lawyers here can handle, but it is just physically awkward, as the Senator from Chittenden said, to write out a question, and you don't know whether that question is properly

written out, so, you get up and have to take it to some member of the Rules Committee, and then the Rules Committee is distracted for a while. Anyhow, the whole procedure just seems to me to compound a lot of awkward possibilities, and I for one would - I think that the idea of saying "shall" is probably correct because that's the purpose, but I prefer just to leave it open and see how it goes. If it gets to be a terrible burden, then, again, we can make a change in the rules, but my own feeling is to vote against the adoption of this particular amendment, although I don't think it's quite so important -

SEN. CROWLEY: Mr. President.

LT. GOV. BURNS: Senator from Chittenden.

SEN. CROWLEY: I do think that in all fairness to the gentlemen of the Rules Committee who, I know, have spent many long, arduous hours on this whole situation, and perhaps, at least for the first afternoon, ah, we try the rules as we have adopted them and as they have been presented to us, and as Senator Janeway has mentioned, if they turn out to be too cumbersome, ah, then nothing prohibits us from changing them, so, I personally would suggest that we, as a body, try for at least one or two days, and if it appears

to be a real problem, there is no reason why we can't go back, go to the system that Senator Janeway suggested.

LT. GOV. BURNS: Senator from Essex-Orleans.

SEN. MANDIGO: Mr. President, what the member from Chittenden has just described seems to be a reasonable procedure, but it has some problems with it it seems to me. If we change the rules during the course of the trial, it might alter the course of that trial, and I find a great deal of problem with the notion that every question has to be written out and then edited by a member of the Rules Committee before it's asked, and then the process of the following question has to go through the same procedure. I would like to ask this question of the Chairman of the Rules Committee if I may. If a question is phrased in what seems to the defense counsel to be a prejudicial manner, is he entitled to rebut to it if he cannot challenge it? Assuming that he cannot challenge it, can he respond to it?

SEN. BLOOMER: How do you mean respond? You mean ask another series of questions of the witness?

SEN. MANDIGO: Yes.

SEN. BLOOMER: Of course. You would be opening up a brand new subject matter. Assuming that you got into a subject matter which had been excluded on the record, but you wanted to know about, so, you would, if you had the desire, you would ask the questions in connection with that, which I might think were totally inadmissible, but you would ask the question, and then the defense attorney would say well, we certainly weren't prepared for that, and we want another day to investigate. That subject matter we aren't prepared to talk about today, and I think they would be entitled to have that time. If you bring up something which is not the least bit germane, it can't be objected to - Because you are a senator, you can't be objected to by an outsider - I might object.

LT. GOV. BURNS: Or I might object.

SEN. BLOOMER: But if it weren't objected to, they can have a whole new ballgame, and that's what we are trying to preclude. We're just - the only purpose of this is try to make it orderly. It's not to try to keep any senator from getting into any subject matter that he desires to, so long as it comes somewhere within the rules of evidence, and while I'm on it, if you don't mind just for a minute, I'd like to respond as to why the rules

of evidence - we should try to follow them, and that is so we have some rules that someone knows about relative to the evidence that comes in, and the rules of evidence, as we've learned there, have come down through the centuries much like trial and error, and the rules that the lawyers are familiar with are workable rules. They're sometimes cumbersome, but they all have meaning, and they've all been debated at great length in many of the courts in the state; this state and other states, so, that's why we'd like to have it as close as we can to follow the rules of evidence.

SEN. MANDIGO: As I understand it, Senator, we as a body act not only as a jury, but also as judge. Is that correct?

SEN. BLOOMER: Yes.

SEN. MANDIGO: So, we're even putting you fellas who are familiar with courtroom procedure into an unfamiliar situation.

SEN. BLOOMER: Well, it's different in that none of us has ever been in an impeachment proceeding.

SEN. MANDIGO: Well, you've never acted as judge and jury at the same time.

SEN. BLOOMER: No, I think no one has in the state. At least - Because the only time I know of would be an impeachment.

SEN. MANDIGO: Yes.

SEN. BLOOMER: Perhaps, a judge would do it when he is the trier of fact subscribed to a fact, also when he had a hearing before the court.

SEN. MANDIGO: I am somewhat concerned that we may be excluding pursuit of relevant matter, which may not occur to those two members of the bar that are here, and we other members may not have time to commit to writing the same time that you will get the motion.

SEN. BLOOMER: Well, I would - You may be right, and I would hope that the president, and I'm sure that he wouldn't shut anyone off. I don't think he'd say all right, that's that without giving you the opportunity to present your question, particularly, if you stood up and said, Mr. President, I'd like a little time to prepare my questions, and there are 30 of us, you know. While the Senator from Chittenden is preparing his, you can be preparing yours. Now, this may be too cumbersome, but as previously stated, and I like the Senator from Chittenden's statement. I'd like to give it a try. If it doesn't work, they're amendable.

SEN. MANDIGO: Do you see any problem with a change in the rules, say, after three or four witnesses have made their - have presented their testimony, and a change in the rules so that individual senators might question them directly. That is, those that follow.

SEN. BLOOMER: I see no problem.

SEN. MANDIGO: Thank you very much.

LT. GOV. BURNS: This Senate stands in recess until 11:15.

Senate reconvened at 11:15 a.m.

LT. GOV. BURNS: The Senate will please come to order. The Senator
from Franklin.

SEN. SOULE: Mr. President, I feel we have another responsibility
which hasn't come up here and that is to the people who are
paying for these proceedings and while I don't like
to suggest that some of you restrict us in our
questioning matter, I do think the rule that's pro-
posed by the Rules Committee puts a restriction on,
which doesn't seem, as in an ordinary legal proceeding
whereby you would refer the matter to your attorney.
I would be happy to refer my questions to my attorney
in front of me, Senator Cummings, and let him phrase
it as it should be done. I don't think we can afford
to be here all summer in the interests of the taxpayers
of the State of Vermont and I prefer that we start on
the restricted basis to begin with.

