

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

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Wednesday, July 10, 1957

The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 10:00 o'clock A. M., in accordance with the rules adopted on July 8, 1957, prescribing the hours of the daily sessions.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Musselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Adams	Carlton	Hair	Pearce
Barber	Carraway	Hodges	Pope
Beall	Clarke	Houghton	Rawls
Belser	Connor	Johns	Rodgers
Bishop	Davis	Johnson	Rood
Boyd	Dickinson	Kelly	Shands
Brackin	Eaton	Kickliter	Stenstrom
Branch	Edwards	Knight	Stratton
Bronson	Gautier	Morgan	
Cabot	Getzen	Neblett	

—38.

CHIEF JUSTICE TERRELL: Quorum present. Have all Senators present had the Oath administered in this trial?

SECRETARY DAVIS: Yes sir.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Tuesday, July 9, 1957, was dispensed with.

The Senate daily Journal of Tuesday, July 9, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: The Sergeant at Arms will make the Proclamation.

THE SERGEANT AT ARMS: Hear ye! hear ye! hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

SENATOR SHANDS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: Yesterday when we adjourned, we were in closed session, and I would like to make a motion, before we go back into closed session, and maybe avoid the closed session.

In discussing - - - I mean in the comments from many Senators - - - and I certainly join in that same position, and am in the same position as many others, that we have heard much discussion on the Bill of Particulars, and you might say, the rehashing of evidence, or purported evidence, but we have heard very little discussion, in my judgment, on the law affecting this particular procedure, and I, for one, and I know many others join with me, agree in that particular, that we should have a discussion of the law, and counsel on both sides are familiar with the motion that I'm going to make and they certainly offered no objection.

I move that we do not return to the closed session at this time and deliberate any further on the motions that are before this body, but that we return in open session and ask counsel on each side, give them at least thirty minutes, for the discussion of the law and the Particulars, without referring to the evidence, and we would like particularly to hear from the - - - I have no particular instance, except I want to hear from those that are capable of giving us the advantage of their knowledge of the law, and I so move, Mr. Chief Justice, that we ask the counsel to confine themselves to the law and the particulars affecting this case, without going into anything else whatever.

CHIEF JUSTICE TERRELL: Do we have a second to the motion?

The motion was seconded by several Senators.

CHIEF JUSTICE TERRELL: Gentlemen of the Court, you've heard the motion. All in favor let it be known by saying "Aye". Opposed, the contrary sign.

The "Ayes" have it, and the motion is carried.

MR. MUSSELMAN: Mr. Chief Justice, on behalf of the Committee Managers of the House, I would like to request permission that our counsel be authorized to speak for us in this regard.

CHIEF JUSTICE TERRELL: Without objection, that will be the order.

MR. BEASLEY: Mr. Chief Justice, as I understand it, since the Respondent is moving - - - the mover on the Articles, they would have the opening statement.

CHIEF JUSTICE TERRELL: The Court will hear you, Mr. Hunt.

MR. HUNT: Mr. Chief Justice, and Members of the Senate:

We are delighted to be availed of this opportunity to discuss the basic legal principles which we feel should guide the consideration of the Court in this matter, and shall, in deference to the wishes of the Court, confine ourselves entirely to the point.

History records that every valid impeachment proceeding has involved actual violation of statute law or wilful acts apart from the statute, which directly related to the judicial function, and which, in their very nature, were dishonest, oppressive, immoral, inherently wrongful, or from evil or corrupt motive or design. History fails to record that any public officer has ever been put upon trial for an alleged violation of a non-legislative code or rule relating to exemplary official conduct which did not at the same time involve an intentional violation of positive law or an official act which, in its own essence, separate and apart from any private association rules, was wilfully dishonest, oppressive or immoral, or from evil or corrupt motive or design.

Every offense of impeachable nature committed by a judge unquestionably will be found to be in violation of one or more of the codes or statements of exemplary judicial conduct known as the Code of Judicial Ethics, but we strenuously protest the premise that for one to neglect or violate a statement of idealistic standards on a particular point of recommended behavior is automatically to commit an impeachable offense, notwithstanding that neither law violation nor wilful immorality, dishonesty, corruption, oppression or evil motive is even so much as charged or mentioned in the Article as an element of the accusation.

This is a government of law, and law and law only, not codes or rules lacking sanction of law, must be the criterion governing a penal proceeding of any type.

We respectfully assert that it was never intended by the writers of the Constitution, or the drafters of the Code of

Ethics themselves, that an approved statement of standards, or a rule of guide, outlining idealistic and exemplary official behavior should have the dignity or force of law, or in any wise supplement, modify or repeal law or be enforceable in any court of law as a substitute for law. We respectfully contend that the Article fails to charge an impeachable offense or a "misdemeanor in office" within contemplation of the Constitution.

First we assert that whereas the Honorable Managers have contended that the form of procedure before this august body is neither Civil nor Criminal, we contend that by a precedent, an established decision, that the form of proceeding here is in its nature criminal, and that the impeachments of history have been handled in accordance with known and recognized criminal procedure in the courts of law.

In the first place - - - and I understand Jefferson's Manual of Parliamentary Practice to be the official guide of this august body, under "Impeachments", on Page 117, Jefferson's Manual of Parliamentary Procedure. I quote:

"This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail."

From 43 American Jurisprudence, Page Twenty-nine:

"Impeachment proceedings are generally begun by Articles of Impeachment adopted upon inquiry by the House of Representatives, which Articles are filed with and duly accepted by the Senate. The proceeding is judicial, and the Senate sitting as a Court of Impeachment indicates its judgment by order, as any other court.

"The proceeding is likened to a proceeding by indictment in a court of criminal jurisdiction. It is in its nature highly penal, and governed by rules of law applicable to criminal prosecutions. The courts have no power to permit amendment of Articles of Impeachment, nor may amendments be made by Managers appointed by the Legislature to prosecute the impeachment."

Thirdly, from an Alabama case, State ex rel. Attorney General versus Hasty, I quote - - - pardon me, 63 Southern 559:

"While this extraordinary remedy by impeachment does not prevent an indictment and conviction thereunder, and does not extend beyond a removal from office and a disqualification to hold office under the state, during the term for which the officer was elected or appointed, it is, in its nature, highly penal and is governed by rules of law applicable to criminal prosecutions."

From Volume Eight of the Mississippi Law Journal, Page 294:

"The proceedings in impeachment are criminal proceedings and are governed by the rules applicable to criminal trials.

"The proceedings, being criminal in their nature, demand proof that excludes every reasonable doubt except that of guilt before a conviction can be had, and after conviction or acquittal of the person he cannot be tried again for the same offense; but he may, by express Constitutional provision, be tried and punished for the crime committed before the regular courts of law. Were it not for this reservation of the power to try before the courts, after conviction or acquittal of the crime in the impeachment proceedings, the provision against being tried twice for the same offense would apply in full force."

I shall omit reference to the Governor Harrison Reed citation, which I gave to the Senate on yesterday, except the last two, brief paragraphs:

"And so it clearly appears that the Assembly deemed that an impeachment was not effective until an accusation should be actually declared before the Senate, which body alone is authority to entertain it.

"The process of impeachment is likened in the books to the proceedings by indictment in the courts of criminal jurisdiction, and it is unnecessary to say that no indictment is of any effect whatever until it is presented to the court in actual, open, and legal session, and received and filed therein."

Indeed, gentlemen of the Senate, Article Three, Section Twenty-nine, which forms the bedrock of the proceeding be-

fore you, makes direct reference to the Respondent being either convicted or acquitted; that does not come from the Civil law.

From Volume Nine on Hughes Federal Practice, we excerpt the following with reference to impeachment trials:

"Section 7274. Scope of prosecution.

The Managers, in the course of the prosecution, must confine themselves to the charges contained in the Articles of Impeachment."

"Section 7285. Rules of Evidence.

"As the Rules of evidence in courts of law are the outgrowth of ages of experience as best adapted to elucidate the truth, they are adopted generally in impeachment trials"; and lastly:

"Section 7286. Reasonable Doubt.

"A reasonable doubt of the respondent's guilt should result in his acquittal."

So, the premise of my remarks of this morning is that we approach the matter at bar under criminal rules of procedure. Now, nothing can be found from known or recognized authority, so far as I know, which gainsays or conflicts with the expressions I have given you from our own Supreme Court, from Jefferson's Manual, from American Jurisprudence, and the other authorities to which I have alluded.

Now, we have had a sufficient amount of discussion, I suppose, about the single Article of Impeachment, and the fact that it is a single Article of Impeachment, with six alleged specifications. I shall not read that again.

