TRANSCRIPT OF PROCEEDINGS

OF THE

SENATE

35TH LEGISLATURE

SITTING AS A

COURT OF IMPEACHMENT

STATE OF OKLAHOMA

vs.

JOHN ROGERS

SECRETARY OF STATE

FRIDAY, JUNE 20, 1975

AND

TUESDAY, JULY 8, 1975

TRANSCRIPT
OF
PROCEEDINGS
OF THE
SENATE
65TH LEGISLATURE
SITTING AS A
COURT OF
IMPEACHMENT

STATE OF
GEORGIA
VS
JOHN ROGERS
SECRETARY
OF STATE

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[illegible]
[illegible]
[illegible]

Transcript of Proceedings

of the

SENATE

Sitting as a Court of Impeachment

THIRTY-FIFTH LEGISLATURE
STATE OF OKLAHOMA

Organized as a Court of Impeachment, Thursday, June 5, 1975

MEMBERS OF THE COURT OF IMPEACHMENT

Baldwin, Don, Anadarko
Berrong, Ed, Weatherford
Birdsong, Jimmy, Oklahoma City
Boatner, Roy A., Calera
Butler, Kenneth, Okmulgee
Capps, Gilmer N., Snyder
Cate, Lee, Norman
Crow, Herschal H., Jr., Altus
Dahl, John L., Barnsdall
Dawson, Bill, Seminole
Field, Leon B., Texhoma
Funston, Bob, Broken Arrow
Garrett, John L., Del City
Grantham, Roy E., Ponca City
Graves, Ralph W., Shawnee
Ham, Glen, Pauls Valley
Hamilton, James E., Poteau
Helm, Mary, Oklahoma City
Holden, Wayne M., Duncan
Howard, Gene C., Tulsa
Howell, James F., Midwest City
Inhofe, James M., Tulsa
Keating, Frank, Tulsa
Keller, E. W., Oklahoma City
Lamb, Norman A., Enid
Lambert, Phillip E., Oklahoma City
Lane, Jim E., Idabel
Luton, John D., Muskogee
McCune, John R., Oklahoma City
Martin, Ernest D., Ardmore
Medearis, Robert P., Tahlequah
Murphy, Robert M., Stillwater
Pierce, Jerry T., Bartlesville
Porter, E. Melvin, Oklahoma City
Randle, Rodger A., Tulsa
Schuelein, William M., Miami
Shatwell, Bob R., Tulsa
Smith, Finis W., Tulsa
Stipe, Gene, McAlester
Taliaferro, Jim, Lawton
Terrill, Al, Lawton
Tinsley, Gideon, El Reno
Wadley, Robert L., Claremore
Watkins, Wes, Ada
Watson, Phil, Edmond
Wolfe, Stephen C., Tulsa
York, Marvin, Oklahoma City
Young, John W., Sapulpa

PERSONNEL

and

OFFICERS

of the

COURT OF IMPEACHMENT

Presiding Officer, Chief Justice Ben T. Williams

ATTORNEYS FOR JOHN ROGERS

Robert Brown, Tulsa
Jerome H. Blumenthal, Oklahoma City
Cecil Drummond, Pawhuska
Phillips Breckinridge, Tulsa
William E. Owen, Oklahoma City

HOUSE BOARD OF MANAGERS

Representative Glenn Eldon Floyd, Chairman, Norman
Representative Kenneth R. Nance, Oklahoma City
Representative M. David Riggs, Tulsa
Representative James R. Cummings, Crescent
Representative Ron Shotts, Moore
Representative Mike Murphy, Idabel

OFFICERS OF THE COURT

Clerk	Lee Slater
Assistant Clerk	Victor L. Thompson
Marshal	Frank Truel
Assistant Marshal	Bob Craig
Assistant Marshal	Norris Spradling
Administrative Legal Aide	Duchess Bartmess
Journal Clerk	Ruth Smith
Journal Clerk	Lorrie Thompson
Journal Clerk	Doris LaReese

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HOUSE JOURNAL

1st Session of the 35th Legislature

66th LEGISLATIVE DAY
Wednesday, April 30, 1975

SPECIAL COMMITTEE APPOINTMENT

Speaker Willis announced the appointment of Representatives Payne, Draper, Fried, Shotts, and Stephenson as members of the Special Investigating Committee pursuant to HR 1020.

84th LEGISLATIVE DAY
Monday, June 2, 1975

SPECIAL COMMITTEE REPORT

Mr. Payne, Chairman of the Special Investigating Committee appointed pursuant to HR 1020, submitted the following Report and asked that same be incorporated in the House Journal, which was the order:

Special Investigating Committee
of the
Oklahoma House of Representatives
First Session of the 35th Legislature

FINAL REPORT

Mr. Speaker:

We, the members of the Special Investigating Committee, of the 1st Session of the 35th Legislature, beg leave to submit the following report:

On the 29th day of April, 1975, the House of Representatives passed House Resolution No. 1020 (Exhibit I), which authorized the appointment of a special investigating committee to conduct a comprehensive and detailed study and investigation of the activities of John Rogers for the purpose of determining whether or not Articles of Impeachment should be preferred against him.

The undersigned Committee was appointed by the Honorable William P. Willis, Speaker of the House of Representatives, on the 30th day of April, 1975, pursuant to House Resolution No. 1020.

I
COMMITTEE DECLARATION OF POLICY

In Article VIII, Section 1 of the Constitution of the State of Oklahoma, which enumerates grounds under which certain public officials may be impeached provides as follows:

"Section 1. The Governor and other elective state officers, including the Justices of the Supreme Court, shall be liable and subject to impeachment for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office. All elected state officers, including Justices of the Supreme Court and Judges of the Court of Criminal Appeals, shall be automatically suspended from office upon their being declared guilty of a felony by a court of competent jurisdiction and their pay and allowances, otherwise payable to such official, shall be withheld during the period of such suspension. In the event such verdict of guilty is reversed by a court of competent jurisdiction on appeal, such accumulated pay and allowances which have been withheld shall be paid to such official and he shall be automatically reinstated in office to serve the remaining part of the term for which he was elected. Such official shall not be entitled to any pay or allowances for a period of time after the term of office would otherwise have expired and he shall not be entitled to reinstatement in office after the expiration of the term for which he was elected. Whenever any Justice of the Supreme Court or Judge of the Court of Criminal Appeals is suspended by reasons of this section, the Governor shall be authorized to appoint a temporary Justice or Judge to serve during the period of such suspension and such temporary Justice or Judge shall be paid for his services the compensation allowed for such regular Justice or Judge."

Using this as the guideline, the Committee endeavored to follow the law and historical precedence in reaching their recommendations contained herein.

This Committee was ever mindful of the duties imposed on it by the Speaker of the House. Every attempt has been made to protect the rights of the witnesses called as well as the Secretary of State.

The Committee's attitude can best be summarized by the following quote from page 2 of the House Journal of the Ninth Legislature wherein that body was, as is this Committee, faced with the grave responsibility of determining if impeachment proceedings should be instituted against a high state official:

"Prudence, indeed, would dictate that an official or officials should not be charged for light or transient causes; and accordingly all experience has shown that mankind is more disposed to suffer while evils are sufferable than to right themselves by removing the official or officials whom they have elected. But when it is charged that a long train of abuses and usurpations, pursuing invariably the same object, evidences a desire upon the part of such official or officials to reduce the people under absolute despotism, it is the right and duty of the people, through their representatives, to investigate such conditions and if found true, to remove such official or officials and to provide new safeguards and new conditions for future safety."

II
COMMITTEE PROCEDURE

The Committee met twenty-one times in both public and executive sessions beginning May 1, 1975, and ending May 27, 1975. At the second meeting the Committee adopted certain Rules of Procedure which were supplied to each witness prior to their testifying before the Committee (Exhibit II).

Some twenty-eight witnesses appeared before the Committee. Every effort was made by the Committee to hear all evidence which would be relevant to the charge to the Committee imposed by House Resolution No. 1020.

The time limitation unavoidably imposed upon the Committee by the Constitution in the establishment of the date of adjournment of necessity limited the investigative activities of the Committee. The Committee feels that if they would have had more time a more comprehensive investigation and resulting report could have been made.

Many of the areas investigated by the Committee involved incidents which occurred many months prior to this investigation. It was very difficult for the Committee to obtain factual, concise statements of witnesses concerning occurrences of several months or even years ago.

An exhaustive study was made by the Committee of the Constitution, the laws of the State of Oklahoma, historical precedence, case law and other material which include the report of the subcommittee appointed pursuant to the introduction of House Resolution 1020 made to the Rules Committee (Exhibit III), deemed pertinent to the areas under investigation as well as the duties and responsibilities imposed under the provisions relating to impeachment.

The Committee was not restrictive in the questioning of witnesses and every effort was made to allow each witness to explain or clarify any statement made to the Committee, even to the point of allowing witnesses to testify as to "rumors they had heard".

A written transcript was made of all testimony heard by the Committee. The Committee endeavored to keep confidential the testimony of witnesses so requesting.

The Committee, under the authority granted them, employed Howard Kirkpatrick as the Court Reporter and United Research Service Company as special investigators to assist them in their investigation.

Mr. Easter Brown acted as special service agent for the service of subpoenas issued by the Committee and served the Committee tirelessly as Sergeant-at-Arms. Duchess Bartmess of the Legislative Council served as the Committee staff attorney.

The Committee wishes to express their sincere appreciation to the many state employees who assisted them in their investigation and in the compiling of this report.

A special expression of gratitude is extended to Ralph Funk and the staff of the law library in providing physical facilities for use by the Committee as well as technical assistance.

III
CONSTITUTIONAL GROUNDS INAPPLICABLE

No evidence was presented to the Committee or ascertained by any member or their investigator which could be supportive of a charge of drunkenness or habitual drunkenness.

IV
SUMMARY OF AREAS INVESTIGATED

A.
Alleged Impropriety In The Use of State WATS Lines

Certain allegations were made concerning the use by the Secretary of State's use of the state Wide Area Telecommunications Service (WATS) lines in his office for political purposes. Evidence was offered indicating that employees in John Rogers' office participated in these polls after normal working hours, at night and on weekends. These employees received no direct compensation from the State of Oklahoma for these services although some evidence indicated that those employees participating in the polling effort later may have received days off from work in direct proportion to the amount of time volunteered to the polling efforts.

It is the opinion of your Committee that WATS lines benefit all state offices at no additional cost to the state.

The Committee feels that evidence concerning the polling activities over the WATS line is substantial and was admitted by John Rogers. The evidence concerning employees being given compensation time is controverted.

The employees of the office of Secretary of State are not under the Merit System. The Secretary of State himself is an elected official and is accountable directly only to the citizens of the state and not to any other agency.

Although the Committee finds these polling efforts to be self-serving and not in the best interest of the public we can find no specific statutory prohibition on the use of WATS lines for private purposes by a state officer or employee.

Our conclusion is that the use of WATS lines for political polling by an elected public official is an abuse of discretion, however, it is not an impeachable offense.

B.
Allegation of Participation in Forgery Scheme

The Committee was presented with testimony to the effect that John Rogers, Secretary of State, had played an active role in a scheme to use 1969 Liquor-by-the-Drink Petitions to forge names on a 1971 Liquor-by-the-Drink Petition.

The Committee must discount the testimony of the principal witness, Robert Sanders. After exhaustive hearings on the matter, the Committee questions the motives, integrity and loyalty of the witness. The Committee feels Mr. Sanders is not a credible witness in that he has admitted to lying to other investigative bodies for personal gain or satisfaction. Evidence from earlier companions has supported this conclusion on the reliability of Mr. Sanders.

There was no direct supporting evidence of participation of John Rogers in the scheme to commit forgery. The Committee did hear from a second witness, Bobbye June Gubisch, who related some purported conversations with the Secretary of State. However, the Committee feels her testimony is tainted by her relationship with the principal witness, Mr. Sanders.

Hearsay evidence by a third witness, Mr. Ron Sigmon, as to facts which only came to his knowledge through statements made to him by Mr. Sanders was totally discounted by the Committee.

The Committee communicated with Mr. Jim Spangler who was a partner of Mr. Sanders at the time of the forgeries of the 1971 Liquor-by-the-Drink Petitions. Although Mr. Spangler was not a party to the forgeries, he became aware of the possession by Mr. Sanders of the 1969 Liquor-by-the-Drink Petitions. Mr. Spangler advised the Committee that at the time he found out about the 1969 Petitions, Mr. Sanders told him that he had stolen them.

The Committee therefore concludes that the evidence is not sufficient to support a conclusion that John Rogers was a participant in a scheme to commit forgeries on the 1971 Liquor-by-the-Drink Petitions.

C.
Allegation of Improper Actions in Raising Campaign Funds for David Hall

Although limited by time, the Committee endeavored to investigate the possibility of wrongdoing on the part of John Rogers, Secretary of State, in campaign fund-raising activities for David Hall. In addition to having access to the transcript of the hearings before the Senate Investigating Committee in 1974, chaired by Senator Ed Berrong, the Committee attempted to discover any other information which might support an allegation of wrongdoing.

No evidence came to the attention of the Committee which would indicate any improper action by John Rogers in campaign fund-raising activities for David Hall.

D.
Allegation of Violation of State Nepotism Laws

Information was presented to the Committee questioning the legality of the employment of the wife of a blood relative by the Secretary of State, John Rogers, as being a violation of the nepotism laws of Oklahoma.

Sections 481 through 487 of Title 21 of the Oklahoma Statutes provide:

"Section 481. It shall be unlawful for any executive, legislative, ministerial or judicial officer to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree, to any clerkship, office, position, employment or duty in any department of the State, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages, pay or compensation of such appointee is to be paid out of the public funds or fees of such office. Provided, however, that for the purposes of this chapter, a divorce of a husband and wife shall terminate all relationship by affinity that existed by reason of the marriage, regardless of whether the marriage has resulted in issue who are still living."

"Section 482. It shall be unlawful for any such executive, legislative, ministerial or judicial officer mentioned in the preceding section, to draw or authorize the drawing of any warrant or authority for the payment out of any public fund, of the salary, wages,

pay or compensation of any such ineligible person, and it shall be unlawful for any executive, legislative, ministerial or judicial officer to pay out of any public funds in his custody or under his control the salary, wages, pay or compensation of any such ineligible person."

"Section 483. It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint and furnish employment for any person whose services are to be rendered under his direction and control and paid for out of the public funds, and who is related by either blood or marriage within the third degree to any other executive, legislative, ministerial or judicial officer when such appointment is made in part consideration that such other officer shall appoint and furnish employment to any one so related to the officer making such appointment."

"Section 484. Any person related within the third degree by affinity or consanguinity to any member of either the legislative, judicial or executive branch of the State Government shall not be eligible to hold any clerkship, office, position, employment or duty in such branch of the State Government."

"Section 485. Any executive, legislative, ministerial or judicial officer who shall violate any provision of this Article, shall be deemed guilty of a misdemeanor involving official misconduct, and shall be punished by a fine of not less than one hundred or more than one thousand dollars, and shall forfeit his office."

"Section 486. Every person guilty of violating the provisions of this Article, shall, independently of, or in addition to any criminal prosecution that may be instituted, be removed from office according to the mode of trial and removal prescribed in the Constitution and laws of this State."

"Section 487. Under the designation executive, legislative, ministerial or judicial officer as mentioned herein are included the Governor, Lieutenant Governor, Speaker of the House of Representatives, Corporation Commissioners, all the heads of the departments of the State Government, judges of all the courts of this State, mayors, clerks, councilmen, trustees, commissioners and other officers of all incorporated cities and towns, public school trustees, officers and boards of managers of the State University and its several branches, State Normals, the penitentiaries and eleemosynary institutions, members of the Commissioners Court, and all other officials of the State, district, county, cities or other municipal subdivisions of the State."

The Committee heard the following testimony from Crystal Jaworsky as to her relationship to John Rogers:

"Q. How long have you been working down there?"

"A. It was a year January 21st, so that's about a year and 5 months."

"Q. Are you related John Rogers?"

"A. My husband is John's first cousin and I'm married to Tom."

"Q. Tom Jaworsky?"

"A. Right."

"Q. So you are related only by marriage?"

"A. Right."

"MR. DRUMMOND: I might state to the Committee that the common ancestor is Henry and Mary Jaworsky and I've made available to the committee the family tree."

"MR. PAYNE: The main thing we want to do for you, Mrs. Jaworsky, is clear the air because people around the Capitol brought this up, I think it's wise to pursue it so if you'll just answer the questions."

"MR. DRAPER: One other question, apparently there is another individual in the office of the Secretary of State by the name of Jaworsky presently employed, is that correct?"

"A. Yes."

"MR. DRAPER: What is his or her name?"

"A. Sherry Jaworsky."

"Q. And could you tell the Committee what her relationship is with you, if you know?"

"A. Yes. Her husband, Clint Jaworsky, is John's second cousin."

"Q. So she would be related to John Rogers only by marriage, is that correct?"

"A. That's right."

"Q. Her husband is a second cousin to the Secretary of State?"

"A. That's correct."

"MR. PAYNE: That's all we've got, we appreciate your coming."

Sections 217 through 221 of Title 84 of the Oklahoma Statutes provide:

"Section 217. The degree of kindred is established by the number of generations, and each generation is called a degree."

"Section 218. The series of degrees from the line; the series of degrees between persons who descend one from the other is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity."

"Section 219. The direct line is divided into a direct line descending and the direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends."

"Section 220. In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons."

"Section 221. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus brothers are related in the second degree, uncle and nephew in the third degree, cousins germane in the fourth degree, and so on."

In 1964, an Opinion issued by the Attorney General of the State of Oklahoma (Opinion No. 64-144) held:

"The Attorney General is, therefore, of the opinion that first cousins are not related within the third degree within the prohibition set forth in the Nepotism laws of Oklahoma ...."

Therefore, the Committee finds that there has been no violation of the Nepotism Laws of the State of Oklahoma by the Secretary of State, John Rogers.

E.
Allegation of Knowledge of the
Commission of a Crime and
Failure to Report it

Another area which was investigated by your Committee pertained to allegations that the Secretary of State had knowledge that petitions being circulated in the 1971 Liquor-by-the-Drink Petition drive (State Question 480), were forged.

In regard to this allegation, your Committee heard testimony from Mr. Robert R. Sanders to the effect that he had forged signatures on several 1971 Liquor-by-the-Drink Petitions. Mr. Sanders stated to the Committee in his testimony as follows:

"****** From that securing the old petitions I arranged to have these names copied on to current petition. I had two or three sessions of various people gathered together and they would transfer the names on to the new petitions and then I would turn them into the wet forces ****** I think it was Mr. Hunter who was Executive Director and I believe if I recall their office was in the old hotel downtown, the Sheraton or whatever that was there, and then there would be — suppose to be there would be a, you know, a certain number of days passed and we would get paid for them. I told the Hood sub-committee when I was here before that I had no idea how many signatures we had forged — I had arranged to have forged and that I would check my bookkeeping records when I returned to Florida and possibly try and determine how many. ****** So that $3,000.00 is what I'd used to pay all these people, first when we — for over a period of several weeks, going out across the state and securing signatures and then secondly to pay the people who helped in forging the signatures, and I still can not tell you how many were forged. A best guess of mine would be anywhere from 4,000 to 8,000 or 9,000 names, it could have been more very easily or it could even have been less, I just do not recall. I had two or three, I think three, sessions of this and then had stopped. In other words the reason I did it to begin with, as I told the Committee before is that I had not made any money and had lost

money by sending out the dozen or more people I had going to Lawton again and places such as that, and so I had forged, and that was my intention, forged petitions until I had retrieved some of that expense and then I had stopped. * * *"

Mr. Sanders further testified that sometime in June of 1971, John Rogers summoned him to a meeting at a restaurant near the State Capitol where there was a confrontation over the forgeries. Mr. Sanders further testified to the Committee:

"* * * I sat down with them and Mr. Gatti commenced to berate me very strenuously and asked me what the hell am I doing and what am I trying to do and you can imagine the same thing you would do, and so it was obvious to me of course that he knew petitions — that I had forged petitions or caused to be forged, and he went on for quite some time and I was in, you know, pretty shook up, I was in a state of shock practically and I was just — sat there and took it for, it seemed like to me forever but perhaps it wasn't longer than 10 or 15 minutes and then I just said it's obvious that you know what I've done but, and John just sat there quite (sic) during this whole meeting and so I looked at John, and I said it's obvious that he knows about this but, you know, he doesn't seem to be including you in this or he doesn't seem to indicate that you're involved in this, and I said — and then I, you know, I was just confused cause he was berating me, but John, John was just sitting there and he wasn't saying anything about John. So a — and John says, you know, what do you mean, what are you talking about, and then I said to Lou, I said exactly what, you know, what is it you know and he says that Mr. Rogers had told him the afternoon before that I was forging petitions and that I had told Mr. Rogers about it. So, I said that's true I am forging petitions but what about his involvement, what about how this was initiated, what about this and that, and then I spent the next 10 or 15 minutes, probably not that long, but the next few minutes trying to bring out of John his involvement in this and he denied it. He said the first I knew about it was yesterday when you told me and so that was — * * *"

Mr. Rogers testified to the Committee that he was at such a meeting and that Mr. Rogers and Mr. Lou Gatti did in fact confront Mr. Sanders with their knowledge of his actions. He stated in his testimony as follows:

"Q. Now, did you at any time shortly after your telephone conversation with Mr. Gatti have occasion to meet privately with him to discuss the forgeries?"

"A. With Mr. Gatti?"

"Q. Yes."

"A. Yes."

"Q. Could you tell the Committee when and under what circumstances?"

"A. We met at the Uncle John's Pancake House that was open at that time. I'm not sure what time of day but I think, I've heard testimony that it was in the morning, and I wouldn't dispute it, I do not know. Probably the next morning."

"Q. You definitely recall that particular meeting?"

"A. Yes, Sir. I do."

"Q. Could you tell the Committee how it was arranged?"

"A. The best I can recall it was arranged in the same conversation where in (sic) I disclosed to Mr. Gatti what was happening."

"Q. And how soon after the telephone conversation when you disclosed the information to Mr. Gatti did this particular meeting take place?"

"A. Would you please repeat the question, Sir."

"Q. How soon after the telephone conversation in which you relayed the information to Mr. Gatti that you were aware of some forgeries did the meeting at Uncle John's take place?"

"A. I think the next morning. It may have been later but I don't think so, I think it was just right away."

"Q. Who was at that particular meeting?"

"A. Lou Gatti, and myself, Bob Sanders and I do not recall Jim Spangler although I will not deny he was there. I've heard later that he was there. It would be normal that he would be since he was everywhere with Bob Sanders but I — in other words I don't know that he was there. I honestly don't."