LT. GOV. BURNS: Senator from Orange.

SEN. R. O'BRIEN: Mr. President, I recently attended a public hearing conducted by the Public Service Board in which this procedure was followed. It was a total failure. I think the primary reason it failed was that in writing the question and passing it to someone else, you interrupted his train of thought. Your next question would follow up on the previous question because usually one question, as Senator O'Brien has pointed out, is followed by another. That left you in a position of trying to write hastily or else whispering, ah, in this particular hearing, whispering your intents of, ah, until the attorney understood exactly what you were driving at and it broke down, it interrupted the proceedings, because the Board had to stop while this back and forth was going on between the one who desired to ask the question and the attorney for the public; a rather similar procedure to the one we're proposing here, so, I think that this is, it seems to me inevitable that we'll break down the same way and I would prefer initially that we have an open opportunity and find then whether we can proceed that way and if that breaks down, I think we should consider how to improve the situation, but initially I think each Senator ought to be given an opportunity to question the witnesses.

LT. GOV. BURNS: Senator from Windham.

SEN. JANEWAY: Mr. President, I have a concrete proposal and it's in partial form here; being typed up and xeroxed ... xerox it, I haven't got enough copies for everybody. I was hoping to get one to the hands of the President Pro Tem before we came in, but he was on the telephone when I heard the gavel fall. However, this is really sort of a combination. I'd like to read it to you, and we will have copies in a moment. This will be an amendment to the rule that we're discussing, as a substitute to that rule. It reads as follows:

"If a Senator wishes to interrogate a witness upon the completion of the witness' testimony, he may do so either through direct questioning or by transmittal of his question (or questions) to a member of the Rules Committee who shall ask such question or questions of the witness."

As you will note, it combines the ideas we discussed earlier this morning and the word "shall" offers the option and I personally feel that I would prefer to start with the freedom of action that this would give us, and, if necessary, then go to a more restrictive rule rather than starting restrictive and going the other way, so, in effect I'm offering this, and I'm sorry that we haven't immediately got copies of it but if Mr. Door Keeper would perhaps deliver these around ...

LT. GOV. BURNS: The Senator from Rutland says he wants to ask a question before we carve it in concrete.

SEN. JANEWAY: Oh, excuse me.

SEN. PARTRIDGE: If you would take the business of questioning the sense of not a specific phraseology of question but getting into a subject to get answers out, I think I could - This idea that you have to - the way you're using questions it sounds like you have to ask a specific question. If you ask the Committee people who are attorney types to get into a subject, there's a flexibility to pursue, whereas if there's this idea of writing out specific language of a question then I think you have this ... being spoken of and I think ...

SEN. JANEWAY: But this doesn't actually indicate you have to write it out ...

SEN. PARTRIDGE: Well, I want the question to be understood in a wide sense rather than the narrow ...

SEN. JANEWAY: ... Writing of this, as a matter of fact, through one of the attorney types on the Rules Committee... I feel we're on pretty good ground. I wish you would have a look at it as to whatever specifics we can offer this as an amendment to that rule.

[Low-voiced discussion here]

SEN. JANEWAY: Naturally, I'm in the process of drumming up a little support for this amendment which I have proposed and I am not saying it's the answer to everything but I am interested in

LT. GOV. BURNS: Senator, we're having a parliamentary haggle here, that's our problem, so that you'll know the question is if you're moving to substitute for a totally new question and the secretary says that that would require the Senator from Caledonia to withdraw his amendment and the Chair ...

SEN. NEWELL: Or to substitute this for ...

LT. GOV. BURNS: Or to substitute this for his amendment, the Chair says that you are substituting for the whole of Section B ... Okay but, so we're going to have to say, Senator, that this would be an amendment to the ...

SEN. NEWELL: Unless he withdraws it ...

LT. GOV. BURNS: Unless he withdraws his or you substitute ...

SEN. NEWELL: I still disagree. I say he can substitute for the whole question.

[More discussion]

LT. GOV. BURNS: The Senator from Caledonia requests permission to withdraw his amendment. If there is no objection we'll allow it. There having been no objection, the Senator from Windham moves that the session rule 8(b)(2) be amended as follows: and you all have that on your desk which would be a complete substitution for the rule. Are you ready for that question, Senator from Rutland?

SEN. J. O'BRIEN: This is a substitution for the rule?

LT. GOV. BURNS: This is a substitution for rule 8(b)(2).

SEN. J. O'BRIEN: Thanks.

SEN. BLOOMER: The only question that I have about it, and I have no objection to the general thought behind it, it being an alternative, and I have no objection to the Senators asking the questions initially, but thought it was cumbersome. This says the questions shall be asked of the witnesses, apparently they do so through direct questioning or members of the Rules Committee shall ask such question or questions upon completion. I

don't know any better way to do it. You'll recall the other rule said "at conclusion of direct examination and cross-examination", and I separated those in my mind at least. Well, I don't know whether you contemplate that, but when both sides say that the questioning is completed, is when the Senate will take over.

SEN. JANEWAY:

Well, that's what everyone had in mind, and if I haven't said it, I'd like to show this - that I think that's - I thought I covered it with "on completion."

