

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Tuesday, September 10, 1963

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Richard Kelly, Circuit Judge for the Sixth Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule adopted on September 9, 1963, prescribing the hours of the daily sessions.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable William G. O'Neill and Honorable C. Welborn Daniel, and their attorneys, Honorable James J. Richardson and Honorable Leo C. Jones, appeared in the seats provided for them.

The respondent, Honorable Richard Kelly, with his counsel, Honorable Perry Nichols, Honorable B. J. Masterson, Honorable Harvey V. Delzer, Honorable Alan R. Schwartz and Honorable Thomas McAiley, 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:

Askew	Cross	Johnson (19th)	Roberts
Barber	Davis	Johnson (6th)	Spottswood
Barron	Edwards	Kelly	Stratton
Blank	Friday	McCarty	Tucker
Boyd	Galloway	Mapoles	Usher
Bronson	Gautier	Mathews	Whitaker
Campbell	Gibson	Melton	Williams (27th)
Carraway	Henderson	Parrish	Williams (4th)
Clarke	Herrell	Pearce	Young
Cleveland	Hollahan	Pope	
Covington	Johns	Price	

—42.

A quorum present.

By direction of the Presiding Officer, the Sergeant At Arms made the following proclamation:

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 Articles of Impeachment, exhibited by the House of Representatives against the Honorable Richard Kelly, Circuit Judge of the Sixth Judicial Circuit of Florida.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Monday, September 9, 1963, was dispensed with.

The Senate daily Journal of Monday, September 9, 1963, was corrected and as corrected was approved.

At the request of the Presiding Officer, Senator Friday of the Twenty-fourth Senatorial District offered the following Prayer:

Our loving and forgiving Father, we do most humbly invoke thy attention to all thy children here assembled to ask that thou grant the strength to resist hasty conclusions, the desire to lend an humble and perceptive ear, the patience and wisdom to fulfil the ministry thou hast here

entrusted. As we stand before thee to ask thy blessing on all, it seems somehow fitting and proper that we offer a common plea to thee, who hast taught us to say when we pray:

“Our Father, which 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. Lead us not into temptation, but deliver us from evil, for thine is the kingdom and the power and the glory. Forever and ever. Amen.”

Senators Connor and Ryan appeared in the Senate Chamber, asked to be recorded as present, and took their seats.

CHIEF JUSTICE DREW: Senator Cross?

SENATOR CROSS: I would like to make a motion, Mr. Chief Justice, relative to Rule 27, relating to persons who may be admitted on the floor.

I would like to move that Rule 27 be waived as to the wife of the Senator from the 22ndX and the wife of the Senator from the 26th, to permit them to come on the floor.

CHIEF JUSTICE DREW: Gentlemen, you have heard the motion. Is there a second?

The motion was duly seconded.

CHIEF JUSTICE DREW: I understand that Mrs. Pearce and Mrs. Clarke are not physically able - - - the doctor will not allow them to climb the stairs, which would be necessary for them to witness these proceedings.

Now, on this basis, the motion is made, as I understand the motion. As many as favor the motion, say aye; opposed, no. The ayes have it. The motion is carried by a two-thirds majority of the Senate.

Gentlemen, are you ready?

MR. NICHOLS: We are, Mr. Chief Justice.

CHIEF JUSTICE DREW: The House has the opening and the closing on the question of whether or not the filing of Motions to Dismiss is allowable in impeachment proceedings.

You may proceed, Mr. Manager.

MR. O'NEILL: Mr. Chief Justice, on the part of the Board of Managers, Mr. Leo Jones will argue the point of the objections raised by the Board of Managers on the Motion to Strike and the Motion to Dismiss, simultaneously.

MR. JONES: Mr. Chief Justice, and members of the Court:

We have placed on each of your desks our brief in response to the questions. I don't intend to belabor these points at all, because all of our contentions are now before you either in the form of our argument yesterday, or in the form of this brief.

I would like, however, to point out first that there are some errors in our brief, typographical errors, or errors of ours, and we do apologize; but the brief was drawn rather hastily in the evening.

I would further point out to you on Page 5. The matter which we have set forth there for you is entitled "In Re the trial against William W. Belknap, late Secretary of War, in the United States Senate, First Session of the 54th Congress.

Apparently, in that matter, a committee of the Senate set out to answer such questions as have been put before you; and when they returned, they reported in their report certain things among which you will see there on Page 6, where they answer this specific question; namely, that Motions to Dismiss, Motions to Strike, and other pleadings did not lie to the Articles of Impeachment as had been brought by the Congress.

You will see that they finally ordered, down in the lower part of the page, "ORDERED, that W. W. Belknap have leave to answer the articles of impeachment within ten days from this date; and that in default of an answer to the merits within ten days, by respondent, to the articles of impeachment" - - - they ordered the impeachment. In other words, the Motions to Dismiss, Motions to Strike, and other pleadings to the articles of impeachment brought by Congress were denied.

We would further refer you to Page 7, in the lower section of the page, In Re Judge Barnard in the State of New York.

The exact same question was brought here. There was a motion to quash certain articles of impeachment, and the Court refused the request and required the Defendant to plead to the merits. In other words, they required the Respondents to answer the articles of impeachment as had been brought from the House of Representatives.

Our brief also includes the citations which we set forth to you yesterday.

And, in our conclusion, the Managers for the House say this: That, in effect, if the Senate, sitting as this Court, were to quash Articles of Impeachment brought by the House, then in effect the sole power of impeachment would rest in only one House, the Senate of Florida; and any action that the House of Representatives took would actually have no force and effect, because the Senate could say, "We will impeach him - - - we will not - - - we will try him - - - we will not."

So the power of impeachment, instead of resting in the dual sovereignty - - - if I may say so - - - of the House and the Senate, would only rest in one body, because this body would have the sole power to say whether or not a person would be put on trial for impeachment. Whereas, this has never been the intention of Parliament, the Congress of the United States - - - either the Federal or our State Constitution, that this power should repose in only one body.

All the constitutions and all the citations and all the law that we have been able to find vest this authority to require a trial in the House of Representatives and the authority and power in the Senate to try that requirement of the Articles of Impeachment.

We submit to you, gentlemen of the Court, members of the Court, that Motions to Dismiss and Motions to Strike do not lie to articles of impeachment brought by the House; and that the Senate of Florida has the sole authority to try the articles of impeachment as brought by that House. Thank you.

CHIEF JUSTICE DREW: Mr. Nichols?

MR. NICHOLS: Mr. Chief Justice, and members of the Senate:

May I first briefly reply to Mr. Jones. We will stipulate with Mr. Jones that the House certainly has the authority and duty and is the only body that can initiate articles of impeachment. The Senate cannot initiate an impeachment proceeding.

Now, the very case that he cited to you in his brief, on Page 6, that he just referred to, the Senate did pass on the Motion to Dismiss and they did make a ruling on the matter.

Now, what he is really talking about is that after we get through arguing this Motion to Dismiss, he should be making this type of argument. Because the Senate did pass on the Motions to Dismiss.

Now, again, you are sitting here today as a Court. I will ask you if you will follow with me in our brief that we prepared last night.

And, prior to going into that, and so that I don't misquote the Board of Managers, I have the daily copy before me as to what they told us yesterday, and this is the first thing that they said:

"MR. O'NEILL: Mr. Chief Justice, it's the position of the Board of Managers on the part of the House that the Motion to Strike and the Motion to Dismiss is not proper, and should not lie, and are prepared at this time to argue the point as to whether or not a Motion to Strike and a Motion to Dismiss lie to Articles of Impeachment under the Constitution and the precedents that have been set by the various impeachment trials throughout the country."

Then he goes on a little further.

Mr. Chief Justice Drew said:

"MR. CHIEF JUSTICE DREW: In the former trial in this court, Articles of Impeachment - - - I mean, such motions were allowed and were voted on."

Mr. Jones said, "In all the research that we have done in the past weeks, which have extended back to the cases and the precedents of common law, we have never found a case in the history of that country or this country where the Senate has granted - - - where the Senate, sitting as a Court, has granted or allowed such motions to Articles of Impeachment."

Now, they contend that they haven't even allowed such motions; that the Senate is not even entitled, sitting here as a Court, to talk about the law or the sufficiency of these Articles of Impeachment or the allegations of the charge.

Now I would like to take up with you our brief, because that is exactly what you asked us to brief, and I would like to thank the Senate for the opportunity of having the privilege of going across to the Library of the Supreme Court, which is just across the street, and bringing to you these cases of former impeachments throughout this country, because this question is just as clear as a bell.

And I am grateful to the Senate for the studious manner and the careful manner in which you are likewise going into it to discharge your responsibility under the serious charge of the impeachment of a public official.

Now, not only do we find in these other impeachment trials - - - the authorities, throughout the country, that you have the right or the authority, but you have the duty to entertain this Motion to Dismiss and test the sufficiency of this as a legal proposition because you are the Court of Impeachment. It has been universally agreed that this Court has the right to consider this motion.

One of the first things that you were handed was Mr.

Justice Drew's handbook. On Page 1 of this desk book Chief Justice Drew said, and I quote:

"This deskbook has been prepared for your information and use in the impeachment trial of Honorable Richard Kelly, scheduled to commence at 11:00 o'clock A.M. on September 9, 1963. It contains copies of all pertinent pleadings except respondent's answer which is required to be filed at or before the commencement of the trial. In view of the pending motions of respondent directed to the sufficiency of the articles of impeachment, it is probable that this answer of respondent will not be filed **until the Senate rules on these pending motions. In the event the Senate denies these motions, and the answer is filed, a copy will be furnished each member of the Senate for inclusion at an appropriate place in this deskbook.**"

This statement clearly recognizes that the Senate must, in fact, rule upon the pending motion. Indeed, it may be assumed that even the Board of Managers, until the last minute, did not question this Court's authority to rule upon the motion. Their present contention, which amounts to a motion to strike the Respondent's Motion to Dismiss, was **never** filed with the Secretary of the Senate, although the Respondent's motions were served upon them on August 12, 1963, and even though this Court, on June 14, 1963, adopted the following rule:

"That it be further ORDERED that all preliminary motions directed to the Articles of Impeachment and all other preliminary matters shall be filed with the Secretary of the Senate on or before **August 16, 1963.**" Senate Journal, June 14, 1963.

This is your Senate Journal of June 14, 1963, Page 1905.

Moreover, this Rule itself recognizes the power of the Senate to pass such a motion. The "preliminary motions directed to the Articles of Impeachment" to which this order refers, obviously mean just the type of motion to which the Board of Managers now objects.

If they wanted to file objections, they should have filed them and joined issue on this matter on the 16th.

The reason why the Chief Justice, the Board of Managers and this Senate itself has recognized the propriety of the motions to dismiss is an obvious one. **In the only preceding impeachment trial in the history of our state, that of Circuit Judge George E. Holt in 1957, the Senate heard argument and passed directly upon and voted upon a motion to dismiss the entire proceedings.** While the Managers claim that the present issue was never raised in the Holt trial, it is clear that the Senate asserted its **jurisdiction** to pass upon the motion. The Managers' argument is unsound; they claim that this Court does not have the power or jurisdiction to pass upon the Motion to Dismiss, and such a jurisdictional issue must be recognized by a Court, even if it is not objected to by counsel. Thus the Holt trial is square authority for this Court's jurisdiction over the pending motion.

There can be no reason for permitting Judge Holt to challenge the sufficiency of the Articles of Impeachment by motion, and denying the same privilege to Judge Kelly. I can't think of but one reason, because these two men held the same judicial office, that of a Circuit Judge.

As Chief Justice Terrell recognized in his brief, filed before the Holt trial and re-adopted by Mr. Chief Justice Drew to guide the Senate in the law and procedure, the Senate has a right to determine "**Whether or not the Articles of Impeachment state an impeachable offense.**"

The Motion to Dismiss permits the Senate to make just this determination.

Now, concerning other impeachment trials, which you directed yesterday that we study and bring to you - - -

what has happened in other impeachment trials - - - whether or not this Motion to Dismiss lies and whether or not you should pass upon it. We need not go outside of Florida for the precedents but we have had the privilege of doing so.

Counsel for the Managers stated that they could find no authority. Yesterday afternoon we left and, even though they have done all of this great and diligent research which they told you, and I quoted from it, they can't find any in this country or in England, in the old country, nor any in this country. Yesterday afternoon we crossed the street - - - we don't even have to go across the Atlantic Ocean to England to find out about it - - - all they had to do was go across the street to the Supreme Court Library, and here are the cases - - - here are eleven cases dealing with impeachment that say conclusively that they considered, that they argued, and that the Senate voted upon the Motions to Dismiss in impeachment trials. I have got them right here and I am going to show you some of them in a moment.