However, it will be noted that not a single one of the specifications possesses any of the legal characteristics or elements of a true specification in a criminal case, in that not a name of a single attorney or appointee is given, not an amount of fee or a description of favor is stated, not a single date is designated, no alleged fee, gift, favor or appointee of any kind is specified, and the final provision, which alleges that certain provisions of the Code of Ethics have been violated, are in no wise made certain or definite, but immediately abandon upon mere utterance of the unsupported, vague and uninforming declaration of the pleader of "certain provisions"; he leaves us high and dry, and there are some thirty-odd recommended rules of exemplary judicial conduct in that Code of Ethics.

Preparation of a defense to such scattershot generalities and platitudes by a respondent who has served as judge for sixteen consecutive years in the state's most heavily-populated Circuit, having some three thousand lawyers, would be an utter impossibility.

The respondent's constitutional right to be informed; under the Sixth Amendment to the Federal Constitution, it is provided:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation";

Under the Florida Constitution, Section Eleven of the Declaration of Rights:

"In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the County where the crime was committed, and shall be heard by himself, or counsel, or both, to demand the nature and cause of the accusation against him." Those things are completely lacking in the lone Article of Impeachment before the Bar of this Senate.

Now, the insufficiency of the Article is tested in two ways; one by legal precedent upon the point, and the other, as I was able briefly to mention on yesterday, by reference to the history of legislative impeachment processes.

The Florida Supreme Court, in commenting upon the efforts of the State to draft a common law - - - an indictment for common law misdemeanor, in Sullivan versus Leatherman, 48 Southern 2d 836, had this to say:

"Respondent says that common law indictment may be

predicated on anything comprehended in this invoice of duties and that count one is sufficient to do so.

"In thus contending respondent does not take into account the fact that our State Constitution, Section Ten, Declaration of Rights and Section Twenty-eight, Article Five, Florida Statutes, and the Federal Constitution, Fifth Amendment, require that anyone tried for a capital crime or other felony must be first charged by presentment or indictment of a Grand Jury. . . . So it follows that if the State relies on an indictment charging official misconduct or failure of official conduct in any respect, whether common law or statutory, the offense must be charged in direct and specific terms and that it was wilfully or corruptly done or omitted."

In other words, if, as in the Ritter case, a statute, a law on the books, had been violated by the respondent, the charge against the respondent would follow the wording of the statute. If you undertake to charge a respondent with a violation of some common law malfeasance, misfeasance, or non-feasance in office, then, must be charged in direct and specific terms, and that it was wilfully or corruptly done or omitted. You will not find either of those words anywhere in this so-called Article of Impeachment.

"Count One," in fact, meets none of the simple academic requirements of precise pleading, neither do they charge that petitioner wilfully or corruptly failed to perform any duty imposed on him by law or that he acted corruptly in the performance of any duty imposed on him"; that's not in here anywhere.

"So it necessarily follows" - - - this is still in the Florida Supreme Court - - - "that when one is relying on a common law indictment, and that is the most that is relied on here, it must meet Constitutional and statutory requirements. The charge must be made in such positive and direct terms as will put the defendant on notice of what he is charged with and enable him to prepare his defense. . . ."

"Summarized Count One charges . . . petitioner was guilty of neglect of duty in office in that he knowingly permitted the gambling laws of the State of Florida to be violated in Dade County" - - - that word "knowingly" is not even before you - - - "in an open and notorious manner, on a wide scale, yet he refused or neglected to take any effective steps to prevent said violations," but the State contends "that it is sufficient as a common law indictment for misdemeanor. This notwithstanding that it measures up to none of the dimensions for a good indictment prescribed in the preceding paragraphs. . . . To recognize such an indictment would amount to an abandonment of every safeguard that the Constitution and the statute has placed about fair and impartial trial and permit one charged with crime to be tried on charges" - - - gentlemen, please get this - - - "on nothing more than idle rumor, flying saucers and current gossip"; that's what you have in Count One, the only count before you, "idle rumor, flying saucers and current gossip. Our Constitution does not permit criminal justice to be so administered.

"So it necessarily follows that when the Founding Fathers made indictments essential to prosecution, they had no scattergun pattern in mind, they shot with a rifle directed to the bull's eye." These are the statements of one of the most beloved, efficient, venerable and distinguished jurists ever to sit on the bench of the Supreme Court of Florida, your Presiding Officer.

"A good indictment must still approach that pattern. It cannot be grounded on street rumor, common gossip or what 'they say'."

Following are some miscellaneous citations of Florida cases:

"Certainty and particularity" - - - this is a Circuit Court of Appeals case, Williams versus United States, 179 Federal 2d 656, affirmed by the United States Supreme Court, 71 Supreme Court 576:

"In any indictment it is required that the accused be definitely informed as to the charges against him so that he may be able to present his defense and so as not to be taken by surprise by evidence offered at the trial and also that the indictment be sufficiently definite and that he shall not be again subjected to another prosecution for the same offense. . . ."

"Test of sufficiency of indictment is whether it is so vague, inconsistent, and indefinite as to mislead accused and em-

barrass him in preparing defense or expose him to substantial danger of new prosecution."

Now, "Even the lay examiner will instantly perceive that the synthetic accusation at Bar not only fails in paucity of language employed and erratic draftsmanship to inform the defendant of the charge . . . but that over and above these considerations, the alleged article charges no wilful or intentional misconduct or misdemeanor in office, nor a single corrupt, dishonest, wrongful or immoral act in office."

In that regard, I will ask the Court to take judicial cognizance of what the public knows, and that is that two different Grand Juries, severely prodded to action, refused to bring in indictments against this respondent even for common law misfeasance, malfeasance or non-feasance in office, and then it was that the delegation from Dade County was importuned by the hot breath of a publication in our County to do what has been done. They are asking you to do, to take a more severe action against this man than Grand Juries of his own Circuit have twice refused to do.

"The members of the Court, whether of professional or lay classification, will be shocked at the realization that not one or more of the words hereinafter set forth and which are found in every valid accusation, information, indictment or impeachment article anywhere in the country" - - - and again I remind you that I have at the bar photostatic copies from the Senate Journal, of a great many of these articles - - - these words are absent from that paper:

"Wilful; wilfully; intentional; intentionally; deliberate; deliberately; with design; designedly; unlawful; unlawfully; illegal; illegally; oppressive; oppressively; wrong; wrongfully; dishonest; dishonestly; immoral; immorally; fraud; fraudulent; fraudulently; evil; evilly; wicked; wickedly," and if I could have thought of anything more, any other charging words that any of you lawyers would instantly look for in any kind of an accusation, I could easily have placed them here, because they're wholly absent.

"Hence, from either or all constitutional approaches, the article utterly fails to measure up to any indictment or accusation charging the most insignificant and minor offense to be found in the statute law of Florida.

"Being so completely barren of legal precedent, it becomes evident that the House acted upon mistaken and ill-conceived concepts as to the proper construction and legal status of the Code of Judicial Ethics" - - - it's my opinion they're still trying to disbar Judge Holt through a new procedure - - - "which was so repeatedly resorted to on the floor. In result, the membership of the House, or a sufficient number thereof, were persuaded to believe that the said Code of Ethics could be resorted to, used and implanted in impeachment proceedings as a substitute for law and enforced in a court of justice as the law of the land."

I have commented upon the insufficiency of the Article at sufficient length. I see my time is nearly up.

I would like to state that the word has gone around that this single Article was copied from some portion of the Ritter impeachment proceeding.

Now, we have a memorandum brief, which we filed yesterday, and we brought copies for each member of the Court, and as an appendix in that brief, we have set forth, to lay bare the truth of the Ritter situation, the entire impeachment articles; there were seven. They are all attached to the brief as an appendix.

Judge Ritter was charged not only with granting excessive fees, but in winding up the recipient of thousands of dollars of those excessive fees from a former law partner; and they went into a tin box, instead of his bank account; and he took gratuities, in the sum of seventy-five hundred dollars, from a wealthy friend, and that went into his tin box; and he violated two sections of Federal Law by practicing law on the bench, and to show the item of moral turpitude, which was involved directly in that case, you will find that Counts Five and Six charge deliberate income tax fraud in the years 1929 and 1930.

Now, that involved lying over his own signature on his income tax returns, and it involved some twelve thousand or fourteen thousand dollars that had gone into the tin box kitty, which he didn't care to report to the Federal Government. Now, you tell me that this thing that we have before

the bar here has prideful genesis in the Ritter impeachment, why, it's just as far from the articles of impeachment in the Ritter case as the filthy "Tobacco Road" is from the Holy Testament; no comparison whatsoever.

The Ritter case involved four Counts of law violation, including two income tax frauds which, in turn, of course, implied perjury on his part.

We have those items set forth in the brief. We would like for the members of this Senate to be fully aware of what the constitutional implications and issues are on this matter before you vote on the motions, because once we decide it, it cannot be recalled; and as I stated at the outset, probably the most important thing here is to square away the legal situation under the laws of the country.