SEN. BLOOMER:

You raised the record fine, but I wanted to be sure that that's what you intended. The only problem you might have with it is you interrogate a witness and it might go on for, say, two hours, and both sides raise good questions and then one Senator or three Senators or five Senators ask questions, then obviously the other attorneys representing the managers and the respondent then go at it again. They have to rebut the questions, perhaps they are given the opportunity to rebut the testimony which was given in answer to the Senators' questions. Just so you'll have in mind and know that's probably the

way the procedure will be followed and you may be opening up an entirely -

SEN. JANEWAY:

I recall a Senator, I'm not sure which one, asked you that question earlier, I believe, and you responded just as you have and I did say to myself that I see this as a proposal to balance these points of view and if it becomes too cumbersome, I think all of us agree that we can have the power to change it and maybe this is not the way to go.

SEN. BLOOMER:

I have no objection to changing it in this manner.

LT. GOV. BURNS:

The question is, shall the rule be better served or wouldn't it?

SEN. GANNETT:

Mr. President, I favor this proposed amendment to the rule, and I am glad the President Pro Tem raised the question about the meaning of completion of the testimony. I think, in the Rules Committee discussions of this rule, one thing - in whatever form it is finally emplaced, one thing we felt very strongly about was

that individual Senators should not interrupt the regular course of questioning between the House Managers and the attorney for the respondent but our questioning in whatever form we authorize it should only come at the conclusion of that testimony and I think that the proposed amendment here fully directs that and I think equally as strongly as in the wording in the present 8(b)(2) which talks, to the conclusion of the direct examination and cross-examination. Hopefully, a great deal of its strength is going to be used by every member of this Senate in the exercise of this rule but I think I'd much prefer to see us start with it, with the options and with the open arrangements. If it proves cumbersome we can then, or abused in any way, in our wisdom we can then pull it in and impose some constraints but I'd rather start with it open rather than the reverse - starting with constraints and possibly later open it up, so I hope very much that the Senate will approve of this amended rule.

LT. GOV. BURNS: The Senator from Essex-Orleans.

SEN. BOYLAN: I wonder if I could interrogate the Chairman of the Rules Committee? Senator, I have in mind a threat in

connection with mechanics of how this is going to operate - I have in mind a situation where, let us say, an attorney on either side of the question addresses the question to the witness and the question is, ah, I don't know how to phrase it but it's not, ah, it's not accepted - it's denied by whoever the Rules Committee member is who will make the decision of whether or not the question is in order. Let us say that the question is, ah, adjudged to be out of order and so stated by the members of the Rules Committee who rule on the evidentiary testimony. Now, then later on several other questions are asked by the attorney as the procedure goes on and then some Senator rises and asks a question which is practically a duplicate question of one which has already been adjudged as out of order, not acceptable, then what happens?

SEN. BLOOMER: Then I think you'll hear cries from the other side about failure of Due Process, Constitutional Rights, and so forth

SEN. BOYLAN: Well, this would then open up the question that has already been declared out of order. The fact that a Senator has asked that question and a response is given, then it opens up the ball game so that the two attorneys then can get back into the area that has already been prohibited.

SEN. BLOOMER: If it goes unchallenged. Now, for example, if some Senator is to ask a question which has been excluded any member of the Senate may get up and ask that that question be put to the entire Senate, and say that this has already been excluded and I don't think it should be asked again and we would like to have a Senate vote on it.

SEN. BOYLAN: So there would be no prohibition there if the question has already been excluded so that the attorneys can't ask the question but a Senator can ask the question so then you open the whole thing up.

SEN. BLOOMER: If it's not challenged by a Senator.

SEN. BOYLAN: I don't know if there's any way of getting around this or not but if - I have no objections certainly to this proposed amendment because I know in our discussion with the Rules Committee it was considered to be extremely cumbersome ... this thing and what will happen if we run - perhaps we won't run into too many questions - hopefully we won't but ...

LT. GOV. BURNS: I would remind the Senators too that we will operate under the set of Senate rules so that if a Senator gets up and asks questions, such as you just mentioned that had already been asked and it was ruled out of order because of relevancy, that you against the Senate rule of germane and you will be ruled out of order by the Chair. Then you can be challenged, the Chair's ruling to the full Senate. The Chair will be the only one, really, that can stop the Senators from asking questions, or any Senator can get up, tell the Chair his objections. And then the Chair will rule on the Senator if he is out of order or not, just like a regular Senate procedure, Senator.

SEN. BOYLAN: Mr. President, you wouldn't want to take away the liberty of a member of the Senate.

LT. GOV. BURNS: That's why I say, Sir, just like a regular ruling of the Senate at which we often stop the Senators from wandering off the subject. But you are correct, Sir, it would be very cumbersome.

SEN. MANDIGO: Did I understand you correctly to say that if the question had been ruled not germane, that you would then rule that it was out of order?

LT. GOV. BURNS: If the question was not germane in relevancy to the questions, you have to go under the same Senate rules. Such as you have a hearsay rule.

SEN. MANDIGO: Let me state my question so you will understand it. I don't think you heard it. If the question has been ruled by the member of the Rules Committee that is acting for the Senate on such questions, if it has already been ruled out of order, that you would automatically rule it not germane?

LT. GOV. BURNS: Correct, Sir.

SEN. MANDIGO: Thank you very much.

SEN. O'BRIEN: But, Mr. President ---

LT. GOV. BURNS: Senator from Chittenden.

SEN. O'BRIEN: ... the only ones that could ask questions from the Senate then would be the Rules Committee. Is that right? Because if any Senator asked a question, and

the Rules Committee said it was out of order, this consists of six people.

LT. GOV. BURNS: No, Sir. I think you are worried about things that won't happen. I am saying that the Chair will have you operate under your own rules and you have passed to the Rules Committee already this power to restrict these questions, to make the rulings. And you did this yourself. So that if the Rules Committee now says it's not relevant, I will not allow a Senator to ask the question either, because it's your own action that you've done this. So, by your own rule...