The first one was the trial of Will J. French, in the Senate of Kansas, 1934; where it was considered and voted on, the motions. The trial of Roland Boynton, the Senate of Kansas, 1934. The trial of George M. Curtis, the Senate of New York, 1872. Again, in the trial of Horace G. Prindle, in the Senate of New York, 1872. The fifth was the trial of Judge Carlos S. Hardy, the Senate of California, 1929.

Now, I am taking cases in which the motions were filed and they were appropriate.

The trial of Halsted L. Ritter, the Senate of the United States, in 1936, the Motion to Quash Individual Articles; The trial of Sherman Page, the Senate of Minnesota, in 1878; the trial of Harold Louderbach, the Senate of the United States, 1933, Motion to Quash Individual Articles; the trial of William Sulzer, Senate of New York, 1913 - - - by the way, they had 433 pages of argument on the Motion to Dismiss. I can assure you my argument won't be that long, but that is where they presented it, and they argued it, and it was ruled upon.

The trial of John F. Cowan, Senate of North Dakota, in 1911; and the trial of Senator William Blount, in the Senate of the United States, 1797. This motion was granted in the Senate; and I have the book right here; after about fifty-four pages of the motion, and I'm showing you the roll call where it was granted, the Motion to Dismiss.

This Senate took up its responsibility. It took it up under the law, and they granted it, and here's the roll call:

"Thursday, January 10: The Court proceeded in the debate on the motion made on the seventh instant"; and here's your "yeas" and your "nays" of the Senate, voting on the motion.

CHIEF JUSTICE DREW: What was the number of yeas and nays, Mr. Nichols?

MR. NICHOLS: Fourteen to eleven.

Now, again - - -

CHIEF JUSTICE DREW: What case was that, please?

MR. NICHOLS: The first one was the trial of Senator William Blount, in the Senate of the United States, which I just referred to there. The second one is the trial of Judge John F. Cowan, before the Senate of North Dakota, in 1911.

Here they had a long and extensive argument on the Motion to Dismiss and to strike the Individual Articles. The Judge had been charged with habitual drunkenness. The demurrers to the Articles were argued, decided on

and voted, and such demurrers, on Page 77, and here it is, and here's the vote.

The question was - - - being on the demurrer, and for you men who are not lawyers, the demurrer is simply a challenge of the jurisdiction, or of the sufficiency of the allegation, the same as a Motion to Dismiss. The question being on the demurrer, the roll was called, and there were, "yeas" 45, "nays" 2; and there's the roll call.

A diligent search of the Managers tell you that they can find none, that there are none, that they don't want you to go into the law, that they don't want you to look into this matter legally. Take what we send over here to you and wrap it up as they want it wrapped up, but don't pay any attention to the law. Destroy a man's constitutional, individual rights, based on what they tell you. The reliability of these Articles are just as reliable as what they told you yesterday, that there's no such law in existence.

Now, another significant indication of the fact that a Motion to Dismiss Articles of Impeachment does in fact lie, is found in one of the leading treatises on the subject, Mr. Simpson's Treatises on Federal Impeachments, 1916.

The treatise collects the law and precedents surrounding Federal impeachments, and also submits "Suggested Senatorial Rules of Procedure" to be followed by the Senate in future impeachment trials. One of the proposed Rules provides as follows, at Page 216 - - -

CHIEF JUSTICE DREW: Mr. Nichols, may I interrupt you just a moment?

Yesterday there was some confusion as to the witnesses being under the Rule. I think there are many witnesses here, and I wish to advise the Sergeant At Arms that until the taking of testimony commences, the witnesses who have been summoned are entitled to sit in the gallery. When we start the taking of testimony, then the witnesses will be placed under the Rule. Until that time, they are free to occupy the gallery. Pardon me, Mr. Nichols.

MR. NICHOLS: Excuse me, Mr. Chief Justice. May I request an invoking of the Rule? I don't mind it until this matter is over, but I would like the Rule invoked if we get into the question of the legal propositions involved in our Motion, later on, but we'll take that up later on.

The proposed rule that they filed: "If the Respondent" - - - and I quote - - - "desires to be heard in person or by counsel, he must plead guilty to or answer each of the Articles of Impeachment separately, but he may accompany his answer with a Motion to Dismiss any or all the articles. The answer to each Article must be complete in and of itself, without reference to the answer to any other Article, and must be a concise statement of the facts only, without any argument. The Motion to Dismiss must also be complete in and of itself, must concisely state the reasons why the Senate should dismiss the Articles and must contain no argument.

"The learned author thus clearly recognizes that a Motion to Dismiss the Articles may be filed and considered by the Senate, and provides Rules by which it may be done."

The present Motion to Dismiss is in the form suggested by this author.

Now, the power of the Court to dismiss quasi-criminal indictments:

The undoubted power of this Court to pass upon the Articles of Impeachment is directly analogous to the right of a Court to consider a motion to quash and dismiss the sufficiency of an indictment or an information in a criminal proceeding, such as this one.

"It has long been recognized that impeachment proceedings are criminal or quasi-criminal in nature. For example, the Supreme Court of Florida, in *In The Matter of The Executive Communication* filed the 9th day of November, A.D. 1868, 12 Fla. 653, 675" - - - this was in 1868, Chief Justice E. M. Randall recognized that - - - and I quote:

"The process of impeachment is likened in the books to the proceedings by indictment in the courts of criminal jurisdiction" - - - that was in relation to attempted impeachment of a Governor of Florida.

Chief Justice Terrell's brief states that the process of impeachment "still retains some of its criminal attributes."

Moreover, as the brief also stated in the impeachment trial, which Justice Drew has placed on your desks, that the trial is unquestionably a judicial proceeding.

Now, the law is summarized in 43 American Jurisprudence, Public Officers, Section 178, where it reads - - - and I quote:

"The impeachment proceeding is likened to a proceeding by indictment in a court of criminal jurisdiction. It is in its nature highly penal, and is governed by rules of law applicable to criminal prosecutions.

"There can be no question that in criminal cases, or in the criminal-like proceedings involved here, a Court may, and must, pass upon the sufficiency of the indictment."

Now, may it please you gentlemen of the Senate, sitting here as a Court, even though you're sitting in the chairs that you've previously used, you are now here as a Court. There is no appeal from any decision that you make. I make this appeal to you, and I make it now, for all the fairness and all of the legal works be gone into.

These Managers simply don't want you to get into the law. I understand why these Managers don't want you or the Court to look into this matter legally. Certainly, they don't want to. They don't want you to know the triviality of these charges, and when you get to looking into it legally, if you let me go into it with this motion, and you let us get into it legally, if you start being a Court then, I tell you, the weakness of their position is demonstrated by the weakness of their statement that they made to you yesterday.

We are entitled to go into this matter, and it's your responsibility to go into it, and I'm glad that we're able to spread upon the record of the Senate this brief under the law that shows you your right, and you gentlemen of the Senate, of the Court, who are not lawyers, the testing of the sufficiency of allegations is done every day in Court.

In civil cases, you go before the Courts and you test the complaint. In criminal cases you go before the Courts and you test the sufficiency of the indictment. In impeachment cases you come before the Court, and you test the sufficiency of the Articles.

This is not unusual. I beg of you and I ask of you to let's face the responsibilities that the law places on us to present, and for you to face and deal with this matter as a matter of law, as they have in these cases.

By the way, they said, even over in England, that they couldn't find any such precedent. I found one case, and here it is. It's in 1450; boy, that's a long time ago, it's over five hundred years ago, but even there those that were trying it, the Chancellor then declared the King's mind as to the greater and more heinous charge included in the first bill, the King held Suffolk, S-u-f-f-o-l-k, who was an Earl that they were trying, neither declared nor charged.

Now, they dismissed even one count of the charges. This old boy had lost some wars, and he was being tried

for bad judgment in some wars that he had been in, but he was being impeached.

I simply point out to you that even five hundred years ago, in England they dismissed some of the charges because they were insufficient.

Gentlemen, if you're going to abide by the law, which I know that you're going to, I have every confidence that you do, then I think we're entitled to go into this matter and look at it straight in the face, and then rule on the matter on its merits. The arguments that they make are arguments which should be made after we go into the merits on this motion.

I thank you, Mr. Chief Justice.

CHIEF JUSTICE DREW: Mr. Nichols, Senator Whitaker and Senator Cross have sent up the following question: "Have you found any precedent where this specific question was raised and considered? If so, what was the specific ruling?"

After the argument of Mr. Nichols, do Senator Cross and Senator Whitaker still wish the question propounded?

SENATOR CROSS: Yes, Your Honor, I think - - -

CHIEF JUSTICE DREW: You want to know whether there has been a direct ruling, saying that this can be or cannot be done?

SENATOR CROSS: Where a Motion to Dismiss lies in an impeachment trial. Do they have any authority directly on that point; that's what we're arguing today, as I see it.

CHIEF JUSTICE DREW: You understand, Gentlemen, that previous rulings are precedents of the Court, and become law. Previous rulings of Court become law.

MR. NICHOLS: In other words, such actions, these actions that I have read to you, where they did dismiss, and where they were, here's what we're talking about. I think that answers the question.

SENATOR CROSS: Mr. Chief Justice, I might reply to that in this way, that - - -

CHIEF JUSTICE DREW: Gentlemen, this is not subject to debate. This is not subject to debate; you can only ask a question.

SENATOR WHITAKER: Mr. Chief Justice, I was really seeking an answer to my question, and I think that there is no such precedent that he has found.

CHIEF JUSTICE DREW: I gather that's his reply. You have about twenty minutes.

MR. NICHOLS: May I further answer that question after they give me a chance to read - - - I think I have a case on point.

MR. O'NEILL: Mr. Chief Justice, so that we may not be misled, I would like to know if the Board of Managers on the part of the House have the opportunity to close this matter, and if so, I would like to start my remarks or let Mr. Nichols go at this time, if he has sufficient time to do so.

CHIEF JUSTICE DREW: Mr. Manager, you have, as I announced in the beginning, the opening and the closing; that was the order of the Court.

MR. O'NEILL: And having opened, I would like at this time to close. However, in all abundant fairness to Mr. Nichols, if he wants to continue his remarks, I would defer to him at this particular time, so that I might conclude my remarks.

CHIEF JUSTICE DREW: Very well. Mr. Nichols, do you want to - - -

MR. NICHOLS: I simply want to answer Senator Cross and Senator Whitaker here in just a moment. There is a case in which the very question was raised, in one of these cases, one of the three that they ruled on, and they asked the question, and this is the trial of Horace G. Prindle, long and involved, but the question was asked as to whether or not the Motion to Dismiss lies, and they considered it and ruled on it, but denied it in this particular case.

SENATOR CROSS: What was that citation?

MR. NICHOLS: Well, it's the trial of Horace G. Prindle by the Senate.

MR. O'NEILL: What state?

MR. NICHOLS: This is the State of New York, in 1872, on Page 220, the Managers raised the objection that the demurrers to the Articles of Impeachment could not be argued, the very question we're talking about - - - excuse me, Mr. O'Neill. I apologize.

CHIEF JUSTICE DREW: You have the closing argument, Mr. Jones. Who is to argue the case?

MR. O'NEILL: I wish to close, Mr. Chief Justice.

CHIEF JUSTICE DREW: Very well.

MR. O'NEILL: Mr. Chief Justice and Members of the Senate of this Honorable Impeachment Court, I will make my remarks very briefly.

On yesterday, Mr. Nichols has alluded to the fact that the Board of Managers on the part of the House has misled this Senate, and I would like to point out and correct something, that that is absolutely incorrect.

He did not need to go across the ocean to seek precedents, or he didn't have to go across the street. He has the precedents and, I assume, lying on his desk, and has done research, and as I pointed out, we were raising the objections on the filing of the motions to strike and the motion to dismiss, and I pointed out to this Senate, with an abundance of fairness, that the motion to strike and the motion to dismiss as argued in the Holt impeachment trial in 1957, and I pointed that out to this Senate, but no objection on the part of the Managers was raised.

There is abundance of precedent where these motions may or may not have been argued and considered but, in each case that we researched, and some of the cases that he cites as authority here say that there was no objection, and if he'll read them, he'll find that to be the law. If no objection is made, and had there been objection at the time of the Holt impeachment trial, I'm sure the Senate at that time would have considered the question.