"Q. Do you have — in other words he could have been there might not have been there, you have no specific recollection?"

"A. That's correct Sir."

"Q. Who suggested that this particular meeting take place, was that your suggestion?"

"A. I really believe that it was Lou Gatti's suggestion. I do not recall but I do recall that it happened in the conversation and that's really not specific but could very well have been Lou Gatti's suggestion, it could have been mine, Sir, I don't remember."

"Q. Did you call Mr. Sanders and ask him to come to the meeting?"

"A. I believe that is correct, Sir."

"Q. Tell the Committee just in your own words what occurred at that particular meeting at Uncle John's Pancake House?"

"A. Well, I recall that I met with Lou Gatti and I think that we were there prior to Mr. Sanders coming and when Mr. Sanders came of course there was verbal discussion which was not amenable to a congenial situation.***"

Mr. Lou Gatti, President of the Oklahoma Malt Beverage Association, an alleged participant at the confrontation, testified he did not recall the meeting and denied any knowledge of Rogers involvement. Mr. Gatti testified as follows:

"Q. Now, Mr. Gatti, do you recall participating in a meeting at Uncle John's Pancake House in late June or early July with Mr. Sanders, Mr. Rogers, the Secretary of State and one other individual?"

"A. No, Sir. I have no recollection of any such meeting."

"Q. Do you recall ever having been in Uncle John's Pancake House with the Secretary of State and Mr. Sanders at any time during the early part of 1971 or up through July of 1971?"

"A. No, Sir."

"Q. Do you know an individual by the name of Jim Spangler?"

"A. He was with Bob Sanders on two or three occasions in my office as I recall, and there again I wouldn't have recognized his name if I hadn't seen it in the paper. He was — he struck me as a fine young man the first time I met him and the first I met him was in my office."

BY MR. STEPHENSON:

"Q. Was — on the time that you confronted Mr. Sanders with the petitions which you felt were forged, was anyone with him at that time?"

"A. No, Sir."

"Q. It was just you and himself in your office?"

"A. Came out to my office after — I tried to get him on the phone, about three days later I got him out there in my office."

"Q. And at anytime (sic) during that conversation did you give any threat or make any threat of prosecution of Mr. Sanders during this time that you were confronting him with these bad petitions or what you felt were bad petitions?"

"A. No, Sir."

MR. STEPHENSON: I have no further questions.

Information was brought to the attention of the Committee that a Sanders confidant was in attendance at the meeting at the Pancake House and that Secretary of State Rogers was aware of the existence of forged petitions and the identity of the persons responsible for the forgeries.

The Secretary of State testified under oath that he informed the Attorney General or an assistant, "in generalizations", of his knowledge of forgeries. His testimony was as follows:

"Q. Who else did you advise, if anybody, about the forgeries that you were made aware of?"

"A. An Attorney General's Assistant in a roundabout way. I said what is my legal position and responsibility if I am aware or think I'm aware of people gathering forgered (sic) signatures. I asked him that question."

"Q. Do you recall the particular Assistant and when this particular contact was made?"

"A. Probably that same day also. It was — many Assistants have been assigned to me because of having to figure out which one it was, as I do not recall from my own knowledge, I think it was Mike Tenny (sic) because he was assigned to me at that specific time."

"Q. Then your best recollection is that that contact was also made the same day that Mr. Sanders had told you about the forgeries?"

"A. Yes, Sir. To my best recollection."

"Q. How did you make that contact, was it by telephone or did you go down to the Attorney General's office?"

"A. I talked with him in person."

"Q. Where?"

"A. In the Attorney General's office."

"Q. What did Mr. Tenny (sic) tell you that you should do about the forgeries?"

"A. He told me that I didn't know they existed until they came through my office."

"Q. Those were his words —"

"A. Well, words to that effect, is that unless I found the petitions, forged petitions in what was filed with my office, I had no standing as to knowledge. That was what he told me."

"Q. Did you indicate to Mr. Tenny (sic) how you had become aware of the forged petitions?"

"A. I don't think so."

"Q. Did you mention specifically Mr. Sanders name?"

"A. I don't think so."

"Q. Did you on that particular day or at any time shortly thereafter directly contact the Attorney General regarding your knowledge of the forgeries?"

"A. I don't think so."

"Q. In other words your sole contact as you best recall was your trip to the Attorney General's office and relaying in general terms this information to Mr. Tenny (sic)?"

"A. Oh, yes. I was going to say that was my sole contact to the best of my recollection and you may find out different, there maybe (sic) some others down there but to the best of my recollection that was my sole contact with the Attorney General's office."

Both the Attorney General and the only assistant Mr. Rogers mentioned by name have advised the Committee that they have no knowledge of such a conversation.

In researching the law relative to this area the Committee gave special attention to 34 O.S. 1971, Section 6.1, which reads as follows:

"Section 6.1 The Secretary of State shall disqualify all signatures on any sheet of any petition which is not verified by the person who circulated said sheet of said petition as provided in 34 O.S. 1961, Section 6, and the Secretary of State shall notify the Attorney General of any and all violations OF THIS ACT of which he has knowledge." (emphasis added)

This statute states specifically in the emphasized language above that it applies to a specific act, House Bill 1320, Chapter 206, 1969 Session Laws, and therefore does not apply to this entire statutory title. The Committee has concluded that this statute does not pertain to Secretary Rogers' knowledge of Mr. Sanders' forgeries.

The weight of evidence also showed that the proponents did not knowingly file any forged petition with their initiative petition drive that had been prepared by Mr. Sanders. Mr. Sanders testified as follows:

"* * * With just a very few days left in the 90 day legal period we had retrieved all of the forged petitions and at that time I burnt the forged petitions and I burnt the originals. They were all destroyed. * * *"

Therefore, although Mr. Rogers had extra-official knowledge of Mr. Sanders' plot, none of the fruits of Mr. Sanders' labor ever came into the office of the Secretary of State to be officially filed.

A thorough examination of the laws pertaining of this subject leads to the determination that mere knowledge of forged petitions by the Secretary of State, which were never filed in his office, standing alone is not a violation of law.

Although the knowledge of the Secretary of State concerning the commission of a crime and his failure to report such act to the proper law enforcement officials does not violate any specific statutory provision, the Committee feels such failure is morally and ethically wrong. The Committee further feels in addition to the duty imposed by the taking of the oath of office by the Secretary of State to obey and defend the Constitution and the laws of the State of Oklahoma, there is a further duty imposed to report any irregularities which come to his attention by virtue of the exercise of his official duties. It was a function of the Secretary of State to rule on the validity of initiative petitions re-

ceived by him. This responsibility rested solely with the Secretary of State and no other state official. His knowledge of an illegal act which did or could have had a bearing on his decision is a violation of his moral and ethical responsibilities to the citizens of this state.

No state official has the discretion to ignore illegal activities as they all take an oath to uphold the laws of the state and nation.

F.
Allegation that the
Secretary of State
has Failed to Expeditiously
Transmit Acts or Resolutions
to County Court Clerks

Information has come to the attention of the Committee that the Secretary of State has failed to comply with the requirement that enacted legislation which have the emergency measure attached shall be mailed to each county court clerk as soon as possible.

Section 25 of Title 75 of the Oklahoma Statutes provides:

"Section 25. It shall be the duty of the Secretary of State, as soon as possible after receipt by his office of any Act or Resolution, any Civil Probate or Criminal Procedure Act passed by the Twenty-fourth or any subsequent Oklahoma Legislature as an emergency measure, to mail to the court clerk of each county of this State a copy of such Act or Resolution."

Due to the lack of time, no evidence was brought before the Committee concerning this allegation. The Committee feels, therefore, that further investigation is warranted.

G.
Alleged Failure to Properly Care for State Records

This Committee feels that as the official custodian of many vital state records, including the original State Constitution and State Seal, the Office of Secretary of State should serve as a model of efficiency for other state officers. The Committee has found this not to be the case.

The Legislature has enacted several laws in an attempt to provide guidelines for state officers and employees to assist in their record keeping functions, and the preservation of essential state documents and records.

Section 202 of Title 67 of the Oklahoma Statutes provides:

"Section 202. The Legislature declares that programs for the efficient and economical management of State and local records will promote economy and efficiency in the day-to-day record-keeping activities of State and local governments and will facilitate and expedite government operations."

Section 203 of Title 67 of the Oklahoma Statutes provides:

"Section 203. As used in this Act:

(a) "Record" means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this Act.

(b) "State record" means:

(1) A record of a department, office, commission, board, authority or other agency, however designated, of the State government; provided, however, the provisions of this Act shall not be applicable to, or binding upon, the State Department of Public Welfare or the Oklahoma Public Welfare Commission.

(2) A record of the State Legislature.

(3) A record of the Supreme Court, the Court of Criminal Appeals or any other court of record, whether of statewide or local jurisdiction.

(4) Any other record designated or treated as a State record under State law.

(c) "Local record" means a record of a county, city, town, village, township, district, authority or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under State law.

(d) "Agency" means any department, office, commission, board, authority or other unit, however designated, of the State government; provided, however, the provisions of this Act shall not be applicable to, or binding upon, the State Department of Public Welfare or the Oklahoma Public Welfare Commission."

Section 206 of Title 67 of the Oklahoma Statutes provides:

"Section 206. The head of each agency, except the Department of Public Welfare, shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the State and of persons directly affected by the agency's activities.

(c) Submit to the Administrator, in accordance with the standards established by him, schedules proposing the length of time each State record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. The

head of each agency also shall submit lists of State records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value to warrant their further keeping for disposal in conformity with the requirements of Section 10 of this Act.

(d) Cooperate with the Administrator in the conduct of surveys made by him pursuant to the provisions of this Act.

(e) Comply with the rules, regulations, standards and procedures issued by the Administrator."

Section 209 of Title 67 of the Oklahoma Statutes provides:

"Section 209. All records made or received by or under the authority of or coming into the custody, control or possession of public officials of this State in the course of their public duties shall not be mutilated, destroyed, transferred, removed, altered or otherwise damaged or disposed of, in whole or in part, except as provided by law."

Section 210 of Title 67 of the Oklahoma Statutes provides:

"Section 210. No record shall be destroyed or otherwise disposed of by any agency of the State, unless it is determined by the Administrator and the Archives and Records Commission that the record has no further administrative, legal, fiscal, research or historical value. This provision does not supersede 74 O.S. 1951, Sections 564-571; 74 O.S. Supp. 1959, Sections 572-576; and 19 O.S. 1951, Sections 911-918, 19 O.S. 1959, Sections 157-159; 19 O.S. 1959, Sections 232-234, and House Bills Nos. 659, 906 and 1016 enacted by the Twenty-eighth Legislature, but is cumulative to these laws."

Section 565 of Title 74 of the Oklahoma Statutes provides:

"Section 565. EVERY STATE OFFICER and the heads of all departments, boards, commissions, agencies and institutions of the State of Oklahoma WHO HAVE IN THEIR CUSTODY PUBLIC RECORDS AND ARCHIVES DEEMED BY THEM TO BE UNNECESSARY FOR THE TRANSACTION OF THE BUSINESS OF THEIR OFFICES SHALL CONSULT WITH THE STATE LIBRARIAN FOR THE PURPOSE OF DETERMINING IF SUCH RECORDS AND ARCHIVES ARE DESIRED FOR DEPOSIT IN THE ARCHIVES DIVISION OF THE OKLAHOMA STATE LIBRARY. Upon certification by the State Librarian that such records and archives are or are not desired for such purpose then such custodian shall, in conformity with such determination, apply to the Commission for authorization to destroy or transfer such records and archives to the Oklahoma State Library as hereinafter provided. Upon the filing of such application the Commission shall have authority to authorize or direct the disposition of such records and archives by any one or more of the following methods:

1. By destruction; provided that no records and archives less than five (5) years old shall be destroyed.

2. By transfer to the custody and control of the Oklahoma State Library and there retained. The State Librarian may, in his discretion, microfilm such records and archives, especially if so doing would aid in the preservation of their contents.

3. By transfer to the Oklahoma State Library with authorization to the State Librarian to microfilm said records and archives and upon the completion of this process to destroy said records and archives in accordance with the order of the Commission.

Records and archives transferred to the Oklahoma State Library shall never be returned to their former custody except by order of the Commission and written consent of the State Librarian." (emphasis added)

Although this may not appear on the surface as a matter of great concern to many persons reviewing this report, the Committee feels this is, however, one point which goes to the crux of one of the major issues of their investigation.

It is an undisputed fact in evidence before the Committee that there are in excess of 700 individual petitions, which made up the 1969 Liquor-by-the-Drink Petition, missing from the office of the Secretary of State who is the legal custodian of such state public documents. No satisfactory explanation has been offered to explain the careless disappearance of the petitions.

The Committee is aware of the request for an opinion from the Attorney General by the Secretary of State in July of 1971, as to how certain initiative and referendum petitions were to be disposed of (Opinion No. 71-333). This Opinion does not, of course, relieve the Secretary of State of the proper exercise of care until the determination of the authorized disposition was made.

John Rogers allowed, by his own testimony and by testimony of various employees, one Robert Sanders, a person not an employee of the office of Secretary of State and of questionable trustworthiness, and others to roam through the office without restraint. He further allowed or did not restrain Robert Sanders from going into the area called "the vault" where there were 1969 Liquor-by-the-Drink Petitions and where the Constitution of the State of Oklahoma and other state records were being maintained.

Mrs. Judy Good testified to the Committee as follows:

"Q. Well, what about the conversation in the vault?"

"A. Well, it was at this time that I became aware that John no longer had the confidence or the trust in Mr. Sanders, and he told me then that Bob was no longer to be in the office, or you know, was no more welcome in the office. Because, Bob was always coming in and more or less just come and go as he pleased. He was always out in the vault, he was always in the office. He would go out and pull corporation records, you know. We had a Xerox machine, and he was always telling the girls that he had to use it — that they had to go on and do something else."

Mrs. Linda Callaway testified as follows:

"A. Mr. Sanders was a political advisor to Mr. Rogers and also to the Governor elect and he visited our office quite often."

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"Q. Would you have thought there was anything irregular about Mr. Sanders going in the second vault during May or June of 1971 alone without receiving permission from anyone?"

"A. No."

"Q. Why not?"

"A. Why not, because he proceeded to do things with such authority that you — and plus the fact that he appeared to be working for the Governor — I don't ever recall seeing him go in the second vault."

"Q. But you would have thought nothing unusual if he'd done so?"

"A. No."

"Q. Was he treated more or less as a semi-employee of the office?"

"A. I would say not as an employee of the office, but as a very welcome guest, yes."

Mr. Larry Kelley testified as follows:

"Q. How often?"

"A. Oh, he would, gee I don't know, I just noticed that he was in that area even before I was employed and I would be up there occasionally and be in there or in the other room or out in the hall, he was pretty busy. You just never knew where you'd find Bob Sanders at."

Testimony of some employees, both past and present, indicated that the office staff did not feel the documents were important in the vault, but your Committee feels this attitude of the Secretary of State and reflected by his staff was clearly erroneous.

Mrs. Judy Good testified:

"Q. Who did he usually visit with when he came? Mrs. Callaway or Mr. Rogers?"

"A. He liked to visit around. He would visit with all of the girls and John, you know."

"Q. Had you ever seen him in the vaults any other time?"

"A. Oh, he was always everywhere. He just had the full run of the office. He had sort of the attitude that he was very businesslike, you know, and none of the girls knew what his capacity was, or anything, I am sure. They just pretty well let him — nobody ever questioned him or anything."

BY MR. DRAPER:

"Q. Do you recall where those 1969 liquor by the drink petitions were stored?"

"A. They were shuffled around quite a bit, because we never had any capacity, I guess you would say, for them. We didn't have much room. We had so many other records that

we had to file, and they were in the first vault, I think, when I first went to work. And we had to make room, so we had to move them into the second vault."

"Q. Do you recall what they were stored in?"

"A. Well, we had to put them in cabinets sometime, and sometimes part of them was in a desk drawer, and part of them was in a file cabinet, it seems like. We didn't really have the facilities to take care of it."

"Q. Then it was scattered all —"

"A. They were kind of —"

"Q. Were they pretty much kept together in one place, or were they —"

"A. Well, like I say, part of them were in a file cabinet, that I remember, and part of them were down in the desk drawer. There was such a gross volume of them, it was hard to find, you know, we didn't really have the room. And I remember, we were always trying to find out what we could do with them, or what we should do with them. It seems like there was the Attorney General — we were waiting for him to tell us what to do with them."

Mrs. Phyllis White testified as follows:

"Q. Mrs. White, you've got one statement in this, I can state of my own knowledge that the papers housed in the second vault were not the papers which we considered it important to guard constantly. What prompted you to put that sentence in there?"

"A. Well, just the fact that it's the truth."

"Q. Well, is that something that you thought of yourself or was it suggested to you by someone that you include a statement to that effect?"

The Committee considered this matter a serious violation of the integrity of public documents and their safekeeping.

H.
Allegation of Impropriety in Closing Office During Regular Working Hours

Your Committee made a thorough investigation of events surrounding the closing of the office of Secretary of State on the 1st day of August, 1968. This event has been commonly called the "fishing trip". The date of closing coincides with the final day for the filing of two referendum petitions, State Questions 464 and 469.

John Rogers, by his own admission, closed his office on the date above mentioned for the sole purpose of thwarting efforts of the petitions' circulators.

Secretary of State Rogers testified as follows:

"Q. Have you ever gone fishing during normal working hours?"

"A. Yes, Sir."

"Q. And who would that have been with, Mr. Rogers?"

"A. Representative Kenneth Converse."

"Q. The powerful Chairman of the House Wildlife Committee. Do you recall this event, Mr. Rogers?"

"A. Yes, Sir."

"Q. And what was the purpose for closing down the office on this occasion?"

"A. All right. I'll tell you. But it's not a yes or no answer or something like that. All right. I don't recall the date but during the time prior to the general election wherein Nixon was obviously to carry the State very strong, the democrats had passed a bill prohibiting voting handles, straight party voting handles on machinery — I mean on the voting machines and then Governor Dewey Barlett (sic) vetoed the bill and then the Legislature passed it over Governor Bartlett's veto. I would not again do such a thing but I — he then, or at least I thought he was and I don't know from my first hand knowledge, I thought he was backing the petition to file in my office a petition on a referendum which would for stall (sic) the effect of the law until such time it was voted on, which would not be until November, which would give him two vetos. I talked to him about it, I talked to others about it and I didn't — I closed the office strictly because I wanted to close the office and if that's a bad deal I'm sorry but I have to face it, that's it, I closed the office in those circumstances and that was it."

Subsequently, the Oklahoma Supreme Court issued an order directing the Secretary of State to reopen his office on the following day, and Mr. Rogers' efforts to prevent the filing of the petition were thus aborted.

It was obvious that the petitions had partisan political overtones and had been the results of the primary effort of persons in the Republican party. John Rogers, by his own account, likewise actually responded in a partisan manner. His judgment in closing his office had nothing to do with the merits of the questions standing alone.

It is the opinion of the Committee that one holding an office of public trust must perform the duties of his office objectively and indiscriminately without the impetus of political overtones.

We find, however, no specific statutory prohibition of this act. Historically, elected department heads have had broad discretionary authority in this area while appointed department heads are regulated more closely.

The members of your Committee do not condone such a capricious act, nor do we believe the Legislature or the general public supports such conduct which suggests a willful disregard of the duties and responsibilities of the Office of Secretary of State.

I.
Allegation of Improper Solicitation by the
Secretary of State and an Employee to Act
as Service Agent for Foreign Corporations

Your Committee received information and supportive testimony that the Secretary of State mailed to many foreign corporations a letter (Exhibit IV) soliciting and by innuendo virtually requiring foreign corporations to use Mrs. Linda Callaway, the Assistant Secretary of State, as the service agent for those corporations.

Mr. Jack Wettengel, a former Assistant Secretary of State from 1963 to 1967, testified as follows:

"Q. Jack, did you continue to serve in the state service agent after you left?"

"A. Yes."

"Q. And do you recall some of the companies that you represented receiving letters from Mrs. Linda Callaway who had then become Assistant Secretary of State soliciting her services in state service agent?"

"A. Do I recall letters that she sent out?"

"Q. Yes, sir."

"A. Yes, I believe I've seen some of them."

"Q. Did any of them go to your clients?"

"A. Yes, I believe they did."

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"Q. Would you mind furnishing us with a copy of it?"

"A. No, I would be glad to, I think I can still find, but I can answer your question this way — she, in her letter pointed out that I had left the State of Oklahoma which would make me ineligible to be a service agent."

BY MR. FRIED:

"Q. Had you done that?"

"A. Oh, no, I was still living here in Oklahoma City."

"Q. Did she know that?"

"A. Yes. And so she stated in the letter that I had left the State of Oklahoma and that was the jest (sic) of her letter that I was no longer eligible to be a service agent.

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"Q. Did you lose any clients over this?"

"A. Yes."

"Q. Are you still service agent for some?"

"A. Yes."

"Q. About how many did you lose?"

"A. About 50. Some of them I got back later on but at the time that she sent out this letter I lost about 50 of them."

BY MR. STEPHENSON:

"Q. Was this letter project by Linda Callaway the same type of operation that you had used when you became Assistant Secretary of State?"

"A. No, you mean that I had written to the corporations that were represented by former assistants?"

"Q. Right, under Secretary of State Bullard?"

"A. Oh, no, it's an unethical thing to do, to contact — now when I assumed office or the position, the assistant Secretary of State was dying of cancer and I contacted him and asked him what he intended to do with his corporations and he said well, I'm going to hold them as long as I live. And so I waited until after his death and then wrote to the corporations which he represented and asked them if they wanted to use me or change to somebody else."

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"Q. That had been really a common practice for years up until we changed the law here a couple of years ago?"

"A. Yes, right, it was — and you don't get a lot of them, I mean it takes a long time to build up a, the death of Mr. Burson when I took office was the only thing that saved my skin because I did get his corporations, some of them, some of them changed to others. It's always ethical to, not to make them feel you are the only one that can do this job, that there are others there and I always pointed out in my letters that even their own employees living in Oklahoma City could be their service agents here, all they need is an address, and a person who could receive a summons."

Further, your Committee received information and testimony that the Secretary of State allowed employees to demand fees for filing and handling foreign corporations (Exhibit V).