SEN. J. O'BRIEN: That part of it is all right. But all I want the Senate to understand is that they have, ~~under~~ this setup, the Rules Committee are about the only ones that can ask questions. Because they have got to pass on any questions that I would want to ask, or you would want to ask, or anybody. Is that right?

LT. GOV. BURNS: Pretty close, Sir. You can always overrule them.

SEN. BLOOMER: Mr. President?

LT. GOV. BURNS: Senator from Rutland.

SEN. BLOOMER: I would like to re-emphasize that the Rules Committee has the final say on absolutely nothing. It is up to the Senate on every subject matter that we bring up, the final question can be left up to the Senate. Any ruling that is made by anybody can be appealed to the Senate just as though it were an ordinary session and the Senate votes on it. It's not the Rules Committee. We are not set up as any super agency - or whatever you want to call it.

LT. GOV. BURNS: The question is, shall Rule 8(b)(2) be amended as recommended by the Senator from Windham. Are you ready for that question? If so, all those in favor will say "aye". All those opposed say "nay". The ayes have it. The Rules are amended. Is there any other discussion of the rules?

SEN. DELANEY: Mr. President?

LT. GOV. BURNS: The Senator from Chittenden-Grand Isle.

SEN. DELANEY: Just one question. If we are able to question witnesses, will the Senate be able to question the Managers, or their attorneys?

LT. GOV. BURNS: The general concensus from our two attorneys is that no, we should not get involved in the managers discussion, or the attorney's discussion seeing as they represent.

SEN. BLOOMER: They are not under oath. They are not witnesses. All they do is appear for someone else. And they conduct the proceedings for someone. They do not testify and, therefore, we wouldn't be allowed to question them.

SEN. DELANEY: Well, I'll go along with it. I was just inquiring if they did ask for the information. I thought maybe in some period of time we might be asked where they got some of these.

SEN. MANDIGO: From our witnesses.

LT. GOV. BURNS: Is there any other discussion of the rules? Senator from Caledonia.

SEN. NEWELL: I would like to go back to the beginning on definition of Rule 2, on page 463. Rule 2, section 6. This troubles me. "Impeachable offense" means maladministration designated as such in an article. It appears to me, Mr. President, that this is somewhat backwards. It seems to me that when you come into the definition of

maladministration, and I realize that there is very little in the Constitution that tells us that, but it's the Constitution we've got to refer to and not any Article. So, it appears to me that this definition should read "Impeachable Offense" means maladministration as designated under section 19 of Chapter II of the Constitution, and not any Article. We aren't allowing anyone to set up in any Article the definition of maladministration. It is going to rest with us, as we read the Constitution, to decide what the Constitution at least purports as maladministrations. So, for that reason, this doesn't appear to be the proper definition. My suggestion here is that the definition should read "Impeachable offense" means maladministration as designated under section 19 of Chapter II of the Constitution. I would like to hear again from the Rules Committee on that.

LT. GOV. BURNS: Senator from Rutland.

SEN. BLOOMER: Mr. President, the Managers, the House Managers, and the counsel for the Sheriff in the House Judiciary Committee, and in the House itself, agreed on a definition of maladministration, which I have here. It is found in 67 Order of Juris Secundum, the title is "Officers"

section 60. And this is the one which was used in the House. And the Rules Committee considered that it having been used in the House that we should use the identical definition of maladministration as was used in the House because they sent it to us on the basis of this definition. I have it here and, if requested, I would be glad to read it or we can certainly make copies of it and make it available. I don't know whether that answers your question. Do you have any others before the crossexamination? I will be glad to try and respond.

SEN. NEWELL:

When you get to the very rule, of course, as far as my problems are concerned, because I feel that I have got to interpret the Constitution as I took my oath to interpret it as I see it and not as any House members saw the Constitution. So perhaps that can't be resolved, but that, again, is going to be my problem throughout the next week, or weeks. I just can't accept an "impeachable offense" that means a maladministration that is designated by someone in the other Chamber. I have my own definition, and I know it is very vague, but it's better than the Constitution. Let's face it, there isn't any. That's my problem. That's why I would prefer to see that we, here, should proceed under the Constitution as to what purports to

be at least maladministration and not as to what someone else has set up as a guideline. If we choose to adopt Corpus Secundum - or whatever it is - 57 CJS with it, if we choose to adopt it, then I would say, well and good. But it is up to us, I think, in this spot as we proceed in the impeachment proceedings, to adopt our own definition that we are going to judge by, by the Constitution.

LT. GOV. BURNS: Senator from Windham.

SEN. GANNETT: It seems to me that the wrong efficace is being suggested on the word "designate", in the learned remarks from the Senator from Caledonia. If that sets the time, I agree with everything he said. But it doesn't. The Constitution, in effect, is where the word maladministration comes from and, in this definition of six here, under Rule 2, in effect was saying that "impeachable offense" for purposes of these rules and these proceedings, means maladministration as brought before us - get away from that word designated - as brought before us in these Articles of Impeachment which the House, in its wisdom has voted. It doesn't say - to me that's not a definition. It's more of an explanation, and the word define isn't there. It's

in effect saying, carrying it a step further, that we are going to possibly be voting on three impeachable offenses. We have three separate Articles and maladministration is the key word for each of those Articles is as designated in the separate Article. So maladministration has one meaning in one Article, and it can have another meaning in another, and another meaning in a third, based upon the incidents that have been designated in the Article. That six doesn't happen to bother me, but I agree with the Senator that the entire definition of maladministration is not clearly defined. And I agree with the Chairman of the Rules Committee that we feel the definition against which the Article originally was voted, of necessity has to be the definition against which we proceed.

MR. MANDIGO: Mr. President?

LT. GOV. BURNS: Senator from Essex-Orleans.