Now, in closing on yesterday, I read to the Senate a portion of the Committee Report, signed by the Honorable William H. Taft, final Report and proposed Canon of Judicial Ethics, found in 9 American Bar Association Journal, 1923, and there they said:

"The Code, however, is not intended to have the force of law; it is the statement of standards, announced as a guide and reminder to the judiciary and for the enlightenment of others, concerning what the Bar expects," and I read to you the recent 1956 case from the Supreme Court of Colorado where, in an unanimous opinion, the Supreme Court of Colorado, having added its approval, as did the Supreme Court of Florida, to the American Bar Association Canons of Judicial Ethics, the Court determined that it had absolutely no force of law, was never intended to even have the force of a rule of Court; it was a guide, and a guide only, and gentlemen, it's a guide that even now is currently undergoing revision in the American Bar Association itself.

To indicate the impermanency of the situation, the January, 1957 issue of the American Bar Association Journal, Page 38, carries a thesis by the Honorable Philbrick McCoy, Chairman of a special committee on Canons of Ethics entitled "The Canons of Ethics; A Re-Appraisal by the Organized Bar." According to this article, the entire subject of the Canons of Ethics currently is being re-appraised, researched and revised for later report to the Association.

"This development, in itself, proves the impermanency and possible discontinuance or modification of the present rules, or some of them, and establishes much more firmly and unequivocally than we are able to argue, that the annual change of officers, committee chairmen, and governing factions within the Association may well produce, from time to time, different and varying dogmas of what the Association approves or disapproves in a judge; and hence the 'should not's' of today may well become the 'shoulds' of tomorrow; and an act condemned by the rules as of this day may have sanction of the rules next year.

"There is, of course, no provision of Constitution or statutory law in Florida which gives the effect of law or color of law to any private statement, code, or standard of judicial conduct, however dignified and respected its authorship, or however esteemed its advocacy.

"It may not be idle ceremony to conclude this section by drawing attention to the fact that the 'misdemeanor in office' provision of the Florida Constitution was adopted in 1868, being some fifty-five years before the rules of the American Bar Association were ever published. For this additional reason, 'misconduct in office' in 1957 is bound to be measured and gauged by the same legal principles, moral formulas, and political concepts that governed the 1868 writings of our forefathers, completely unaffected and uninfluenced by the rules or regulations of the American Bar, the County Bar, the City Bar," the Kiwanis Club, the Elks Club, or anybody else. As long as we operate and live under a government of laws predicated and bedrocked upon the Constitution, we cannot and should not stray away from them.

Thank you, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Hunt, before you take your seat, this question has been sent up:

"Will you please comment upon the last article of the Ritter Articles of Impeachment, upon which Judge Ritter was found guilty, so it was felt?"

MR. HUNT: May I have time to do that, please sir, Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Yes, Mr. Hunt; and then we have another question, when you get through with that.

MR. HUNT: Since it was stated on the floor of the House that the Article at Bar is a verbatim reproduction of the seventh article in the Ritter case, we have taken pains to copy that seventh article, as finally amended, in toto, on Page Thirty-four in the Brief.

The seventh article began with the same conclusions of the pleader, or relatively the same, that you find beginning the single article before you, the broad general statement having to do with reflections upon his office. Then it says: "In that" - - - Sections One and Two of the original Article Seven - - - and by the way, your speaker was a part of Section Two, and testified at length, but they were withdrawn at the time of trial. So, Article Seven did not go to trial with Sections One and Two in it.

Now, Section Three of Article Seven, I want you to listen to these names and dates and amounts, if you will, please, and if you can show me any names or dates or amounts in the pleadings which we have under attack, then you rule against me:

"3. In that the said Halsted L. Ritter, while such Federal Judge, accepted, in addition to forty-five hundred dollars from his former law partner as alleged in Article One hereof, other large fees or gratuities, to wit, seventy-five hundred dollars from J. R. Francis, on or about April 19, 1929, J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a Judge; and on, to wit, the fourth day of April, 1929, the said Judge Ritter accepted the sum of two thousand dollars from Brodek, Raphael and Eisner, representing Mulford Realty Corporation, as its attorneys, through Charles A. Brodek, senior member of said firm and a Director of said corporation, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court of which Judge Ritter was a Judge from, to wit, February 15, 1929."

Please remember all those names and amounts and dates. Here is one of the most significant things, Mr. Chief Justice, the concluding, very short paragraph in the Ritter Seventh Article is this:

"4. By his conduct as detailed in Articles One, Two, Three and Four hereof, and by his income tax evasions as set forth in Articles Five and Six hereof.

"Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office."

He was found guilty on one vote. In my opinion, he was truly guilty, bless his bones, because these income tax frauds for two consecutive years, 1929 and 1930, amounted, to the dollar, to the amount of money which he had received unlawfully and put in a little tin box, according to the testimony, and that Section Four, if you please, recaptured the specific law violations, including the two income tax frauds, for which he could have been sent to the penitentiary, and the two distinct violations of practicing law while a Federal Judge of the United States, and they were all charged and recaptured there.

This thing before you has to have something before it to recapture anything. It recaptures precisely nothing; there's nothing before it.

CHIEF JUSTICE TERRELL: Is that it?

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: The second question:

"Should the Bill of Particulars be received and filed by this Court as part of a record?"

There's a third question also, Mr. Hunt.

MR. HUNT: In answer to that, we gave, as the position of the respondent on yesterday, the fact that no Bill of Particulars, regardless of what it has in it, has a right to be tendered here by the House Managers. If it is received, under the law

the Bill of Particulars is not a pleading, does not become a part of the record. The purpose of a Bill of Particulars, as has been pointed out, is only to inform the defendant, when he moves for it, and ordinarily, when he has to fight like the dickens for it, but there has been no motion here for a Bill of Particulars; there's been no order of Court, directing the filing of a Bill of Particulars; the respondent doesn't want it. In no history that you can find has it been permitted to be filed by the State over the objection of a defendant; a completely anomalous situation, and one which makes history in my short period at the Bar. The Bill of Particulars is a complete illegal document tendered before this Senate in that connection.

Since counsel adverted yesterday to a state case, I would like to briefly read from State of Nebraska versus William Leese, by the Nebraska Supreme Court, found in L.R.A. Annotated, Twentieth Volume, on Page 579. It has to do with the power of impeachment similar to ours and the power of Managers:

"By the foregoing provision, the exclusive power of impeachment is conferred upon the legislature. Both houses of that body are required to meet in joint convention to act upon resolution to impeach a state officer for misdemeanor in office" - - - same thing we have - - - "and such resolution can only be adopted and carried to an affirmative vote with at least a majority of all members elected to the legislature." We'll get down to these Managers in just a moment.

"The authority thus given carries with it the power of the Senate and the House of Representatives, under like restriction, to adopt suitable Articles of Impeachment and specifications in support of their impeachment; and likewise, the authority to adopt and present additional or amended Articles or specifications, whenever it is deemed proper or expedient to do so, but such power can no more be delegated to a committee or Managers of Impeachment than the legislature can confer authority upon a committee of the members of that body to enact a law, or to change, alter or amend one which has been duly passed, and in neither case does the right exist.

"Impeachment is in the nature of an indictment by a Grand Jury. The general power which Courts have to permit the amendment of pleadings does not extend to either indictments or Articles of Impeachment. The uniform holding of the Court, except where a different rule is fixed by statute" - - - and we have no different rule - - - "is that when an indictment has been filed with the Court, no amendment, in the matter of substance, can be made by the Court or by the prosecuting attorney against the consent of the accused, without the concurrence of the Grand Jury which returned the indictment.

"We have no hesitancy in holding that the Managers have no power or authority to change in any material manner the specifications contained in the Articles of Impeachment exhibited against this respondent."

Now, if we're going by law, which we plead with you to go by, and which we know you will, here is a guidepost of the precise situation before the Senate, as far as the official authority of these gentlemen to change or alter in any respect the alleged specifications (a) through (f) in that Article of Impeachment.

"If they could do that" - - - reading further - - - "it necessarily follows that they could exhibit new Articles of Impeachment or specifications, preferring charges against the respondent not included in the original accusation made against him."

Man alive, it took them eighteen pages to get through declaring themselves against Judge Holt, and it only took their fellows in the constitutional House of Representatives one page to declare against the respondent in this case.

"It follows that they could exhibit new Articles of Impeachment or specifications, preferring charges against the respondent not included in the original accusation against him, and which the sole impeaching body, the convention of the Legislature, might have rejected, had they been submitted to it for consideration."

They did reject a bunch of that trash, and you won't find it in the Committee Report, and if you'll go into the Committee session, in the outline, which is agreed to with counsel, you won't find all that fee stuff; they discarded it. These gentlemen, sure, they're willing to be bound by it, just as I'm willing to be bound by Webster's Unabridged Dictionary - - -

SENATOR DAVIS: Mr. Chief Justice, I'd like to raise a point of order.