Now, we're involved simply in a very simple question, and I don't think we have to go to any precedents, all we have to do is look at the Constitution of the State of Florida, and I invite your attention, Members of this Court, to the Board of Managers' brief, and if you will refer to Page 4 of that brief, the last paragraph, wherein we take verbatim the Constitution of this State of Florida, you will find, in the first sentence there, it says - - - and it's underlined - - - "The House of Representatives shall have the sole power of impeachment."

Then it goes on down, and you'll note, we only underlined one word, "and all impeachments shall be tried" - - - "tried - - - by the Senate." Not to dismiss, but tried by the Senate.

We submit to you gentlemen that what we're trying to do is get into the question of the taking of testimony so that you might determine whether or not this man is guilty of those impeachable offenses which have already been found by the House of Representatives. The conclusions are, I believe, summed up in a much better way

than I could do. I would simply say further to you that he has referred to the impeachment of Halsted Ritter, a Federal District Court Judge; on Page 37 of that, Mr. King, "I have no objection." Therefore, the motion to dismiss and motion to strike were not even discussed.

I would further point out to you, on Page 51, that the Board of Managers on the part of the House of Representatives of the Federal Congress made a motion of their own volition to dismiss, but not done by the Respondent in that case, and he cited that as authority.

I point out to you there was no objection made and, therefore, the authority he cited there is ridiculous.

In connection with the New York impeachment case, we cited the New York case in ours. We did not put the book in front of us, and I don't have it at my fingertips, but we pointed out there that the Articles of Impeachment, the Court refused to request and require the Defendant to plead to the merits to file his answer.

We have cited that - - - another case in our brief, and I invite your attention to that, wherein, in the United States Congress, that they quoted with approval an English precedent, and it's set out in there that - - - what our position is to stand, and it's on Page Number 449 and 450, and it appears in Hinds' Precedents to the House of Representatives, Number 3, of 1907.

Now, there's one other case that distinguished counsel for the Respondent didn't cite to you, and I would like to bring it to your attention, in the case of the impeachment of Harrison Reed, Governor of this State, which was never tried, and the facts, briefly, are these:

That Harrison Reed was impeached by the House of Representatives, or the Assembly. It was sent to the Senate, and the Senate adjourned sine die during the regular session, without placing Harrison Reed, the then Governor, on trial.

Harrison Reed then asked the advice and opinion of the Supreme Court of Florida, and the Supreme Court of Florida went into great details as to impeachment, and what it did; it suspended that man, Harrison Reed, from office during the time that the impeachment charges were pending. The question came up when Lieutenant Governor Day, who was then Lieutenant Governor of the State of Florida, and served as acting Governor. The Supreme Court of Florida went into great detail, and said, in that case, that the minute that the House of Representatives passed those articles of impeachment, he was suspended from office, and it was up to the Senate to try. The Senate never did try in this particular case; and Harrison Reed went out of office before the trial occurred.

The precedents that Mr. Nichols has cited to you on his misconception of the pleadings, let me tell you something: The lawyers know this; it simply means one man's opinion. He didn't cite any precedents in there; that's no precedent in this case, and the Holt case is no precedent in this trial. We simply point out to the Members of the Senate - - - and I think that the Managers, maybe, made a tactical error in that case, without knowing the merits, and not having been here, but they did not raise an objection. We are now raising an objection, and we maintain that to dismiss, or a motion to strike would be wrong.

Now, on Page 9 of our brief, wherein we cite Mr. Chief Justice Glenn Terrell, who was then Chief Justice who presided in the Holt trial, on Page 603, in re investigation of Circuit Judge, which was cited to you yesterday by Mr. Jones, appeared in 93 Southern (2d) 601, in 1957, wherein the Florida Bar was seeking to investigate a Circuit Judge.

In that case, the Supreme Court of Florida held that it was not possible for the Florida Bar to investigate a Circuit Judge, even though he might have been an attorney before he came on the Bench; that, when he went on the

Bench, even though he was an attorney then, that they had no authority, and the only means by which a Circuit Judge could be removed is impeachment. I point that out to you, that's the only means; and I would like to quote and call to your attention, on Page 9, there; we have that underlined for your easy reading:

"It necessarily follows that it has the power to determine whether the charges brought against one amount to a 'misdemeanor in office' as contemplated by the Constitution."

Now, that is the House of Representatives.

The net effect, the net effect of the motion to strike and the motion to dismiss is to remove that power from the House of Representatives, who has the sole right and authority to determine whether or not the things that we say that Judge Kelly did in this case are impeachable offenses, and places it in the Senate.

Summarily, summarily dismiss - - - and we submit to you there is no precedent, no precedent, where objections have been made, and where it has been considered, for the position of the Respondent, and we respectfully request that the motion to dismiss and the motion to strike do not lie in these proceedings, because we have raised the objection.

CHIEF JUSTICE DREW: Mr. Sergeant, with a quorum present:

Gentlemen of the Senate, you have heard the arguments of counsel.

I want to call to your attention that Rule 7, the last sentence, provides: "The Presiding Officer of the Court may rule on all questions of evidence and incidental questions, which rulings stand as the judgment of the Court, unless some member of the Court shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Court for decision, or he may, at his option, in the first instance submit any such question to a vote of the Members of the Court."

In view of the extended discussion on this question, and while I am of the view that it relates to procedural matters and lies within the authority of the Presiding Judge to rule initially, I am going to ask that the roll be called, and that each Senator be allowed to vote upon the question of whether or not this motion to dismiss is properly invoked in proceedings of this kind but, before I do that, and in order to expedite these proceedings, I feel that the Senate is entitled to my views, as Presiding Judge, inasmuch as I feel I should rule on the question initially, you are entitled to my views on whether this motion should - - - the motion of counsel for dismissal - - - should be granted or sustained.

In the first place, I think much misunderstanding has arisen in the House in the complete misconception of the connotation and the meaning of the word "impeachment," as used in the Constitution, with reference to the powers of the House.

To impeach, in its sense used in the Constitution, means nothing more or less than to accuse. The statement of Justice Terrell that the House of Representatives has the power and the sole power to determine what shall constitute sufficient grounds for impeachment there is without a doubt true. They have the sole power to determine when they vote Articles of Impeachment, but the effect of their Articles of Impeachment—there is nothing this body can do under the Constitution to in any way impair the right of the House of Representatives.

When they vote Articles of Impeachment, the officer charged loses his office instantly. He cannot again resume his office under any circumstances until he is acquitted by this Senate.

Now, we turn to the question of what is meant by a trial in this House.

A trial encompasses more than merely the taking of evidence. In judicial proceedings it encompasses all phases that might arise in a judicial proceeding, including the testing of the legal sufficiency of any pleading.

Reference was made to the Harrison Reed case; and, in order to clear up any misconception, I believe the Managers stated that Governor Reed went out of office before the trial occurred.

I have carefully checked that record again because I recalled it from research. Governor Reed was impeached by the House in February, 1872. In May, 1872, he was discharged on motion to discharge him by the Senate. And I read you, for the benefit of exercising your judgment in this matter, what the Supreme Court of Florida said in the advisory opinion:

"What is the true meaning of the word 'acquittal' used in the Constitution, referring to the fact that the suspended officer stands suspended until he is acquitted by the Senate.

"This Court does not differ as to the proper definition of this term.

"It is our unanimous opinion that it is not restricted to an actual judgment of acquittal after vote, upon full evidence, failing to convict by a requisite two-thirds vote of the members of the organized Senate.

"We think its true significance embraces any affirmative final action by a legal Senate other than a conviction by which it dismisses or discontinues the prosecution.

"If I had initially ruled upon it, this question, I would have overruled the House in their objections to the right to file and argue the motion."

Mr. Secretary, would you call the roll.

If you vote aye on this motion which has been sent up by Senator Cross - - - "I move that an order be entered recognizing the right of Respondent to attack the sufficiency of the Articles of Impeachment by Motion to Dismiss and overruling the oral objections by the Managers of the House to the filing of such motions." If you vote aye, you vote in favor of overruling the Managers and allowing the Respondent to present and argue his Motion to Dismiss.

If you vote no, you deny the Respondent the right to present and argue his Motion to Dismiss.

Will you call the roll, Mr. Secretary?

Whereupon the Secretary called the roll and the vote was:

Yeas—33.

Askew	Connor	Hollahan	Price
Barber	Covington	Johns	Roberts
Barron	Cross	Johnson (19th)	Ryan
Blank	Davis	Johnson (6th)	Stratton
Bronson	Edwards	Kelly	Usher
Campbell	Friday	Mapoles	Williams (27th)
Carraway	Gautier	Melton	
Clarke	Gibson	Parrish	
Cleveland	Henderson	Pope	

Nays—11.

Boyd	McCarty	Spottswood	Williams (4th)
Galloway	Mathews	Tucker	Young
Herrell	Pearce	Whitaker	

CHIEF JUSTICE DREW: Thirty-three yeas, eleven nays. By your vote you have recognized the right of the Respondent to file and argue his Motion to Dismiss.

I assume, Mr. Nichols, inasmuch as both of these motions contain identical grounds, you will argue them both in one argument.

MR. NICHOLS: Yes, Mr. Chief Justice.

CHIEF JUSTICE DREW: You will be allowed thirty minutes, beginning at 10:25.

MR. NICHOLS: Mr. Chief Justice, may I ask the Senate to extend the time on these motions. There are eight charges in these Articles. You have, by your vote, given us the right to present the matter. This is the most important motion that we will present in the trial and it is the only motion that we think will take more than the allotted time under the rules.

But, if I only have eleven minutes for each matter, it would take approximately an hour and a half; and I ask the Court to give us, each side, at least that much time to present this motion; because we are going into it legally, on its merits, and we certainly think that we should be given as much as ten or eleven minutes to discuss each one of these articles.

I think we are going to save time by that, and let us go ahead into the matter fully from a legal standpoint, which we think will be beneficial, either in granting or continuing the trial.

CHIEF JUSTICE DREW: Before replying to that or putting the motion - - - Senator Price asked are we now under the rules appertaining to witnesses. Do the Managers or the attorneys for the Respondent have any motion to make as to invoking the Rule?

MR. NICHOLS: It is the motion of the Respondent that the witnesses be placed under the Rule, and all witnesses be excluded from the hearing in the Chamber.

MR. O'NEILL: We have no objection to the Respondent making such a motion. We would not have made it, of course, had we been asked the question.

CHIEF JUSTICE DREW: I am going to put the witnesses under the Rule only after the arguments have been concluded. Now, gentlemen, what is the attitude of the Managers of the House with reference to the time?

MR. O'NEILL: We have no objection to the gentlemen of the Senate allowing Mr. Nichols ample time. It is the position of the Board of Managers that we will not need that amount of time.

CHIEF JUSTICE DREW: Mr. Nichols, it is now 10:30. We have two hours and a half until we adjourn at 1:00 o'clock. I am going to allow one hour to the side for the argument of these motions. You may proceed.

MR. NICHOLS: May we at this time request a five-minute recess, Your Honor?

CHIEF JUSTICE DREW: The Court will stand in recess for ten minutes.

Whereupon, at 10:28 o'clock A. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 10:38 o'clock A. M.

A quorum present.

CHIEF JUSTICE DREW: One of the Senators has very properly called my attention to Rule Number 20, which provides that all preliminary and interlocutory questions and all motions shall be argued for not exceeding one-half hour by each side unless the Senate shall by order extend the same.

Gentlemen, I would not have the authority to grant the last permission to extend the time for argument. It will be a matter to be submitted to you.

Do I hear any motions by any Senator that the time be extended, enlarged, or restricted?

SENATOR CROSS: For the purpose of getting it to a vote, Mr. Chief Justice, I make such a motion.

CHIEF JUSTICE DREW: That it be extended to the time which I previously ruled? One hour to each side?

SENATOR CROSS: Yes.

SENATOR PEARCE: Mr. Chief Justice?

CHIEF JUSTICE DREW: Senator Pearce?

SENATOR PEARCE: Would it require a majority vote or a two-thirds vote to amend the rule?

CHIEF JUSTICE DREW: It requires a majority vote. It would not be an amendment to the rule because the rule says unless the Senate shall, by order, extend the time.

Gentlemen, you have heard the motion. As many as favor the motion, say aye; opposed, no. The ayes have it. The motion is carried. You may proceed.

MR. NICHOLS: Mr. Chief Justice, and members of the Senate, who are now organized and sitting as a Court of Impeachment, you have ---

MR. DANIEL: Mr. Chief Justice? Before he gets started, so that I won't interrupt him: Do I understand that you are arguing both of your motions at the same time?