SEN. MANDIGO: May I interrogate the Senator from Windham?

LT. GOV. BURNS: Um-hum. The Senator from Windham you wish to interrogate.

SEN. MANDIGO: Senator Gannett, is the gist of your remark emphasis on the fact that impeachable offense, as far as we are concerned, is limited to the three Articles, to the citations of the three Articles that are before us, that we consider nothing else as an impeachable offense?

SEN. GANNETT: Absolutely.

SEN. MANDIGO: That's the point of that rather than the intent to define it?

SEN. GANNETT: Yes, Sir.

SEN. MANDIGO: Thank you.

LT. GOV. BURNS: Senator from Rutland.

SEN. BLOOMER: It is my judgment, that is in listening to the proceedings beginning this afternoon, that we have to have in mind the definition of maladministration because that's the only thing you can impeach the man for, as we view it, is maladministration. So that you should have in mind that's what all this evidence is going to, is to show maladministration. And, in order to show maladministration, we should

have some kind of a definition, because we may all think different things about maladministration. The House Managers, and the attorneys for the respondent, Sheriff Mayo, have agreed on a definition of maladministration. The Rules Committee has adopted that definition. And I would hope that the entire Senate would adopt that definition. I think perhaps it would be well if we photocopied the definition and had it on your desk, and have it right here. And I was going to talk to the subject matter before the Senator from Caledonia got up. I have it right here and we'll have it copied and placed on your desks before we start proceedings this afternoon at 1:30 P.M.

LT. GOV. BURNS: There is no question before the Senate. The next order of business is any other preliminary business is put on your chart and that, I believe, is removed to the House. So that is now ... if you wish to discuss that now. If anyone wishes to move to the House, now would be the time to make the motion. If not, we will move on...

SEN. NEWELL: Excuse me, Mr. President, have we adopted the rules now in part?

LT. GOV. BURNS: We have adopted them, and all we have done is amend them Senator. We adopted them in the last session.

SEN. NEWELL: Yes, now we are in the process of amending them.

LT. GOV. BURNS: We just amended them, right. You can amend them at any time Senator.

SEN. NEWELL: I would just like to hold on

LT. GOV. BURNS: Certainly, Senator, hold on. Are we ready for other business? Is there more discussion of the rules? We'll go on to No. 8. Is there any Senator here who wishes to make a motion for the movement of the House to the House? I see none. This completes us up to the starting of the trial.

SEN. J. O'BRIEN: Mr. President, may I ask a question please?

LT. GOV. BURNS: You certainly may Senator.

SEN. J. O'BRIEN: I wish to ask this question. Will all decisions be made during this impeachment by majority vote, two-thirds vote?

LT. GOV. BURNS: Yes, Senator. All decisions will be made by majority vote. The decision to convict must be two-thirds vote. Two-thirds of those present. All decisions during trial

all votes during the trial, will be by simple majority, like all that we've had. But, when you get to the Articles of Impeachment, and vote on those, it will take two-thirds to convict.

SEN. J. O'BRIEN: Am I correct in assuming this is going to be presented as a motion to dismiss the case?

LT. GOV. BURNS: In all probability, it is.

SEN. J. O'BRIEN: Is that right? That will take a majority vote.

LT. GOV. BURNS: It will take a majority vote to either dismiss or not to dismiss.

SEN. J. O'BRIEN: Thank you.

LT. GOV. BURNS: Are there any other questions before the Senate?
If there is no more business in the Senate, then we will stand in recess until 1:30 P.M.

The Senate reconvened at 1:30 P.M.

LT. GOV. BURNS: All cameras have to leave the Senate Chambers; all recording devices except those allowed. To give the Senators a general idea of what we intend to do here this afternoon, we have a Motion pending before us on dismissal. It is our intention this afternoon to hear this Motion, approximately one half hour apiece from the respondents and the House Managers, then move on to the opening debate for approximately one hour apiece, from both sides, the opening arguments. After this, we will adjourn for the afternoon when the Senators, the Rules Committee, and whatever Senators may wish to remain, look at the Motion, decide what they want to do and tomorrow we will probably take a vote, if you are ready, on the Motion to Dismiss after you have had a chance to study it and make decisions on it. We will now hear from Counsel for the respondent on the Motion to Dismiss.

MR. DAVIS: Mr. President, Members of the Senate. I will try to speak as loudly as necessary and if any do not hear me well, please raise your hand and I will speak a little louder. My name is Davis, Richard Davis. I am an attorney from Barre, Vermont and I am representing the Sheriff in this case along with my associate, Oreste Valsangiacomo, who is also associated in our office. We have filed here this morning a Motion before

this Body which raises, in our judgement, one of the most important issues for you to consider as it relates not only to the case before you but as it relates in general to the powers of the Legislature in impeachment proceedings. It is our view, and I would like to say that the proposition in question for you to resolve is this, whether or not an officer who is not an officer of state can be impeached, whether the Legislature has any jurisdiction, either body of the Legislature has any jurisdiction, and the question of the conduct of the office of an officer below the level of an officer of state to undertake impeachment proceedings or, for that matter, as a Senate body to act on - listen to evidence and to act on impeachment charges presented to the Senate by the House. Most of you probably have in your possession a copy of our Vermont Constitution as it now stands, and that Constitution, of course, would control in your decision with respect to the Motion which has been filed. The particular section of that Constitution which is relevant in determining the power of the Senate in an impeachment proceeding is Section 58. This is the amended Section 58 which, of course, came into law with the last couple of years. That section reads in part "... every officer of state, whether judicial or executive, shall be liable to be