The Committee feels that the lack of employee supervision by the Secretary of State in allowing this type of action by employees and the questionable tactic of a letter of solicitation, virtually requiring foreign corporations to utilize one particular person as

service agent, without statutory authority to do so, to the financial and personal detriment of other persons though maybe not unethical is highly improper. That further, the Secretary of State should have exercised control of his employees by not allowing them to compromise the Office of Secretary of State by writing letters appearing to be official policy or of legal import. Your Committee feels this is a serious violation of the integrity of the Office of Secretary of State.

J.
Allegation of Solicitation
of a Bribe

Section 382 of Title 21 of the Oklahoma Statutes provides:

"Section 382. Every executive, legislative, county, municipal, judicial, or other public officer, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, who corruptly accepts or requests a gift or gratuity, or a promise to make a gift, or a promise to do an act beneficial to such officer, or that judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or as a consideration for any speech, work, or service in connection therewith, or that in such capacity he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment under the laws of this State, and be punished by imprisonment in the State Penitentiary not exceeding ten (10) years, or by fine not exceeding Five Thousand Dollars ($5,000.00) and imprisonment in jail not exceeding one (1) year."

Section 1404 of Title 74 of the Oklahoma Statutes provides:

"Section 1404. No state employee shall:

(a) Directly or indirectly accept any compensation, gift, loan, entertainment, favor, or service given for the purpose of influencing such employee in the discharge of his official duties. Provided, however, that this section shall not apply to bona fide campaign contributions;

(b) Use his official position to secure special privileges or exemptions for himself or others, except as may be provided by law;

(c) Disclose confidential information acquired by reason of his official position to any person, group, or others not entitled to receive such confidential information, nor shall he use such information for his personal gain or benefit;

(d) Sell or cause to be sold, either as an individual or through any business enterprise in which he holds a substantial financial interest, goods or services to any state agency or to any business entity licensed by or regulated by the state agency, except as provided in Section 5(a) of this Act;

(e) Receive any compensation that would impair his independence of judgment, for his services as an officer or employee of any state agency, from any source other than the State of Oklahoma, unless otherwise provided by law; or

(f) Accept other employment which would impair his efficiency or independence of judgment in the performance of his public duties."

Testimony was presented to the Committee which indicated that the Secretary of State, John Rogers, solicited money from individuals involved in the liquor industry for a future political campaign while he was in the process of ruling in his official capacity on the validity of the 1971 Liquor-by-the-Drink Petition.

This allegation only came to the attention of the Committee on May 15, 1975, and although a few witnesses have been interviewed regarding the allegation, the Committee feels that they have not had a sufficient amount of time to fully investigate the allegation and present a well-documented conclusion and recommendation to the House of Representatives.

V
GENERAL INFORMATION FOR CONSIDERATION BY THE HOUSE OF REPRESENTATIVES

A.

The Committee feels although the State of Oklahoma nor its legislative branch should be responsible for policing federal law to insure that they are adhered to, they would be derelict in the performance of their duty and responsibility entrusted to them by the House of Representatives if they did not report the following information.

John Rogers, Secretary of State, gave certain testimony, under oath, on the 26th day of May, 1975, wherein he admitted possible violations of the Federal Elections Campaign Act of 1971.

Mr. Rogers testified he received $22,000 from Governor David Hall.

"Q. Now you did state also that Governor Hall had given you $25,000?"

"A. Yes sir."

"Q. How was this money received?"

"A. In the mansion he handed me $25,000 in cash. I stuck it in my pocket. We talked a while. Before I got out of the mansion, he asked back $3,000, I believe it was."

"Q. To your best recollection, when did this conver- (sic) take place?"

"A. It was before the first primary."

"Q. Was it before or after the first federal reporting date that you were telling me about?"

"A. Oh, way before it."

"Q. As I recall that would have been some time in April of 1972 to the best of my recollection?"

"A. Yes sir."

"Q. Your statement is that this cash was given to you prior to that time?"

"A. Yes sir."

"Q. Why was it not reflected on your report?"

"A. It was. Oh, well, prior to the April 6th or whatever the beginning time is, only the moneys that have ... I have a CPA who is also a friend who made out my reports. I signed them and I think that they are correct. Prior to the reporting or the federal law, moneys that came in and were expended were not accounted for and that is the reason why there wouldn't be an accounting for them at that date."

"Q. In other words, you're saying that the $25,000 less the $3,000 or in essence the $22,000 that you received from Hall was expended prior to the April, 1972 reporting date?"

"A. Plus some."

"Q. Was this ... did Governor Hall indicate to you whether or not this was a personal contribution or from whom it might have been obtained?"

"A. I believe that he indicated that he obtained it from several people, that were not ... that would rather have me be the nominee than somebody else that was running."

"Q. Had you previous to that date ask him to raise campaign funds for you?"

"A. Yes, I'm sure I had. I don't know that, I don't remember it but I'm sure that that's what brought it about."

"Q. What I'm trying to get ... I'm sure he didn't call you up and say come on over to the mansion John, I've got $25,000 for you."

"A. No, that's right. The thing that sticks in my mind is that he gave it to me but I'm sure I asked him for it."

"Q. Did he ever mention any names of individuals that he had raised the $25,000 from?"

"A. No sir, he did not."

"Q. Do you know why he took back the $3,000 shortly after he had given it to you?"

"A. I'm not absolutely certain, no."

"Q. Did he give you any indication of why he took it back?"

"A. If I recall, if I recall correctly I think he told me he was going to use it to go to Russia."

This contribution was neither reported nor deposited in the Friends of Rogers Campaign Bank Account with the Village Bank in Oklahoma City.

Mr. Rogers admitted making a $750 campaign expenditure to Bob Sanders or his company, Survey Research Associates in 1972.

"Q. Well, Mr. Rogers, Mr. Sanders has testified in fact here with the Committee meeting that over a period of time you participated in taking polls for you, is that a correct statement?"

"A. Well, he gave me the knowledge how to do it and he did participate in the operations or the actual mechanics of it. Not being acquainted with it myself."

"Q. How — in what manner was he paid by you for taking these political polls?"

"A. He was not paid by me to my knowledge, to my remembrance."

"Q. Do you recall ever having paid him anything either personally or through your office?"

"A. Well, I've looked up the fact that there was a check written out of a campaign to him, but through my office the answer is still no."

"Q. What campaign fund was he paid through from your checking?"

"A. I believe the Senate campaign fund."

"Q. That would have been your 1972 Senate campaign?"

"A. Yes, Sir."

"Q. Do you recall how much and approximately when he was paid?"

"A. I recall that the check was $750.00 and I do not have the approximate date, I just don't know."

This expenditure was not reported although other expenditures as small as $20.21 were listed.

After careful consideration of this issue, this Committee decided that an alleged violation of federal campaign reporting laws was not a proper subject for investigation by a legislative committee. Rather, it is more properly within the purview of federal law enforcement agencies and the United States District Attorney.

B.

Allegations were made which came to the attention of the Committee by Mr. Jim Reynolds that individuals were compensated by John M. Rogers, State Examiner and Inspector, for personal services performed for John Rogers, Secretary of State.

Mr. Reynolds testified to the Committee that he was on the payroll of John M. Rogers for some two or three months, but that he had in fact performed certain services for the office of State Examiner and Inspector.

Evidence of allegations of wrongdoing was inconclusive and not corroborated and time did not permit a more complete investigation. Therefore, the Committee could draw no conclusions concerning allegations of state compensation for personal services performed for John Rogers, Secretary of State.

VI
CONCLUSION

The Committee feels the limitation imposed by the shortness of the time allowed them to conduct their investigation prohibits them from returning a complete report to the House of Representatives.

Within the twenty-four-hour period before the Committee completed the preparation of this report, new information came to their attention concerning new allegations of corruption in office which, because the powers of the Committee cease with adjournment sine die, could not be pursued in the time remaining. The new allegations regarding corruption in office warrant a full-scale investigation which would require the issuing of subpoenas, the taking of testimony under oath and concentrated deliberation by the Committee. The allegations could not be investigated in the time remaining and such failure to further investigate would be a disservice to the responsibilities entrusted to the Committee by the House of Representatives, to John Rogers and to the citizens of the State of Oklahoma.

The Committee has decided to forestall a final recommendation on all the allegations mentioned in this report until all the allegations have been thoroughly investigated.

The Committee respectfully requests that the Speaker of the House of Representatives request that the Oklahoma State Bureau of Investigation begin an exhaustive investigation of the matters contained in this report and submit written reports to him from time to time to the Speaker on their investigation.

The Committee also feels they should be permitted to continue their investigation to commence on the first legislative day in January of 1976. The Committee would further request the assistance of the Oklahoma State Bureau of Investigation and other state resources in their continued investigation.

The Committee therefore respectfully requests that a Resolution be introduced and passed by the House of Representatives recreating this same investigating committee and they each be appointed as members of the Committee to continue the investigation and determine if there are sufficient grounds to recommend the impeachment of John Rogers.

VII
RECOMMENDATIONS

Now, therefore, we make the following recommendations to the Honorable House of Representatives:

1. The following matters should be submitted for interim study for purposes of preparing and introducing legislation in the 2nd Session of the 35th Legislature:

a. a method for checking out state records should be devised for use by all state agencies having custody of public state records and documents whereby the location of the records and documents would be known to the legal custodian at all times.

b. enactment of legislation which would clarify the definition of public documents and records to determine those matters a state officer or employee is legally responsible for maintaining.

c. enactment of legislation which would combine and clarify the Records Management Act (67 O.S. 1971, Sections 201 through 216), and the Preservation of Essential Records Act (67 O.S. 1971, Sections 151 through 168).

d. clarification through either legislation or rules by the State Archives Commission of how long a public state document should be preserved in the individual state agency and how it is to be properly disposed of.

e. a policy for charging fees for the use of state physical facilities and personnel, where appropriate, should be instituted by the agency or agencies responsible for those facilities and personnel.

f. a clear and concise statute prohibiting the obstruction of justice.

g. requirement that all elective officials shall report the commission of any crime that relates to duties and functions of his office.

h. action should be taken on pardons and paroles by state officials within ten (10) days of receipt in their office.

i. amend Section 25 of Title 75 of the Oklahoma Statutes to require forwarding of enacted legislation to county court clerks within ten (10) days of receipt of the bill in the office of Secretary of State.

j. amend Section 6.1 of Title 34 of the Oklahoma Statutes to change the wording "violations of this act" to "violations of this title".

k. the designation of working hours and the determination of the method for accrual of compensatory time, sick leave and vacation time under the rules of the Merit System of the State of Oklahoma should be used as a guide by all state agencies including those which are not under the Merit System.

1. lists of new corporations registering with the Office of Secretary of State be made available through the Office of the Secretary of State for a fixed fee to go to the General Revenue Fund.

2. That the magnitude of the charges against the Secretary of State are of such a nature that the Committee has been unable to fully and completely investigate all the allegations presented to them; and therefore the Committee cannot make a final recommendation to the House of Representatives at this time. Therefore, the Committee recommends that a Resolution be introduced and passed by the House of Representatives recreating this Committee and that they be reappointed on the first legislative day of 1976 to continue their investigation with the intent of determining whether Articles of Impeachment should be recommended.

3. That the Oklahoma State Bureau of Investigation and other state law enforcement agencies be requested to assist the House of Representatives in this matter.

4. That this report be received and filed, accepted and approved.

5. That this report in its entirety shall be published in the Journal of the House of Representatives.

Respectfully submitted,

Representative Gary Payne, Chairman
Representative Dan Draper
Representative Ron Shotts
Representative Tom Stephenson

85th LEGISLATIVE DAY
Tuesday, June 3, 1975

PENDING CONSIDERATION OF SPECIAL COMMITTEE REPORT

Mr. Payne, Chairman of the Special Investigating Committee appointed pursuant to HR 1020, moved the adoption of the Report submitted to the House on the last legislative day.

Mr. Fried submitted the following Minority Report and moved that the Minority Report be substituted for the Majority Report:

MINORITY REPORT

It is recommended that the House of Representatives vote the following Articles of Impeachment against John Rogers, Secretary of State:

1. Solicitation of a bribe concerning the 1971 Liquor-by-the-Drink Petition.

2. Incompetence in office based on:

a. Failure to take action upon discovering forgeries on the 1971 Liquor-by-the-Drink Petitions.

b. Neglect in keeping public documents secure.

c. Misuse of public office by allowing nonemployees access to the office for political purposes.

d. Improper solicitation of Foreign Service Agent designation for Linda Callaway.

e. Closing of Secretary of State's Office for political purposes.

Respectfully submitted,
REPRESENTATIVE JIM FRIED

Speaker Willis ruled that the Majority Report will first be considered and voted upon.

Following request for debate on the adoption of the Majority Report, Mrs. Atkins moved that the Rules be suspended for the purpose of extending the time for debate to twenty (20) minutes to each side, which motion was declared adopted upon a roll call as follows:

Aye: Abbott, Atkins, Bamberger, Bengtson, Bennett, Bernard, Beznoska, Bradshaw, Camp, Campbell, Cleveland, Converse, Cotner, Cowan, Craighead, Cunningham, Davis (Don), Denman, Draper, Duckett, Duke, Edmondson, Elder, Ferrell, Fitzgibbon, Floyd, Fried, Green, Hammons, Harper, Henry, Holaday, Hood, Hooper, Hopkins, Johnson (A. V.), Johnson (Don), Johnston, Kane, Kardokus, Kilpatrick, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Riggs, Robinson, Rogers, Smith, Stratton, Swinton, Thompson, Thornhill, Townsend, Vaughn, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—68.

Nay: Anderson, Bradley, Briscoe, Brunton, Caldwell, Conaghan, Cullison, Cummings, Davis (Guy), Dunn, Frates, Hastings, Holden, Holt, Johnson (Joe), Kamas, Kennedy, Lancaster, Monks, Poulos, Prentice, Roberts, Sanders, Shotts, Sparkman, Stephenson, Twidwell, Weichel.—28.

Excused: Ervin, Ford, Hardesty, Hibdon, Joiner.—5.

(Ensuing Debate)

The vote occurring upon the Payne motion, the question being — "Shall the Majority Report prevail?" — it was declared failed of adoption upon a roll call as follows:

Aye: Anderson, Bernard, Beznoska, Bradley, Brunton, Campbell, Conaghan, Converse, Cullison, Cummings, Cunningham, Davis (Guy), Draper, Dunn, Elder, Fitzgibbon, Frates, Henry, Holden, Holt, Johnson (Don), Johnson (Joe), Kamas, Kardokus, Kennedy, Lancaster, McKee, Miskelly, Monks, Murphy, Parris, Payne, Peterson, Poulos, Roberts, Rogers, Sanders, Shotts, Sparkman, Stephenson, Stratton, Thornhill, Townsend, Twidwell, Vaughn, Weichel, Whorton, Mr. Speaker.—48.

Nay: Abbott, Atkins, Bamberger, Bengtson, Bennett, Bradshaw, Briscoe, Caldwell, Camp, Cleveland, Cotner, Cowan, Craighead, Davis (Don), Denman, Duckett, Duke, Edmondson, Ervin, Ferrell, Floyd, Fried, Green, Hammons, Harper, Hastings, Holaday, Hood, Hooper, Hopkins, Johnson (A. V.), Johnston, Kane, Kilpatrick, McCaleb, McIntyre, Manning, Matheson, Morgan, Nance, Prentice, Riggs, Robinson, Smith, Swinton, Thompson, Wickersham, Wilson, Wiseman.—49.

Excused: Ford, Hardesty, Hibdon, Joiner.—4.

The vote occurring upon the Fried motion that the Minority Report be substituted for the Majority Report, it was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Briscoe, Brunton, Caldwell, Camp, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cummings, Cunningham, Denman, Duckett, Duke, Edmondson, Floyd, Frates, Fried, Green, Hammons, Hastings, Henry, Holaday, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kilpatrick, McCaleb, McIntyre, Manning, Matheson, Miskelly, Morgan, Nance, Parris, Prentice, Riggs, Robinson,

Shotts, Smith, Swinton, Thompson, Thornhill, Townsend, Whorton, Wickersham, Wiseman.—59.

Nay: Bengtson, Bennett, Bernard, Beznoska, Bradley, Bradshaw, Converse, Cullison, Davis (Don), Davis (Guy), Draper, Dunn, Elder, Ervin, Ferrell, Fitzgibbon, Harper, Holden, Johnson (A. V.), Kardokus, Kennedy, Lancaster, McKee, Monks, Murphy, Payne, Peterson, Poulos, Roberts, Rogers, Sanders, Sparkman, Stephenson, Stratton, Twidwell, Vaughn, Weichel, Wilson, Mr. Speaker.—39.

Excused: Ford, Hardesty, Hibdon.—3.

86th LEGISLATIVE DAY
Wednesday, June 4, 1975

Mr. Townsend announced that consideration of the Articles of Impeachment were set for Special Order at 3:00 p.m., on this legislative day.

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The House reconvened at 2:55 p.m., with Speaker Willis presiding.

SPECIAL ORDER — ARTICLES OF IMPEACHMENT

The following detailed Articles of Impeachment were submitted and explained by Mr. Fried:

ARTICLES OF IMPEACHMENT

John Rogers was elected to the Office of Secretary of State for the State of Oklahoma in 1966, and he took the following oaths of office as provided for in the Constitution and laws of the State of Oklahoma:

Article XV, Section 1 of the Constitution:

"Section 1. All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as_____ to the best of my ability." The Legislature may prescribe further oaths or affirmations."

Section 2 of Title 51 of the Oklahoma Statutes:

"Section 2. Every State, county, township, city, town, school district, or other officer under the laws of the State, and every deputy or assistant of any such officer, shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation:

"I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use or travel upon any free pass or on free transportation during my term of office."

In 1970, he was reelected to the same high office and again took the oaths of office prescribed.

While in office as Secretary of State of the State of Oklahoma, John Rogers, unmindful of the high duties of his office and of his oath of office, and in violation of the Constitution and the laws of the State of Oklahoma, has been guilty of willful neglect of duty, corruption in office, incompetency and an offense involving moral turpitude; and the House of Representatives hereby exhibits and presents to the Honorable Senate of the State of Oklahoma, Articles of Impeachment against John Rogers, Secretary of State, for the cause, and upon the grounds, and in particular as follows, to wit:

ARTICLE I

That, John Rogers, while acting in his official capacity as Secretary of State, did transmit letters to domesticated foreign corporations implying the necessity to employ a member of his staff, the Assistant Secretary of State, in order to have a legal service agent within the state. Said letter of solicitation was misleading, untruthful and contrary to any authorized procedure of the Office of the Secretary of State.

That, on the 1st day of August, 1968, which was a regular working day and not any declared official or unofficial holiday, without authority of law or good cause shown, John Rogers, Secretary of State, did close his office precluding any citizens from availing themselves of the services they were lawfully entitled to for partisan political reason only. That such closing of a state office without legal basis prevented the filing of a referendum petition signed by some 37,000 Oklahoma citizens. Such action being a clear abuse of power and discretion by the Secretary of State and was an attempt to completely deprive many citizens of the State of Oklahoma from exercising their right of referendum as provided in the Constitution of the State of Oklahoma.

That John Rogers, Secretary of State, had full knowledge of the forging of a number of 1971 Liquor-by-the-Drink Petitions and that he failed to properly notify law enforcement authorities. Because the determination of the validity of initiative petitions was within the purview of the authority vested in him as Secretary of State, such failure to report his knowledge of a wrongful act constituted a willful neglect of duty and a total disregard of the rights of the citizens of the State of Oklahoma.

That, John Rogers, Secretary of State, is the legal custodian of certain public documents and records, and as such has a high degree of care imposed upon him. Some 700 individual petitions of the 1969 Liquor-by-the-Drink Petition are missing and unaccounted for and no satisfactory explanation has been given by the said Secretary of State for this careless treatment of public documents. The Secretary of State, John Rogers, permitted state public documents to be left unattended and within the easy access of unauthorized persons, thereby subjecting such documents to the possibility of suffering damage or destruction. That the said Secretary of State specifically allowed one Robert Sanders such access with full knowledge of his having participated in a scheme to forge signatures.

That, one Robert Sanders, during the months between January, 1970 through December of 1973, did conduct numerous political polls using the offices, office facilities and other facilities of the official office of the Secretary of State of Oklahoma. That John Rogers, the duly elected Secretary of State, did permit and encourage such questionable procedures and actions unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma.

And so the said House of Representatives hereby referring to each of the above and foregoing charges against the said John Rogers as the Secretary of State and hereby making each and every one of said charges a part of this Article to the same extent as if each of said charges were set out in full herein, and hereby further charge:

That the said John Rogers, in the official capacity aforesaid, during his incumbancy in the Office of Secretary of State, at various times and on sundry and numerous occasions, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma, purposely, willfully, intentionally, wrongfully and corruptly did show, exhibit, demonstrate and establish his official incompetency to hold, occupy and serve in the capacity of Secretary of State of the State of Oklahoma and to perform and accomplish the duties thereof, by a course of conduct alleged and set forth, and specified in the above and foregoing Articles of Impeachment; and that he, the said John Rogers, Secretary of State, aforesaid by reason of his official acts and course of official conduct hereinbefore alleged and specified, is guilty of incompetency while in his said office.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE II

That, John Rogers, while acting in his official capacity as Secretary of State, did solicit funds from various persons at various times in exchange for validating or nonvalidating various petitions and that he did specifically solicit funds from one Bob Naifeh and one Johnny Monsour for his personal use in exchange for the validation of the 1971 Liquor-by-the-Drink Petition.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

Mr. Shotts moved to amend the Articles of Impeachment on page 2, line 19, by striking the comma (,) after the word "misleading" and by striking the word "untruthful", which amendment was declared adopted.

Mr. Hammons moved to amend the Articles of Impeachment on page 3, by inserting on line 19½ the paragraph "And that the Secretary of State has failed to expeditiously transmit Acts or Resolutions to County Court Clerks as is a necessary function of the duties of that office as set forth in Section 25 of Title 75 of the Oklahoma Statutes," which amendment was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamger, Bradshaw, Briscoe, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cummings, Cunningham, Duke, Dunn, Edmondson, Ervin, Floyd, Frates, Fried, Green, Hammons, Henry, Holaday, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kilpatrick, Lancaster, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Prentice, Riggs, Roberts, Robinson, Smith, Stephenson, Stratton, Swinton, Thompson, Townsend, Weichel, Whorton, Wickersham, Wiseman, Mr. Speaker.—65.

Nay: Bengtson, Bennett, Bernard, Beznoska, Bradley, Converse, Cullison, Davis (Guy), Draper, Duckett, Elder, Ferrell,

Fitzgibbon, Harper, Holden, Kardokus, Kennedy, Monks, Poulos, Sanders, Shotts, Sparkman, Thornhill, Twidwell, Wilson.—25.