The Judge has consumed his time on his regular argument. I think that he should be allowed additional time to answer any question propounded by Members of this body, but I don't think, under the Rule, he should be allowed to go into any other additional, collateral matter.

CHIEF JUSTICE TERRELL: It is a fact that Judge Hunt used the time allotted him in his direct argument, but these three questions were sent up, and the argument since that has been directed to the answer of these questions, and I take it, if you want to make a motion to extend an additional time for that purpose, I think it's in order.

SENATOR DAVIS: The point I make, Mr. Chief Justice, is this - - - and I have no objection, am making no point as to his answers to the questions, direct answers to the questions. However, I don't think he should be allowed to go into any other collateral matters other than to answer the questions asked by Members of this body.

MR. HUNT: Mr. Chief Justice, I may have been in error, but I thought the question to involve the status of the Bill of Particulars brought in to the Bar of the Senate; I thought that was the question.

If I may be permitted one minute to complete the reading of this case, why, I will have answered that question, if the Court please.

CHIEF JUSTICE TERRELL: All right.

MR. HUNT: "To hold that the Managers of Impeachment have the right to do that would be to disregard both the letter and spirit of the Constitution.

"In reaching the conclusion stated above, we have carefully considered and given due weight to the last paragraph of the Article of Impeachment" - - - and I'd like for the Members to observe this particularly - - - "which reserves to the House of Representatives of the State of Nebraska in joint convention assembled the liberty of exhibiting at any time hereafter any further Articles or other accusations or impeachment against the said William Leese, late Attorney General of the State of Nebraska."

"All that can be reasonably claimed - - - and I call your attention to this fact, and I know that many, many Members of this Court have studied some of the impeachments of history - - - you will find that in every case the impeaching body specifically reserved to itself the right to exhibit amended Articles or additional Articles of Impeachment, or to file further pleadings, as that body should be advised.

That was not done in this case. The due form of law, which anyone could have found in any one of these impeachment proceedings, whereby the House would have reserved and preserved to itself the right to exhibit additional Articles was not done. However, the Court, after quoting that provision, said this:

"All that can be reasonably claimed for this provision is that the joint convention of the two houses of the Legislature reserve the right to adopt other additional Articles of Impeachment, but the Legislature has not preferred other or further accusations against him, nor does" - - -

CHIEF JUSTICE TERRELL: Mr. Hunt - - -

MR. HUNT: Yes.

CHIEF JUSTICE TERRELL: - - - the question is whether or not the Article - - - the Bill of Particulars should be received and filed; in other words, whether it should be filed in this Court.

I don't see that you - - -

MR. HUNT: Well, we'll conclude, Mr. Chief Justice, by making this statement: It is such a hybrid instrument in its current state that, in the first place, it should not be received by the Senate for any purpose; and in the second place, if the Senate does receive it, it certainly does not become a part of the pleadings in the case, to the extent that it has - - - the respondent has to answer what the Managers of the House say. We will still only be required to answer the generalities and platitudes of that one-page Article of Impeachment.

So, I say that the authority is lacking in the first place.

It's a null and void act, so far as the law books indicate.

CHIEF JUSTICE TERRELL: Now, the third question:

"Does the Supreme Court's definition of misdemeanor in office, set forth in 93 Southern 601, apply in an impeachment proceeding?"

MR. HUNT: Let me find that - - - just a moment.

I say it does apply, in answer to that question, and we are willing to accept it at face value, and if I may be permitted to do so, I would like to read it, only a small portion of which was read yesterday.

CHIEF JUSTICE TERRELL: All right.

MR. HUNT: Now, the Supreme Court of Florida recently, in the action which we had to bring to restrain an improper invasion upon Judge Holt by the Florida Bar. Its judgment could not have been effective. If it could have been, we would have gladly welcomed our trial there, but it had no jurisdiction, and we had to go to Court. That produced this statement by the Court, in holding that only the Legislature could - - - that impeachment was exclusive, and only the Legislature could move against a constitutional officer who was subject to impeachment, the Court said this:

"As applied to impeachment, 'misdemeanor in office' may include any act involving moral turpitude" - - - please remember that, if Your Honors please - - - "which is contrary to justice, honesty, principles, or good morals, and is performed by virtue of authority of office.

"'Misdemeanor in office' is synonymous with misconduct in office" - - - notice this "in office," it's threaded all the way through - - - "and is broad enough to embrace any wilful malfeasance, misfeasance, or non-feasance in office" for which two prompted Grand Juries have refused to return an indictment. "It may not necessarily imply corruption or criminal intent," citing a number of cases. "In Words and Phrases, citing Yoe versus Hoffman" - - - this is still in the opinion - - - "it was said that the phrase 'misdemeanor in office,' when referring to impeachment should be applied in the parliamentary sense and when so applied it means misconduct in office. Something which amounts to a breach of the conditions tacitly annexed to the office, and includes any wrongful official act or omission to perform any official duty."

We are willing to stand squarely upon that pronouncement. Thank you.

CHIEF JUSTICE TERRELL: That's all the questions.

SENATOR DAVIS: Mr. Chief Justice, I've been requested to make a motion that we recess for five minutes.

SENATOR RAWLS: Second the motion.

CHIEF JUSTICE TERRELL: You've heard the motion, gentlemen. If there's no objection, that will be the order. The Senate will be at ease.

Whereupon, a short recess was taken.

The Chief Justice declared a quorum of the Senate present.

CHIEF JUSTICE TERRELL: All right.

MR. JOHNSON: Mr. Chief Justice, Honorable Members of the Senate, sitting as a Court for the trying of the impeachment of the Honorable George E. Holt:

This is the first opportunity that I have had during the proceedings to address you on this matter, and I appreciate the opportunity to bring you some of my thoughts and the results of some of my research, and to comment upon the Article of Impeachment and the Bill of Particulars.

I might say, at the inception of this, that coming from a community on the West Coast of Florida, prior to being asked to assist in this matter, I had not read these newspaper articles in detail. I had not been subjected to the rumors of which counsel has spoken, and I came into this matter with a mind unfettered by any misconceptions or any innuendos derived from other sources; and my only purpose here this morning is to give you my comments and my thoughts, based, not upon things outside the record, but based upon matters which are in the record and before you, as the highest court of the State of Florida for disposal in your discretion.

I feel this also, that these proceedings upon which we have

embarked, are rich in historical significance, and the matters and things that you do here today and subsequently in connection with this cause, will lay a precedent to be followed for years and perhaps generations to come; so, I know it's a matter upon which you enter with a great deal of seriousness and conscientiousness.

Actually, the matters before us at the present time, the question of whether or not to suppress these Articles, whether or not to admit these Bill of Particulars, and whether or not to send this back to the Legislature are the most important portions of this entire proceeding, because what you will do here will determine forever the outcome of this case.

I won't read the Articles of Impeachment, nor the Bill of Particulars; you've all read them, or had them read to you; you have them before you in the Journal of the Senate, but boiled down to its essence, the defense here has raised three primary objections. The first is to dismiss and strike the Articles of Impeachment which, of course, if they are successful in that, will result in a termination of these proceedings forever;

Second, they have moved to dismiss the Bill of Particulars which, if they are successful in that, will have no real significance other than to deprive them of a guidepost by which we intend to proceed;

And thirdly, they have asked, in an ore tenus motion, or whatever that may be, by Mr. Pierce, to send this back to the Legislature for further proceedings.

Now, gentlemen, I have had little or no experience in the Legislature. This is the first time I have appeared before the Senate, but I am told by my friends at the Bar that when a Legislature desires to kill a bill in such a fashion as not to discuss it fully on the floor after it has come out of Committee, they send it back to Committee. So, in effect, Mr. Pierce's ore tenus motion in sending back to the Committee of the Legislature a bill which has already been favorably reported on by the Legislature, sitting as a Committee, so to speak, of this Court, and that, of course, would have the effect they desire, which is quashing and disposing of this case for all time.

Listening to the argument of Mr. Pierce, he said that the defense attorneys are here to defend, and the prosecutors are here to prosecute, and if they want to give us something, there's something awfully sinister about what we want to do, implying that we have some ulterior motive in presenting this Bill of Particulars to this Assembly.

Well, gentlemen, I'll just state this about the Bill of Particulars, that in this case, which is not a criminal matter, but in any criminal matter and any civil matter, I have yet to see a pleading which has withstood the attack of demurrers and motions to dismiss. I have yet to see a pleading under which you could not give a better Bill of Particulars or a more definite statement.

Many of you are attorneys, practicing at the Bar of this State, and you know that you can have a pleading which is complete on its face in a Civil action, and you can go into Court and ask for a more specific and definite statement. You can have an indictment, or an information, which is complete within the purview of the statutes in the Constitution, but yet you can go into Court and ask for a Bill of Particulars.