impeached by the House of Representatives even when in office or after his resignation or removal for maladministration. The Senate shall have the sole power of trying and deciding upon all impeachments." The phrase that I would like to discuss with you this afternoon and to which our Motion is directed is that phrase "every officer of state". What is an officer of state? That is the question. We say that the law, the Constitution of the State of Vermont and the law of this state, makes a distinction between state officers such as the heads of departments and other people who have been extended authority by this Legislature and officers of state. We think that, if you will take a moment in your consideration of this Motion to review Chapter II, which is the chapter in our constitution outlining the framework of our government - first of all, we all know there are three branches and what they are. But, if you will look through that chapter you will find that as to officers of state, there are designated officers such as Governor, the Lieutenant Governor, the Secretary of State, the Auditor of Accounts, who have designated powers. That is significant because the law in general, we will attempt to convince you in our discussion this afternoon, is that where the officer

has powers created by the Constitution, he is an officer of state and, as such, he is not within the control of the other body - in this case the Legislature - except in impeachment proceedings or by impeachment proceedings. He is separate. The officers of state are separately empowered under the Constitution to carry out their responsibilities without any interference from the Legislature except as authorized in Section 58. That is why, in Section 58, the authors of our Constitution were talking about every officer of state because that is where the check and balance arises insofar as crimes in office. Now, it is going to take some time, in terms of your consideration of this matter, to distinguish between that phrase "every officer of state and every state officer", and I would like to say that there are state officers, of which the Attorney General is one, who is not even mentioned in the Constitution over which, in my judgement, under this Constitution, the Legislature has no power of impeachment. The Attorney General is an officer of statute. His authority comes from statute. He isn't mentioned in the Constitution at all. Therefore, it cannot be that the Legislature has the authority to impeach him. There is an example of what I am talking about when I speak about a state officer. Now, if we come to the sheriff, we are talking about a person

who is mentioned in the Constitution. But, what is said about the sheriff in the Constitution? Absolutely nothing with respect to the sheriff's powers. All we find in the Constitution with reference to the sheriff is a section, which is Section 25 - and it has been pointed out to me that we have a typographical error in our Motion. When we refer to Section 25 in that we called it Section 55, and that appears on the second page of our Motion. I believe Section 25 of our Constitution has to do with when the sheriff can commence his duties, and it says, "he can commence his duties after he filed a bond with sufficient sureties in a manner prescribed by the Legislature". So you see, there you are, in Section 25 with the Legislature, and this is the first place that we have reference to the sheriff, the Legislature having the power to determine how he files a bond, how much the bond will be, and where he files the bond. Now we - if you will go into the statutes I have cited in the Motion, you will find that there is specific provisions in the statutes adopted by the Legislature which tells the sheriff where he files his bond, how much his bond will be, and directs him with respect to the procedure of preparing that bond. This is § 24, I believe - Title 24 § 291. But don't hold me to that because my memory with numbers isn't really

that great. So you see in § 25 the first reference to the sheriff, and if you turn around - if you keep going through this Chapter II you'll find another reference to the sheriff in § 43 where all officers are mentioned. Not only state officers, but also officers of state: the governor, the lieutenant-governor, the treasurer, the secretary of state, the auditor of accounts. Even the Senators and Town Representatives are listed there. But this is the section that tells and specifies the time of the election of these various officers. Following from that, we go to § 50, which is a new section adopted recently by the people of this state, which specifies that the sheriff will be elected by the freemen of the district in which he will serve. Their term of office - the sheriff's term of office is going to be four years. That's a significant section because it establishes the intent of the drafters of the constitution of the amendment to the effect that the sheriff is a county officer. He is not a state-wide officer, but a county officer elected by the people of the county, not elected by the people at large throughout the state, as is the case with the officers of state, such as the governor and the lieutenant-governor and the others that I've mentioned. Going beyond that, we have another section, which is § 56, which relates to the oath that certain officers must take before they undertake their duties. And that section says - and I think this is significant language and I ask

you to give it consideration after you have had an opportunity to hear both my position and my argument and that of the House Managers. "Every officer, whether judicial, executive, or military, in authority under this State,..." You see the difference - in authority under this State. A sheriff has authority under this State, but he is not an officer of state. The distinction is quite clear and the intent is quite clear that what was intended by our forefathers in this oath, and it hasn't been changed, I might add, since this constitution was first adopted back in the late 18th century, was that every officer had to take an oath of allegiance to the State of Vermont as specified in that section. Now, that oath of office is somewhat a little bit different than the governor's oath and others, but I don't want to get into that because I don't think it's really that important. The point I'm trying to make is that there are only these three places in our constitution where the sheriff is mentioned: the section with respect to filing a bond, the section with respect to his election and his term of office, and the oath. But he takes no different oath than the head of the Department of Education takes. Now, those things being established, the next question in mind, I'm sure, is, well, why is this important in this case? We think it's important in this case. We insist it's important in this case because it **clearly** establishes a constitutional precedent ~~for~~ a delineation between officers of state and other state officers. And, again, Section 58 only

authorizes an impeachment proceeding in cases in which the officer involved is an officer of state. Now this question has never been raised in Vermont before, so far as I know. There was a case back in 2 Tyler, which is about the third volume of the Vermont reports, involving a justice of the peace who was subjected to impeachment, and in that situation our Constitution was different. At that time, the justice of the peace was appointed by the Governor with the approval of the general counsel, and, of course, we don't have that type of government any more. The Constitution has been completely revised since that case. But we have found in our research that in the state of Massachusetts, where the constitutional provisions are virtually the same as ours, that the Supreme Court of that state, in interpreting the power of the Legislature to impeach public officers, has held in three separate cases, and in one of those cases, the famous Justice Oliver Wendell Holmes was a member of the court, they have held in that state that there is a distinction in terms of the power of impeachment as it relates to officers of the Commonwealth, as used in the Massachusetts Constitution, and Commonwealth officers. In other words, they have found - as you know, Massachusetts refers to itself as a commonwealth, and the Constitution so provides. They have found, as a result of at least several opinions in the Massachusetts Supreme Court, that there is a distinction and