MR. NICHOLS: Correct.

MR. DANIEL: Or is it one hour for each motion?

MR. NICHOLS: I am attempting to argue the Motion to Dismiss the entire cause of action at this time.

CHIEF JUSTICE DREW: We will consider the entire argument directed to the two Motions to Dismiss, and he will be allowed one hour to argue everything that he is going to argue on the two Motions to Dismiss.

MR. DANIEL: Thank you, sir.

CHIEF JUSTICE DREW: I should have said the Motion to Dismiss and the Motion to Strike will be in one argument, and you will be allowed one hour for it.

MR. NICHOLS: We are now attempting to attack the sufficiency of the Articles, by this motion which we have already stated to you --- the law that the Senate or this Court may first determine whether or not these Articles state an impeachable offense. We emphatically tell you that they do not state an impeachable offense.

May I discuss with you the reasons behind the law and the history as to impeachments. I would like to show you that it takes grave misconduct. This business of a misdemeanor in office --- it must involve very serious charges of moral misconduct, and not simple mistakes. Mistakes that every Judge in the state --- that every Judge in every state --- makes.

We are not here trying to tell you that Judge Kelly does not make mistakes because he, like anyone else, does make mistakes. But the mistakes of a judicial officer are not an impeachable offense, and that is all that is actually being charged throughout these Articles.

Now, mistakes of law that a Judge makes are corrected by Courts of Appeal. We have recently --- through the Legislature and the State of Florida, we have recently, within the last ten years, set up District Courts of Appeal; putting three more into the state. So that you can correct legal errors if Judges make legal errors. We have our Supreme Court of Florida which corrects legal mistakes of Judges.

Complaints of personalities are, should be, and always have been corrected at the polls. We have chosen in Florida our system by which we, every six years, elect our judiciary. Contrary to the Federal system. The Federal system emanates from England where they are appointed for life; and you will see that the impeachment proceedings that have occurred are in the Federal Courts.

Never in the history of Florida has a State Judge been impeached. The law recognizes how serious these charges must be to justify an impeachment. Those who originally conceived and inspired these Articles of Impeachment --- by which they are asking you, the Senate, to reach over here into their elected officials and take out an elected official and forever destroy this man as a public official.

Now, why do I say "forever destroy" him.

The Constitution --- and that is what we are proceeding under here --- says, after listing those officials who may be removed by impeachment, "but judgment, in such case, shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State."

Then likewise --- and that is Article 3, Section 29 --- or Article 3, Section 39 --- and Judges of the Circuit Court, after naming several others --- "and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office."

Now, those are the Constitutional provisions that we are here under. It must be a misdemeanor in office. The legal basis for a misdemeanor in office is moral turpitude. There is no act of moral turpitude charged in these Articles. They are the Articles --- and I have them here somewhere --- here they are in this blue back --- there is no act of moral turpitude charged anywhere in these Articles; because there is none involved in this case.

Even more important, even more significant, they do not even charge Judge Kelly in these Impeachment Articles with any type of moral turpitude or act or anything close to moral turpitude.

Legally, "moral turpitude" involves an act which is vile or is done with corrupt motives. What are some of the acts of moral turpitude? Stealing in office. Bribery. Graft. Awarding of excessive fees. Drunkenness. Favoritism among lawyers or litigants. Gifts of things of value --- that the Judge takes gifts or things of value from lawyers or clients.

Now, they have not charged any of these things. They have not charged anything of a serious nature in these Articles. Why? Because there is none.

You know that they have put their best foot forward in these Articles, and you have heard them, time and time again, using window dressing, trying to say and trying to bolster up or trying to shore up some of these charges; by a long list of adverbs --- time after time, they repeat them and repeat them and repeat them. But it does not add up to an impeachable offense when you boil it down.

Now, visit with me a little bit concerning the history of impeachment. There have been only four Federal Judges in the United States impeached. Four out of the entire history of the United States. Only four Federal Judges have been impeached.

The seriousness of the charge necessary for a valid impeachment is clearly demonstrated in these four cases.

The first impeachment was in 1803. This was Judge John Pickering. He was charged with public intoxication on the bench. That he was drunk and had been drunk for approximately two years. In one Admiralty case it was the testimony that two lawyers had to sit, one on each side of him, and hold him up and hold his head up. And

in that very case he said, "I am drunk as hell today but I will be sober tomorrow."

Impeached? He didn't even attend his impeachment trial. He was impeached in absentia. Certainly he was impeached.

They haven't charged this man with drinking or even intemperance of any kind.

The second trial was Judge West H. Humphreys, in 1862. This was a Tennessee Federal Judge. He was charged with treason against the Federal Government. He deserted his political post. He refused his obligations as a Federal Judge, and absolutely deserted his post; and he was tried for treason in absentia, and of course he was impeached. We are talking about the seriousness of the charge.

It is very interesting, in the same Constitution of the United States, when the Senate sets up impeachment procedures, it says that they may be removed for treason, bribery, or other high crimes and misdemeanors.

So I am simply pointing out to you that "misdemeanor in office" is used synonymously with very, very serious charges of treason, bribery, and other high crimes in office.

Now, the third Federal Judge that was removed - - and, remember, that Federal Judges do you have the opportunity to come before the polls and come before the people for a review of their records, as we have in our State system, which is still the finest system that there is in the country. The Court belongs to the people. The Courts belong to the people; and the people should have something to say about their Judges and who their elected officials are.

The third was Judge Robert H. Archbald. He was charged with corruption in office; extorting money from the litigants who had cases before him. He was accepting cases before other Judges or before other Courts and taking a fee for it while he was a Judge; and he was impeached.

The fourth was Judge Halsted Ritter, a Federal Judge. He was charged with fraudulent income tax evasion. He was improperly accepting large sums of money and not reporting it on his income tax return, from lawyers and litigants who had matters before him; and at one time they found a considerable amount of marked money that they had marked and they found it in his safety deposit box. On one occasion, \$7,500 was accepted.

Impeached? Yes.

Now, those are the four Federal Judges that have been impeached in the entire history of our nation, and those are the serious charges that you must charge a man with.

You don't charge him with making errors of judgment, which all of us make all the time.

Now, there has been only one trial in Florida of an impeachment, and some of you men had the privilege or the disprivilege, I will say, of hearing the Holt matter. But I want you to visit with me as to what they had Judge Holt charged with. He was a Circuit Judge from Dade County. That trial was started on July 8 and ended August 15th. Here is your record of it, right here.

I want you to compare the charges that they had, as versus these frivolous charges that they have got involved here.

And, after twenty-six days of trial, you, the Senate of Florida, discharged or acquitted George Holt and reinstated him on the bench.

George Holt was charged, first, with appointing friends

as receivers; allowing large fees. One receiver got \$27,000 in an estate. And then taking trips with this receiver to Europe. This receiver would not even come within the jurisdiction of the Senate at the time of the trial. He was in Casablanca enjoying that \$27,000 that Holt had referred to him, at the time of the impeachment trial.

Number 2: He was charged with appointing attorneys, Masters, curators for large estates and of other people's property, allowing large, exorbitant fees, into the thousands of dollars; and borrowing money from the Masters, curators, and so on.

In one estate matter alone he awarded \$64,524.75 in this regard.

Third: He was charged with borrowing money from attorneys who practiced before him.

Fourth: He was charged with the driving of an automobile while intoxicated, and seriously injuring other innocent people.

You don't find any such charges in this. Why? Because they cannot find them. They are not in existence. Those are the serious charges on which the only trial in Florida has been held and you, the Senate, reinstated the Judge.

We are talking about serious charges that must be alleged in a complaint and that must be alleged in these Articles; and there are none anywhere to be found in this.

Now, historically, again, only one other Circuit Judge has been attempted to be impeached in Florida. He was Judge James T. McAfee. In 1871 he was Circuit Judge at Tampa. He was charged, Number 1, with improperly holding attorneys and people in contempt. Secondly, with imposing unjust and heavy sentences on citizens.

After the House of Representatives in one session had voted the Articles of Impeachment, during the next House they came along and appointed a committee and they withdrew the Articles of Impeachment from the Senate. It is quite interesting. The legislative committee report of withdrawal, because I think it throws some light on this.

We have one or two cases in which they are complaining about an attempt to cite for contempt, which is simply a judicial ruling within the power of a court.

In withdrawing the charge, the report of the House committee said, and I quote:

"Upon careful and deliberate investigation we find the Articles are frivolous."

They are about as frivolous as they are here, because the charges are about the same. And the evidence was entirely insufficient to sustain the Articles of Impeachment.

"That the gravest charge contained in said charges is the alleged punishment of William B. Henderson for alleged contempt.

"We find, upon examination of precedents, that the action of Judge McAfee to be sustained thereby; and, at the most, the exercise of the power of Courts to punish for contempt is in a great measure undefined; and, not being expressly limited by statutory enactment, we believe that the exercise of a power so undefined and unlimited as shown in this case, not to be a proper ground for impeachment."

This is your Legislature, on a previous matter, saying that a ruling of the Court is not proper ground for impeachment or any ruling concerning a contempt matter.

Contempt is reviewable by an Appellate Court. That is what they are for. They couldn't come in here and ask

you to be an Appellate Court. That is exactly what, I will show you in a minute, they are attempting to do.

Now, the House of Representatives knew that these acts were not impeachable offenses. In the closing hours of the special session of the Legislature, this House first rejected these Articles. Then, without any additional testimony - - - without any additional hearings - - - they reversed themselves over an incomplete newspaper article that somebody came in with the next morning.

But for that incomplete article Judge Kelly would be down there in Pasco County now attending to the people's business, and I would be home with my wife and children where I should be.

Now, taking up the Articles themselves, I would like to take them up Article by Article, for a moment to show you the legal insufficiency of these Articles. That they are not an impeachable offense. Throughout the Articles themselves, as I have mentioned already, they have used a string of adverbs, such as "intentionally, illegally, and for personal reasons and emotions."

Those are just simply window dressing descriptions that they repeat and repeat and repeat. They are not charges, themselves. And they cannot shore them up and make one out of them.

Now, the normal mistakes of a Judge - - - dressed up with "intentionally and illegally" - - - does not change them or make them an illegal act. I don't care how much they try to dress it up, it is not an impeachable offense.

Now, boiled down, says that there was a condemnation matter going on in Pasco County. An attorney by the name of Charles Luckie, Jr. was representing a land owner. Luckie did not want Judge Kelly on the case, so he, along with two lawyer friends of his, filed an affidavit of disqualification of the Judge. The trial had not started and the Judge had not taken any testimony concerning the facts. These affidavits were long and voluminous and were personally insulting to the Judge and to the character of the Court itself, containing unjustified opinions and not facts.

After the Judge had researched the law on how to deal with this issue, he simply issued a notice for the three attorneys to appear before him on a certain date for a hearing. This is known in the law as a rule to show cause. At this point Mr. Luckie, one of the attorneys, went to the Appellate Court, where his rights were properly determined. According to the District Court - - - and that is where these matters should be decided - - - according to the District Court, Judge Kelly was wrong and the attorneys were right. This case is still on appeal to the Supreme Court of Florida, which is our highest Court to still review the matter. No one knows legally yet who was right and who was wrong.

Now they ask you to sit here, as an Appellate Court in a matter that is pending across the street in the Supreme Court, and you pass on whether the contempt matter or even the matters that were therein discussed was wrong or right.

Now, if a few lawyers can use the Senate as a forum to retry cases and these legal matters, then I wish to show you that what the Judge did was within a legal right. If we're going to have trials, de novo here, and if we're going to review every act of the Circuit Judges here, operating within the power of their office, if you're going to sit here time and time, I'd like to show you that his actions were within the bound of legal reasoning.

Now, we're talking about whether or not the Judge had a right, when these lawyers filed these long-winded affidavits, which stated conclusions and other things, not facts, whether or not he has a right to ask them to come before him for a hearing.

I point out to you, he never did hold the attorneys in contempt. He went to the District Court but, nevertheless he never had any - - - he asked them to come before him for a review of the matter, to discuss it.

Now, did he have a right to do that? I'll show you that he did, and after he did his home work and his research in the matters, he had - - - the Court read these cases, and the first case clearly shows that the Judge does have - - -

CHIEF JUSTICE DREW: I'd like to interrupt you just a minute, Mr. Nichols, to advise the Senate that, for the purpose of this argument and, of course, you realize that - - - for the purpose of these arguments, all of the facts contained in the impeachment articles are assumed to be true and, of course, you are confined to the facts there as alleged.