Excused: Brunton, Camp, Davis (Don), Denman, Ford, Hardesty, Hastings, Hibdon, Johnson (A. V.), Rogers, Vaughn.—11.

Mr. Matheson moved to amend the Articles of Impeachment on line 26, by correcting the spelling of the word "incumbancy" to "incumbency" which amendment was declared adopted.

Mr. Elder moved to amend Articles of Impeachment on page 2, by striking all language on lines 15 through 20, which amendment was declared failed of adoption upon a roll call as follows:

Aye: Bernard, Beznoska, Bradley, Converse, Davis (Guy), Draper, Duckett, Elder, Fitzgibbon, Harper, Henry, Kardokus, Kennedy, McKee, Miskelly, Monks, Murphy, Payne, Peterson, Poulos, Rogers, Sparkman, Stephenson, Thompson, Thornhill, Twidwell, Weichel, Wilson.—28.

Nay: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bennett, Bradshaw, Briscoe, Brunton, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Duke, Dunn, Edmondson, Ervin, Ferrell, Floyd, Frates, Fried, Green, Hammons, Hastings, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Kamas, Kane, Kilpatrick, Lancaster, McCaleb, McIntyre, Manning, Matheson, Morgan, Nance, Prentice, Riggs, Roberts, Robinson, Sanders, Shotts, Smith, Stratton, Swinton, Townsend, Vaughn, Whorton, Wickersham, Wiseman, Mr. Speaker.—63.

Excused: Caldwell, Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Johnson (A. V.), Joiner, Parris.—10.

REPRESENTATIVE ELDER PRESIDING

Mr. Duckett moved to amend Articles of Impeachment on pages 2 and 3, by inserting the following on page 2, line 20½ — "Article II"; on page 2, line 30½ — "Article III"; on page 3, line 2½ — "Article IV"; on page 3, line 12½ — "Article V"; on page 3, line 19½ — "Article VI"; on page 3, line 24½ — "Article VII"; on page 4, line 6 — "delete Article II and substitute therefor Article VIII".

The roll was ordered called on the Duckett amendment and resulted as follows:

Aye: Bengtson, Bradley, Davis (Guy), Duckett, Fitzgibbon, Monks, Payne, Poulos, Thornhill.—9.

Nay: Abbott, Anderson, Atkins, Bamberger, Bennett, Bernard, Beznoska, Bradshaw, Briscoe, Brunton, Campbell, Cleveland, Conaghan, Converse, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Draper, Duke, Dunn, Edmondson, Elder, Ferrell, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, Lancaster, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Peterson, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith, Sparkman, Stephenson, Stratton, Swinton, Thompson, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—82.

Excused: Caldwell, Camp, Davis (Don), Denman, Ervin, Ford, Hardesty, Hibdon, Johnson (A. V.), Kennedy.—10.

The Duckett amendment was declared failed of adoption.

Mr. Henry moved to amend the Articles of Impeachment on page 2, by striking the

paragraph on lines 21 through 30, which amendment was declared failed of adoption upon a roll call as follows:

Aye: Anderson, Beznoska, Bradley, Converse, Cullison, Davis (Guy), Draper, Elder, Fitzgibbon, Henry, Holden, Kamas, Kane, Kardokus, Kennedy, Monks, Murphy, Payne, Peterson, Rogers, Shotts, Sparkman, Stephenson, Thornhill, Weichel, Whorton, Wilson.—27.

Nay: Abbott, Atkins, Bamberger, Bengtson, Bennett, Bernard, Bradshaw, Briscoe, Brunton, Campbell, Cleveland, Cotner, Cowan, Craighead, Cummings, Cunningham, Duckett, Dunn, Edmondson, Ervin, Ferrell, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Holaday, Holt, Hood, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kilpatrick, Lancaster, McCaleb, McIntyre, Manning, Matheson, Miskelly, Morgan, Nance, Parris, Prentice, Riggs, Roberts, Robinson, Sanders, Smith, Stratton, Swinton, Thompson, Townsend, Vaughn, Wickersham, Wiseman.—59.

Excused: Caldwell, Camp, Conaghan, Davis (Don), Denman, Duke, Ford, Hardesty, Hibdon, Hooper, Johnson (A. V.), McKee, Poulos, Twidwell, Mr. Speaker.—15.

Mr. Fried moved the adoption of Article I, as amended, which motion was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bernard, Bradshaw, Briscoe, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Duckett, Duke, Dunn, Edmondson, Ervin, Ferrell, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, Lancaster, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Peterson, Prentice, Riggs, Roberts, Robinson, Sanders, Shotts, Smith, Stephenson, Stratton, Swinton, Thompson, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wiseman, Mr. Speaker.—79.

Nay: Bennett, Beznoska, Bradley, Converse, Draper, Elder, Fitzgibbon, Kennedy, Monks, Payne, Poulos, Rogers, Sparkman, Wilson.—14.

Excused: Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Johnson (A. V.), Thornhill.—8.

Article II was explained by Mr. Fried and considered.

Mr. Shotts moved to amend the Articles of Impeachment on page 4, line 9, by striking the words "various petitions" and inserting in lieu thereof the language "the 1971 Liquor-by-the-Drink Petition" which amendment was declared adopted upon a roll call as follows:

Aye: Anderson, Bengtson, Beznoska, Bradley, Bradshaw, Brunton, Campbell, Cleveland, Conaghan, Cowan, Craighead, Cullison, Cummings, Davis (Guy), Draper, Duckett, Duke, Elder, Ervin, Ferrell, Fitzgibbon, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holden, Holt, Hood, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, Lancaster, McCaleb, McKee, Manning, Matheson, Monks, Morgan, Murphy, Nance, Parris, Payne, Peterson, Poulos, Prentice, Riggs, Roberts, Rogers, Sanders, Shotts, Smith, Sparkman, Stephenson, Twidwell, Weichel, Whorton.—65.

Nay: Abbott, Atkins, Bamberger, Bennett, Briscoe, Caldwell, Converse, Cotner, Cunningham, Dunn, Edmondson, Floyd, Hooper, Hopkins, McIntyre, Mis-

kelly, Robinson, Stratton, Swinton, Thompson, Townsend, Vaughn, Wickersham.—23.

Excused: Bernard, Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Johnson (A. V.), Kennedy, Thornhill, Wilson, Wiseman, Mr. Speaker.—13.

Mr. Fried moved to amend the Articles of Impeachment on page 4, line 10, by inserting after the name "Monsour" and the word "for" the language "between July and November of 1971," which amendment was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bennett, Bernard, Beznoska, Bradshaw, Briscoe, Brunton, Campbell, Cleveland, Conaghan, Converse, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Draper, Duckett, Duke, Dunn, Edmondson, Elder, Ervin, Fitzgibbon, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kennedy, Kilpatrick, Lancaster, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Monks, Morgan, Murphy, Nance, Parris, Payne, Peterson, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith, Sparkman, Stephenson, Stratton, Swinton, Thompson, Thornhill, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wilson, Wiseman.—89.

Nay: Bradley.—1.

Excused: Caldwell, Camp, Davis (Don), Denman, Ferrell, Ford, Hardesty, Hibdon, Johnson (A. V.), Poulos, Mr. Speaker.—11.

Mr. Ervin moved to amend the Articles of Impeachment on page 4, line 11½, by inserting the language "That during 1972, John Rogers, while acting in his official capacity as Secretary of State did solicit a bribe from various undisclosed persons in exchange for his official act of validating any initiative petition calling for the legalization of pari-mutuel horse and/or dog racing within the State of Oklahoma" which amendment was declared failed of adoption upon a roll call as follows:

Aye: Atkins, Bamberger, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cunningham, Duke, Edmondson, Ervin, Floyd, Frates, Green, Henry, Holaday, Holden, Holt, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Joiner, Kane, Kardokus, Lancaster, McCaleb, Manning, Matheson, Miskelly, Morgan, Prentice, Roberts, Sanders, Stratton, Swinton, Thompson, Townsend, Vaughn, Wickersham, Wiseman.—43.

Nay: Abbott, Anderson, Bengtson, Bennett, Bernard, Beznoska, Bradley, Bradshaw, Brunton, Converse, Cullison, Cummings, Davis (Guy), Draper, Duckett, Dunn, Elder, Ferrell, Fitzgibbon, Fried, Hammons, Harper, Hastings, Hood, Johnston, Kamas, Kennedy, Kilpatrick, McIntyre, McKee, Monks, Murphy, Nance, Parris, Payne, Peterson, Poulos, Riggs, Robinson, Rogers, Shotts, Smith, Sparkman, Stephenson, Thornhill, Twidwell, Weichel, Whorton, Wilson, Mr. Speaker.—50.

Excused: Briscoe, Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Johnson (A. V.).—8.

Mr. Ervin moved to amend the Articles of Impeachment on page 4, lines 8 and 9, by striking on line 8, the words "in exchange for" and inserting in lieu thereof the words "while he was considering the"; on line 8, by striking the word "validating" and substituting therefor the word "validation"; on line 9, by striking the word "nonvalidating" and substituting therefor the word "nonvalidation"; and on line 9, by inserting after the word "nonvalidation" and

before the word "various" the word "of" which amendment was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bennett, Bernard, Beznoska, Bradshaw, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Draper, Duckett, Duke, Dunn, Edmondson, Elder, Ervin, Ferrell, Fitzgibbon, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kennedy, Kilpatrick, Lancaster, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Poulos, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith, Sparkman, Stephenson, Swinton, Thompson, Thornhill, Townsend, Twidwell, Weichel, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—87.

Nay: Bradley, Henry, Monks, Stratton.—4.

Excused: Briscoe, Camp, Converse, Davis (Don), Denman, Ford, Hardesty, Hibdon, Johnson (A. V.), Vaughn.—10.

Mr. Fried moved the adoption of Article II, as amended, which motion was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bernard, Bradshaw, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Duckett, Duke, Dunn, Edmondson, Elder, Ervin, Ferrell, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, Lancaster, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith, Stephenson, Stratton, Swinton, Thompson, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wiseman, Mr. Speaker.—81.

Nay: Bennett, Bradley, Converse, Draper, Fitzgibbon, Kennedy, Monks, Poulos, Sparkman, Wilson.—10.

Excused: Beznoska, Briscoe, Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Johnson (A. V.), Thornhill.—10.

Mr. Edmondson moved to amend the Articles of Impeachment on page 4, by adding an additional Article III to read as follows:

"That, prior to April of 1972, one David Hall, former Governor of the State of Oklahoma, gave to John Rogers, Secretary of State, Twenty-five Thousand Dollars in cash for his campaign for United States Senate at the mansion of the Governor of Oklahoma. That John Rogers had requested the Governor to assist in raising campaign funds for his Senate race. That the money was in fact raised for John Rogers by several persons, the identity of whom are unknown, at this time. Within minutes of the receipt of the Twenty-five Thousand Dollars, John Rogers returned Three Thousand Dollars to the then Governor David Hall. The Twenty-two Thousand Dollars which John Rogers received for campaign purposes and kept, was not deposited in the Friends of Rogers Campaign Bank Account nor reported, nor was the purposes for which the Twenty-two Thousand Dollars was expended reported or accounted for.

That the said John Rogers, Secretary of State for the State of Oklahoma, then and there and thereby in the manner and form

hereinbefore specified, became and was and is guilty of willful neglect of duty, incompetency, corruption in office, and of an offense involving moral turpitude."

The roll was ordered called upon the adoption of the Edmondson amendment, and resulted as follows:

Aye: Abbott, Atkins, Bamberger, Bengtson, Bernard, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Duckett, Dunn, Edmondson, Ervin, Ferrell, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Holaday, Holden, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, Lancaster, McCaleb, McIntyre, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Peterson, Prentice, Riggs, Roberts, Robinson, Sanders, Shotts, Smith, Stratton, Swinton, Thompson, Townsend, Twidwell, Vaughn, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—71.

Nay: Anderson, Bennett, Beznoska, Bradley, Bradshaw, Converse, Draper, Elder, Henry, Kennedy, McKee, Monks, Parris, Payne, Poulos, Rogers, Stephenson, Thornhill, Weichel.—19.

Excused: Briscoe, Camp, Davis (Don), Denman, Duke, Fitzgibbon, Ford, Hardesty, Hibdon, Johnson (A. V.), Sparkman.—11.

The Edmondson amendment was declared adopted.

Mr. Floyd moved that the Rules be suspended for the purpose of inserting an amendment in Article III, which motion was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bennett, Bernard, Beznoska, Bradshaw, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Draper, Duckett, Duke, Dunn, Edmondson, Elder, Ervin, Fitzgibbon, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith, Stephenson, Thompson, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—81.

Nay: Bradley, Converse, Monks, Sparkman, Stratton, Swinton, Thornhill.—7.

Excused: Briscoe, Camp, Davis (Don), Denman, Ferrell, Ford, Hardesty, Hibdon, Holden, Johnson (A. V.), Kennedy, Lancaster, Poulos.—13.

Mr. Floyd moved to amend Article III by striking the period after the first paragraph and adding the language "as required by law." which amendment was declared adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bennett, Bernard, Beznoska, Bradshaw, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Draper, Duckett, Duke, Dunn, Edmondson, Elder, Ervin, Ferrell, Fitzgibbon, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith,

Stephenson, Swinton, Thompson, Thornhill, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—84.

Nay: Bradley, Converse, Monks, Sparkman, Stratton.—5.

Excused: Briscoe, Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Holden, Johnson (A. V.), Kennedy, Lancaster, Poulos.—12.

The Speaker announced that all Articles of Impeachment against John Rogers, having received a majority vote of those members present and voting, a quorum being present, have been adopted by the House of Representatives.

The Articles of Impeachment, as amended, read as follows:

ARTICLES OF IMPEACHMENT

John Rogers was elected to the Office of Secretary of State for the State of Oklahoma in 1966, and he took the following oaths of office as provided for in the Constitution and laws of the State of Oklahoma:

Article XV, Section 1 of the Constitution:

"Section 1. All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as_____to the best of my ability." The Legislature may prescribe further oaths or affirmations."

Section 2 of Title 51 of the Oklahoma Statutes:

"Section 2. Every State, county, township, city, town, school district, or other officer under the laws of the State, and every deputy or assistant of any such officer, shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation:

"I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use or travel upon any free pass or on free transportation during my term of office."

In 1970, he was reelected to the same high office and again took the oaths of office prescribed.

While in office as Secretary of State of the State of Oklahoma, John Rogers, unmindful of the high duties of his office and of his oath of office, and in violation of the Constitution and the laws of the State of Oklahoma, has been guilty of willful neglect of duty, corruption in office, incompetency and an offense involving moral turpitude; and the House of Representatives hereby exhibits and presents to the Honorable Senate of the State of Okla-

homa, Articles of Impeachment against John Rogers, Secretary of State, for the cause, and upon the grounds, and in particular as follows, to wit:

ARTICLE I

That, John Rogers, while acting in his official capacity as Secretary of State, did transmit letters to domesticated foreign corporations implying the necessity to employ a member of his staff, the Assistant Secretary of State, in order to have a legal service agent within the state. Said letter of solicitation was misleading and contrary to any authorized procedure of the Office of the Secretary of State.

That, on the 1st day of August, 1968, which was a regular working day and not any declared official or unofficial holiday, without authority of law or good cause shown, John Rogers, Secretary of State, did close his office precluding any citizens from availing themselves of the services they were lawfully entitled to for partisan political reason only. That such closing of a state office without legal basis prevented the filing of a referendum petition signed by some 37,000 Oklahoma citizens. Such action being a clear abuse of power and discretion by the Secretary of State and was an attempt to completely deprive many citizens of the State of Oklahoma from exercising their right of referendum as provided in the Constitution of the State of Oklahoma.

That, John Rogers, Secretary of State, had full knowledge of the forging of a number of 1971 Liquor-by-the-Drink Petitions and that he failed to properly notify law enforcement authorities. Because the determination of the validity of initiative petitions was within the purview of the authority vested in him as Secretary of State, such failure to report his knowledge of a wrongful act constituted a willful neglect of duty and a total disregard of the rights of the citizens of the State of Oklahoma.

That, John Rogers, Secretary of State, is the legal custodian of certain public documents and records, and as such has a high degree of care imposed upon him. Some 700 individual petitions of the 1969 Liquor-by-the-Drink Petition are missing and unaccounted for and no satisfactory explanation has been given by the said Secretary of State for this careless treatment of public documents. The Secretary of State, John Rogers, permitted state public documents to be left unattended and within the easy access of unauthorized persons, thereby subjecting such documents to the possibility of suffering damage or destruction. That the said Secretary of State specifically allowed one Robert Sanders such access with full knowledge of his having participated in a scheme to forge signatures.

That, one Robert Sanders, during the months between January, 1970 through December of 1973, did conduct numerous political polls using the offices, office facilities and other facilities of the official office of the Secretary of State of Oklahoma. That John Rogers, the duly elected Secretary of State, did permit and encourage such questionable procedures and actions unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma.

That the Secretary of State has failed to expeditiously transmit Acts or Resolutions to County Court Clerks as is a necessary function of the duties of that office as set forth in Section 25 of Title 75 of the Oklahoma Statutes.

And so the said House of Representatives hereby referring to each of the above and foregoing charges against the said John Rogers as the Secretary of State and hereby making each and every one of said charges a part of this Article to the same extent as if each of said charges were set out in full herein, and hereby further charge:

That the said John Rogers, in the official capacity aforesaid, during his incumbency in the Office of Secretary of State, at various times and on sundry and numerous occasions, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma, purposely, willfully, intentionally, wrongfully and corruptly did show, exhibit, demonstrate and establish his official incompetency to hold, occupy and serve in the capacity of Secretary of State of the State of Oklahoma and to perform and accomplish the duties thereof, by a course of conduct alleged and set forth, and specified in the above and foregoing Articles of Impeachment; and that he, the said John Rogers, Secretary of State, aforesaid by reason of his official acts and course of official conduct hereinbefore alleged and specified, is guilty of incompetency while in his said office.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE II

That, John Rogers, while acting in his official capacity as Secretary of State, did solicit funds from various persons at various times while he was considering the validation or nonvalidation of the 1971 Liquor-by-the-Drink Petition and that he did specifically solicit funds from one Bob Naifeh and one Johnny Monsour between July and November of 1971 for his personal use in exchange for the validation of the 1971 Liquor-by-the-Drink Petition.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE III

That, prior to April of 1972, one David Hall, former Governor of the State of Oklahoma, gave to John Rogers, Secretary of State, Twenty-five Thousand Dollars in cash for his campaign for United States Senate at the mansion of the Governor of Oklahoma. That John Rogers had requested the Governor to assist in raising campaign funds for his Senate race. That the money was in fact raised for John Rogers by several persons, the identity of whom are unknown, at this time. Within minutes of the receipt of the Twenty-five Thousand Dollars, John Rogers returned Three Thousand Dollars to the then Governor David Hall. The Twenty-two Thousand Dollars which John Rogers received for campaign purposes and kept, was not deposited in the Friends of Rogers Campaign Bank Account nor reported, nor was the purposes for which the Twenty-two Thousand Dollars was expended, reported or accounted for, as required by law.

That the said John Rogers, Secretary of State for the State of Oklahoma, then and there and thereby in the manner and form hereinbefore specified, became and was and is guilty of willful neglect of duty, incompetency, corruption in office, and of an offense involving moral turpitude.

RESOLUTION

HR 1031 was introduced and read at length as follows:

HR 1031 — By Fried, Hammons, Hood and Edmondson.

A Resolution regarding Articles of Impeachment against John Rogers, Secretary of State.

WHEREAS, the House of Representatives of the 1st Session of the 35th Okla-

homa Legislature, has voted Articles of Impeachment against John Rogers, Secretary of State for the State of Oklahoma; and

WHEREAS, the 1st Session of the 35th Oklahoma Legislature is contemplating adjourning sine die in the near future.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 1ST SESSION OF THE 35TH OKLAHOMA LEGISLATURE:

THAT the Speaker of the House of Representatives be authorized to appoint a Board of Managers with the number of members to be designated by him to present and prosecute the Articles of Impeachment voted by the House of Representatives, the same as if the 1st Session of the 35th Legislature was in regular session.

THAT the Board of Managers are further empowered and authorized to employ such attorneys, investigators and other such staff as may be required.

Upon motion of Mr. Bamberger, **HR 1031** was considered, adopted upon a roll call as follows:

Aye: Abbott, Anderson, Atkins, Bamberger, Bengtson, Bennett, Bernard, Beznoska, Bradshaw, Brunton, Caldwell, Campbell, Cleveland, Conaghan, Converse, Cotner, Cowan, Craighead, Cullison, Cummings, Cunningham, Davis (Guy), Draper, Duckett, Duke, Dunn, Edmondson, Elder, Ervin, Ferrell, Fitzgibbon, Floyd, Frates, Fried, Green, Hammons, Harper, Hastings, Henry, Holaday, Holt, Hood, Hooper, Hopkins, Johnson (Don), Johnson (Joe), Johnston, Joiner, Kamas, Kane, Kardokus, Kilpatrick, McCaleb, McIntyre, McKee, Manning, Matheson, Miskelly, Morgan, Murphy, Nance, Parris, Payne, Peterson, Prentice, Riggs, Roberts, Robinson, Rogers, Sanders, Shotts, Smith, Sparkman, Stephenson, Stratton, Swinton, Thompson, Thornhill, Townsend, Twidwell, Vaughn, Weichel, Whorton, Wickersham, Wilson, Wiseman, Mr. Speaker.—87.

Nay: Bradley, Monks.—2.

Excused: Briscoe, Camp, Davis (Don), Denman, Ford, Hardesty, Hibdon, Holden, Johnson (A. V.), Kennedy, Lancaster, Poulos.—12.

HR 1031 was ordered referred for enrollment.

87th LEGISLATIVE DAY
Thursday, June 5, 1975

APPOINTMENT OF BOARD OF MANAGERS

Speaker Willis announced, pursuant to 51, O.S. 1971, § 58, the appointment of the following Board of Managers to prosecute the impeachment charges against Secretary of State, John Rogers: Floyd, Chairman, Nance, Riggs, Cummings, Shotts, and Murphy.

Upon motion of Mr. Townsend, the above appointments were confirmed.

* * *

ARTICLES OF IMPEACHMENT TO SENATE

Speaker Willis directed the Board of Managers to proceed to the Honorable Senate to present its report on the Articles of Impeachment of Secretary of State John Rogers.