I feel that in this case, time is of the essence. I feel that we're all here away from home, our families, our businesses, our professions, and time is of the essence; and what we have done in this particular here is to furnish, without request, a matter which we know, under the law and Constitution, under all the rules of fair play, they are entitled to. It's merely a time-saving device, and if they don't want the Bill of Particulars, we certainly won't insist upon it, because we insist that these Bill of Particulars are not an amendment to the Articles of Impeachment, and that the Articles of Impeachment will and shall stand alone, upon their own feet, as sufficient basis to proceed in the trial.

Mr. Pierce and I practiced together on many occasions, on opposite sides of the fence in Hillsborough County, and he knows that I, on many occasions, in which I see that the defense counsel is entitled by law to perhaps view the evidence or the Bill of Particulars, I don't require him to go before the Court and take up my time and his time in arguing for the Bill of Particulars; I say, "Bill, here it is. You're entitled to it. You're going to get it anyway." and that's exactly what

we've done here. We have filed, or the House has filed Articles of Impeachment which stand alone on their own bottoms, and we, in turn, the Managers of the House, have filed a Bill of Particulars to which they felt the defense was entitled, and I say again, if they don't desire a Bill of Particulars, we're certainly not going to force upon them a Bill of Particulars which restricts only us; not them, but restricts only us in the presentation of our case.

Let me comment briefly about the Articles of Impeachment. As you all know, these Articles were drafted during the regular session of the Legislature, a somewhat hectic session, I am told. They were the results - - - as you will see from the Senate Journal and the Report of the Committee - - - the results of some two weeks of study, over forty-one hours of actually sitting in Committee, hearing witness after witness and discussing this matter, by a Committee of the House of Representatives of the Legislature; and perhaps it is safe to assume that if they had not been in this hectic session, but had had more time, perhaps, to have studied them carefully, they would have, perhaps phrased these Articles of Impeachment somewhat differently, but I have, since I have come into this case, I have studied them carefully, I have read the precedents of other Courts, of other Senates, sitting as Courts, and I don't know whether, if I had been drawing these Articles of Impeachment myself, I would have changed, in substance - - - I might have used somewhat different words, every lawyer uses different words in describing what he's trying to get across, but I think, in substance, I perhaps would have followed the method of drafting these Articles that was done during this hectic session of the Legislature.

Now, Mr. Hunt has come out before this body, and has cited a great deal of law, but much of the law that he has cited is not applicable to the situation at Bar before this Senate, sitting as a Court of Last Resort to hear this matter. He has cited the cases - - - I jotted them down - - - he cited the Ritter case, and stated that someone had indicated that the Articles of Impeachment were the same as the Ritter case.

Well, gentlemen, I have yet to hear either of the Managers, or Mr. Hopkins - - - and certainly not myself - - - at any time say that these Articles of Impeachment were the same as the Ritter case, and therefore, since they're the same as the Ritter case, you should adopt them and follow them.

As a matter of fact, I will take Judge Hunt at his word, and will agree with him they are different from the Ritter case in many respects, but I submit the Ritter case is just one proceeding of impeachment. There are countless other proceedings of impeachment, and as you lawyers in this body know, on any point of law, if you dig into the records, you can find law on one side, and you can turn around and find law on the other side, and the important thing to remember in this case, if your Honors please, is that you are making law. The judgment and the opinion that you render here will be the law of the State of Florida, and perhaps will be persuasive in forming and qualifying the laws of other states, because from this verdict that you render there is no appeal, even to the Supreme Court of the United States of America; an appeal cannot be taken from the results of your labor here.

So, I say to you that although there are cases that you can use as persuasive, you are the final determining body of what is the law of impeachment in the State of Florida, because this is a historic occasion, in which you, for the first time in the history of this great state of Florida, are called upon to say what is the law of the State of Florida regarding impeachment; what are the rules under which Circuit Judges are required to act; are Circuit Judges immune from prosecution; are Circuit Judges immune from being called to account for actions that they have performed while in office; and that is up to you, gentlemen, to decide, and no one else, and it's a duty that I don't envy you; it's a duty that is not simple or easy; it's not fraught with many difficulties, but it's a duty which is upon your shoulders, and I am satisfied that you will do what your consciences will dictate in the matter.

Judge Hunt also referred to another case - - - I think it was the Leese case, a Nebraska case. In Nebraska, they have an entirely different proceeding. The Attorney General files charges and presents it before the Supreme Court of Nebraska, as I understand. It's not the same situation as we have here.

And then he cited another case, which - - - I have not read the Nebraska case, but I did read the headnotes, but in the Colorado case, he said, in effect, that the Colorado Court,

in re Canon Thirty-five, had said, "The Canons of Ethics do not have the force and effect of law."

What Judge Hunt neglected to tell you, though, was that the Colorado case, which he cites as authority for his position, was a proceeding before the Supreme Court of the state of Colorado to change the Canons of Ethics, insofar as it would permit the taking of photographs and television pictures of proceedings in Court trials.

So you see, gentlemen, we are not dealing here with your changing the code of ethics; we are dealing here with a proceeding in which we have alleged the violation of existing Code of Ethics; whereas, the Colorado case is authority only for the fact that that Court and that State changed the Code of Ethics so as to permit the taking of pictures; and all through his entire presentation of law, he presented matters which, on the face of them, are persuasive, in the final analysis, are not bearing, and are not stare decisis upon this Court, sitting in impeachment of Circuit Judge George E. Holt.

I'm not going to belabor the points of law. They are adequate laws to sustain the position we take in this matter. In one of the authorities on the Constitution, and on the question of impeachment, Foster on the Constitution, at Page 609, they speak of Page's impeachment in Minnesota, an impeachment trial in which the Articles of Impeachment charged only in the most general terms, only in the most vague and indefinite terms, misconduct in the office on the part of Judge Page; and the defendant's - - - or the respondent's attorneys moved to quash, and the motion was denied. However, in that case, the Managers were required to furnish a Bill of Particulars, which we have already done in this case; and this Article says that:

"The Articles need not pursue the strict form of an indictment. Great looseness is allowed in their construction, and it's customary to make those resolutions, as well as Articles with a statement of facts which they contain."

As a matter of fact, in England, no demurrer to an Article of Impeachment has ever been sustained.

In another case, in the impeachment of Cox, the article was drawn in vague, general fashion, charging misdemeanor in office, and in that case, the demurrer, or the motion to dismiss the Articles of Impeachment, was heard by the Senate and denied. However, the Managers, in that case, furnished a Bill of Particulars.

So, the Managers, in this case, gentlemen, have furnished a Bill of Particulars without taking up your time and our time in arguing the point, because we are convinced that if the defense desires a Bill of Particulars, they are entitled to it; and in that case, as well as in this case, we are trying to present the issues clearly and precisely, and proceed with this trial without any undue delay or hesitation.

Judge Hunt has spoken, frequently comparing this to a criminal trial. Well, gentlemen, this is not a criminal trial. It does not have any aspects of a criminal trial. Does he mean to say that before a Circuit Judge, the most powerful figure, one of the most powerful figures in the State of Florida, whose discretion is unlimited, does he mean to say that a Circuit Judge must be guilty of a crime before he can be removed from the office which he holds? Is that the purview, is that the intent of the framers of our Constitution, that a Circuit Judge, who sits in judgment upon people charged with a crime, must first be guilty of a crime before he can be removed?

I say to you, that is not the Constitution, that is not a reasonable, logical interpretation of our Constitution.

He mentions also the strictness within which indictments must be drawn. He cited case after case in criminal actions, which are in no wise in point with our case before you gentlemen, in which it says that indictments must be strictly drawn.

Well, I have not served at the Bar of this State for the length of time, or anywhere near the length of time that Judge Hunt has, or Mr. Pierce, or Mr. Hopkins, or many of you, but during the last four and a half years I have been privileged to serve as County Solicitor of my County, and I guess, during that four and a half years, that I have had the opportunity of handling, perhaps as many criminal cases as many lawyers handle in a lifetime, and during that limited period of time, the last four and a half years, I have filed virtually thousands upon thousands of informations, by which people

were deprived of their liberty and sentenced to prison, in which I barely alleged the words of the statute, and the law of the State of Florida is well settled that an allegation in an indictment, or an information, which charges the crime in the words of the statute, is sufficient, and will not be subject to attack.

The landmark case upon that is the case of *Humphreys versus State*, 17 Florida 381, an 1879 case, in which it says, for the first time, that "It has long been well settled that where the offense is one prescribed and defined by statute, it must be charged in the very language of the statute, or in language of equivalent import."