as it relates to the power of impeachment in that the Legislature does not have the power to control the removal of officers who are not officers of state, except by the statutory enactments that the Legislature has adopted. The Constitution creates the legislative power to impeach officers of the Commonwealth, but the Constitution confers no power on the Legislature to impeach any officers of state, other than officers of the Commonwealth, as such, because the Legislature was given the power, according to Massachusetts decisions, to enact legislation for the purpose of controlling this question of the removal of officers who are below the level of an officer of state. The state of Kansas has had a case involving a sheriff, as a matter of fact, in which they held that the Constitution of that state did not provide any authority on the part of the Legislature to impeach a sheriff, but that he could be impeached by virtue of legislation adopted by the state legislature. The state of Missouri, which has had a number of questions raised over this in the past years, has stated very clearly in one case that there is a definite distinction between the phrase "state officer" and "an officer of the state." Now the question with respect to what our history has been in terms of dealing with the sheriff is of relevance here. As I pointed out earlier, there is nothing in the Constitution with respect to the sheriff's powers whatsoever. It's silent; he has no powers. He has

no right to do anything by reason of the Constitution. so where does he get his power from? He gets his power in two ways. From the common law, which is the result of decisions of the Vermont Supreme Court, and by legislative enactment. This Legislature has adopted any number of pieces of legislation granting the sheriff powers. Without that legislation, he would not have those powers. If this Legislature felt that a common law power that had developed over the past 75 years in Supreme Court decisions should be denied the sheriff, it's a simple matter for this legislature to cancel that power by legislation. The point being, again coming back to my initial remarks, the point being that this Legislature can control the office of sheriff by controlling his power. Therefore, this Legislature can adopt a new piece of legislation to control his removal, as was said in Massachusetts, as was said in Kansas, as was said in Missouri. That is the situation as we view it in connection with a sheriff. We do not believe that the Vermont Constitution gives any authority to the Senate or to the House to consider the impeachment of an officer who is below the level of an officer of the state. So what can be done? With a situation of this kind at the present time, assuming any of these charges that have been made against Sheriff Mayo are validated, are proved by the required burden of proof, what can be done is that if the state, the State's Attorney or the Attorney General's Office,

considers that the sheriff has violated the law, they can bring him to court, charge him with a crime, and put him in jail. And if they put him in jail, there are provisions in the law which the Legislature has adopted to provide for replacement in his office. Now if that isn't deemed sufficient by the Legislature, and up to now in our history it has been deemed sufficient, then this Legislature can obviously, when properly convened, look into the question of adopting rules for the removal of officers who are not officers of state. I say to you gentlemen that based upon our own Constitution and precedents created in states who have Constitutions similar to our own that you are without jurisdiction to proceed to impeach the Sheriff of Washington County. Thank you.

LT. GOV. BURNS: We will now hear from the House Managers on the Motion.

REP. MEAKER: Mr. President, before I address the Motion itself, I understood, before you entertained respondent's counsel remark on this Motion, to say that there would be no witnesses called this afternoon. Is that correct?

LT. GOV. BURNS: That was the general agreement.

REP. MEAKER: We had a different understanding from the Rules Committee meeting before lunch, and if that is the present ruling, we would like to perhaps release the witnesses that are now waiting. As to the Motion itself, this would seem to be a question of law, whether or not this particular officer is an officer of state. And in resolving questions of law, as we all know, we look for precedent. It is the view of the Managers that there is Vermont precedent for this question as to whether or not this particular office, that is, county sheriff, falls within the ambit of officer of state. The section of the Constitution in question has been already read to you, but let me read it again. It is short. Section 58: "Every officer of state, whether judicial or executive, shall be liable to be impeached by the House of Representatives, either when in office or after his resignation or removal for maladministration." Now, it's interesting to note that back in 1802 in the state of Vermont, its Constitution read the same way, with one exception - instead of "impeached by the House of Representatives, it then said, "impeached by the General Assembly." The only other difference is that the Governor and his counsel then would try cases of impeachment rather than the

Senate. So, we are dealing with essentially the same language on this officer of state question. Now, what the Supreme Court said on this matter - 1802, in the case of State against John Campbell, Esq. An indictment had been brought against a justice of the peace, because he had issued what's called an alias execution after his term of office had expired and he received the fees for doing it. Well, a criminal indictment was brought against him for having done so. The defense raised the question as to whether or not this person should not be run through the criminal process but instead should be impeached. And the question in the opinion was put this way: but the principal reliance of the defendant was that no indictment for maladministration could be maintained against a justice of the peace, but the trial of such maladministration must be by impeachment before the Governor and counsel, as directed by the 24th Section of the second Chapter of the Constitution, and that reference is the language that I just read to you that's the same today, with the exception of those two words. Now, in concluding that the defense was right on this question, that is, that it should be a matter for impeachment, the Supreme Court said in referring to a justice of the peace he is also subjected, in this case, as well as in

every other instance of maladministration, not to a trial upon indictment in the judicial courts, but impeachment before the Governor and counsel. In cases of maladministration there is a peculiar and manifest propriety, and thus, leaving the injured citizen to seek his redress in the courts of law. The injured citizen his redress in the courts of law. In bring state criminals, as they are styled in the Constitution, to trial before this high national tribunal with the solemnity and publicity of the trial, will either publicly purge their official characters from impugned crime, or make their maladministration known to the citizens at large, and especially to those in whom rests the election to office. And in its conclusion, the court stated, "The Court therefore consider that an indictment cannot be maintained against a justice of the peace for maladministration, and therefore the indictment must be abolished." The court was saying, if you want to remove this particular justice of the peace from office, don't do it in the criminal courts; follow the Constitutional impeachment route. It would seem that if a justice of the peace back then under those words of the Constitution was an officer of state, then certainly a sheriff now would also be an officer of state. The suggestion has been made that somehow because the sheriff's powers are not detailed in the Constitution, that some conclusion should be drawn from that he is somehow not an officer of state. But in the Motion of the