SENATE JOURNAL

1st Session of the 35th Legislature

87th LEGISLATIVE DAY
Thursday, June 5, 1975

HOUSE COMMITTEE RECEIVED

The Sergeant-at-Arms of the Senate was recognized and announced that a Committee from the Honorable House was present.

President Pro Tempore Howard recognized the Committee, constituting the Board of Managers of the House of Representatives, composed of Representatives Floyd, Murphy, Nance, Riggs, Shotts and Cummings. Representative Floyd advised the Senate that the Board of Managers desired to appear before the Senate and present Articles of Impeachment against John Rogers, Secretary of State.

There being no objection, Representative Floyd presented the Articles of Impeachment against John Rogers, Secretary of State. President Pro Tempore Howard asked that they be read by the Clerk of the Senate, which was the order.

The Message from the House of Representatives and the attached Articles of Impeachment were as follows:

MESSAGE FROM THE HOUSE

TO THE
HONORABLE SENATE
STATE OF OKLAHOMA

Sirs:

By order of the House of Representatives of the State of Oklahoma, this Message is sent:

Advising that pursuant to 51 O.S. 1971, § 58, and in accordance with **HR 1031**, Speaker Willis has appointed the following Board of Managers to prosecute the impeachment charges against Secretary of State John Rogers: Floyd, Chairman, Nance, Riggs, Cummings, Shotts and Murphy.

Attached herewith are the said Articles of Impeachment and on behalf of the said House of Representatives, through its Board of Managers, we the said Board of Managers do hereby request that the said Articles of Impeachment be laid before the Honorable Senate and presented therewith.

Board of Managers
By Glenn Floyd, Chairman

Respectfully,
Louise Stockton, Chief Clerk

ARTICLES OF IMPEACHMENT

John Rogers was elected to the Office of Secretary of State for the State of Oklahoma in 1966, and he took the following oaths of office as provided for in the Constitution and Laws of the State of Oklahoma:

Article XV, Section 1 of the Constitution:

"Section 1. All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation:

"I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as_____to the best of my ability." The Legislature may prescribe further oaths or affirmations."

Section 2 of Title 51 of the Oklahoma Statutes:

"Section 2. Every State, county, township, city, town, school district, or other officer under the laws of the State, and every deputy or assistant of any such officer, shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation:

"I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use or travel upon any free pass or on free transportation during my term of office."

In 1970, he was re-elected to the same high office and again took the oaths of office prescribed.

While in office as Secretary of State of the State of Oklahoma, John Rogers, unmindful of the high duties of his office and of his oath of office, and in violation of the Constitution and the laws of the State of Oklahoma, has been guilty of willful neglect of duty, corruption in office, incompetency and an offense involving moral turpitude; and the House of Representatives hereby exhibits and presents to the Honorable Senate of the State of Oklahoma, Articles of Impeachment against John Rogers, Secretary of State, for the cause, and upon the grounds, and in particular as follows, to wit:

ARTICLE I

That, John Rogers, while acting in his official capacity as Secretary of State, did transmit letters to domesticated foreign corporations implying the necessity to employ a member of his staff, the Assistant Secretary of State, in order to have a legal service agent within the state. Said letter of solicitation was misleading and contrary to any authorized procedure of the Office of the Secretary of State.

That, on the 1st day of August, 1968, which was a regular working day and not any declared official or unofficial holiday, without authority of law or good cause shown, John Rogers, Secretary of State, did close his office precluding any citizens from availing themselves of the services they were lawfully entitled to for partisan political reason only. That such closing of a state office without legal basis prevented

the filing of a referendum petition signed by some 37,000 Oklahoma citizens. Such action being a clear abuse of power and discretion by the Secretary of State and was an attempt to completely deprive many citizens of the State of Oklahoma from exercising their right of referendum as provided in the Constitution of the State of Oklahoma.

That John Rogers, Secretary of State, had full knowledge of the forging of a number of 1971 Liquor-by-the-Drink Petitions and that he failed to properly notify law enforcement authorities. Because the determination of the validity of initiative petitions was within the purview of the authority vested in him as Secretary of State, such failure to report his knowledge of a wrongful act constituted a willful neglect of duty and a total disregard of the rights of the citizens of the State of Oklahoma.

That, John Rogers, Secretary of State, is the legal custodian of certain public documents and records, and as such has a high degree of care imposed upon him. Some 700 individual petitions of the 1969 Liquor-by-the-Drink Petition are missing and unaccounted for and no satisfactory explanation has been given by the said Secretary of State for this careless treatment of public documents. The Secretary of State, John Rogers, permitted state public documents to be left unattended and within the easy access of unauthorized persons, thereby subjecting such documents to the possibility of suffering damage or destruction. That the said Secretary of State specifically allowed one Robert Sanders such access with full knowledge of his having participated in a scheme to forge signatures.

That, one Robert Sanders, during the months between January, 1970 through December of 1973, did conduct numerous political polls using the offices, office facilities and other facilities of the official office of the Secretary of State of Oklahoma. That John Rogers, the duly elected Secretary of State, did permit and encourage such questionable procedures and actions unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma.

That the Secretary of State has failed to expeditiously transmit Acts or Resolutions to County Court Clerks as is a necessary function of the duties of that office as set forth in Section 25 of Title 75 of the Oklahoma Statutes.

And so the said House of Representatives hereby referring to each of the above and foregoing charges against the said John Rogers as the Secretary of State and hereby making each and every one of said charges a part of this Article to the same extent as if each of said charges were set out in full herein, and hereby further charge:

That the said John Rogers, in the official capacity aforesaid, during his incumbency in the Office of Secretary of State, at various times and on sundry and numerous occasions, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma, purposely, willfully, intentionally, wrongfully and corruptly did show, exhibit, demonstrate and establish his official incompetency to hold, occupy and serve in the capacity of Secretary of State of the State of Oklahoma and to perform and accomplish the duties thereof, by a course of conduct alleged and set forth, and specified in the above and foregoing Articles of Impeachment; and that he, the said John Rogers, Secretary of State, aforesaid by reason of his official acts and course of official conduct hereinbefore alleged and specified, is guilty of incompetency while in his said office.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE II

That, John Rogers, while acting in his official capacity as Secretary of State, did solicit funds from various persons at various times while he was considering the validation or nonvalidation of the 1971 Liquor-by-the-Drink Petition and that he did specifically solicit funds from one Bob Naifeh and one Johnny Monsour between July and November of 1971 for his personal use in exchange for the validation of the 1971 Liquor-by-the-Drink Petition.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE III

That, prior to April of 1972, one David Hall, former Governor of the State of Oklahoma, gave to John Rogers, Secretary of State, Twenty-five Thousand Dollars in cash for his campaign for United States Senate at the mansion of the Governor of Oklahoma. That John Rogers had requested the Governor to assist in raising campaign funds for his Senate race. That the money was in fact raised for John Rogers by several persons, the identity of whom are unknown, at this time. Within minutes of the receipt of the Twenty-five Thousand Dollars, John Rogers returned Three Thousand Dollars to the then Governor David Hall. The Twenty-two Thousand Dollars which John Rogers received for campaign purposes and kept, was not deposited in the Friends of Rogers Campaign Bank Account nor reported, nor was the purposes for which the Twenty-two Thousand Dollars was expended, reported or accounted for, as required by law.

That the said John Rogers, Secretary of State for the State of Oklahoma, then and there and thereby in the manner and form hereinbefore specified, became and was and is guilty of willful neglect of duty, incompetency, corruption in office, and of an offense involving moral turpitude.

RESOLUTION

Senator Grantham introduced the following resolution:

SR 36 — By Grantham.

A Resolution relating to impeachment proceedings; providing that Articles of Impeachment against John Rogers, Secretary of State, be received and ordered filed with the Secretary of the Senate for preservation; advising the House of Representatives of said action; directing that the Managers of the House of Representatives be served with due notice of further proceedings; and directing that the Secretary of State be served with due notice of proceedings.

WHEREAS, the House of Representatives has advised the Senate that the Honorable House has sustained Articles of Impeachment against John Rogers, Secretary of State; and

WHEREAS, said Articles of Impeachment have been transmitted to the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE 1ST SESSION OF THE 35TH OKLAHOMA LEGISLATURE:

THAT, said Articles of Impeachment against John Rogers, Secretary of State, be hereby received and ordered filed with the Secretary of the Senate.

THAT, the House of Representatives be advised of said action and that the Board of Managers of the House be served with due notice of further proceedings.

THAT, the Secretary of State, John Rogers, be served with due notice of further proceedings.

SR 36 was read at length, adopted upon motion of Senator Grantham and ordered referred for enrollment.

President Pro Tempore Howard advised the Board of Managers and the Senate that, pursuant to SR 36, the Articles of Impeachment had been duly filed with the Secretary of the Senate and received by the Senate; that a day for an Answer thereto would be set and all parties, including the Board of Managers and the Secretary of State, John Rogers, would receive due notice.

RESOLUTION

Senator Grantham introduced the following resolution:

SR 37 — By Grantham.

A Resolution relating to Articles of Impeachment against John Rogers, Secretary of State; authorizing the Rules Committee of the Senate to present to the Court rules and procedures for court proceedings; authorizing and directing the President Pro Tempore to appoint a special committee of the Senate Rules Committee to prepare recommendations of rules and procedure; and directing date for committee to report to the court.

WHEREAS, Articles of Impeachment against John Rogers, Secretary of State, have been received and filed with the Secretary of the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE 1ST SESSION OF THE 35TH OKLAHOMA LEGISLATURE:

THAT, the Rules Committee of the Senate be designated to coordinate the presentation of rules and procedures for the proceedings.

THAT, the President Pro Tempore be authorized and directed to appoint a special committee to prepare recommendations to be submitted to the Court for the adoption of rules and procedures, the time and date of hearing and trial issues presented by the Articles of Impeachment, and all related matters of concern to the Senate sitting as a Court in connection with the discharge of its legal and Constitutional obligation to act on the Articles of Impeachment.

THAT, the said committee report its recommendations for action by the court at 10:00 a.m., Friday, June 20, 1975.

SR 37 was read at length and adopted upon motion of Senator Grantham, the roll call thereon being as follows:

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Medearis, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—45.

Excused: Baldwin, Porter and Taliaferro.—3.

SR 37 was ordered referred for enrollment.

Pursuant to SR 37, the following Committee was appointed by President Pro Tempore Howard: Senators Grantham, Lambert, Lamb, Garrett and Young.

Senator Lambert moved that the Chief Justice of the Supreme Court of the State of Oklahoma be notified that the Senate had received Articles of Impeachment against John Rogers, Secretary of State of the State of Oklahoma, and that the Senate desired him to appear and administer the Oath of Office to the members of the Senate as a Court of Impeachment today, June 5, 1975, at 3:45 p.m., which motion was declared adopted.

President Pro Tempore Howard ordered the Sergeant-at-Arms to notify the Chief Justice of the action taken and that the Senate awaits his pleasure.

Senator Grantham moved that the Oklahoma State Senate resolve itself into a Court of Impeachment, which motion was declared adopted upon roll call as follows:

Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Medearis, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—47.

Excused: Porter.—1.

Sergeant-at-Arms Truel announced the arrival of Chief Justice Ben T. Williams. President Pro Tempore Howard advised Chief Justice Williams that 47 of the 48 members elected to and constituting the Senate were present and that the Senate had resolved itself into a Court of Impeachment.

President Pro Tempore Howard administered the following Oath of Office to Justice Williams:

"I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as_____ to the best of my ability."

The Presiding Officer ordered the roll called of Members of the Court of Impeachment, resulting as follows, and the Clerk of the Court administered to those present the following Oath of Office:

"I do solemnly swear (or affirm), that I will faithfully and impartially try the impeachment against John Rogers, Secretary of State, and do justice, according to the law and the evidence. So help me God."

Present: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.

Excused: Baldwin, Medearis and Porter.

The Presiding Officer declared the Court of Impeachment in order.

President Pro Tempore Howard moved that the Secretary of the Senate be designated as the Clerk of the Court of Impeachment and that the Sergeant-at-Arms be designated as the Marshal of the Court of Impeachment and that they both be administered the Oath of Office, which motion was declared adopted upon roll call as follows:

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—45.

Excused: Baldwin, Medearis and Porter.—3.

President Pro Tempore Howard moved that the Officers above elected be administered the following Oath of Office by the Presiding Officer, which motion was declared adopted.

"I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as_____to the best of my ability."

The Oath was then duly administered to Secretary of the Senate Lee Slater and Sergeant-at-Arms Frank Truel as Clerk and Marshal of the Court of Impeachment, respectively.

President Pro Tempore Howard moved that a summons be issued with copies of the Articles of Impeachment to John Rogers, Secretary of State, directing said John Rogers to appear before the Court of Impeachment in the Senate Chamber on the 20th Day of June 1975, at 1:00 p.m. and then and there to answer and plead to said Articles and to abide by the Orders of this Court, and with the Board of Managers of the House of Representatives to be furnished with a true copy of the summons and attachments, which motion was declared adopted upon roll call as follows:

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—45.

Excused: Baldwin, Medearis and Porter.—3.

Presiding Officer Justice Williams ordered the Clerk to issue said summons and to notify the Board of Managers.

President Pro Tempore Howard moved that the Court stand in recess until 10:00 a.m., June 20, 1975, to proceed further, which motion was declared adopted upon roll call as follows:

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—45.

Excused: Baldwin, Medearis and Porter.—3.

Senator Lambert moved that the Members of the Court of Impeachment be admonished by the Presiding Officer to refrain from discussing with anyone not a Member of the Court, or the staff thereof, the proceedings of this Court, which motion was declared adopted upon roll call as follows:

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Field, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Lane, Luton, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—43.

Nay: Funston and Stipe.—2.

Excused: Baldwin, Medearis and Porter.—3.

The Presiding Officer declared the Court recessed until 10:00 a.m. on June 20, 1975.

88th LEGISLATIVE DAY
Friday, June 6, 1975

COMMITTEE REPORT

Mr. President:

We, your Committee appointed under SR 37, for the purpose of preparing recommendations to be submitted to the Senate for the adoption of Rules and Procedures, RE Articles of Impeachment against John Rogers, Secretary of State, wish to submit herewith proposed Rules and Procedures.

Submitted by:
Roy E. Grantham

RULES OF THE OKLAHOMA STATE SENATE 35TH LEGISLATURE; WHEN SITTING AS A COURT OF IMPEACHMENT

SECTION 1. When the Senate shall receive notice from the House of Representatives that Managers are appointed on its part to conduct an impeachment against any person and are directed to carry Articles of Impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the Managers for the purpose of exhibiting such Articles of Impeachment, agreeable to such notice.

SECTION 2. When the Managers of an Impeachment shall be introduced at the Bar of the Senate and shall signify that they are ready to exhibit Articles of Impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant-at-Arms to make proclamation that, "The Managers of the Honorable House of Representatives are present to present Articles of Impeachment against _____," after which the Articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the Managers that the Senate will take proper action on the subject of impeachment, of which due notice shall be given to the House of Representatives.

SECTION 3. Upon such Articles being presented to the Senate, the Senate shall, within ten days thereafter, organize as a Court of Impeachment for the trial of the person or persons accused. At an hour of a day fixed by the Senate, the Senate shall organize as a Court of Impeachment, and before proceeding to the consideration of the Articles of Impeachment, the Presiding Officer shall administer or order the Clerk of the Court to administer the oath hereinafter provided to the members of the Senate then present and the other members of the Senate as they, from time to time, shall appear.

SECTION 4. The Court of Impeachment shall be presided over by the Chief Justice, or if he is absent or disqualified, then one of the Associate Justices of the Supreme Court, to be selected by it, except in cases

where all of the members of said Court are absent or disqualified, or in cases of impeachment of any Justice of the Supreme Court, then the Senate shall elect one of its own members as Presiding Officer for such purpose. The House of Representatives shall present all impeachments.

SECTION 5. Upon adoption of these rules and while the Senate is sitting as a Court of Impeachment the Sergeant-at-Arms shall be the Marshal of the Court and all Assistant Sergeants-at-Arms as named by the Court shall be Assistant Marshals and as such shall exercise all powers and obligations of such office as authorized by these rules.

SECTION 6. The Marshal of the Court shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer shall prescribe the forms of process for the enforcement of the orders and judgment of the Court of Impeachment.

SECTION 7. Upon the adoption of these rules and while the Senate is sitting as a Court of Impeachment, the Secretary of the Senate shall be the Clerk of the Court of Impeachment, and as such shall exercise all powers and obligations of such officer as authorized by these rules. Upon the adoption of these rules and while the Senate is sitting as a Court of Impeachment, the Senate Journal Clerks shall be the Journal Clerks of the Court of Impeachment. The Presiding Officer shall administer all oaths prescribed by these rules.

SECTION 8. The Journal Clerks of the Court shall cause a record of the proceedings in cases of impeachment to be kept in a special journal, which shall be examined and approved by the Presiding Officer of the Court.

SECTION 9. The President Pro Tempore of the Senate is hereby designated and authorized by the Court of Impeachment to employ court reporters, stenographers and all other personnel necessary to properly carry out the duties and functions of the Court of Impeachment. Provided, unless otherwise ordered, the Senate Journal Clerk shall be the Journal Clerk of the Court of Impeachment.

SECTION 10. Upon the presentation of Articles of Impeachment and the organization of the Senate as a Court of Impeachment, as hereinbefore provided, a writ of summons shall issue to the accused, with a copy of said Articles, notifying him to appear before the Court of Impeachment on a date and time certain, and at a place to be fixed by the Court and named in such writ, and file his answer or plea to such Articles of Impeachment, and to stand to and abide the orders of the Court of Impeachment thereon; which writ shall be served by the Marshal or his assistant, and due return thereof made such number of days prior to the day fixed for such appearance as shall be named in such summons, either by the delivery of an attested copy thereof to the person accused, or, if that cannot be conveniently done, by leaving such copy at the last known place of abode of such person, with some member of his or her family over sixteen years of age. If the Accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his plea or answer to such Articles of Impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

SECTION 11. At the time fixed on the day appointed for the return of the summons against the person impeached, the Court of Impeachment shall convene and the Clerk of said Court shall administer an oath to the returning officer substantially in the form following, viz:

"I,_____, do solemnly swear that the return made by me upon the process issued on the_____day_____, by the Senate of the State of Oklahoma, organized as a Court of Impeachment, against_____, is truly made, and that I have performed such service as therein described. So Help me God," which oath shall be entered in the record.

SECTION 12. The person impeached shall then be called to appear and answer to the Articles of Impeachment against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing, and the capacity in which he appears. If he does not appear, either by agent or attorney, the same shall be so recorded.

SECTION 13. The hour of the day at which the Court shall sit upon the trial of an impeachment shall be fixed by the Court, either by general order or by motion from day to day; and when the hour for such sitting shall arrive, the Presiding Officer of the Court shall so announce, and shall cause proclamation to be made of the opening of such Court, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial as a Court of Impeachment, or of the Legislative Session, shall not operate as an adjournment of the Court; but on such adjournment the Court shall continue the consideration of such impeachment proceedings from day to day or to any further date until the final conclusion thereof.

SECTION 14. The Presiding Officer shall have the power to make all orders, mandates and direct the Clerk of such Court to issue all writs and process authorized by these rules, or by the Court of Impeachment, and may make and enforce such other regulations and orders in the premises as the Court may authorize or provide.

SECTION 15. The Court of Impeachment shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, process and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts or judgments, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice. The Marshal of the Court, under the direction of the Court of Impeachment may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs and precepts of the Court.

SECTION 16. Witnesses shall be sworn in the following form, viz:

"You do solemnly swear (or affirm) that the evidence you shall give in the impeachment trial now pending shall be the truth, the whole truth, and nothing but the truth; so help you God." This oath shall be administered by the Clerk of the Court.

Form of subpoena to be issued on the application of the Board of Managers or of the party impeached, or his counsel:

"To_____, Greeting:"

"You and each of you are hereby commanded to appear before the Court of Impeachment of the State of Oklahoma at the hour of_____o'clock,____M. on the_____ day of_____, 1975, at the Senate Chamber in the City of Oklahoma City, then and there to testify in the cause which is before the said Court in which the House of Representatives has impeached_____and remain in attendance from day to day until discharged by this Court.

"FAIL NOT."

Done by direction of_____, Presiding Officer of the Court of Impeachment, at the City of Oklahoma City, this_____day of_____, 1975.

_____

"Clerk of the Court of Impeachment"

Form of direction of the service of said subpoena:

"The Court of Impeachment of the State of Oklahoma to_____Greeting:"

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

"Dated at Oklahoma City, this_____ day of_____, 1975."

_____

"Clerk of the Court of Impeachment"

Form of oath to be administered to the members of the Senate sitting in the trial of impeachments:

"I do solemnly swear (or affirm), that I will faithfully and impartially try the impeachment against_____and do justice according to the law and the evidence. So help me God."

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

"The State of Oklahoma,"

"The Court of Impeachment of the State of Oklahoma, ss:"

"To_____Greeting:"

"Whereas, the House of Representatives of the State of Oklahoma did, on the_____ day of_____, 1975, exhibit to the Senate, Articles of Impeachment against you, the said_____, a true copy of which Articles of Impeachment are attached hereto, and demand that you, the said_____, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and justice:"

"You, the said_____are therefore hereby summoned to be and appear before the Court of Impeachment of the State of Oklahoma, at the Senate Chamber in the City of Oklahoma City, on the_____day of _____, 1975, at_____o'clock____m., and then and there to answer or plead to the Articles of Impeachment, to abide by, obey and perform such orders, directions and judgments as the said Court shall make in the premises according to the Constitution and Laws of the State of Oklahoma."

"HEREOF, YOU ARE NOT TO FAIL."

"Done by direction of_____, Presiding Officer of the said Court, at the City of Oklahoma City, this_____day of_____, 1975."

_____

"Clerk of the Court of Impeachment"

Form of direction of the service to be endorsed on said writ of summons:

"The State of Oklahoma, ss:"

"The Court of Impeachment of the State of Oklahoma, to_____, Greeting:"

"You are hereby commanded to deliver to and leave with_____, if conveniently found, or if not, to leave at his usual place of abode with some member of his family over sixteen years of age, a true and attested copy of the within writ of summons, together with a true copy of the Articles of Impeachment and in whichsoever way you perform the service, let it be done on or before the_____day of_____, 1975."

"Fail not, and make return of this writ of summons, with your proceedings thereon

endorsed, on or before the appearance day mentioned in the said writ of summons."

"Done by direction of_____, Presiding Officer of the said Court, at the City of Oklahoma City, this_____day of_____, 1975."

_____

"Clerk of the Court of Impeachment."