What is our statute? It's no statute. What does our Constitution say? The Constitution of the State of Florida says only this, that:

"The Governor, administrative officers of the Executive Department, Justices of the Supreme Court, and Judges of the Circuit Courts shall be liable to impeachment for any misdemeanor in office," and that's all the Constitution says, any misdemeanor in office, because it would be impossible to define every possible misdemeanor in office, because, as Judge Hunt pointed out, misdemeanor in office can involve any act involving moral turpitude which is contrary to justice, honesty, principles or good morals; and further, that it is something which amounts to a breach of the conditions tacitly annexed to the office, and includes any wrongful official act or omission to perform any official duty; and certainly, gentlemen, from a careful reading of the Article and the Bill of Particulars, there can be no question in your minds but what the Managers are presenting Articles as enacted by the House of Representatives, which charge acts contrary to justice, honesty and principles, and contrary to duties which are tacitly annexed to the office of Circuit Judge of the State of Florida.

In the case of the impeachment of Archbald, a case which has been referred to on a number of occasions by Judge Hunt, in Article thirteen of that impeachment, which was tried before the Senate, Article thirteen had several motions to demur, motions to strike, dismissed, filed to it. That Article charged in the most general language misconduct in office. It charged offenses vaguely, without naming times and places and details, and the Senate of the United States ruled that the Articles of Impeachment were sound, were sufficient; they sat and heard the testimony, and they voted to impeach him, based upon that general Article Number Thirteen, in the Archbald case.

Now, gentlemen, we are faced with a very unique situation, a situation unique in all the annals of the State of Florida, a situation in which all of the prerequisite steps have been taken prior to coming here. The Grand Jury of Dade County, I understand, met and recommended Articles of Impeachment. Counsel for the respondent, invoking all the technical rules and decisions he could, went to the Supreme Court of the State of Florida, and they said, "The Grand Jury is not the forum to discuss this."

The Bar Association of the State of Florida, an association who has the right to disbar from the active practice of law any lawyer at the Bar of the State of Florida, commits proceedings designed to impeach Judge Holt. The Bar Association was prevented, as Judge Hunt pointed out, from proceeding further in the impeachment or the disbarment of Judge Holt.

Judge Hunt said, "We would have been glad to have proceeded before the Bar, but that was not the proper forum."

Now, if the Court please, we are at last, finally, in the proper and only forum in which the conduct of this Judge, or any Judge, can be determined and heard. You are the only body on God's earth that can determine if this respondent is fit to sit upon the bench as a Circuit Judge of the great state of Florida and administer justice.

I say to you that the confidence of the people of the State of Florida has been greatly shaken. They have lost their confidence in the judiciary, and it's only through this body, sitting soberly, attentively, and hearing this case on the merits, can we restore once more to the people of the State of Florida confidence in the judiciary. I'm not asking for you to rule upon a technicality; I'm not asking for you not to say this is not the forum; we are asking that you hear this case upon the merits and determine if these newspaper articles are scurrilous and improper, determine if these Bill of Particu-

lars are untrue, and determine, from the sworn testimony of the witnesses in this cause, if Judge Holt should be impeached and removed from the high and powerful office of Circuit Judge of the State of Florida.

Thank you.

MR. HOPKINS: Mr. Chief Justice, Senators sitting as a Court of Impeachment:

In the very few minutes I have left, I will, of course, have to be most general in my remarks. However, in this case, I think it is one that we need to look at from a general sort of an aspect, to try to figure out what the framers of the Constitution really expected in a case of this kind.

I can't help but think of my position as State Attorney, in case I should be guilty of some act for which I should be removed. I could be removed by the Governor of the State of Florida, but the Senate would have to go along with that, or to put me back in office.

I can't help but think of what an appointment amounts to in our Constitution, as to my own office. I can be appointed by the Governor, but I have to be confirmed by the Senate.

The framers of the Constitution, in the over-all picture, did not feel that the Governor of the State of Florida should have the power to remove a member of the judiciary. They gave that power to the House of Representatives, instead of to the Governor. The House of Representatives have power to remove the judiciary, subject to confirmation, and the Senate going along with it.

In this case, as has been pointed out, there has been attempt after attempt to get this man in the proper forum so that the merits of the case may be passed on. Each and every instance, he has said, "You are not the proper forum; although you say I should be removed, you are not the proper forum."

Now, as to the law - - - and I know I only have a minute or two left, and I would like to cover that generally, if I might - - - the Constitution sets out the procedure to be used in impeachment. We have no law in the State of Florida specifically on impeachment proceedings. What you decide here today will set the law for the State of Florida. You have a right, if you see fit, to put this man to trial on the merits, and I don't believe the framers of our Constitution intended that any technicality would prevent the Senate from passing on the impeachment when the House has seen fit to impeach a man for misconduct in office.

He has said he can answer these charges. Let's give him a chance to answer them on the merits for the first time, and not let a technicality put it back in the Committee, as Mr. Johnson said. Let's face the issue squarely and let him present his case on the merits.

You have that power. I think you have that duty. I think it's your moral responsibility to let him go to trial on the merits.

Now, as far as being fair to him, I think that is really the criterion. Is it fair to put him to trial on the present pleadings in this case? He is charged in Articles of Impeachment in the exact words of the Constitution of the State of Florida. He is charged in the exact language clothed in that Constitution.

Not only that, the Managers have been fair enough to give him a Bill of Particulars, so that he can be apprised of the exact testimony to be offered against him on the merits. So I say the criterion of being fair and present the case so that he can defend himself, has been taken care of, not only amply, but minutely and carefully giving the names, the dates, in every instance that he would expect to defend himself against; that's the criterion, in my opinion, can he fairly defend himself.

If he should say that the Bill of Particulars were not filed in time, so as to be able to prepare his defense on each and every one of them, I would have no quarrel against a delay in order for him to go out and get witnesses, if he needs them in that case, but we think that after many dilatory motions, after forum after forum has recommended that something be done in this case, in each and every instance, it's been held that that forum didn't have jurisdiction, that the time has now come to meet the issue squarely and pass on it.

MR. HUNT: Your Honor, inasmuch as there were two speakers on the part of the prosecution, would it be out of order to request that my associate, Mr. Pierce, be allowed ten minutes for response?

CHIEF JUSTICE TERRELL: We have a motion to allow Mr. Pierce ten minutes to reply to the argument in this case. It's within the discretion of the Court to grant the motion. You have used the time allowed, and unless the Court grants the extension, the ruling of the Chair is you don't have it.

There seems to be no motion to that effect, Mr. Hunt.

MR. HUNT: Sir?

CHIEF JUSTICE TERRELL: I say, there seems to be no motion. The Chair rules that you're not entitled to that.

MR. PIERCE: Mr. Chief Justice, may I put in a word?

If I should be allowed such time as five minutes, ten minutes, one minute or an hour, whatever it is, it will be strictly in response to the arguments made, strictly.

CHIEF JUSTICE TERRELL: There's no extension granted, Mr. Pierce.

Senator Gautier sends up this question to the Managers:

"Are we to understand that you are offering to withdraw the Bill of Particulars?"

Mr. Beasley, or Mr. Hopkins, will one of you answer it for him?

MR. HOPKINS: If I might answer that on behalf of the Managers, we think that the Bill of Particulars actually is necessary to the proper defense of the case. We have presented them at this stage in order to save time. If we hadn't presented them, I am sure they would have asked for them; and so, I see no reason to withdraw the Bill of Particulars.

MR. JOHNSON: Mr. Chief Justice, I've been asked by Senator Rawls to reply to that.

I stated in my argument the reasons for offering the Bill of Particulars, which was because that we felt, from a survey of all the existing law and precedent, that they were entitled to a Bill of Particulars.

However, the Bill of Particulars in no wise affects the soundness of the Articles of Impeachment. So, we are not insistent upon the Bill of Particulars, but I think that's a matter up to the Senate, sitting as a Court, in their sound discretion, whether they should be received or not.

I think the Senate is entitled to - - - I think perhaps the Senate is entitled to know upon what particular points we want to pursue; and we offered them only as a guide to the respondent and the Senate, and if the Senate, in their discretion, wishes to remove them, we certainly would have no objection, although we think they will be quite helpful during the proceeding.

SENATOR DAVIS: Mr. Chief Justice, since we only have five minutes more prior to the time of recess, I move you, sir, that we do now recess until two o'clock today - - - just a second, hold that motion.

SENATOR JOHNSON: Mr. Chief Justice, we have several copies, a number of copies of a memorandum of law which you have made research on in the last month.

I would like to have those distributed to the members, so that they will have the benefit of your research, and I so move.

CHIEF JUSTICE TERRELL: You make that as a motion?

SENATOR JOHNSON: Yes sir.

SENATOR SHANDS: Before you put the motion I am sure - - - this is for the benefit of all, though; these are copies that have been approved by the Committee which was appointed by me in the beginning to ask, to request the Chief Justice to pass on these particular points, and the Committee has approved them.

SENATOR JOHNSON: As Senator Shands said, the Committee has approved them, and the Committee feels that the Senate is entitled to the benefit of your research.

SENATOR SHANDS: That's right, the Committee has ap-

proved them, and felt that they should go to each member of the Senate and to the lawyers on each side.