respondent, a distinction is made that offices that are created by the Legislature as opposed to being set forth and described in the Constitution have a kind of distinction that determine whether or not an officer should be considered an officer of state or not. We have ample reference in our Constitution to the office of sheriff, and I think they've already been mentioned in Chapter 2, Section 25; Chapter 2, Section 43; Chapter 2, Section 50; and Chapter 2, Section 53-54 - all deal with various aspects of the office of sheriff, making him, in the opinion of the Managers, an officer of state. To say that this proceeding that we're engaged in today would only apply to the officers enumerated by the respondent would constrict the supervisor authority over performance in public office by this Body unduly and unreasonably. Mention was made that the office of Governor, of Lieutenant Governor, Secretary of State, Auditor of Accounts - Specific reference is made to them in the Constitution, but the office of Attorney General is not mentioned there. Now, are we to believe that the Attorney General could not be impeached by the arguments just given by the respondent? His duties are set out in the statutes rather than the Constitution. The suggestion was made that the Legislature has spoken on the question, and if a sheriff, for example, commits a crime, then the remedy is to put him in jail. But that doesn't go to the question of removal from office. He is in jail

doing a sentence imposed by a court, but after that, he is sheriff again; so somewhere must lie the ability to determine whether this particular officer should remain in office, and the only place we find this is Section 58 of our Constitution. We think he falls well within its perimeter. In addition to what I've just said, the Managers did file an 11-page memorandum on this subject, which we feel supports amply the proposition that a county sheriff is an officer of state. I will not repeat that at this time, but simply make reference to it for the consideration of the Senate.

LT. GOV. BURNS:

Do all the Senators have copies of the memorandum?

SEN. BLOOMER:

Mr. President.

LT. GOV. BURNS:

Senator from Rutland.

SEN. BLOOMER:

If I may, I'd like to explain to the Senate that the Rules Committee would like a little time to examine both the memo submitted by the respondent and the memo which has been submitted to the members of the Rules Committee by the House managers. We are not prepared to make any recommendation to you right now as a committee. We hope to be able to do it tomorrow, so that's the reason we are not debating the subject matter at the present time, so far as the Rules

Committee is concerned.

LT. GOV. BURNS:

If there is no objection, we won't have any votes on this until tomorrow and the Senators can take this under their own advisement, when you receive copies of the House Managers' proposals. You have the sheriff's proposals, and we'll take that up tomorrow morning. It is now our intention to move on to the opening arguments from both sides.

REP. DREW:

Mr. President, Our Vermont Constitution sets forth a process by which an officer of state may be impeached for maladministration. Assuming the sheriff to be an officer of state, if his demonstrated unfitness threatens the rights and interests of our citizens, there is no method other than impeachment by which such officer can be removed from office. The Vermont House of Representatives has voted impeachment of Sheriff Malcolm Mayo, and now brings the facts in this matter to the Honorable Vermont Senate for its consideration. In opening our presentation, we will not presume to suggest to the Senate conclusions to be drawn from the evidence. The facts will speak for themselves and then each member of the Senate will be called upon to decide whether the demonstrated performance of Sheriff Mayo, while in office, measures up to the high standards befitting an officer in whom has been placed

great power, trust and responsibility. The seriousness of this matter cannot be overemphasized. Abuses of public office strike at the very heart of our precious freedom, and the standards established in this relatively short proceeding will have a substantial and lasting impact upon the performance of all our state public officers and upon the daily lives of our people who must live with the standards to be set in this impeachment trial. Thank you.

MR. DAVIS:

Mr. President. My understanding was that there would be an opening statement with reference to Article I. Am I in error in that regard?

SEN. BLOOMER:

That was my understanding, too.

MR. DAVIS:

We haven't heard anything about Article I.

SEN. BLOOMER:

I don't know whether they are going to proceed any further or -

REP. DREW:

This is our opening statement in respect to Article I and all the other Articles. We don't presume or intend to indicate to the Senate the conclusions they can draw from the evidence presented. We are satisfied that the facts will speak automatically and will speak for themselves.

LT. GOV. BURNS:

The respondent may proceed with his opening argument.

MR. VALSANGIACOMO:

Thank you, Mr. President. Members of the Senate. As Mr. Davis has already indicated, my name is Rusty Valsangiacomo, and I, along with Mr. Davis, represent Mr. Mayo. Mr. Mayo is seated there at our table, and his wife is sitting over there in the reserved section. Mr. and Mrs. Mayo have been man and wife for almost 21 years, and 6 children have been born of that marriage. You'll have to forgive me for a second here, I've proceeded to the podium, so to speak, a little earlier than I thought I was. This case is a case that certainly I needn't point out to you is serious in two respects. First of all, it is serious in respect as to the future of Mr. Mayo, and also from your point of view in the second respect as to what type of precedent and standards are going to be set for the future with regards to impeachments of elected officials. There are a number of questions I think you will be forced to decide before this case is over. I know you all have been shown and perhaps have had an opportunity to read the definition of maladministration. One of the points that we feel will be raised in this proceeding is, what are the official duties of a local or county official, such as a sheriff? Two, you will be presented with facts as to whether or not the sheriff violated any of his official duties. Further than that, these violations, in our opinion,