Form of oath to be administered to officers of the Court of Impeachment:

"I_____, do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity. So help me God."

Substantial compliance with the forms prescribed in this section shall suffice. All process shall be served by the Marshal of the Court or his assistants, unless otherwise ordered by the Court.

SECTION 17. If the Court of Impeachment shall at any time fail to sit for the consideration of Articles of Impeachment on the day or hour fixed therefor, such Court may, when reconvened, continue the proceedings without debate, or may fix a day and hour for resuming such consideration, and such Court may adjourn its sessions and the proceedings before it to such dates as may suit its convenience or serve the ends of justice.

SECTION 18. Any person before the Court who shall file or present for filing any pleadings, or who shall make any statement or remark, designed in disrespect toward, or in contempt of the Court or any members thereof, may be deemed guilty of contempt of Court and may be expelled from the courtroom and otherwise punished, as the Court may direct.

SECTION 19. During any session of the Court no member of the Court shall be permitted to engage in any conduct which would be detrimental to perfect decorum in the Senate Chamber. The Marshal is authorized and empowered to enforce proper rules of order and decorum on the part of visitors and spectators. Visitors and spectators may be permitted to enter the gallery and to depart at pleasure, so long as they do not disturb the Court or any of its members. The Marshal may, upon the order of the Court, remove or refuse admission to any spectator or visitor.

SECTION 20. While the Senate is sitting as a Court of Impeachment, access to the lower floor of the Senate Chamber shall be denied to all persons, except members and officers of the Court, House Managers, the Accused and his or her counsel and witnesses. Representatives of the news media will be permitted in the section reserved for their use. No person shall be permitted to use flash bulbs, lights or other illuminating devices in the Senate Chamber or Galleries, and any other equipment tending to disturb the decorum of the Court may be prohibited upon order of the Court.

SECTION 21. Counsel for the parties shall be admitted to appear and be heard upon an impeachment as upon the trial of a cause in the courts of the State.

SECTION 22. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if he shall require, such motion or motions shall be committed to writing and read at the Clerk's table.

SECTION 23. Witnesses shall be examined by one person on behalf of the party introducing them, and then cross-examined by one person on the other side, unless the Presiding Officer of the Court shall otherwise order.

SECTION 24. No member of the Court of Impeachment shall be called as a witness by either party.

SECTION 25. In the trial of impeachment charges, the rules governing the admissibility of evidence, and the order of trial, commencing with the opening statement of counsel, shall be the same as is prescribed and recognized by the courts in the trial of criminal proceedings in this State, except as may be otherwise provided by these rules. The Court may, by specific ruling, receive as evidence any matter considered by the Court to be germane and material to the proceedings. The rules of evidence prohibiting the admission of hearsay evidence shall prevail and shall be interpreted in accordance with the rules of evidence applicable to judicial proceedings in the State of Oklahoma.

SECTION 26. If a member of the Court wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing and put by the Presiding Officer.

SECTION 27. The members of the Court, by a majority vote of those present, shall determine all questions of procedure in any impeachment trial in said Court.

SECTION 28. The Presiding Officer shall decide all motions, demurrers, questions of evidence, or other incidental matters arising during such proceedings. Provided, however, that any member of the Court, any member of the Board of Managers, or the Accused in person or by his attorney, may take exception to any ruling of the Presiding Officer, and if any such exception is accompanied by a request for ruling by the entire membership of the Court, the question shall be put to the Court for ruling thereon if the exception and request for ruling is supported by ten (10) or more members of the Court. In the event the question on any controverted ruling is put to the Court, the same shall be by roll call vote. It is further provided that the Presiding Officer, at his discretion, may allow an equal amount of time to the Board of Managers and the Accused or his attorneys, for argument thereon.

SECTION 29. All questions and all motions shall be argued for not exceeding five (5) minutes on each side, unless the Presiding Officer shall, by order, extend the time.

SECTION 30. All orders and decisions of the Presiding Officer shall be made without debate by any member of the Court of Impeachment except when the doors shall be closed and, in that case, no member shall speak more than once on any one question, and for not more than ten (10) minutes on any question unless by unanimous consent. Upon motion in writing presented by any member of the Court to close the doors and exclude all persons from the presence of the Court, the same shall be considered by the Court and adopted upon a majority vote of those members of the Court present and voting, or, upon the order of the Presiding Officer.

SECTION 31. The case, on each side, shall be opened by one person, as in criminal trials. The final argument on the merits may be made by three persons on each side, unless otherwise ordered by the Presiding Officer, upon application for that purpose, and the argument shall be opened and closed on the part of the House of Representatives by the Board of Managers.

SECTION 32. No member of the Court of Impeachment shall vote upon any separate Article of Impeachment who has been absent from the trial during the taking of all the testimony of any one witness upon such Article. The question of whether or not any member of the Court shall be entitled to vote upon any Article of Impeachment may be raised by a member of the Court only, and when raised shall be decided by a majority of the members of the Court present. The decision of the question by a majority of the members of the Court present shall be a final deter-

mination of the matter. (51 O.S. 1971, Section 65)

SECTION 33. After submission of the case for final determination, the doors shall be closed for deliberation and the Presiding Officer shall preside over the deliberations of the members of the Court of Impeachment.

SECTION 34. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each Article of Impeachment separately; and, if the impeachment shall not, upon any separate count or charge contained in the Articles, be sustained by the votes of two-thirds of the members present, a judgment of not guilty shall be entered as to such count; but if the person accused in such Articles of Impeachment shall be convicted upon any separate count or charge of said Articles by the votes of two-thirds of the members present, the Court shall proceed to pronounce judgment upon such count.

SECTION 35. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present and voting in open session.

Senator Grantham moved that the committee report on Rules and Procedures be adopted, which motion was declared adopted upon roll call as follows:

Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Cate, Crow, Dahl, Dawson, Field, Funston, Garrett, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Howell, Inhofe, Keating, Keller, Lamb, Lambert, Luton, McCune, Martin, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York and Young.—43.

Excused: Capps, Lane, Medearis, Murphy and Porter.—5.

TRANSCRIPT OF PROCEEDINGS

of the

SENATE OF THE 35th LEGISLATURE

OF THE STATE OF OKLAHOMA
Sitting as a Court of
Impeachment

Presiding Officer Ben T. Williams,
Chief Justice of the Supreme Court

Held in Senate Chambers, Fourth Floor,
State Capitol, Oklahoma City, Oklahoma

APPEARANCES:

Secretary of State John Rogers

Defense Counsel:

Robert Brown, Tulsa, Oklahoma
Jerome H. Blumenthal, Oklahoma City, Oklahoma
Cecil Drummond, Pawhuska, Oklahoma
Phillips Breckinridge, Tulsa, Oklahoma
William E. Owen, Oklahoma City

House Board of Managers, in charge of Prosecution:

Representative Glenn Eldon Floyd, Chairman, Norman, Oklahoma
Representative Kenneth R. Nance, Oklahoma City, Oklahoma
Representative M. David Riggs, Tulsa, Oklahoma
Representative James R. Cummings, Crescent, Oklahoma
Representative Ron Shotts, Moore, Oklahoma
Representative Mike Murphy, Idabel, Oklahoma

Friday, June 20, 1975

PRESIDING OFFICER CHIEF JUSTICE BEN T. WILLIAMS: Gentlemen: The Senate will come to order and the clerk will call the roll:

(Whereupon the roll was called.)

The following Members of the Court were present: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—39.

The following Members of the Court were absent: Field, Garrett, Howell, Inhofe, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: A quorum being present, the Court will proceed.

Will all of the Members of the Court please stand and we will ask that Senator Watson lead the Invocation.

SENATOR WATSON: Our Father and our God, we are grateful to you for sparing our lives, for giving us safe journeys.

We pray that as we enter into this special deliberative session that we will be aware of its significance, its import, that we will, to the very best of our abilities, with open minds, consider evidences as presented and draw conclusions with integrity.

We pray your blessings on the Chief Justice as he directs the deliberations. Give him insights that would expedite the endeavor and give each of us patience and understanding as we deliberate.

Forgive us for falling short of your expectations of us and instill within us a desire and a determination to be of service to you and our fellowman in everything that we do.

In Jesus' name, Amen.

———

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I believe the record shows, gentlemen, that Senator Baldwin and Senator Porter did not take the oath when the Court was organized and Senator Medearis likewise. I understand that Senator Baldwin and Senator Porter are here but that perhaps Senator Medearis is not.

Will Senators Baldwin and Porter please stand and you will be given the oath. Would you please hold up your right hand and say — and by the way, you may swear or affirm.

"I do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against John Rogers and do

justice according to the law and the evidence, so help me God."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: On the date of our organization the oath was not administered to the Marshal and the oath has not yet been administered to the Journal Clerk, to the Assistant Clerk, to the Assistant Sergeant at Arms and to the Court's Administrative Legal Aide, or any of its employees. At this time, I am going to ask those who designation I have called and other employees of the Court of Impeachment to stand and be sworn.

You may use the word "swear" or "affirm" whichever is in accordance with your religious convictions.

Please stand and raise your right hand and repeat your name and your position with the Court of Impeachment and I will administer the oath.

I, Victor L. Thompson, Assistant Clerk, do solemnly swear that I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

I, Duchess Bartmess, Parliamentarian, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

I, Harvey W. Stephens, Court Reporter, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

I, Bob Craig, Assistant Marshal, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

I, Norris Spradling, Assistant Marshal, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

I, Ruth Smith, Journal Clerk, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

I, Doris LaReese, Journal Clerk, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, so help me God.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: At this time, Senator Howard is recognized.

SENATOR HOWARD: Mr. Chief Justice, I move that the doors of the Court be closed for the purpose of deliberation.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Will the Senate by voice vote indicate approval or disapproval of the Senator's motion to close the doors of the Court? Will all in favor please say "aye"?

Any opposed say "nay".

The motion is carried. The Marshal will cause the visitors to leave and the Court's doors will be closed. The doors of the Court closed until 11:50 a.m.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court will be in session. The Clerk will call the roll, please.

(Whereupon, the roll was called.)

The following Members of the Court were present: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—41.

The following Members of the Court were absent: Cate, Field, Garrett, Howell, Lambert, Medearis, Taliaferro.—7.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: Mr. President and Members of the Court: I would like to be recognized for a series of motions that is on the Clerk's desk, dealing with the Rules and I would request the Court Clerk read them.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the motions.

COURT CLERK: "Mr. Chief Justice: I move that the following alterations be made in the Rules. Page 2, Section 7, Line 17. After the word 'Impeachment' and before the word 'the' add 'the Chief Clerk and'. And on Page 4, Section 14, Line 12, after the word 'Impeachment' and before the word 'and' add 'administer oaths'. And in Section 16, Line 29, after the word 'Court' strike the period and add 'or the Presiding Officer.' " By Grantham.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair recognizes Senator Grantham.

SENATOR GRANTHAM: Mr. President and Members of the Court: I have explained these changes in the Rules to each Member of the Court heretofore and I move that this motion be adopted.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will call the roll on the motion. And I might say Senator Cate is present. The Clerk will declare the roll — the roll call.

COURT CLERK: The following Members of the Court were present and voted aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—40.

The following Members of the Court were absent: Field, Garrett, Howell, Lambert, Lane, Medearis, Stipe, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried. The Rules are adopted, Senator Grantham.

I recognize Senator Grantham.

SENATOR GRANTHAM: Mr. President, Members of the Court: We have another amendment on the Clerk's desk to the Rules and I would request that the Clerk read it to the Court.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the amendment.

COURT CLERK: "Mr. Chief Justice: I move to amend the Rules, Section 28, Line 4, after the period and before the word 'The' add the following: 'On any motions or demurrers which would go to the merits

of the case or would have the effect of terminating the case shall be ruled upon by a vote of the Members of the Court.' " By Grantham.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I recognize Senator Grantham.

SENATOR GRANTHAM: Mr. President, Members of the Court: This is a Rule suggested by Senator Hamilton and Senator Stipe. It merely goes to the fact that if the — if the question decided goes to the merits of the case and would, in effect, terminate the case or parts thereof, that it should be voted on by the entire body. That is the effect of this motion. And if there are no questions, I move its adoption.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will — the Court will vote on the amendment.

COURT CLERK: I need to read the amended motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the amended motion.

COURT CLERK: "Mr. Chief Justice: I move to amend the Rules, Section 28, Line 4, after the period and before the word 'The' add the following: 'Any motions or demurrers which would go to the merits of the case or would have the effect of terminating the case shall be ruled upon by a vote of the Members of the Court.' " By Grantham.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have heard the proposed amendment. All in favor — The Clerk will call the roll.

COURT CLERK: Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. — 40

Nay: Dawson, Funston. —2

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro. —6

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: Forty ayes and two nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The amendment has carried. And I will recognize Senator Grantham.

SENATOR GRANTHAM: Mr. President: I estimate two further corrections by unanimous consent. In Section 28, after the word "all" and before the word "motions" on Line 4, to insert the word "other" so as to make it read "The Presiding Officer shall decide all other motions" and so forth.

I ask that unanimous consent be given.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Unanimous consent has been asked. Is there any objection? If not, the amendment is made.

SENATOR GRANTHAM: Mr. President and Members of the Court: I make a further request of the unanimous consent to correct a typographical error found in Section 8, on Line 21, after the word "to" and before the word "kept" that the word "the" be deleted and in place thereof the word "be" be inserted.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Are there any objec-

tions? There being no objections to the amendment, it is considered made, Senator Grantham.

SENATOR GRANTHAM: Now Mr. President and Members of the Court: I have on the Clerk's desk another amendment — another motion — a motion, rather.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized, and I will ask the Clerk to read the motion.

COURT CLERK: "Mr. Chief Justice: I move that the Senate sitting as a Court of Impeachment adopt the following recommendations for Rules which were adopted by the Senate on the last legislative day, June 6, 1975, in Open Session and as amended by the Court of Impeachment as the Rules of the Court of Impeachment." By Grantham.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: The adoption of Rule 12 corrected this and I press my motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur to the motion as to the adoption of the Rules as amended. And the amendments have been adopted. The vote will occur.

(Whereupon a vote was taken.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote on the motion.

COURT CLERK: Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. —40

Nay: Dawson, Funston. —2

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro. —6

Forty ayes, two nays.

(See page 125, Rules, as adopted and amended)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried and Senator Grantham is recognized.

SENATOR GRANTHAM: Mr. President and Members of the Court: I now move that we approve the forms which have been called to the attention of the Body heretofore and by Senator Howard. I think all of the amendments to the form which has been previously read to this Body and I press the motion — I press the motion, Mr. President — Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion that the forms which have been submitted to the Members of the Court be approved.

The vote will occur.

(Whereupon a vote was taken.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. —42.

Nay: —0.

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro. —6.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried. The forms have been adopted and I recognize Senator Grantham.

SENATOR GRANTHAM: Mr. President and Members of the Court: We have heretofore had passed out to each Member the seating arrangements concerning this body and I am sure that the Senators are familiar with it. I therefore move that we approve these seating arrangements and I press the motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is that the seating arrangements as presented to the Members of the Court be approved.

The vote will occur on the motion.

(Whereupon a vote was taken.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote on the motion.

COURT CLERK: Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. —42.

Nay: —0.

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro. —6.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The ayes have it. The motion is adopted.

Senator Grantham.

SENATOR GRANTHAM: Mr. President, Mr. Chief Justice and Members of the Court: I now move to allow in this Chamber live television coverage. This matter has been previously discussed with the Members of this Court and I believe it's familiar to all Members of the Court and if there is no debate, I move that we allow live television coverage.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: A point of order, Senator Grantham. Does that include a part of the Senator's motion that this is subject to the consent of the Board of Managers and the accused?

SENATOR GRANTHAM: Mr. Chief Justice, your point is well taken and that is assuming that we will have a trial. We realize that we are to rule on certain motions which were, if ruled on in favor of the accused, would eliminate the necessity of a trial and that question has not been decided and will not be decided until a later time and therefore, I place in this motion "In the event of a trial, I move that we allow live television coverage" and I correct my amendment to state that.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: And further that this is with the consent of the Board of Managers and the accused?

SENATOR GRANTHAM: I don't think that we can cross that bridge — we can cross that bridge when we come to it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well.

SENATOR GRANTHAM: But we should adopt this Rule.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well. You have heard the motion. The vote will occur on

the motion as stated by Senator Grantham.

(Whereupon a vote was taken.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the motion.

COURT CLERK: Aye: Baldwin, Berrong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Wolfe, York, Young. —38.

Nay: Birdsong, Hamilton, Pierce, Watson. —4

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro. —6.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried. And Senator Grantham is recognized.

SENATOR GRANTHAM: Now Mr. President, we are up to other business and that concludes my motions.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you.

Gentlemen: You have already voted that we are to be here at one o'clock. If there is no further business, the Court will be in recess until 1:00 p.m. this date.

(12:07 p.m. Court adjourned. 1:00 p.m., Court reconvened wherein proceedings had are as follows:)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Gentlemen: The Court of Impeachment of the First Period of the 35th Legislature will come to order. The Clerk will call the roll.

(Whereupon, the roll was called.)

Present: Baldwin, Berrong, Birdsong, Boatner, Capps, Cate, Crow, Dahl, Funston, Grantham, Graves, Ham, Hamilton, Holden, Inhofe, Keating, Lamb, Lane, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. —35

Absent: Butler, Dawson, Field, Garrett, Helm, Howard, Howell, Keller, Lambert, Luton, Medearis, Porter, Taliaferro. —13.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Luton has just arrived. Senator Howard is here. Senator Holden is here.

The Court will be in order.

In accordance with Section 11 of the Rules the Court has adopted, it's now incumbent upon the Presiding Officer to administer to Mr. Truel an oath that he has served the accused with the Articles of Impeachment and Summons.

Senator Helm is present.

Mr. Truel, the Presiding Officer just announced that you are to be administered this oath. If you will please hold up your right hand and you may stand right there, if you like, sir. And you will say "I" and repeat your name, "I, Frank Truel, do solemnly swear that the Return made by me upon the Process issued on the sixth day of June, 1975, by the Senate of the State of Oklahoma, organized as a Court of Impeachment against John Rogers, Secretary of State, is truly made and that I have performed such service as therein described. So help me God."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court of the

Impeachment of the First Period of the 35th Legislative Session of Oklahoma has been duly organized.

A quorum is present for trial of the case of The State of Oklahoma against John Rogers, Secretary of State.

Is the Board of Managers ready?

REPRESENTATIVE FLOYD: Mr. Chief Justice: The Board of Managers is present and ready.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Is the accused ready?

MR. DRUMMOND: Chief Justice, the Defendant is ready.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would you gentlemen please give the Clerk your respective names?

REPRESENTATIVE FLOYD: My name is Glenn Floyd.

MR. DRUMMOND: My name is Cecil Drummond.

SENATOR STIPE: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I recognize Senator Stipe.

SENATOR STIPE: I think it would be appropriate that we enter all of the names of the Board of Managers as well as all counsel present.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you, Senator. The point is well taken. Are all of the members of the Board of Managers present?

REPRESENTATIVE FLOYD: Mr. Chief Justice, all members are present. I can introduce them and then I will ask them to stand. Mr. Mike Murphy, Mr. David Riggs, Mr. Jim Cummings and Ron Shotts and Ken Nance.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you, Representative Floyd.

MR. DRUMMOND: Mr. John Rogers is present in person and represented by counsel Cecil Drummond of Drummond and Raymond; Jerome H. Blumenthal; Robert Brown and Phillips Breckinridge of Brown, Breckinridge and Messler; and at the present time the other counsel are not present with us.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you.

Section 10 of the Rules provides that the accused shall appear. The time has been set for this time. The accused has announced ready. The Clerk will read the Articles of Impeachment against the accused.

COURT CLERK: "1:00 p.m., June 4, 1975.

ARTICLES OF IMPEACHMENT

John Rogers was elected to the Office of Secretary of State for the State of Oklahoma in 1966, and he took the following oaths of office as provided for in the Constitution and Laws of the State of Oklahoma:

Article XV, Section 1 of the Constitution:

'Section 1. All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: 'I,_____, do solemly swear (or affirm) that I will support, obey, and defend the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the

performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law; I further swear (or affirm) that I will faithfully discharge my duties as_____ to the best of my ability.' The Legislature may prescribe further oaths or affirmations.'

Section 2 of Title 51 of the Oklahoma Statutes:

'Section 2. Every State, county, township, city, town, school district, or other officer under the laws of the State, and every deputy or assistant of any such officer, shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation:

'I,_____, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use or travel upon any free pass or on free transportation during my term of office.'

In 1970, he was re-elected to the same high office and again took the oaths of office prescribed.

While in office as Secretary of State of the State of Oklahoma, John Rogers, unmindful of the high duties of his office and of his oath of office, and in violation of the Constitution and the laws of the State of Oklahoma, has been guilty of willful neglect of duty, corruption in office, incompetency and an offense involving moral turpitude; and the House of Representatives hereby exhibits and presents to the Honorable Senate of the State of Oklahoma, Articles of Impeachment against John Rogers, Secretary of State, for the cause, and upon the grounds, and in particular as follows, to wit:

ARTICLE I

That, John Rogers, while acting in his official capacity as Secretary of State, did transmit letters to domesticated foreign corporations implying the necessity to employ a member of his staff, the Assistant Secretary of State, in order to have a legal service agent within the state. Said letter of solicitation was misleading and contrary to any authorized procedure of the Office of the Secretary of State.

That, on the 1st day of August, 1968, which was a regular working day and not any declared official or unofficial holiday, without authority of law or good cause shown, John Rogers, Secretary of State, did close his office precluding any citizens from availing themselves of the services they were lawfully entitled to for partisan political reason only. That such closing of a state office without legal basis prevented the filing of a referendum petition signed by some 37,000 Oklahoma citizens. Such action being a clear abuse of power and discretion by the Secretary of State and was an attempt to completely deprive many citizens of the State of Oklahoma from exercising their right of referendum as provided in the Constitution of the State of Oklahoma.

That John Rogers, Secretary of State, had full knowledge of the forging of a number of 1971 Liquor-by-the-Drink Petitions and that he failed to properly notify law

enforcement authorities. Because the determination of the validity of initiative petitions was within the purview of the authority vested in him as Secretary of State, such failure to report his knowledge of a wrongful act constituted a willful neglect of duty and a total disregard of the rights of the citizens of the State of Oklahoma.