MR. O'NEILL: Mr. Chief Justice, we, the Board of Managers, would object, under the authority and precedents on Pages 27 and 29 of the Holt Journal of the Senate, July 9, 1957, to counsel for the Respondent arguing facts. The precedent appears - - -

CHIEF JUSTICE DREW: You may argue only the facts, as alleged in the Articles of Impeachment. I'm sure Mr. Nichols realizes that, and you may reply to - - -

MR. O'NEILL: Just as to the sufficiency of them, Your Honor.

CHIEF JUSTICE DREW: The sufficiency of the Articles, that's correct. You will not argue the facts other than those which appear in the Articles and within the sufficiency of the Articles.

MR. NICHOLS: Correct, Your Honor. Can we also include there the Bill of Particulars under which the Articles - - - they've alleged facts, too, I presume.

CHIEF JUSTICE DREW: The Bill of Particulars cannot be used to add to or detract from the Articles of Impeachment, as set out in your own brief.

MR. NICHOLS: All right, sir. Now, the matter that I was talking about was the contempt in the Article and the attempted holding of Luckie in contempt, which is clearly set out in Article 1.

Now, I want to show you that the Judge, after doing research on - - - and these affidavits, have a legal basis on which he called these lawyers before him to have a discussion about the matter.

In the case of the Ft. Pierce Bank - - - no, the State vs. Peacock, 152 So. 617, the Supreme Court of Florida said this: "But even in cases of proceedings to invoke the disqualification of a Judge" - - - and we're traveling under the disqualification procedure, in which someone, if they feel they're prejudiced, has the right to disqualify the Judge by following the statutory procedure to disqualify him, and filing affidavits for disqualification - - - "but even in cases of proceedings to invoke the disqualification of a Judge, the power to punish for contempt exists where, in such uncalled-for acts or wrongful conduct as amounts to an actual, direct obstruction to or interfering with the administration of justice and his erroneous or abusive exercise of such powers to punish for contempt that this Court can be concerned, when properly called on, to grant relief."

Again, the Supreme Court of Florida, in dealing with this same subject, in *Zarat vs. Culbreath*, 8 So. (2d), Page 1:

"When we adhere to the enunciation" - - - and I quote - - - "when we adhere to the enunciation contained in *State vs. Peacock*, *Supra*, we are brought to answer the question, whether or not the offending allegations was one which could reasonably result in actual and direct obstruction to or interference with the administration of

justice. Aside from this, we may consider whether or not the alleged offending act was such as to reasonably result in bringing the Judge or the Court into contempt, disrespect and shame in the public eye."

Now, Gentlemen, that's all that this count does in the first phase of the count. In the second phase of the count, the Board of Managers charges that Judge Kelly had started to prepare an opinion, as the basis upon which he was relying to issue the rule to show cause.

Now, what happened there? After he did this research, and looked up the law concerning the same, he called in his Court Reporter, the Court Reporter, who takes all his trials and all of his chancery hearings, and he roughed out the benefit of his research and these cases into a memorandum but, lo and behold, this Court Reporter goes over and takes this order, which has never been signed by the Judge, and delivers it to Mr. Luckie - - -

MR. O'NEILL: Mr. Presiding Officer, under the precedents, on Pages 27 and 29, we point out to the Court that the gentleman for the Respondent is arguing facts again, and it's not pertinent to the argument here.

CHIEF JUSTICE DREW: Mr. Manager, I think we will save time if we let Mr. Nichols conclude his argument, and then you can conclude your argument.

Now, he is - - - I have told the Senate that he may not argue, and you should not consider, and you may not consider anything that he says outside of the record, and I think they understand that, that we'll not consider, if Mr. Nichols gets outside the record, but I think we'll save time if we let - - -

MR. O'NEILL: Mr. Chief Justice, am I to understand the ruling, that the Board of Managers are not to make objections?

CHIEF JUSTICE DREW: You can make objections at any time in the proceedings but, during the argument, you are not to interrupt opposing counsel.

MR. O'NEILL: Thank you, sir; that's qualified.

SENATOR ROBERT WILLIAMS: Mr. Chief Justice - - -

CHIEF JUSTICE DREW: Mr. Senator.

SENATOR WHITAKER: - - - I move that the Senate go into closed session.

CHIEF JUSTICE DREW: Gentlemen, you've heard the motion.

Those in favor of the motion, say "aye." Opposed, "no."

Call the roll, Mr. Secretary.

Whereupon, the Secretary called the roll and the vote was:

Yeas—23.

Askew	Connor	Hollahan	Ryan
Barber	Friday	Johnson (19th)	Spottswood
Blank	Galloway	McCarty	Tucker
Boyd	Gautier	Mathews	Whitaker
Campbell	Gibson	Pearce	Williams (27th)
Cleveland	Herrell	Roberts	

Nays—21.

Barron	Davis	Mapoles	Usher
Bronson	Edwards	Melton	Williams (4th)
Carraway	Henderson	Parrish	Young
Clarke	Johns	Pope	
Covington	Johnson (6th)	Price	
Cross	Kelly	Stratton	

Whereupon, at 11:13 o'clock A. M., the Senate went into closed session.

The Senate opened its doors at 11:22 o'clock A. M., and was called to order by the Chief Justice.

A quorum present.

CHIEF JUSTICE DREW: I would like to announce to the Managers of the House and the attorneys for the Respondent in this case, that if the attorneys on either side go outside of the record in this case - - - outside of the allegations set forth in the Articles of Impeachment - - - I will call his attention to the fact and warn him again, but neither side should interrupt the other during the arguments that are presented to the Court of Impeachment. You may proceed, and I wish you would please be careful not to go outside nor bring in any facts other than those in the Articles.

MR. NICHOLS: Thank you.

CHIEF JUSTICE DREW: You have now used twenty-eight minutes of your time.

MR. NICHOLS: Thank you. Continuing on, we were talking about Judge Kelly in the normal course of a Judge's actions in the normal course of a day, and his normal acts in office. That is all we are dealing with and that is all they are charging in the entire Articles.

Now, Article I (b) and Article I (c), these deal with clerks and attorneys.

Attorneys are officers of the Court and at all times should be interested in the administration of justice of the Court; and the clerks are employees that are connected with the Court. And this count simply deals with the administration of Court affairs, and the requiring of these officers of the Court to appear before him in open Court to discuss these matters. Now, boiled down, that is all those counts amount to.

Article II simply deals with the speeches that Judge Kelly made, and it so states in the Article itself. It deals with the elimination of his office in that circuit, the Sixth Circuit; and joining it up with the Fifth Circuit. And he spoke out in opposition to that.

I call your attention to the fact that he was elected under a statute that says that the number of Judges of the Sixth Judicial Circuit shall be one for every 50,000 inhabitants.

CHIEF JUSTICE DREW: Mr. Nichols, you are referring to facts that are not in the Articles. You should confine it strictly to what is alleged in the Articles of Impeachment.

MR. NICHOLS: Well, that is exactly what I am talking about here.

CHIEF JUSTICE DREW: Does it say anything about what you are referring to?

MR. NICHOLS: They are referring to the office and I am reading a statute under which he was elected - - - 50,000 inhabitants or a major fraction thereof as may be determined pursuant to law; provided that one of said Circuit Judges shall reside and be appointed or elected from Pasco County. I am simply pointing out that he was elected to be the resident Judge of Pasco County; and any time that you start to change his circuit, you have an elected official who has been elected by the people - - -

CHIEF JUSTICE DREW: Mr. Nichols, I am going to have to interrupt you. This is entirely beyond the scope of Article II, which has no reference whatever to what you are talking about.

It is charged that he engaged in certain political activities. What it was, I don't think that you are now entitled to go into in any respect whatever.

MR. NICHOLS: Judge, the Article refers to the fact

"that aforesaid speech and public appearance was for a political purpose." That is their allegation. And that he made speeches and that he made them for a political purpose.

I am simply pointing out to you that when they attempted to change his judicial circuit, he opposed that and he spoke out to the public, and that it was a non-partisan political talk. The abolition of a Circuit Judge's - - -

CHIEF JUSTICE DREW: You will have to confine yourself to the Articles of Impeachment. There is nothing before this Senate to show what kind of political discussion developed.

You must admit that the Articles are true and that it was a political discussion, and it is not necessary - - -

MR. NICHOLS: Let me move on, Your Honor. Article III, I think, is a good Article to show the triviality of these Articles.

The case which is discussed in that charge has been completely reviewed by the Second District Court of Appeal and it was unanimously affirmed in all respects.

This is simply ordinary litigation between a man named Mountain, whom they refer to in that case, and the County of Pinellas. It involved a case where the county wanted to extend their water mains into territory that Mountain said was his. Judge Kelly ruled that the county could do it. It has been reviewed and approved.

CHIEF JUSTICE DREW: Now, Mr. Nichols, you are going into the evidence in the case and I am sure that somebody is going to make a motion that you discontinue this argument unless you adhere strictly to the allegations of the Articles of Impeachment. Not the facts behind them. They are not properly arguable at this time.

MR. NICHOLS: I shall conclude by saying that this amounts to no more than the ordinary litigation of an average case.

Article IV. This Article simply charges that the Judges, in discussing, had differences of opinion on how cases were to be assigned within this Circuit. Now, I don't know who's supposed to discuss cases and the assignment of them, if the Judges are not supposed to do so. That's all that Article amounts to, and even, on occasion, they may have debated or discussed; it doesn't say that they argued or otherwise.

I don't believe that it's an impeachable offense for the Judges to discuss and even argue. I hope that we don't eliminate the right of debate, because that's the way improvement and progress is made, by discussion and by debate, and even argument had on occasion as to your rights, are the best method of handling cases within the Circuit.

Article V. Now, I think that again shows you how frivolous these charges are.

Article VI. This Article does not claim that the Judge there had falsified any records. It says that he aided and condoned the alteration of public records in a cause pending before him - - - and I'm reading from the Article - - -

CHIEF JUSTICE DREW: I think that would help, if you would read these, Mr. Nichols.

MR. NICHOLS: Well, Judge, I cannot - - - the man - - - it took the Secretary almost thirty minutes, and I can't reread them and discuss them within the limits of the time that I've got - - -

CHIEF JUSTICE DREW: All right.

MR. NICHOLS: - - - so, I've got to proceed on, because I'm losing time at the moment.

CHIEF JUSTICE DREW: You may proceed.

MR. NICHOLS: Thank you, sir. We're talking about the alteration of the record.

Well, it's actually the - - - a hearing held, and the Court dealing with a matter that's before it at the time; again, an official act of the Court, within the record, and dealing with the record itself, and the Judge simply holding - - - and they refer to the fact that the holding of the signatures appearing on the pleadings at a later date, they refer to the holding, that the Judge showed that it simply was a collateral matter of an affidavit of a signature, and he ruled on the collateral matter and took some testimony about it.

Again, it's an act within the confines of the Court, in determining these types of matters. Now - - - and there's nothing of moral turpitude, nor any misdemeanor involved.

In Article VI, in the case of the State vs. Sinclair, in the Circuit Court of Pinellas County, "in which the said Sinclair previously had been indicted by the Grand Jury of Pinellas County for the crime of murder in the first degree, grant a writ of habeas corpus upon petition of the Defendant, Sinclair, without notifying the prosecuting attorney of the Sixth Judicial Circuit of Florida, as required by Section 27.06, Florida Statutes, 1961."

Now, Gentlemen, they do not allege in this allegation, nor is it the responsibility of the Judge, to give notice; it's the responsibility of the attorney handling the matter, or when the writ is served upon the Sheriff, that he call in the prosecuting attorney to handle the matter. There is no charge here that it's an obligation of the Judge to do so, when the attorney, in fact, has notice; then there is no obligation whatsoever.

Article VII contains three obscured allegations, that Judge Kelly has unduly and unnecessarily interjected his own personality into the trial of cases before him. There is no impeachable offense in the Judge asking questions. There is no moral turpitude. There is no showing, even in these allegations, that there was any error committed or any prejudice, or if there was any appeal whatsoever. This makes no claim that anybody's rights have been involved. It's certainly not an impeachable offense, not misconduct or moral turpitude; and I hope - - - they're talking about - - - they say in there that he unduly extended the trial.

I hope that the Senate doesn't recommend that the Circuit Judges have to have a stopwatch, as to time. Certainly, I think that the Senate is going to leave it to judicial office the right to conduct their hearings in an orderly manner, and see that justice is done, and not clocked by the clock. I hope that we don't change the rules in an impeachment proceeding.