Is that clear? Is that correct?

SENATOR JOHNSON: That's correct.

SENATOR DAVIS: Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: It was the understanding of the Committee that the work which the Chief Justice has done would be most helpful to the members sitting here as a Court, but we feel that the Managers of the House and the respondent's attorneys should have an opportunity to also reply, or file whatever they wish to in response to the work which the Chief Justice has done on them.

CHIEF JUSTICE TERRELL: Well, I might state to the members of the Court that I am under the same condition that you gentlemen all are, in that this case was set for consideration and trial on day before yesterday, and I have spent most of my time in the last month, or a little more, working on it, and this brief is just the result of my research.

As I stated in the beginning, I did it to post myself and to advise counsel on both sides what I thought the law was that governs this proceeding, and also to assist the Senate in appraising its position as a Court of Impeachment.

SENATOR SHANDS: Mr. Chief Justice, I'd like to repeat to the Senate, in case some of them might have overlooked the point: On the opening day, at the request of the Chief Justice, I appointed a committee composed of Senator Johnson, Senator Rodgers and Senator Eaton, to pass on these things and later, after they reported, we added Senator Davis, as a continuing committee to pass on such questions as the Chief Justice might desire that they pass on, and so that they can amply be informed.

I just wanted to make that explanation.

SENATOR EATON: Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Senator Eaton.

SENATOR EATON: The mere fact, Mr. Chief Justice, that the members of our committee have expressed themselves as to their particular function on this committee, I wish to make it clear to this body and the Court that the law, as set forth in the brief does not necessarily reflect my personal interpretation of the law, nor is it my understanding that it is binding, as to the law of this particular case, upon any member of the Court.

CHIEF JUSTICE TERRELL: That's correct, that's just the direct result of my observation.

If theres' no objection, then, the brief will be distributed.

MR. HUNT: Mr. Chief Justice, may we have permission to have our memorandum printed brief distributed to the members of the Senate?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: Thank you, sir.

Copies of each brief were then distributed to the members of the Senate.

SENATOR DAVIS: Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Mr. Chief Justice, I now raise a point of order.

CHIEF JUSTICE TERRELL: The point of order is well taken, and the Senate, sitting as a Court of Impeachment, is adjourned until 2:00 o'clock this afternoon.

Whereupon, at 12:00 o'clock, Noon, the trial was recessed until 2:00 o'clock P. M. of the same day.

AFTERNOON SESSION

The Senate reconvened a 2:00 o'clock, P. M., pursuant to recess order.

The Chief Justice presiding.

CHIEF JUSTICE TERRELL: Gentlemen of the Senate the Court is now open as a Court of Impeachment.

The Secretary will note a quorum present, unless someone raises a question. Quorum present.

The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

CHIEF JUSTICE TERRELL: What is your pleasure, gentlemen?

SENATOR RAWLS: If it please the Court, I have a question that I respectfully request the Chief Justice to give an opinion on.

Question Number One, please sir.

CHIEF JUSTICE TERRELL: "Is the Senate going to discuss these questions before us further in closed session?"

SENATOR DAVIS: Mr. Chief Justice, as I understand the rule, it is an open session unless the motion is made and ordered by a majority of the members of the Senate.

CHIEF JUSTICE TERRELL: These questions, Mr. Senator, I think it's only proper for the members of the Senate to discuss this. I don't mind giving my judgment, but I prefer not giving it at this time.

SENATOR RAWLS: Mr. Chief Justice, I move that the Senate do now go into executive session.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: Gentlemen, you've heard the motion, and the second. All in favor of the motion that the Senate now go into a closed session, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

Whereupon, at 2:18 o'clock, P. M., the Senate closed its doors.

Proceedings of the Senate with doors closed:—

Senator Neblett asked for the following order:

ORDERED: That the bill of particulars submitted to the Senate by the Managers on the part of the House of Representatives be admitted and made a part of the record of the impeachment proceedings.

Senator Neblett moved the adoption of the order.

A roll call was requested.

Upon call of the roll on the motion made by Senator Neblett the vote was:

Yeas—25.

Adams	Carlton	Getzen	Pearce
Barber	Carraway	Hair	Pope
Beall	Clarke	Houghton	Shands
Bishop	Connor	Kelly	Stratton
Boyd	Davis	Kicklitter	
Brackin	Dickinson	Knight	
Cabot	Edwards	Neblett	

Nays—13.

Belser	Gautier	Morgan	Stenstrom
Branch	Hodges	Rawls	
Bronson	Johns	Rodgers	
Eaton	Johnson	Rood	

So the order was adopted.

EXPLANATIONS OF VOTES

The following explanations of votes were filed with the Secretary of the Senate:

We voted against admitting the Bill of Particulars prepared by the Managers and their counsel, after the House had rendered its Article of Impeachment, and the same was not considered by the House, nor authorized by the House to be filed by the Managers. And for that reason we feel that the whole proceeding should be re-submitted to the House for proper action.

D. M. JOHNSON
Senator, 6th District

W. RANDOLPH HODGES
Senator, 21st District

In my opinion, the House Managers and their attorneys have not cited a single legal precedent which would allow the House Managers to introduce a Bill of Particulars which had not been considered by the House of Representatives. It is my opinion that the Article of Impeachment should be returned to the House of Representatives for that body to submit legally sufficient Articles of Impeachment. Therefore, I vote against the admission of the Bill of Particulars.

JOHN RAWLS
Senator, 4th District

I voted "Nay" because I thought new charges were in Bill of Particulars.

FLETCHER MORGAN
Senator, 18th District

The Senator from the 13th voted "Nay" to the acceptance of the "Bill of Particulars" filed herein—or presented herein—because no motion was made for such document by the respondent. The Court had not ordered such "Bill of Particulars." The Managers have taken the position that they do not resist the withdrawal of the "Bill of Particulars". Withdrawal of the "Bill of Particulars" would not prejudice the respondent or the Managers.

I am concerned that there may be matter within the "Bill of Particulars" which may make substantive changes in the Article of Impeachment presented to this body by the Florida House of Representatives—under its constitutional authority.

I take this position notwithstanding my feeling that the Article meets the test of sufficiency (this is not a criminal proceeding) and my reasoning for such feeling is substantially that set out by Chief Justice Terrell in his study of impeachment which was this date made available to this body.

JOE EATON
Senator, 13th District

We are convinced that the Bill of Particulars contains new substantive matter which was not considered and approved by the House in the adoption of the Article of Impeachment. Such new substantive matter is not admissible in this cause.

There is no authority in either our Federal or State impeachment proceedings for the introduction in evidence of a Bill of Particulars over the objections of the accused. Even if such authority existed the Bill of Particulars must be confined to the matters upon which the House based its impeachment article. The Bill of Particulars in this cause is not so confined.

We further question the authority of the House Managers in this proceeding to add to or, in effect amend the Article of Impeachment voted by the House.

Not having heard the evidence in this cause, we have no opinion as to the guilt or innocence of the accused.

J. B. ROGERS, JR.
Senator, 19th District

DOUGLAS STENSTROM
Senator, 37th District

IRLO O. BRONSON
Senator, 33rd District

Senator Rawls asked for the following order:

ORDERED: That Section (d) of the Article of Impeachment, and that part of the Bill of Particulars which refers to Section (d) of the Article of Impeachment, be stricken.

Senator Rawls moved the adoption of the order.

A roll call was requested.

Upon call of the roll on the motion made by Senator Rawls the vote was:

Yeas—10.

Beall	Branch	Johnson	Rood
Belser	Hodges	Rawls	
Bishop	Johns	Rodgers	

Nays—28.

Adams	Carraway	Gautier	Morgan
Barber	Clarke	Getzen	Neblett
Boyd	Connor	Hair	Pearce
Brackin	Davis	Houghton	Pope
Bronson	Dickinson	Kelly	Shands
Cabot	Eaton	Kicklitter	Stenstrom
Carlton	Edwards	Knight	Stratton

So the order failed of adoption.

Senator Stratton asked for the following order:

ORDERED: That the motion made by the respondent, appearing propria persona and by counsel, that the Article of Impeachment be stricken, the proceedings dismissed, and the respondent discharged; and the motion made by Mr. Pierce, of counsel for the respondent, ore tenus, that the Article of Impeachment be referred back to the House of Representatives for such action as the House may see fit to take, be denied.

Senator Stratton moved the adoption of the order.

A roll call was requested.

Upon call of the roll on the motion made by Senator Stratton the vote was:

Yeas—36.

Adams	Carraway	Hair	Neblett
Barber	Clarke	Hodges	Pearce
Beall	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Rodgers
Brackin	Eaton	Kelly	Rood
Bronson	Edwards	Kicklitter	Shands
Cabot	Gautier	Knight	Stenstrom
Carlton	Getzen	Morgan	Stratton

Nays—2.

Belser Branch

So the order was adopted.