That, John Rogers, Secretary of State, is the legal custodian of certain public documents and records, and as such has a high degree of care imposed upon him. Some 700 individual petitions of the 1969 Liquor-by-the-Drink Petition are missing and unaccounted for and no satisfactory explanation has been given by the said Secretary of State, for this careless treatment of public documents. The Secretary of State, John Rogers, permitted state public documents to be left unattended and within the easy access of unauthorized persons, thereby subjecting such documents to the possibility of suffering damage or destruction. That the said Secretary of State specifically allowed one Robert Sanders such access with full knowledge of his having participated in a scheme to forge signatures.

That, one Robert Sanders, during the months between January, 1970 through December of 1973, did conduct numerous political polls using the offices, office facilities and other facilities of the official office of the Secretary of State of Oklahoma. That John Rogers, the duly elected Secretary of State, did permit and encourage such questionable procedures and actions unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma.

That the Secretary of State has failed to expeditiously transmit Acts or Resolutions to County Court Clerks as is a necessary function of the duties of that office as set forth in Section 25 of Title 75 of the Oklahoma Statutes.

And so the said House of Representatives hereby referring to each of the above and foregoing charges against the said John Rogers as the Secretary of State and hereby making each and every one of said charges a part of this Article to the same extent as if each of said charges were set out in full herein, and hereby further charge:

That the said John Rogers, in the official capacity aforesaid, during his incumbency in the Office of Secretary of State, at various times and on sundry and numerous occasions, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the State of Oklahoma, purposely, willfully, intentionally, wrongfully and corruptly did show, exhibit, demonstrate and establish his official incompetency to hold, occupy and serve in the capacity of Secretary of State of the State of Oklahoma and to perform and accomplish the duties thereof, by a course of conduct alleged and set forth, and specified in the above and foregoing Articles of Impeachment; and that he, the said John Rogers, Secretary of State, aforesaid by reason of his official acts and course of official conduct hereinbefore alleged and specified, is guilty of incompetency while in his said office.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE II

That, John Rogers, while acting in his official capacity as Secretary of State, did solicit funds from various persons at various times while he was considering the validation or nonvalidation of the 1971 Liquor-by-the-Drink Petition and that he did specifically solicit funds from one Bob Naifeh and one Johnny Monsour between

July and November of 1971 for his personal use in exchange for the validation of the 1971 Liquor-by-the-Drink Petition.

That, while acting in his official capacity, the said John Rogers committed acts which were then and there in the manner and form alleged acts of willful neglect of duty, incompetency, corruption in office and of offenses involving moral turpitude.

ARTICLE III

That, prior to April of 1972, one David Hall, former Governor of the State of Oklahoma, gave to John Rogers, Secretary of State, Twenty-five Thousand Dollars in cash for his campaign for United States Senate at the mansion of the Governor of Oklahoma. That John Rogers had requested the Governor to assist in raising campaign funds for his Senate race. That the money was in fact raised for John Rogers by several persons, the identity of whom are unknown, at this time. Within minutes of the receipt of the Twenty-five Thousand Dollars, John Rogers returned Three Thousand Dollars to the then Governor David Hall. The Twenty-two Thousand Dollars which John Rogers received for campaign purposes and kept, was not deposited in the Friends of Rogers Campaign Bank Account nor reported, nor was the purposes for which the Twenty-two Thousand Dollars was expended, reported or accounted for, as required by law.

That the said John Rogers, Secretary of State for the State of Oklahoma, then and there and thereby in the manner and form hereinbefore specified, became and was and is guilty of willful neglect of duty, incompetency, corruption in office, and of an offense involving moral turpitude."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Keller, Senator Porter, Senator Butler and Senator Dawson are here at this time.

The Court would hear the plea of the accused but perhaps you gentlemen for the defense wish to present your Motion to Dismiss first.

MR. DRUMMOND: Your Honor, prior to entering any plea, we would like to urge our Motion to Dismiss.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: How long do you think it would take you to present that, sir?

MR. DRUMMOND: Your Honor, we feel that twenty minutes would be sufficient to present our Motion to Dismiss.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: And how long would the House Managers —

REPRESENTATIVE FLOYD: Your Honor, we feel that we can respond in thirty minutes.

MR. DRUMMOND: Your Honor, we would also request permission to split our argument into two parts.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well.

REPRESENTATIVE FLOYD: Mr. Chief Justice, we would like to split our argument into three parts, ten minutes for each person.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Who will open the argument, Mr. Drummond?

MR. DRUMMOND: Mr. Robert Brown will open the argument.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: And you will close?

MR. DRUMMOND: Mr. Robert Brown will also close the argument.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well.

Mr. Floyd, how do you propose to proceed?

REPRESENTATIVE FLOYD: Mr. Chief Justice, Mr. David Riggs will open our argument and Mr. Ron Shotts will argue with regard to several points and I will argue with regard to several points. If permissible, we would like to reserve about three minutes as a last response following the response of the —

MR. DRUMMOND: Your Honor, I request — a question I would like to have a ruling from the Court on is the three minutes response to our response. Under the Rules of Procedure —

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I believe, Mr. Shotts, that they would be entitled to open and close.

REPRESENTATIVE FLOYD: I am sorry, Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I beg your pardon.

REPRESENTATIVE FLOYD: I didn't understand. I am sorry.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I believe under the Rules, these gentlemen would be entitled to open and close.

REPRESENTATIVE FLOYD: That will be fine.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: My point with you, Mr. Floyd, was — well, excuse me — I understand now. Very well, when you gentlemen are ready we will hear from you.

MR. DRUMMOND: Yes, Your Honor. Before proceeding, I would also like to introduce another counsel of Mr. John Rogers', Mr. William E. Owen.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well. Senator Smith is here. The record may show. I beg your pardon, Senator Smith is excused — Senator Smith is present. The record may show.

SENATOR STIPE: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is recognized.

SENATOR STIPE: I was going to raise this question. If the Board of Managers require thirty minutes, I think that in fairness that we should give the accused the same amount of time, if they desire to use it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Your point is well taken, sir.

The Court is advised that the Marshal is distributing among the members of the Court, copies of the Motion to Dismiss and has a Response of the Board of Managers.

Senator Grantham will be recognized.

SENATOR GRANTHAM: Mr. President — Mr. Chief Justice, I was wondering who was going to keep time? Have you designated that?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair has reserved that right to himself.

SENATOR GRANTHAM: Very well.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Brown, while these are being distributed in line with Senator Stipe's timely suggestion, if you are going

to use the full thirty minutes say — would you present all of your argument on the merits first and reserve the latter part of your time for an answer to their Response?

MR. BROWN: Yes, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I was having the Clerk to get the Chair a copy of the Response.

In pre-trial, Mr. Brown, yesterday the informal discussions with counsel, the suggestion came up that you gentlemen for the defendant might desire time to file a Response to this Response. I presume this was furnished to you by ten o'clock this morning and not having heard anything to the contrary, that you do not care to make a written reply to the Response?

MR. BROWN: That's correct, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: This is a matter of procedure that is not really in the script but yesterday when the Presiding Officer was discussing this matter with Committee of the Senate and the Board of Managers and Counsel for the accused, a question came up about whether these proceedings would be televised. Did the accused come to a conclusion and did you notify the President of the Senate and opposing counsel what your reaction was to that?

MR. BROWN: If the Court please, we have no objection. We take the position that it's a matter of vital interest.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I beg your pardon?

MR. BROWN: We have no objection to television or any other form of communication.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well. The Court will now hear the arguments by the accused on his Motion to Dismiss and Mr. Brown is recognized.

MR. BROWN: If the Court please, Members of the Senate: At the outset, I take it all of you have been furnished a copy of the Motion to Dismiss we have filed in behalf of the Secretary of State. I will not belabor certain issues but for the benefit of all of you, I would like to state that there is precedent for this Motion to Dismiss and that is set forth in the motion itself. In both of the Trapp and Johnson cases, the Senate, acting as a Court in an impeachment proceedings, entertained such a motion, and be that as it may, whether it's valid or whether it's not valid, I think our statutes are sufficiently broad but you members of the Senate could entertain it whether we moved that you entertain it or not, or whether there is a precedent or not.

You are sitting as a Court of the Only Resort and Last Resort. So for that reason, I'll state at the outset that this is a matter that you can consider and should consider.

Now with respect to the Motion itself. We're here by reason of Articles of Impeachment having been filed against the Secretary of State. That is the vehicle which brings us here and in that regard, we will admit at the outset that those — at the outset that those allegations can be and should be brought in the House of Representatives and can be brought for any reason at all.

In other words, there is no rule or regulation with respect to those allegations. We take the position in that regard if they elect to proceed by an Article or Articles of Impeachment and in this instance, there are three Articles of Impeachment, they can proceed in any manner they want. If they elect to hear evidence, you are — as a member of this Court, you are entitled to receive that

which they received; the evidence that they presented. In this instance, that is exactly what transpired. They did present evidence. That evidence is contained in the House Report and the motions we have set forth — and in the motions we have set forth certain excerpts from that House Report and I will state right now it was not our intention to omit any portion of the House Report. We incorporated all of it in its entirety by reference. We were trying to simplify matters by setting out what we thought was some salient pertinent points, trying to make it a little simpler so that we can expeditiously handle this matter.

We did not intend to exclude any portion of it. Now in that regard, the House heard this and it is our position that the Articles of Impeachment are to be analyzed in the same manner that you would analyze an indictment or information in a criminal case.

Now that is not to say that this is an indictment. That is not to say that this is an information. But by reason of the peculiarity of the circumstances involved here, sometimes the only way I can explain it is by reference to other things and the best analogy that I can draw is that of an indictment or an information and I feel that is pertinent for the plain and simple reason that the members of this Court have adopted and have elected to follow the Rules of Criminal Procedure in handling this matter.

So if I may draw some analogies for the benefit of the Court, I state at this point that the Articles charged in Article I, and I will try to take them one by one and incidentally, let me state right here there is a Constitutional provision with respect to what grounds for impeachment are and each and every ground for impeachment is alleged within these Articles of Impeachment, save and except that of habitual drunkeness. In other words, they allege willful neglect of duty, corruption in office, incompetency, and offenses involving moral turpitude.

Now at this point, let me make this observation, that it was the intent of the framers of our Constitution and I am sure the intent of the Legislature that has acted upon that subsequent to its enactment to provide that these are separate and distinct charges upon what an impeachment can be predicated.

Now you will note that incompetency is one of those allegations. They don't say that we can — you can remove or impeach, rather, for offenses involving moral turpitude, high crimes and misdemeanors such as the Federal Constitution or felonies, as an example. They set out separate and distinct offenses for which a man or a person can be impeached. So it is our position that because of the fact that willful neglect of duty is a separate grounds for impeachment and because of the fact that corruption in office is a separate ground for impeachment and moral turpitude is an offense — an offense involving moral turpitude is a separate grounds for impeachment, it's necessarily exclusive of the other grounds, that being incompetency. In other words, you cannot say that you're incompetent because you willfully neglected your duty. There is a separate and distinct definition there. You cannot say that you are corrupt and at the same time allege that by reason of your corruption you are incompetent. They are mutually exclusive.

Now the Articles being the vehicle by which we're charged allege in Article I some six separate offenses. We take the position, and I think rightfully so, that the correct procedure in following with the Constitution and the Statutes of this State would have been to have charged Mr. Rogers separately in each paragraph, that is, with having written the letters; with having closed his office and so on, without enumerating every one of them. That if

they're going to charge a person, they have to set out separately and distinctly each and every offense for which we stand charged just like you would in an indictment, or just like you would in an information in a criminal case. They have not done that. They have charged that we neglected our duty, that we were corrupt in office and are guilty of moral turpitude and all of that constitutes incompetency.

For that reason at the outset we urge that the members of this Court accept, since it's mutually exclusive, that you accept that definition which you have given to incompetency and of course that — that is the definition which provides that an incompetent person is a person who is incapable of handling affairs or the affairs of others.

We urge that you adopt that definition by reason of the mutual exclusiveness.

Now it's not, like I say, my intention to argue the evidence. We have attached what we feel to be pertinent excerpts in Article I, if you will. It's alleged that John Rogers did solicit from domesticated corporations to have his then acting Secretary of State act as the non-resident agent for corporations and that this solicitation was misleading and contrary to laws and authorized procedure.

Well, we have attached to our motion a copy of the letter.

Now the House Report presumably contains all of the evidence that the Committee heard. The Committee is the only body that has the opportunity to weigh the evidence, to examine the witnesses, to determine their demeanor and all, to determine their truth and veracity. Those people of that Committee listen to this evidence. They made a report and that evidence is before you.

The only evidence with respect to that allegation is the letter which is attached and I submit that that is not misleading. It speaks for itself. It's not misleading, it's not in any way solicitous nor does it compel anybody to do anything. It simply states that the Assistant Secretary is the only one authorized at this time to act in that capacity. "If you want to use her, go ahead and make arrangements to do so." It's in the subjunctive tense and it's not compelling anybody to do anything.

The second alleged statement that he — that — he closed his office on a working day. Well, you will notice in our Motion we will admit that occurred and I think generally the members of this body know what transpired with respect to that. There is no doubt that he closed his office and still, at the same time, there is no doubt but what the Petition was — that the Petition was ultimately presented and accepted in that office.

In other words, the public — it was not to the public detriment in any way.

The third allegation within Article I states that he had full knowledge of the forging of the Petitions. Well, you've got to get to the findings that the Committee made with respect to not just this allegation, but every one of these allegations with respect to that.

Those persons who heard this evidence made a determination and I think it was ultimately determined by the Chief — by the Chief Legal Officer of this State, and I think if you gentlemen in looking at the book, which you will ultimately have to do in determining this issue, can readily and easily ascertain and will agree that I can sit up here all day long and forge petitions. I can sit up here all day long and forge checks or forge anything, but as long as they're never presented, as long as they're never used, as long as they do not ultimately affect the outcome of anything, as long as no one is defrauded, it is — I am

sitting up here just doing nothing, just an exercise in gymnastics is what it is and that is the findings, incidentally, by the Committee, that it was not a violation of the law. I think everybody can readily see that it's not a violation of the law, even if the allegation is true and in our Motion we have to assume that every one of these allegations are true.

Mr. Rogers as Secretary of State had a high degree of care in preserving the records in his office. I think at this point it's undisputed that some seven hundred odd sections or portions of the '69 Liquor-by-the-Drink Petition are missing. There is no evidence that they were missing for any illegal purposes as such. There is nothing more — there is nothing within this report that shows that it's just as likely to assume that when he moved from one office to another that they were misplaced. All that is is an allegation of negligence, but they were there at one time and they're not there now.

Mr. Sanders was given free access to his office and Mr. Rogers knew that he participated in the forgeries of this petition or these petitions. Now if, in fact, that is true and incidentally, no one has yet seen those forgeries. We just have to assume that they were forgeries and never used and that is just all that we can assume — we can assume that is what happened, I guess, but in any event the — giving somebody — giving somebody access to your office might possibly be negligence, but certainly it's not a willful neglect of duty.

It does not come within — with any of the statutory provisions set forth with respect to impeachment.

It's not corruption in office, having somebody who might have participated in a fraud in your office. It's not an offense of moral turpitude to permit that person to come into your office, nor is it willful neglect of duty and if you adopt the definition of incompetency, how can it be said that you are incompetent for letting somebody walk around your office?

The allegation with respect to failing to transmit the House Bills to the Court Clerks of this State is answered in the Report itself. They allege that he failed to do this and what do they find in the Report? They just simply state there is no evidence with respect to this allegation. The same is true with each and every one —

SENATOR HAMILTON: Point of Order, Chief Justice. Apparently an altercation is going on here about somebody taking pictures. I think it is disruptive to the argument that counsel is giving and I would like for the Court to slow it down before we hear further argument.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Hamilton's point is well taken. Will the folks in the gallery please be advised that the Senate has forbidden the use of flashbulbs and this sort of thing that would disturb the proceedings. Thank you, Senator Hamilton. The folks in the audience please be governed accordingly. Excuse us, Mr. Brown. You may proceed, sir.

MR. BROWN: Thank you, sir. Thank you, Your Honor. In any event, the House entertained this evidence that I have just related to you with respect to Article I, Article II and Article III.

Now in what capacity did they act, and again, I have to draw an analogy. They acted in the capacity of a Grand Jury, if you will.

Now they're not a Grand Jury, I'll admit that, but they act in the capacity of a presiding magistrate as he would in a criminal case. They're not presiding magistrates but they acted in that capacity. They acted and issued these Articles of Impeachment.

And now they would have you, as Members of this Court, rule on the validity or the competency of those Articles of Impeachment.

Now the accused in a criminal case is charged. This is not a criminal case but the accused in an impeachment proceeding is charged. This is an indictment. This is a preliminary information and putting it simply and getting away from a bunch of this, all I am trying to tell you is this. I want you people to sit here and not review necessarily the evidence that the House of Representatives received in its report. I don't want you to do that exclusively. That is the only thing that you have, incidentally, but that is not the exclusive purpose of that.

What I want you to do is to examine this and say, "All right, we are sitting here at this particular time. Did the House of Representatives have sufficient evidence? Did they have any evidence at all on — upon which to predicate and base these Articles of Impeachment?" And I submit they did not and they say so by their own report.

If this were a Preliminary Hearing and you were called upon to rule whether a crime had been committed and whether there had been probable cause to believe this defendant committed the crime charged, you'd have no choice but to sustain a Motion to Quash to this evidence.

I take the position that with respect to that, that the House right now could file Articles of Impeachment against the Chief Justice with no evidence at all, none whatsoever. They could say, "We just don't like the Chief Justice of the Supreme Court. Let's impeach him." They have that right and I'll admit that, but after they have that right, they have to come to somebody who is ultimately and finally going to try those issues and those issues are contained within this Article and once they have done that, it would be ludicrous to assume that you gentlemen know what they have. Absolutely no one would accept Articles of Impeachment on the Chief Justice, knowing that there is no evidence and begin the trial of a case against him and that is what they would have you do today in this instance.

There is no evidence with respect to any impeachable offense. In other words, everything that they charge is not an impeachable offense.

We take the position in Article I that they are going to have to prove each and every material allegation they set forth in Article I.

They had an opportunity, if you will look at the House Journal. They had an opportunity to separately state each and every one of these Articles. They refused to do that. It came up on the floor. They voted against it something like eighty to nine, I think it was, or eighty to something, but in any event, it was overwhelmingly defeated. They refused to do that.

Now they're sitting here with a charge before you which, as Article I, as an example, having to prove each and every allegation and the House Report which the evidence will show defeated that purpose and shows that it is just not true, it is not there.

This ultimately ended up in one thing and that was just an effort — somebody suggested that "we get John Rogers" and without evidence, with a complete disregard for his rights and on their own volition, they just summarily passed Articles of Impeachment.

The majority report says it's not there. They voted on it and say "Well, it may not be there, but so what, we are going to vote it anyway and you give us enough time and we will come up with something."

Well, we don't try lawsuits in this country without evidence. We don't accuse people without evidence. We don't make a man go to trial and endure the rigors of a trial and the expense and the embarrassment and the humiliation of a trial without evidence and if any Court accepted the information that is set forth in this report from an indictment as evidence, from a presiding magistrate, a preliminary hearing, he would summarily dismiss this charge. There just is no evidence.

Article III shows the utter hypocrisy and asininity of the whole thing. They charge him with failing to make a report that relates to a tax return having to do with a federal campaign expense and the law on that is clear. That you don't have to report monies received or expenditures made prior to April 7th of 1972. And in the Article itself, they allege that prior to April, 1972, he received this money.

It starts out this way. In other words, you don't have to do it, but the fact that you didn't do it prior to April of 1972, knowing or they should have known that it's absolutely no violation of the law, it's no violation of any code.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Excuse me, a moment, Mr. Brown. Did you desire to reserve six or eight minutes?

MR. BROWN: If I could, please.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have used about twenty-two minutes.

MR. BROWN: Thank you, Your Honor.

If I may, let me just read the Federal Rule that is applicable. "Calendar year for 1972. The first year during which the Act will be effective means the period from April 1972 to and including December 31, 1972. No report is required to show any expenditures or campaign contributions which occurred before April 7, 1972, the effective date of this Act." Now that is a federal law with respect to reporting campaign expenditures. That's it, but in the face of that, they charge him with an impeachable offense and I submit that the whole thing — all three Articles — are without — are fraught with inconsistencies and do not allege any violations and for that reason, this Court should sustain our Motion to Dismiss.

Thank you.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The order on behalf of the Board of Managers is what?

REPRESENTATIVE FLOYD: Chief Justice, Mr. Riggs and then Mr. Shotts and myself.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well. We will hear Mr. Riggs.

REPRESENTATIVE RIGGS: Mr. Chief Justice, Members of the Court of Impeachment:

The House of Representatives through its Board of Managers submits respectfully that the Motion to Dismiss of the accused is improper and in not proper form and although it has already been filed and argued, we suggest that it should not be entertained by you. The fatal defect in that Motion to Dismiss is that it is not limited to the sufficiency and the form of the charges against the accused, which is the only proper scope.

Instead it deals almost wholly with the kind and sufficiency of the evidence to support those charges. It goes without saying that there is as yet no evidence before the Court upon which either the Board or the accused could comment or draw a conclusion.

It would only be through some kind of preliminary hearing, as the defendant has already pointed out, that evidence could be submitted to this Court on which it could base any kind of a decision at this point in the proceedings. As yet, there is no provision for a preliminary hearing of any kind through which partial evidence could be submitted to this Court on which any kind of a dismissal could be based.

There is nothing in the Constitution, there is nothing in our statutes and most importantly, there is nothing in your Rules which provides for your consideration of partial evidence on making any decisions in this matter.

It is actually improper for either the Board of Managers or the accused to comment on the evidence which is not before this Court or to draw any conclusions based upon facts that are not in evidence here.

Any Motion to Dismiss an impeachment action should be based solely upon purely legal defenses. That is a failure to be — to meet either those constitutional or statutory requirements or the requirements of your Rules.

Furthermore, if the Court were considering evidence as to the guilt or innocence of the accused the proper action would be directed toward a verdict of guilty or innocent, or guilty or not guilty according to Rule 34 of your Rules, not a dismissal.

Clearly when there is no evidence before this Court no verdict as to guilt or innocence is possible and conversely when the evidence has been submitted a mere dismissal is not proper since a final resolution of the question must be — must then in fairness be made and any Order of Dismissal today would not be a resolution of this matter. In no way would any partial selective self-serving presentation of evidence by either the accused or the Board of Managers be considered by this Court to make any type of disposition.

The full evidence has got to be submitted. There is no way under your Rules or under the laws of this State for this submission of evidence at this particular time. The accused has submitted evidence, partially selected evidence, as I say.