CHIEF JUSTICE DREW: Mr. Nichols, do you desire me to call you, to save any time? You have twenty minutes.

MR. NICHOLS: I've got somebody handing me notes here, Judge. I've got twenty minutes left.

CHIEF JUSTICE DREW: All right.

MR. NICHOLS: I want to move over into VII and VIII.

VII and VIII charge that Judge Kelly mismanaged his office, alienated attorneys, flagrantly violated certain provisions of the Canons of Ethics, and committed other and further actions of misconduct in office. They don't say what the other and further acts are. This is just a bunch of shotgun charges that they've brought, and we're continuing here to get bills of particulars, and we're continuing to get all kinds of charges.

Now, the House is the only party that's vested with the right to bring these impeachment proceedings, not this Board of Managers, to continue to have hearings

up here and continue to furnish us with charges. They've got to be specific. Time and time again the Supreme Court - - - and I've got the cases here if I had the time to read them - - - time after time the Supreme Court has said you must inform the man whom you charge. You must tell him what these charges are. You can't just allege and submit other and further acts of misconduct in office.

How am I to defend this man on such a charge? Could anyone in this room defend him on such other misconducts in office. These generalities that they're talking about, they do not claim legal grounds for impeachment, they're frivolous.

"In his" - - - and I'm quoting again - - - "in his official capacity, intentionally, shrewdly, and ruthlessly, and in abuse of his official trust, as evidenced by the acts heretofore set out in Articles I through VII hereof, each of which is hereby realleged and reaffirmed."

Now, they're simply going back and realleging and reaffirming, "and made a part of this Article as though set out in full herein, embark upon and maintain a continuous course of conduct calculated to intimidate and embarrass the members of the Pasco County Bar."

Is there anything specific about it? It's a shotgun proposition for the House Managers, just to bring up anything with and certainly, Counts VII and VIII must be dismissed in these particular charges. Now - - - or it gives them a blank check to continue to bring in, continue to bring in matter which we will take up later.

Now, in Article VIII, I've just mentioned the fact that they are, likewise, general charges. These are general charges, and they simply are conclusions of those alleging these impeachment proceedings. The law is, as I have stated time and time again, that you must conform, and they have not. They must be a matter of moral turpitude, and they are not. They have not charged this man with any misconduct, actually, in office, and I'm appealing to you, not as a legislative body, but as a Court, to dismiss this charge.

These charges are frivolous; these charges are not within the law. Therefore, I make this appeal to you, based on the law. There's not any more need of you sitting here for six weeks and trying this case than if they brought a charge that he was six feet tall and had a long, tall, thin face that I talked about yesterday.

Now, every word in impeachment proceedings, if they could prove every single word, if they could prove every single word, to and beyond the exclusion of all reasonable doubt, conceding that they did, you would still have to dismiss this matter after you sit here, because they do not state an impeachable offense. I don't concede that they can, but if they did prove every single word in these Articles here, they would not have an impeachable offense, and may it please the Court, we are simply going to sit here and take testimony after testimony, to hear some complaints of some lawyers who have lost some cases.

Being a Judge is a hard job. Somebody's got to lose. Lawyers and litigants don't like to lose, and it's a tough, tough job.

In one place they complain in this case, in this impeachment, that he was unprepared; in another case, they complain that he was well prepared, had memoranda; in another place, they charge that he should be impeached because the District Court affirmed, and in another allegation, they claim that the District Court reversed, but there have been many, many Circuit Judges reversed for their conduct.

I've got a number of cases here, which I wish I had the time to read to you, to show that Judges make errors, and that their personal conducts are injected into cases.

One of the finest Judges in the State of Florida is Judge Bird, and there's a case here that shows that he interfered, that he was reversed. I'm pointing out to you that the place to reverse error is in the District Court and in the Appellate Court, and not in the Senate of impeachment.

Now, it's extremely important that we keep our judicial system on an independent plane. There are three distinct bodies of Government: The Legislative and the Executive and our Judicial. They are simply, by these Articles, attempting to get you to reach over into a process and actually be an appellate court and review the actions of Judges, and I repeat what I said before, that under our state judicial system, the appellate courts are open every day of the week to correct errors of Judges, and the polls are open at election time to correct our personalities, and that's where we should leave the democratic principle of how to select judges in our state, and who shall be their judges to the people, because the courts belong to the people, and that's exactly where they should be, and we shouldn't come in here with this group of trivialities and ask you to sit here and try this case on this group of trivial allegations, and I ask you to assume the legal responsibility, and eliminate this matter, and let's go home and tend to our - - - the State's business, where it should be tended to, and send this Judge back down to tend to the County business at Pasco, where he was elected by the people, who selected him to be their judge.

I wish I had more time to read this law to you, but I'm limited by time, but this is a serious matter, and the allegations have to be serious, and they're not. They don't conform with those four cases of those Federal Judges that were impeached, and it doesn't in any way touch the allegations that were set out in the Holt matter; and I remind you that there's never been an impeachment of a State Judge in the history of the State of Florida, and that there have been some of them charged, as Judge Holt was, with moral turpitude and all types of stuff.

There is none in this, and there's no need of your wasting your time and the State's money, sitting here, because you have every legal basis, you have every legal duty, you have the legal responsibility to dismiss these charges. Thank you very much.

CHIEF JUSTICE DREW: You have ten minutes remaining, Mr. Manager.

MR. O'NEILL: Mr. Chief Justice, on behalf of the Board of Managers, Mr. Leo C. Jones will argue the motion.

CHIEF JUSTICE DREW: Mr. Jones.

MR. JONES: Mr. Chief Justice, this lady and members of the Court:

I hope not to take any more of your time than is absolutely necessary in making this argument. I would first like to clear up one doubt that has been cast in your minds. The charge for which a man may be impeached does not have to involve moral turpitude, nor does it have to involve the violation of a statutory law. The crime of impeachment reaches beyond and above and exclusive of those crimes for which a person may be charged for in the lower courts.

We're here to determine what a misdemeanor in office is, and only you, and you alone can determine what a misdemeanor is in office, that will warrant the removal of a judicial officer.

I think that we should refer, first, to the Constitution of the State of Florida, which says that a man may be impeached for a misdemeanor in office. It does not say a crime; it does not say a high crime and misdemeanor, as several other states do. It merely says a misdemeanor in office. This could include the violation of a statutory law. It could include an act involving moral turpitude. It

could include stealing, and so forth, probably, but it does not have to, and does not, necessarily.

Mr. Nichols referred specifically to the Archbald case, involving moral turpitude, where he states there that Judge Archbald was convicted and impeached for crimes of accepting funds, and so forth but, of course, he fails to mention to you, and you will see, on Page 11 of your desk book, that's Article IV of the Articles of Impeachment of Judge Archbald, before the United States Senate, charged that secret correspondence was passed between the Judge and the Counsel for railroad companies. Judge Archbald was convicted of that count and acquitted of several others, and we have charged, in these Articles of Impeachment, that Judge Richard Kelly did communicate with a party on one side of litigation, and their counsel, outside the presence of the other counsel, which is the exact, same charge that Judge Halsted was convicted of and impeached --- or rather, Judge Archbald --- excuse me. That's on Page 11.

We would like, first, to point out, as we have, that this is not a proceeding like a court. It's not a criminal proceeding. The law specifically says that even if you impeach, and there is shown here a violation of statutory law, then the courts of our state can immediately go back and try the officer, even though he has been impeached.

Now, your jurisdiction is exclusive and above and beyond that jurisdiction which lies in our lower courts. The Florida Constitution, as I pointed out to you, says clearly, a misdemeanor in office. We, therefore, have to go to define, we have to go and define what is a misdemeanor in office.

We have found, as I have told you, that it does not involve a violation of law; it could be. It does not involve the violation of a statute and common law. It does not involve a crime of moral turpitude. It involves acts which disrupt the administration of justice and take away from the people of a country - - - and in this particular case, the people of our state, the people of our counties, involved acts that takes away from them the right to their justice and their courts.

These are several acts that have been found in a research to constitute a misdemeanor in office, and as we go along in this argument, I shall point that out to you.

The first is an act which is prejudicial to the public interests. Should you find that the officer is guilty of acts which are prejudicial to the public interests, should you so find, that is sufficient for misdemeanor in office, under the Constitution of Florida.

Two: It could be an act which directly or indirectly casts an influence on the welfare of the State. It could be any act, regardless of whether or not it involved a crime or moral turpitude, which affects the welfare, the livelihood, the income, the life, the welfare of the state, any act which tends to do that, or any combination of a whole lot of small acts which, put together, tend to affect the welfare of the state, that is a misdemeanor for which the officer could be impeached.

An officer, it has been found, can be impeached for arrogance, that the fact that the accused has become so obsessed with himself and with his powers that he feels that he owns the office. I believe that all of you Senators have seen and known in your lifetime people who could not accept authority, who could not stand to be in high places, and who could not stand power which they had. If it is found, in our judicial system, that there is a Judge that is so obsessed with his own power that he believes that he owns the office, that would be a misdemeanor in office for which the Judge would be subject to impeachment.

Fourth: Conduct of the Judge is such that the public loses respect and confidence in him. If the Court conducts

himself in such a manner, while sitting on the Bench, that the general public, the lay public or the bar, completely loses confidence in their judicial system, then this place here is the only place they have to go to get redress so that they can have a Court and a judicial system in their county. The man cannot be tried in the Criminal Court, cannot have an information brought against him because he has not violated a law.

The only redress that people have, when the Court conducts himself in such a manner that the public loses respect for the Court, is to come to you here in the Senate and the House of Representatives.

Five: His acts should be such acts that, if done by a lay citizen, they would not be culpable. He could do such acts that, if they were done by you or me on the street, nothing would be wrong; but, because of his position - - - the position which he occupies - - - it tends to bring public distrust of the Court system.

Six: Impeachment will also lie for a course of conduct that brings the office or officer into discredit or displaces public confidence with public distrust. This could be a combination of a hundred acts over a period of time that brings public distrust to the Court or the officer who occupies the Court. Any of these acts could be a misdemeanor in office.

And all of the acts which I have described to you, which could be a misdemeanor in office, are exclusive of specific violations or crimes or exclusive of any acts of crime which involve moral turpitude.

Now, if we could, I would like to go down the Articles very briefly and I feel sure I can show to your satisfaction that each and every one of the Articles fits within these categories that I have just laid forth, which describe a misdemeanor in office.

First, we have Article I, Section (a). It has been charged there that the Court held attorneys of the bar in contempt by doing a lawful act without a hearing. We have charged that the Court held members of the bar in contempt of his Court without giving them the benefit of a hearing.

Article I, Section (b), is that the Court used the power of his Court to subpoena persons for a political purpose. Certainly this fits within the definition of a misdemeanor.

Article I, Section (c) is that the Court abused his power for personal motives against the clerks of the Circuit Court. That charge, standing alone, could fit within any of the categories which we have set forth. That the Court used the power vested in him to carry out personal abuses against a Clerk of the Circuit Court.

Article II, Section (a): In the name of the Court, using the position of the Court - - - in the name of the Circuit Court of the Sixth Judicial Circuit - - - we have charged that Richard Kelly carried on partisan politics before a partisan group in the name of the Circuit Court.

In Article II, Section (b), we have charged that the Court interjected himself into partisan politics by preparing and circulating a partisan petition throughout the county, thus involving himself in partisan politics, which violates the Judicial Code of Ethics and certainly tends to bring the Court into disrespect in the eyes of the public.

MR. NICHOLS: If Your Honor please, I object to counsel's making the statement - - - he says the allegations charge partisan politics - - -

CHIEF JUSTICE DREW: Mr. Nichols, I have ruled that counsel would not interrupt the other side.

MR. NICHOLS: Well, the charge does not say "partisan politics." He says it does.

CHIEF JUSTICE DREW: The Senate is reading the Articles. Each Judge is reading them and has them before him and they will understand it. If the matter is misrepresented, they will understand it. You may proceed, Mr. Jones.

MR. JONES: Article III. It has been charged there that the Court lifted an injunction which had been placed without notice to the attorney for the parties entitled to the injunction to their prejudice. Certainly this act would tend to bring lack of confidence of the public and the Bar - - - that an injunction which they were entitled to could be lifted and withdrawn without notice being given to them or their counsel in order that they might protect their rights in the Court system.

Article IV. It has been charged there that the Court brought excessive friction between himself and other Circuit Judges. Certainly, this act is a misdemeanor in office, when one Judge of a circuit brings such friction between himself and other Circuit Judges of that circuit that the Circuit Judges of the whole circuit cannot operate effectively, and thus dispense justice, to which every citizen is entitled.