Senator Rood moved that Senate Rule 12 be amended to provide that the hours of the day at which the Senate shall sit upon the trial of an impeachment shall be 9:00 o'clock A. M., to 12:00 o'clock, Noon; and 2:00 o'clock P. M., to 5:00 o'clock P. M.

Senator Edwards moved as a substitute motion that the hours at which the Senate shall sit upon the trial of an impeachment remain as now fixed by the rules until the trial gets under way, and subject to further action by the Senate.

The question was put on the substitute motion by Senator Edwards.

A roll call was requested and upon call of the roll the vote was:

Yeas—21.

Adams	Connor	Houghton	Rawls
Barber	Davis	Johnson	Shands
Beall	Edwards	Knight	Stratton
Brackin	Getzen	Neblett	
Carraway	Hair	Pearce	
Clarke	Hodges	Pope	

Nays—17.

Belser	Cabot	Johns	Rood
Bishop	Carlton	Kelly	Stenstrom
Boyd	Dickinson	Kicklitter	
Branch	Eaton	Morgan	
Bronson	Gautier	Rodgers	

So the substitute motion made by Senator Edwards prevailed.

Senator Shands moved that the records of the proceedings of the Senate with doors closed be made public upon the doors being opened.

Which was agreed to and it was so ordered.

Senator Shands moved that the doors of the Senate Chamber be opened.

Which was agreed to and the doors of the Senate Chamber were opened at 3:30 o'clock P. M.

CHIEF JUSTICE TERRELL: I have had a meeting with counsel, and counsel for both sides - - - counsel for respondent would like to have until Monday week to get his pleadings and make further preparations for trial; and counsel for the Managers have agreed to that; and if there's no objection on the part of the Senate, why, when we adjourn we'll - - - or when the Senate, as a Court of Impeachment, adjourns, we'll adjourn 'til Monday week.

I just am apprising the Senate of that fact so you can consider it and take it up as a last item.

SENATOR POPE: Mr. Chief Justice?

CHIEF JUSTICE TERRELL: Senator Pope.

SENATOR POPE: May I have some information as to why so much time is needed by the counsel? I'd like to have some information as to why that amount of time is needed.

CHIEF JUSTICE TERRELL: Well - - -

SENATOR POPE: If we have some other sessions, we're going to be piled up here, and we certainly don't want any action to interfere with that.

CHIEF JUSTICE TERRELL: The respondent will have, as the first thing, the preparing of an answer to the Article of Impeachment; and then his witnesses are from Miami. Some of them are business people, and some of them are attorneys, some of them have other commitments that Mr. Hunt thinks that that would be about as short a time as he can reasonably expect to make the preparations and bring the witnesses here.

That's the substance of it. Do you have anything in addition, Mr. Hunt?

MR. HUNT: I might say, further, Mr. Chief Justice, that the matter of filing an answer is not the item which requires the time.

In the first place, we will not know what witnesses to subpoena until opposing counsel deliver their own witness list to the Sergeant-at-Arms. Those witnesses are five-hundred-odd miles from here; we're running into a weekend; they ought to be given some opportunity to make arrangements, to arrange their own businesses to come to Tallahassee for a few days, and it is not the matter of any unprecedented delay, because the time we have asked for is the shortest time I know anything about.

If we could go on to trial sooner than that, why, we would be glad to do it, but we do have to have time to prepare an answer to an Article of Impeachment which I never thought we would be required to answer, but, as I say, that in itself will not take much time, but we have no witnesses yet, not the first one who has been subpoenaed by this Court. The Managers may have a few on hand, but if so, they're not here under subpoena of this Court of Impeachment. So, there are practical problems of preparing for the taking of testimony.

For instance, we just discussed the matter with the prosecution, who intended to bring a considerable number of witnesses here, and to save time and expense, it is thought that the respondent will not bring his here at the same time, but will stagger them along perhaps a few days later. It's a practical problem that we can't precisely meet. I'll be delighted to conform to the views of the Senate on the matter to the extent that I can.

SENATOR ROOD: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: The Senator from the 36th.

SENATOR ROOD: I'd like to make a motion.

There are other people involved here, as far as making arrangements, other than the respondent.

I made arrangements - - - tried to make arrangements for these three weeks, if it should be necessary to take it. Now, if they want to delay things ten days, I'd like to make a motion, so I can get my business in shape, that we come up here August 12.

I put that in the form of a motion, and I'll let the Court pass on it. I want to make a motion to get my business in shape now if we're going to delay ten days. Let's come up here August 12.

SENATOR POPE: Mr. Chief Justice, I'd like to offer a substitute motion, the motion being that we adjourn until Tuesday, and that counsel for the Managers of the House immediately furnish to the counsel for the respondent a list of their witnesses, and counsel for the respondent be required to be prepared at that time, and by way of explanation, I would like to say that we've got the balance of the week to notify these people, and that the members of this Senate have got some time, and it's pretty valuable too; I don't believe it's going to be any more inconvenient for the witnesses to make their contribution in the interests of justice than it is the members of this Senate, and I think that next Tuesday is ample and sufficient time.

I make that in the form of a substitute motion, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Do we have a second to the motion?

SENATOR SHANDS: I second the motion.

CHIEF JUSTICE TERRELL: Any debate?

MR. MUSSELMAN: May I inquire, what was that date?

SENATOR POPE: Next Tuesday was my motion. I don't know what the exact date is.

MR. MUSSELMAN: We are prepared at any time, Mr. Chief Justice, that the Senate desires to go to trial. We're prepared to do it.

Mr. Chief Justice, before the Senate adjourns, may I ask of the Senate whether or not the authority of the Senate to issue subpoenas and punish for contempt for failure to answer subpoenas was established beyond any question.

CHIEF JUSTICE TERRELL: I don't think there's any question in the world about it.

MR. MUSSELMAN: All right, sir.

CHIEF JUSTICE TERRELL: The rules provide that the Court, or the Senate, shall have the authority to punish for contempt, to summons witnesses, and to require attendance, and everything that pertains to conducting an orderly trial.

MR. MUSSELMAN: All right, sir. Then, there's one other question I'd like to also ask, that we're going to be as complete with this witness list as possible, but the Court must realize that at this time we do not have the benefit of the answer of the respondent; so, we do not want to be bound completely by this witness list, and calling no more.

CHIEF JUSTICE TERRELL: Well, that was one of the reasons Mr. Hunt was asking so much time, that he had to prepare his answer as the first thing, and it's likely to take him several days to do that; then getting his witnesses, making their arrangements to be here is why he asked for ten days.

MR. MUSSELMAN: Yes sir, that's - - - well, we'll abide with whatever the Senate decides.

SENATOR BELSER: Mr. Chief Justice, I'd like to say a few words.

CHIEF JUSTICE TERRELL: Yes sir, Senator Belser.

SENATOR BELSER: Mr. Chief Justice, and members of the Senate:

Now, counsel for the defense and Managers on the part of the House and the prosecuting officials there have requested an extension of ten days to this trial.

Now, we're not sitting here in a legislative body. This man has rights, and we've got to protect his rights. We want to afford him every opportunity, afford him due process of law and other constitutional guarantees to which he may be entitled.

The individuals who are going to prosecute this case - - - and this is a trial; this is not going to be a circus, this is going to be a judicial proceeding, conducted in a judicial manner, even though, as justices of this Court, we are also sitting here as members of the legislative body; and I don't see how counsel for the defense can be expected to file an answer to these charges, to contact innumerable witnesses, nor do I see how the prosecution can contact and get their witnesses lined up between now and next Tuesday, and I think the least that the members of this Court could do would be to grant the request of a period of extension of time of this trial until such time as they have agreed, and I respectfully think that we owe it to the prosecution, and we owe it to this respondent, as members of this Court, not by choice, but by virtue of the office we hold, to accord them this opportunity and give them the extension of time that they have requested, and I so move you, that we give them and accord them, as a substitute motion offered by the Senator from the - - - that we grant them the extension of time which they have requested here.

SENATOR BEALL: Second the motion.

SENATOR SHANDS: May I inquire, Mr. Chief Justice, what date would that put it, Senator?

SENATOR BELSER: The twenty-second.

SENATOR POPE: The twenty-second, Monday week.

SENATOR SHANDS: Monday week?

SENATOR BELSER: Monday week.

CHIEF JUSTICE TERRELL: Does the Court want a roll call on this question?

SENATOR RAWLS: Voice vote.

CHIEF JUSTICE TERRELL: All in favor of this Court, when it adjourns, adjourning until Monday week, all in favor say "aye." Opposed, "no."

The "ayes" have it; the motion is carried.

SENATOR EATON: What time?

CHIEF JUSTICE TERRELL: Ten o'clock.

Whereupon, at 4:04 o'clock P. M., the Senate, sitting as a Court of Impeachment, adjourned until 10:00 o'clock A. M., Monday, July 22, 1957.