Article V. It has been charged there, in Section (a), that the Judge allowed and condoned the alteration of public records. Certainly, this would fit within any of the categories. If we should stand there and allow the Court of any of our circuits to condone and allow the alteration of public records.

In Article V, Section (b), it is charged that the Court attempted to procure the destruction of public records. Certainly, we could not contend that the public could continue to have confidence and trust in this office if we were to allow our Circuit Courts to procure or attempt to procure the alteration or destruction or mishandling of public records.

In Article VI, it has been charged that the Court, without notice to the State Attorney, did hear a habeas corpus proceeding involving a man who had been indicted for first degree murder, to determine whether or not he should be allowed bond. Without giving the State Attorney notice, in order that the State Attorney might protect the rights of the citizens of that county from a person under indictment for first degree murder being free on bond.

It is not the contention that it is a requirement that the Circuit Judge give this notice, but it is the charge and the contention that the Circuit Judge, in the name of Richard Kelly, heard or allowed to be heard before him a writ of habeas corpus, and set bond for a man under indictment for first degree murder.

In Article VII, Section (a), it is charged there that the Court unduly and unnecessarily interjected himself into the trial of causes to the prejudice of the litigants. It is charged here that, through his many acts, he interjected himself into a proceeding and that the rights of the parties were not substantially obtained.

Section (b) of Article VII. It is charged there that the Court did indulge in partisan politics.

Section (c) of Article VII. It is charged there that the Court did discuss litigation pending before him with parties outside of the opposing party or their counsel; with counsel outside the presence of the other counsel. This is exactly the charge upon which Judge Archbald was impeached, in Article IV of those articles against Judge Archbald.

In Section (d) of Article VII, it is charged that the Court disrupted the Judgeship by alienating the Bar of Pasco County, between the Bar and himself.

In Article VII, Section (e), it is charged that the Court violated the Code of Ethics for Judges.

Then we get to the general charge, Charge Number VIII, and we would refer you, for your interest or your research, if you so desire, to the Halsted Ritter case, wherein such a charge as this was upheld and was heard by the United States Senate.

I think now that it would be helpful to you, as Judges of this Court, if we could refer for a moment to your desk-book. The points that I have there, and which I think are important, were set forth by Judge Terrell in a much more concise way than I believe any of us could.

I would refer you first to the first paragraph, nine lines from the bottom of this paragraph on Page 3.

"The Governor, Justices of the Supreme Court and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office."

This is the extent of our Constitution on the subject.

We would refer you then to the lower part of Page 3, the last paragraph, the corresponding provision of the Federal Constitution. You will see there the Federal Constitution says, "conviction of treason, bribery, or other high crimes and misdemeanors."

Our Constitution is absent this provision.

If you will next refer with me to Page Number 5, the starting of the second paragraph:

"Impeachment under the State Constitution is limited to 'any misdemeanor in office.'"

Nowhere can we find that it refers to moral turpitude or the violation of a specific statute or statutory law.

If you will then go to the center of that paragraph, about ten lines from the top of it, still on Page Number 5:

"Under English practice many offenses were impeachable which were not punishable as crimes at common law. The State Constitution does not attempt to define what offenses are contemplated by the phrase, 'any misdemeanor in office.'"

Then, at the bottom of the same page, Judge Terrell refers us to a writer on the subject, a Mr. Wrisley Brown; and Judge Terrell states that Mr. Brown says: "In his well documented article just adverted to, Mr. Brown points out that to determine whether or not an act or a course of conduct is sufficient in law to support an impeachment, resort must be had to the external principles of right, applied to public propriety and civic morality. The offense must be prejudicial to the public interest and it must flow from a wilful intent or a reckless disregard to duty to justify invocation of the remedy. It must act directly or be a reflected influence to react upon the welfare of the state."

Then we go to Page 7, the first paragraph that starts on that page, at the top of the page, seven lines down from the top there:

"We also defined 'Misdemeanor in Office' as grounds for impeachment under Florida Constitution in In Re Investigation of Circuit Judge (Fla.) 93 So. (2d) 601. So there can be no doubt that a circuit judge may be impeached when his personal conduct becomes such that the public loses respect for and confidence in him."

Certainly, these Articles, if proved - - - and, as the Chief Justice has stated, these Articles must be taken as true for the purpose of this argument - - - if these Articles are true, then certainly they fit within the denunciation.

Then, as we have referred to already, there is a study of the Archbald case, in which I have called to your attention that Article IV charged secret correspondence between the Judge and other counsel outside of opposing

counsel; and, as I have related to you, we have a specific charge in that regard. If you will go about threequarters of the way down the page, Judge Terrell says, at Page 11 --- Judge Terrell says that the trial of Archbald resulted in the conviction, and so forth.

Then he lays out four significant deductions from the result of that trial. I would like to read you (2), (3), and (4) specifically.

"(2) none of the articles charged an indictable offense or violation of any written law; (3) none of the acts charged would have been culpable if committed by a citizen; (4) judgment removed from controversy the idea that judges are impeachable only for indictable offenses."

Once again, we go to Page 11, the last complete paragraph there on the bottom of the page. Judge Terrell says there, "A study of the federal cases settles beyond question that impeachment will lie not only for offenses punishable by statute, but that it may be predicated on a course of conduct that reveals unfaithfulness to trust or which brings the office or officer into discredit or displaces public confidence with public distrust."

Then, if we will go down to Page 12, starting with the second complete paragraph on that page, Judge Terrell says there now:

"Now it is perfectly apparent that impeachment is directed to a political right, that the office held by the accused is a political incident, that if successful the impeachment imposes a political forfeiture and is designed to suppress a political evil but the judgment is reached by the judicial process and is the product of judicial scrutiny."

Now, we go to Page 13, the last complete paragraph on that page.

"From these observations I cannot escape the conclusion that impeachment is a proceeding singled out by the Constitution to reach a peculiar class of offenses, peculiar to a limited class of high officials, and because of its peculiar fitness the Senate was clothed with power to try such offenses."

Then we refer to the last paragraph on Page 13, where Judge Terrell, says this:

"Now, all that has been said could be crystallized in this --- in our country public office is still a public trust and the higher the office, the more serious and sacred the trust; in the lower echelons violation of the trust is ground for suspension by the governor; in the higher echelons it is ground for impeachment by the House of Representatives; in either event the Senate is a judicial umpire or court of impeachment before which the charges against the accused must be established to its satisfaction."

In closing, I believe it has become amply clear to you that these charges, if proven --- and they must, for the purpose of this argument, be taken as true --- under the charges, the charges are sufficient to charge a misdemeanor in office.

In concluding, I would like to quote from the Halsted Ritter case:

"When doubt enters, confidence departs."

When confidence in the man who sits on the Bench is gone, confidence in the Courts is gone.

We, on behalf of the House of Representatives, charge and we have assumed the responsibility of proving --- and these, of course, are our words --- we will endeavor to convince the Senate that the sum total of the specific charges on the part of the House show to you reasonable

grounds, or grounds sufficient to cause the belief in you that public distrust, public confidence, and public welfare has been affected to their detriment, in the counties and the people of the area concerned by this Court. Thank you.

CHIEF JUSTICE DREW: Gentlemen, before reaching Mr. Nichols' argument --- it is now 12:15 --- he has ten minutes remaining --- I declare a recess of this Court for ten minutes.

Whereupon, at 12:15 o'clock P. M., the Senate stood in recess.

The Senate was called to order by the Chief Justice at 12:25 o'clock P. M.

A quorum present.

CHIEF JUSTICE DREW: Before proceeding to hear the argument of Mr. Nichols, Senator Price ---

SENATOR PRICE: Mr. Chief Justice, the question which I posed has been answered by the argument of counsel.

CHIEF JUSTICE DREW: Thank you, Senator Price. Mr. --- Senator Askew has requested that the following question be asked to Mr. Jones:

"Is it the position of the Board of Managers that Section 27.06 of the Florida Statutes required --- underscored --- the Judge --- underscored --- to give notification to prosecuting attorney of the application for a writ of habeas corpus and, therefore, imposes a duty upon him to make the notification?"

MR. JONES: It's not the position or the contention of the Board of Managers that the statute, as quoted, requires the Circuit Judge to give that notice. It is our contention that the Circuit Court, by implication or otherwise, is without authority to hear such a proceeding without having first ascertained, to the satisfaction of the Court, that such notice has been given, in order that the State Attorney may be there to represent the people.

CHIEF JUSTICE DREW: Does that answer your question, Senator?

SENATOR ASKEW: Yes sir.

CHIEF JUSTICE DREW: You may proceed, Mr. Nichols. You have ten minutes --- eleven minutes remaining.

MR. NICHOLS: Mr. Chief Justice and Members of the Court:

The Article however, that --- the question just asked by the Senator, does say that the Judge is required to and is charged, without notifying the prosecuting attorney of the Sixth Judicial Circuit of Florida, as required by Section 27.06 of the Florida Statutes; that's what we're talking about. They make this allegation in their charge that they do.

Now, I want to briefly conclude with you by saying that this procedure that they are attempting to use here is simply a --- they are trying to virtually hang a man for some ten or fifteen small acts like, for instance, if you violated fifteen traffic acts, why, they want to hang you for it.

Now, they say that a lot of these small acts add up to something large. I tell you, if you take these Articles, one by one, and item number one, when you get through boiling it down, it adds up to zero. It does not state an impeachable offense; and you can take the next one, and when you get through with it, it adds up to zero and, Gentlemen, seven zeros don't add up to an impeachable offense, it's still seven zeros.

Now, this proceeding strikes at our very basic demo-

cratic principle, and that is the people's right to elect their Circuit Judge; and Mr. Jones tells you that you should sit here and try this man, primarily based upon whether or not the people have lost confidence. He used that word, and I vote it down, as to whether or not the people have lost confidence. I tell you, Members of the Court, it's not for you to judge whether the people in Pinellas and the Sixth Circuit have lost confidence, it's for the people to judge whether or not they have lost confidence.

Now, what are they going to do? Sit here and bring lawyers in, and let a group of lawyers on one side complain and say that they've lost confidence, and then I'm going to have to call, I guess, about five thousand people from down there before - - - to outweigh, to show there's confidence.

What are they going to have? A polling contest here in the Senate, to see whether or not the people, who elect this man to this office, have lost confidence? How do we try such a collateral thing, or such a trivial thing, that the people have lost confidence in the Judge.

Now, maybe, if this was a federal proceeding, under which the man was elected for life, that might be the only way, but Mr. Jones tells you that this is the only way that you can eliminate this man from public office.

If these matters add up to an impeachable offense, then this man - - - if this man is such as they contend, certainly, he will be eliminated at the polls; and the people have the right to select him, and they did, and the people have a right to reject him, and then we are trying the matter, as to who's got confidence, at the right forum.

This is a dangerous proceeding that they are starting about, and they're starting here in the State of Florida, to bring the judiciary up here and review their judicial acts. The independence of the Circuit Courts and Circuit Judges is extremely important, because, if they are going to be intimidated by some group or other concerning their rulings, then we are striking deep into the judicial processes of our state.

These Articles do not state the necessary requisite, as the House knew, as the House voted one day, and turned around the next. These Articles do not constitute a matter which this Senate should be sitting here reviewing, and we sincerely ask you to let errors, legal errors of Judges, be corrected in the District Court, where they belong, and let the people correct the errors of personality at the polls, for that is our democratic way of life, and that is the process that we are involved here with, and we sincerely tell you, under the law, and under the Constitution, and under the provisions of impeachment, that these matters, or these Articles, should be dismissed, and we ask for your sincere, sober, intelligent consideration of this matter and actually, because there is so much going on when we try these judicial officers of our state on a bunch of non-impeachable offenses.

I thank you very much for your time and the privilege of addressing you concerning this motion. Thank you, Mr. Chief Justice.

CHIEF JUSTICE DREW: Senators, there are - - - there have been argued before you a motion to strike individual Articles of Impeachment and a motion to dismiss the Articles of Impeachment as a whole.

In order to properly dispose of the matter, were this being presented to a single Judge, he would first determine whether he would strike any individual articles before he ruled upon the question of whether the Articles themselves should be stricken.

Different from an ordinary Court, after parts of Articles are stricken, usually there is an opportunity to amend. There will, of course, be none here. So, in order that you

may properly consider all of the angles of this motion, and study whether or not, in your opinion, any particular Article should be stricken and disposed of today, I think we should now adjourn until 2:30, so that you may use this time to study the question of whether any Senator desires to make a motion that any particular Article be stricken.

Now, if you think that the Senate is ready to determine this now, it will not be necessary, because I intend to call for any motions on any particular Articles, and if you think you should have time to determine whether you desire to move to dismiss any particular Article, I think we should first dispose of that.

I would like to know whether you desire - - - this is not a Senate - - - regular Senate procedure, I suppose, but I would like to know whether you desire the time between now and 2:30 to discuss, or whether you do not. As many as favor adjourning now till 2:30 to study these Articles and then dispose of them, if you will please say aye; opposed, no.

CHIEF JUSTICE DREW: The "ayes" have it. Senator Cross?

SENATOR CROSS: Mr. Chief Justice, a point of information here. I think we need to clear this up. Does the Chief Justice intend to consider the Motion to Dismiss, ground by ground, first?

CHIEF JUSTICE DREW: Yes sir, on each Article.

SENATOR CROSS: And then, of course, if that's granted, then the other would be moved?

CHIEF JUSTICE DREW: That's right, sir.

SENATOR BARRON: Mr. Chief Justice.

CHIEF JUSTICE DREW: Senator.

SENATOR BARRON: Mr. Chief Justice, I have been concerned, from the beginning, about something that was filed here before us; we have all seen it; and that is the Bill of particulars.

Now, I'm fully aware that the Bill of Particulars cannot strengthen the Judge, but as in a Court, the Bill of Particulars is a part of the pleadings.

May we, as a Jury here, consider the Bill of Particulars, and have certain facts set out, if we so desire, in the light of the weakening of the charges?

CHIEF JUSTICE DREW: No sir. You may consider the Bill of Particulars as limiting or proscribing the introduction of evidence in support of any Article of Impeachment if they amplify the Article itself, but it may not add anything or take anything from it. Now, gentlemen - - -

MR. NICHOLS: Excuse me, Mr. Chief Justice. On behalf of the Respondent, we respectfully request that the Motion to Dismiss the entire charges be voted on by the Senate.

CHIEF JUSTICE DREW: Both of the - - - all of these are going to be voted on.

MR. NICHOLS: I understand that, but our request to you and the members of the Court is to vote, first, on the entire Motion to Dismiss the matter.

CHIEF JUSTICE DREW: The vote will be taken on the Motion to Dismiss by the Senate. After each Article is disposed of, it will then revert to the Motion to Dismiss before the Senate.

I'm going to ask, then, that it be conducted in this way, so that we can use the time and then, if any Senator has any motion to make on Article I then - - - Senator Cross.

SENATOR CROSS: Mr. Chief Justice, I thought we were going to ---

CHIEF JUSTICE DREW: Adjourn?

SENATOR CROSS: Adjourn and consider this until later. I think ---

CHIEF JUSTICE DREW: Well, I gathered that that was the sentiment of the Senate on the motion, and I'll now declare us adjourned until 2:30, at which time we will take these up, Article by Article.

Whereupon, at 12:40 o'clock P. M., the trial was recessed until 2:30 o'clock P. M., of the same day.

AFTERNOON SESSION

The Senate reconvened at 2:30 o'clock P. M., pursuant to recess order.

The Chief Justice presiding with all members of the Senate present.

SENATOR CROSS: Mr. Chief Justice, I would like to move at this time that the Court go into closed session.

CHIEF JUSTICE DREW: You have heard the motion, gentlemen, that the Court go into closed session.

As many as favor the motion, say aye; opposed, no. The ayes have it. The motion is carried.

Whereupon, at 2:32 o'clock P. M., the Senate closed its doors.

Senator Cross 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.

Proceedings of the Senate with doors closed:—

Senator Cross asked for the following order:

ORDERED: That the Motion by counsel for respondent to strike and dismiss Articles of Impeachment be considered, and following consideration of the foregoing that the Motion by counsel for respondent to strike individual Articles be considered.

Senator Cross moved the adoption of the order.

Which was agreed to and the order was adopted.

Senator Price asked for the following order:

ORDERED: That motion by counsel for respondent to strike and dismiss Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—15.

Barber	Cross	Kelly	Stratton
Barron	Davis	Mapoles	Usher
Bronson	Henderson	Parrish	Williams (27th)
Covington	Johnson (19th)	Roberts	

Nays—29.

Askew	Edwards	Johnson (6th)	Spottswood
Blank	Friday	McCarty	Tucker
Boyd	Galloway	Mathews	Whitaker
Campbell	Gautier	Melton	Williams (4th)
Carraway	Gibson	Pearce	Young
Clarke	Herrell	Pope	
Cleveland	Hollahan	Price	
Connor	Johns	Ryan	

So the order failed of adoption.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article I of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—18.

Barber	Davis	Mapoles	Usher
Barron	Gibson	Parrish	Williams (27th)
Bronson	Henderson	Pope	Young
Covington	Johnson (19th)	Roberts	
Cross	Kelly	Stratton	

Nays—26.

Askew	Connor	Johns	Ryan
Blank	Edwards	Johnson (6th)	Spottswood
Boyd	Friday	McCarty	Tucker
Campbell	Galloway	Mathews	Whitaker
Carraway	Gautier	Melton	Williams (4th)
Clarke	Herrell	Pearce	
Cleveland	Hollahan	Price	

So the order failed of adoption.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article II of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—17.

Barber	Davis	Kelly	Usher
Barron	Friday	Mapoles	Williams (27th)
Bronson	Gibson	Parrish	
Covington	Henderson	Roberts	
Cross	Johnson (19th)	Stratton	

Nays—27.

Askew	Connor	Johnson (6th)	Ryan
Blank	Edwards	McCarty	Spottswood
Boyd	Galloway	Mathews	Tucker
Campbell	Gautier	Melton	Whitaker
Carraway	Herrell	Pearce	Williams (4th)
Clarke	Hollahan	Pope	Young
Cleveland	Johns	Price	

So the order failed of adoption.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article III of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—24.

Askew	Covington	Johnson (19th)	Roberts
Barber	Cross	Johnson (6th)	Stratton
Barron	Davis	Kelly	Usher
Blank	Gibson	Mapoles	Williams (27th)
Bronson	Henderson	Parrish	Williams (4th)
Campbell	Hollahan	Pope	Young

Nays—20.

Boyd	Edwards	Johns	Price
Carraway	Friday	McCarty	Ryan
Clarke	Galloway	Mathews	Spottswood
Cleveland	Gautier	Melton	Tucker
Connor	Herrell	Pearce	Whitaker

So the order was adopted.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article IV of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—23.

Askew	Cross	Kelly	Stratton
Barber	Davis	Mapoles	Usher
Barron	Friday	Mathews	Williams (27th)
Blank	Henderson	Parrish	Williams (4th)
Bronson	Johnson (19th)	Pope	Young
Covington	Johnson (6th)	Roberts	

Nays—21.

Boyd	Edwards	Johns	Spottswood
Campbell	Galloway	McCarty	Tucker
Carraway	Gautier	Melton	Whitaker
Clarke	Gibson	Pearce	
Cleveland	Herrell	Price	
Connor	Hollahan	Ryan	

So the order was adopted.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article V of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—18.

Barber	Cross	Kelly	Stratton
Barron	Davis	Mapoles	Usher
Blank	Henderson	Parrish	Williams (27th)
Bronson	Johnson (19th)	Pope	
Covington	Johnson (6th)	Roberts	

Nays—26.

Askew	Edwards	Johns	Spottswood
Boyd	Friday	McCarty	Tucker
Campbell	Galloway	Mathews	Whitaker
Carraway	Gautier	Melton	Williams (4th)
Clarke	Gibson	Pearce	Young
Cleveland	Herrell	Price	
Connor	Hollahan	Ryan	

So the order failed of adoption.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article VI of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—20.

Askew	Campbell	Johnson (19th)	Roberts
Barber	Covington	Kelly	Stratton
Barron	Cross	Mapoles	Usher
Blank	Davis	Parrish	Williams (27th)
Bronson	Henderson	Pope	Young

Nays—24.

Boyd	Friday	Johns	Price
Carraway	Galloway	Johnson (6th)	Ryan
Clarke	Gautier	McCarty	Spottswood
Cleveland	Gibson	Mathews	Tucker
Connor	Herrell	Melton	Whitaker
Edwards	Hollahan	Pearce	Williams (4th)

So the order failed of adoption.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article VII of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—18.

Askew	Cross	Mapoles	Usher
Barber	Davis	Parrish	Williams (27th)
Barron	Henderson	Pope	Young
Bronson	Johnson (19th)	Roberts	
Covington	Kelly	Stratton	

Nays—26.

Blank	Edwards	Johns	Ryan
Boyd	Friday	Johnson (6th)	Spottswood
Campbell	Galloway	McCarty	Tucker
Carraway	Gautier	Mathews	Whitaker
Clarke	Gibson	Melton	Williams (4th)
Cleveland	Herrell	Pearce	
Connor	Hollahan	Price	

So the order failed of adoption.

Senator Price asked for the following order:

ORDERED: That Motion by counsel for Respondent to strike Article VIII of the Articles of Impeachment be granted.

Senator Price moved the adoption of the order.

A roll call was requested.

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

Yeas—18.

Barber	Cross	Kelly	Stratton
Barron	Davis	Mapoles	Usher
Blank	Gibson	Parrish	Williams (27th)
Bronson	Henderson	Pope	
Covington	Johnson (19th)	Roberts	

Nays—26.

Askew	Edwards	Johnson (6th)	Spottswood
Boyd	Friday	McCarty	Tucker
Campbell	Galloway	Mathews	Whitaker
Carraway	Gautier	Melton	Williams (4th)
Clarke	Herrell	Pearce	Young
Cleveland	Hollahan	Price	
Connor	Johns	Ryan	

So the order failed of adoption.

EXPLANATIONS OF VOTES

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

After some research and careful consideration of the Articles of Impeachment, all pleadings filed in this case and after hearing argument of the respective counsel for the parties I am not convinced that an impeachable offense is charged in either of the Articles. In my judgment, if the facts are admitted as alleged in all the Articles they

would not evidence Judge Kelly's unfitness for holding office, do not involve moral turpitude, would not constitute a misdemeanor in office or amount to conduct prejudicial to the public interest of the Sixth Judicial Circuit.

It is my further judgment that any alleged act of misconduct on the part of the Respondent could be and should be corrected in the appellate courts of this state and is not the proper subject of the drastic remedy of impeachment.

J. EMORY CROSS
Senator, 32nd District

I have cast my vote to dismiss impeachment charges against Judge Kelly because there are not sufficient grounds as presented by the House of Representatives for such action. In view of the fact Judge Kelly is an elected official, I believe the people should have an opportunity to act upon this matter.

CLAYTON W. MAPOLES
Senator, 1st District

Senator Cross moved that the doors of the Senate Chamber be opened and the doors were opened at 3:41 o'clock P. M.

CHIEF JUSTICE DREW: Senators, please be seated. The Presiding Officer declares a quorum to be present.

MR. NICHOLS: Mr. Chief Justice, and members of the Senate:

On behalf of the Respondent, we think the vote of 15 yeas and 29 nays, as cast here, constitutes a dismissal of this cause of action.

That 14 votes plus 1 is sufficient votes - - - a sufficient number of votes to show that, under the Constitutional provision which requires a two-thirds vote, that you have, by your action, dismissed this cause of action; because anything that deals with the initial Articles by the House, under the Constitutional provision, takes a two-thirds vote. Likewise, in the Senate it takes a two-thirds vote.

The motion that was made to strike or the Motion to Dismiss this entire cause of action on the ground that it does not state an impeachable offense has now been voted by a sufficient number of votes to cause the dismissal of this action; because you are moving to dismiss the entire charge, the entire cause of action, and by your vote you have shown that it does not - - -

CHIEF JUSTICE DREW: I am forced to declare you out of order. That is a matter to be determined. It has been set forth. There is nothing before the Senate except the result of the vote. I don't know that there is anything before the Senate at this time on that subject.

MR. NICHOLS: Well, I would like to raise the question.

SENATOR CROSS: Mr. Chief Justice, I move that the Court now recess until 9:30 tomorrow.

CHIEF JUSTICE DREW: Gentlemen, that motion is not subject to debate. As many as favor the motion, say aye; opposed, no. The motion is unanimously carried and Court is adjourned until tomorrow morning at 9:30.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 3:59 o'clock P.M., until 9:30 o'clock A. M., Wednesday, September 11, 1963.