The Board of Managers has no way to submit any evidence at this point. Throughout the accused's motion, he deals and prevails upon the Court to accept not only the findings of the majority report of the House Investigative Committee, but its conclusions as well and that is very important because no mention is made of the fact that it was the conclusion of that majority report which were rejected by the full House not its findings. Carefully selected excerpts of that report were brought to this Court's attention by the accused in his effort to get the Court not to consider the full evidence, not to make its own independent determination as to those findings and draw its own conclusions. The action by the House in voting Articles of Impeachment came after that kind of a full study and investigation regarding that majority report and other factors and again of which no mention is made by the accused. It came after that report was subjected to the full — the fullest kind of scrutiny by the entire House, so that even members of the committee who had supported the majority report wound up voting for the Articles of Impeachment. Yet the accused asked the Court to ignore that determination by the House and even to forego any kind of full consideration of its own.

Furthermore, the accused misrepresents the majority report by suggesting somehow it vindicated John Rogers, which, in fact, it did everything but vindicate John Rogers.

It was on the Committee's request for additional investigation and their conclusions that due to the fact that they had just discovered new incriminating evidence of the secret oath offense that calls them to ask for more time and only that was rejected by the House. Nothing else by that committee report was rejected by the House.

It was not the case that they had already made against the accused that was rejected. That case was overwhelmingly endorsed by the House and should be presented to this Court for a final resolution.

The Board of Managers is cognizant of the fact that this Senate sitting as a Court of Impeachment is both a Court of First Impression and a Court of Last Resort.

We recognize that you are neither bound by precedent nor even strictly the rules of law. You are bound only to do justice according to your own rules and according to each individual — each individual's conviction that's here. Thus, the House of Representatives through its Board of Managers will bring to the attention of this Court information regarding prior impeachments and even of prior Court decisions in our answer to arguments made by the accused but we recognize that they are there only for you to do with as you will and we prepared that kind of authority, if we could call it "authority" with the full confidence that it, in fact, supports the action taken by the House of Representatives in voting the Articles of Impeachment and it rejects entirely any kind of a summary dismissal of those Articles.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Excuse me, Mr. Riggs, a question has been directed to the Chair that I will ask the Clerk to read for your particular attention.

COURT CLERK: "Mr. Chief Justice, I will request that Representative Riggs be asked whether he feels it proper to consider that portion of the Motion to Dismiss dealing with the form and sufficiency of the Articles." By Funston.

REPRESENTATIVE RIGGS: Yes, I feel that would be proper and it's the only proper action that I feel the Court should take on that Motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, there is another question directed to the Board of Managers. Will the Clerk read that question? In fact, there are three of them.

COURT CLERK: "Mr. Chief Justice: I would ask the Board of Managers the following questions: 'Under Article I, Paragraph 1, what date or dates did that offense take place? What is meant by "contrary to any authorized procedure of the Office of the Secretary of State?" Statutes, rule and if so, what rule or statute?' " By Young.

REPRESENTATIVE RIGGS: Mr. Chief Justice, Members of the Court: We do feel at this time it would be inconsistent with our position just taken on this Motion to Dismiss to go into the evidence to that extent and we certainly would furnish the Court after it rules on the Motion to Dismiss with the specifics relating to those allegations.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There is a second question there, Mr. Clerk. Will you read the question?

COURT CLERK: "Mr. Chief Justice: I would like to ask the Board of Manager the following question: 'Under Paragraph 3, Line 8, were those forged signatures filed in the Office of the Secretary of State and what date did Rogers fail to expeditiously transmit acts or resolutions to County Court Clerks?' " By Young.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Lamb is recognized.

SENATOR LAMB: Mr. Chief Justice: I see there are several questions being sent to the Clerk. It was a point of order for procedural finesse. Could we wait until the arguments of either side are completed and then each debater be called back to be asked those particular questions so we can get our continuity as they respond to the questions from the accused's attorneys. It seems to me it would be smoother if we did — if we had their arguments or their response to Mr. Rogers' attorney, then we can ask the questions and have them read.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have a good point there, but as to the — as to the continuity, but at the same time —

SENATOR BALDWIN: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Baldwin is recognized.

SENATOR BALDWIN: Now as the layman of this group, I would like to have those questions propounded after each speaker has finished, because I might lose my train of thought on the thing. Now these lawyers are used to following these things. We lay members need a little protection on that. And Mr. Chief Justice, I would like to move that we do our interrogation after each speaker and I know my motion is supposed to be in writing, but I would like to presume that this is in writing.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Baldwin moved or moves that his motion be considered to be in writing and that the Senate sitting as a Court of Impeachment rule that questions may be asked during the course of the argument while presenting the argument and the vote will occur on the motion.

SENATOR STIPE: Excuse me.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is recognized.

SENATOR STIPE: Mr. Chief Justice: To clarify the motion, I think the motion was that the questions be asked at the close or at the end of the statement of each counsel, after they have concluded and that they not be interrupted during their statements but that the questions be propounded at the end of their statements when they finish. That was as I understood Senator Baldwin's motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I misunderstood, Senator Stipe. Thank you. With that change, the vote will occur.

(Whereupon a vote was taken.)

Voting aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Funston, Grantham, Graves, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Lane, Luton, Martin, Murphy, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. — 36.

Voting nay: Dawson, Ham, Keller, Lamb, McCune, Pierce. —6.

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro.—6.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the vote.

COURT CLERK: 36 ayes; 6 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried and Senator Hamilton is recognized.

SENATOR HAMILTON: Mr. Chief Justice: My motion is in writing and I will present it. I move that questions and answers not be counted against the time allocated the speaker involved.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Your point is well taken, Senator Hamilton, and the vote will occur on that motion.

(Whereupon a vote was taken.)

Voting aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—42.

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro.—6.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the vote.

COURT CLERK: 42 ayes; no nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried. Senator Wadley is recognized.

SENATOR WADLEY: Mr. Chief Justice: In the interest of perhaps saving — some time saving, as I read Section 28 of the Rules, couldn't this well have been decided by you, sir, and if anyone in the chambers took exception with ten seconds — ten people seconding their exception, then we could have a roll call, could we not, sir?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Are you talking about the question of the voting on the Articles of Impeachment on a motion?

SENATOR WADLEY: No sir, no sir, I am talking in terms of these procedural matters on which we have just voted. Would they not have well been better served with you ruling from the Chair; then any member of the Senate that takes exception to them calling that exception. Will we not be in better shape that way than voting on each procedural matter as we go?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Senator has a good point except that Section 27 provides that the mechanics of the Court by a majority vote of those present shall determine all questions of procedure.

The Chair recognizes Senator Ham.

SENATOR HAM: Mr. Chief Justice: May we have the question propounded by the Clerk read again? I think that is what is before the Court at this particular time.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the question.

COURT CLERK: "Mr. Chief Justice: I would suggest that the Board of Managers be asked the following questions. 'Under Paragraph 3, Line 8, were those forged signatures filed in the Office of the Secretary of State? What date did Rogers fail to expeditiously transmit acts or resolutions to the County Court Clerks?' " By Young.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Ham is recognized.

SENATOR HAM: Mr. Chief Justice: A point of order.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Ham is recognized.

SENATOR HAM: I will object to asking such a question, Mr. Chief Justice, on the grounds that it is a solicitation of evidence

which is not before this body at this time and is improper to present — it is improper to present any evidence to this Court at this time and I object to the propounding of that question to the Board of Managers.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The objection is sustained. There are other questions here. I believe there was a third question.

SENATOR STIPE: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is recognized.

SENATOR STIPE: I am going to move that we go into Executive Session in order that we can discuss the ruling just made by the Chief Justice, in order that I think it can be best handled in Executive Session, in a closed session, because I think it is a matter we should deliberate upon and vote upon.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Lamb is recognized.

SENATOR LAMB: Mr. Chief Justice: With the exception of the Chair ruling, I take the ten seconds — I will make a second to Senator Stipe's motion before the Court rules.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would you clarify your point, Senator Lamb?

SENATOR LAMB: Well, Senator Stipe — it is my understanding, has taken exception to the Court's ruling on the last — on Senator Ham's motion. It's going to take ten of the Court members to second Senator Stipe's motion. I was just getting up too soon before the Court ruled or honored Senator Stipe's request.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Cate is recognized.

SENATOR CATE: Mr. Chief Justice: Under Section 30, Senator Stipe's request was to close the doors. That motion does not require a second although a motion is to be made in writing, but the motion to close the doors for the purpose of debate on a ruling, he has not yet taken exception to the ruling as provided in Section 28.

SENATOR STIPE: I have now.

SENATOR CATE: To merely vote to close the doors.

COURT CLERK: We have a motion to that effect on my desk, Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: A vote will now be taken on the proposition of closing the doors. All in favor of closing the doors, please say "aye". Any opposed? The nos appear to have it. The roll call has been called for. Will the Clerk call the roll?

(Whereupon the vote was called.)

Voting aye: Baldwin, Butler, Crow, Holden, Lane, Luton, Stipe and Young.—8.

Voting nay: Berrong, Birdsong, Boatner, Capps, Cate, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Howard, Inhofe, Keating, Keller, Lamb, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe and York.—34.

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro.—6.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the results of the roll call.

COURT CLERK: 8 ayes; 34 nays.

PRESIDING OFFICER CHIEF JUS-

TICE WILLIAMS: The nays have it. The motion has lost. Senator Stipe is recognized.

SENATOR STIPE: As I take it, the Chair has ruled that we cannot go into closed session?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes.

SENATOR STIPE: Could I ask the Chief Justice is it the ruling of the Chair that no questions can be asked of these various counsel; is that the ruling?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: No, sir.

SENATOR STIPE: Then I misunderstood the ruling. I understood you to rule that no questions could be asked.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The suggestion by Senator Ham, sir, was that the particular question last asked related to an evidentiary matter and that objection has been sustained to that one question and that was the ruling, sir. As a point of order while you are up, Senator Stipe, we have your objection as well as the motion that the doors be closed. I don't know if you desire to pursue your objection as to that one question and the ruling thereon.

SENATOR STIPE: Well, I don't understand what my remedies are. I want to discuss the matter because I think it is an erroneous ruling that a judge cannot ask lawyers questions when they are presenting arguments to the Court. I don't know of any Court that has that rule and contrary — it's contrary to any other Court that I have ever been before, that a member of the Court can't ask lawyers questions for the purpose of clarifying their argument and that is the way I take the ruling of the Presiding Judge to be.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Ham is recognized.

SENATOR HAM: Mr. Chief Justice and Members of the Court: Senator Stipe, if you were presiding in Court and you were hearing some motions that had ultimately nothing to do with evidence, you would sit the lawyer down right quick. We're not to the evidentiary phase of this matter, Mr. Chief Justice, and yet, we are propounding questions that are — that answers haven't come from witnesses. This Board of Managers here are not witnesses in this case. They're advocates and —

SENATOR STIPE: Will Senator Ham yield?

SENATOR HAM: And the witness to answer that question is not present in court because — and the question is untimely because it calls for an evidentiary answer. It doesn't relate to the sufficiency of the Articles of Impeachment — to the Articles of Impeachment. I will yield.

SENATOR STIPE: Senator Ham, you and I have appeared before the Appeal Courts —

SENATOR HOWARD: Point of order, Mr. Chief Justice. This matter is running into debate between the members and it is not in accordance with the Rules. I believe all motions shall be in writing and there should be nobody — no discussion among the members of this body back and forth.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Howard's point is well taken. We have a question — a point of order has been approached to the Chair and that is that Senator Stipe's objection to the ruling, it appears not to have been joined in by ten Senators and failed.

Will the Clerk read the question now being handed in from one of the Senators?

SENATOR STIPE: Now point of order, Mr. President. We voted that the questions not be propounded until the particular counsel has finished his argument. That is what I understood the motion to be by Senator Baldwin.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Senator's point is noted. The first speaker — very well, the point is well taken. May I have that question back, Mr. Clerk? And would you gentlemen proceed with your arguments and we will have the questions at the conclusion of all of your argument.

REPRESENTATIVE SHOTTS: Have all of the questions that were to be asked the past speaker, have they been taken up at this time?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There are two more questions or three, but they will be propounded after your side is finished.

SENATOR GRANTHAM: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: Mr. Chief Justice, I believe the rule to that or the rule adopted was to ask them at the close of each speaker rather than the close of each side.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair — the Chair is of the belief that Senator Stipe — Senator Stipe's view is the correct one rather than Senator Grantham's here and we will proceed on that basis.

You may proceed, Mr. Shotts.

REPRESENTATIVE SHOTTS: Thank you, Mr. Chief Justice. Members of the Council: I would like first of all to refer to comments made by the defendant — of the plaintiff, regarding the vagueness of the charges contained in the Articles of Impeachment presented to this Honorable Court and I would like to refer you to the page there, the Board of Managers Response to that report wherein we cite and call your attention to the Title 51 of the Oklahoma Statutes Annotated, Section 57. By reading that statute, I think you can see that the test of a sufficiency of an Article of Impeachment is reasonably certain that an offense has been committed and I believe there is to be no doubt that this particular time — that this is the particular time as to the charges with which the accused had been charged in this particular matter. The interpretation of that statute I believe is that each offense, not necessarily each offense, not necessarily each Article, but each offense that he is charged with is stated with particular certainty.

Now I believe the Motion to Dismiss and the argument that has been presented to you by counsel for the accused shows that they well understand what they're charged with. They have, in fact, set out and delineated each separate charge and count. They have understood it and they have stood and they have debated that before you for a period of approximately twenty minutes, now as to each charge that they have been charged with, so I think it's — it's evident and obvious that they, in fact, do know what the charges are.

Now going to the argument also, as to the form that is contained in the Articles of Incorporation (sic) I would like for you to again read that section that I have just given to you where the Articles of Impeachment shall state with reasonable certainty the offense in office for which the officer is impeached and if there be more than one, they shall be stated separately and distinctly. And it is our interpretation that that goes to the offenses charged and

we have in there, in fact, stated each of those offenses in separate and distinct matters.

I believe that by reading that you can well understand and see that. Also, in relationship to the process of a criminal procedure which was valid by counsel for the defendant, I think Title 22, Oklahoma Statutes 401, in regard to indictments and information which was alluded to by the counsel for the accused, show that there must be the title of action which, of course we have that, a statement of the acts constituting the offense in ordinary and concise language and in such a manner as to enable a person of common understanding to know what is intended. And I think again, upon the argument of counsel, the Motion to Dismiss has been vague. That they are fully aware of each impeaching act of which they have been charged and what the matters of Articles of Impeachment have been brought about. And in further response to this form of the Articles of Impeachment in Title 51, Oklahoma Statutes 71, which is a specific statute relating to this Court of Impeachment and your voting upon the various Articles of Impeachment, when this happens, that the Senate when sitting as a Court of Impeachment, shall have power to prescribe and adopt such rules of procedure as it may deem expedient for the orderly trial of the impeachment case. When an accused person has been placed upon trial and the case is ready to be submitted to the Senators sitting as Members as a Court of Impeachment for their decision, the roll of the Members shall be called in open session upon each separate charge or count. And this is found on page four, gentlemen, of the Board of Managers' Response to the Motion to Dismiss. Read that section and see that it explicitly implies or, in fact states, that you shall vote on each particular count.

Going on down in the paragraph you can see that where if two-thirds of the Senators present shall vote "yea" upon any charge or count contained in the Article of Impeachment, the accused shall be adjudged guilty. In fact, in there it tells you that you can, in fact, vote on separate charges and separate counts including the ones included in one Article of Impeachment and that is what has been presented in the Articles of Impeachment, the basic different counts of which any or all of those might be grounds for impeachment stated in that particular Title.

I would also call to your attention in the case of N. B. Johnson, the Articles of Impeachment, they were properly brought by the House of Representatives at that particular time that Article I, it states that the House of Representatives first advised and presented that such acts on the part of Justice N. B. Johnson constituted corruption in office and it's an offense involving moral turpitude while in office against specifics as to several counts as authorized under the Constitution of the State of Oklahoma.

The Senate adopted those Articles of Impeachment and thereby through precedent we wanted to use that as an argument here. You have, in fact, sitting as a Court of Impeachment, accepted more than one grounds in a particular Article of Impeachment, so we feel that an argument based on the theory that the Articles are not in proper form is not a valid motion and it should be overruled.

Then the counsel for the defendant also argues on the solicitation of a bribe. One of the Articles, number two of the Articles of Impeachment that there is no evidence to this. In fact, I believe that in there they stated that the majority report of the members of the special committee determined that there was not, that they did not believe there was evidence to vote Articles of Impeachment.

Members of the Court, I tell you that in

fact is not the case. Now I have — I was a member of that special committee, the special committee did, in fact, vote at one time on Articles of Impeachment, based on solicitation of a bribe as set out and outlined in Article II by a majority vote and as Representative Riggs has presented to you that the only reason that Article was not brought out was the fact that new evidence brought in and the committee requested further time to look into the new Article and that was the conclusion that was rejected by the House of Representatives, not the evidence, and the evidence was there and in fact, a special committee did vote Articles of Impeachment at one time on that particular ground by majority vote. So I feel that this fact is not a true statement that we did not believe there were grounds there and that was not the reason this was not voted.

I would like now to go to the basic argument, I think that is proposed and that is as to the competency. If I understand the definition of incompetency and I say what this House of Representatives and you as members of the Court of Impeachment are going to have to determine in your mind is what incompetency is and what we can go to or go by is the authorities that we can look to is, we will first say that the defendant relies on the case of Tafoya versus New Mexico State Board — Police Board, 472 Pac. 2d 973, and in reading there, they would have you believe that the only grounds for incompetency was that of physical and mental inability to, in fact, perform the duty and in that same case and in that same decision, the Court, in fact, did state the following: "The state or fact of being incompetent: As "lack of physical, intellectual or moral ability" and that was the decision of the Court, not basically where those two were spelled out specifically, but also moral absence was lacking. They set out that was, in fact, a ground of incompetency or a part of incompetency. Ballentine's Law Dictionary defines and comes to the conclusion that want of qualification or eligibility, the absence of a physical, moral or intellectual quality incapacitating one to perform the duties of his office, characterized by gross neglect of duty, by gross carelessness in the performance of duty, lack of judgment and want of sound discretion.

Now it is our opinion and our belief that you can limit the definition of the competency as the defendant would have you to do, showing physical and mental ability would be — and not including that of moral ability would be something that should not be done and it should stand to include that and the defendant states the six basic grounds of the Articles cause of action or charges contained in Article I, and they state that those contained — those — those charges are containing the letter from John Rogers to the foreign corporation and the closing of the Office of the Secretary of State on August 1, 1968. Now first let me comment on the letter and then to the closing. The letter to the foreign corporation — that this was done — this letter was mailed out and we will present testimony to the fact that letter's with permission of the accused. This was sent out across the nation to many corporations to come in and that letter is presented on their behalf. I think you can read that letter and it leaves no doubt in anyone's mind. In fact, that letter implies that the only person you can use, and now again, that may not have necessarily been exactly a violation of a crime, but is it moral grounds or grounds as to their moral competency?

Now closing of the office on August 1st, 1968, again, there is no statutory violation or a crime, but the fact did occur that 37,000 Oklahomans were denied their Constitutional Right of Referendum because that office was closed.

Now whether or not that is a violation or a crime is not in issue but whether or not that is a moral breakdown or a breach of public trust and a breach of such trust of a

public office is the thing before this Court. Failure to report forged Liquor-by-the-Drink Petitions. Again, that was not a violation of a separate crime, but only through one word of the statute because it is — the Secretary of State is required to report it. It is a crime to and to not forge or to attempt to forge public documents and things that will be used in petitions is in the statute. It also states that the Secretary of State shall report all violations of this act and had that said Article — he would have in fact been in violation of a particular violation of a particular statute because he failed to report this.

Now we will not show that that by his failure to report this by witnesses that we will present that there was no evidence of a forgery reported and such evidence was known to the Secretary of State.

Now whether or not that is a violation or a crime is not in issue here, but what is in issue here — but what is in issue is the Secretary of State knowing that the forgeries had been taking place on the petition and of whether he would have probably ruled as to the validity or non-validity of those petitions in his official capacity. And he says he knows they were there. Is that, in fact, a moral obligation of any type to report that to the proper authorities? That is the question that is before you today.

The other is the failure to care for public documents and again, no violation of a particular — or a particular crime, but by the admission of the defense counsel this is, in fact, seven hundred petitions were missing which we shall produce that in evidence and will show you that people came in and out and public documents of the people of the State of Oklahoma were, in fact, missing. It is not a violation or a crime, but is it any kind of a moral responsibility on behalf of the Secretary of State to care for the public documents? That is the thing before you today, not the violation or a crime. And another is use of official facilities for political polls, or political purposes. Again, we can show you this was done numerous times. There is no violation or a crime, but we have alleged that is a moral violation of a trust endowed to the Secretary of the State. That is an article that is brought to you in the Impeachment Article.

There are five of the things that are not even contested by the defendant. These are the things that are before you. We think that you should — we think should be looked at and should be considered as whether a violation of a public trust exists.

In closing, as far as the grounds for competency that we feel there is a limit in competency further than physical and mental ability and we think it should encompass that of moral inability to perform the office. It is on you gentlemen — that is the most important ingredient in competency, namely that of a moral and intellectual ability that is competent, flowing from a conscientiously minded moral attitude toward public service and what we would attempt to set out in the Article — what we have attempted to set out in the Articles is that these specific acts, in fact, they did happen and we want to come to you and prove to you that these acts and facts happened and if they did, the question is in your mind that a violation of the public trust for which the Secretary of State is endowed to by two and a half million citizens of the State of Oklahoma. Although it may not be a violation nor a crime, if, in fact, they did happen and we prove that they happened, is that a violation — it is a violation of public trust of more or less incompetency, is it, to act and continue to act as Secretary of State. That is the issue that is before us. Can we prove that? Have we stated that out in our petition with sufficient certainty that the offense — the accused knows that is what he has been charged with as he says it is. They stood up and they admitted that they know that is what they are charged with and the de-

fense counsel would have you look behind the petition. He would have you impeach the integrity of the members of the House of Representatives. He would have you go to the minds of each member of the House and say, "Why did he vote? Was it a basis for impeachment or a personal grudge? Did he have the evidence?"

Ladies and Gentlemen: The evidence was presented to the members of the House of Representatives by the members of the special committee in caucus.

The evidence was presented to the Floor, to the House of Representatives. The majority of the special committee decided there was sufficient evidence that Articles of Impeachment should be introduced and the House of Representatives by an overwhelming margin agreed to that and voted that there was.

Now on this issue of whether or not the competency of moral turpitude is involved, that was the issue that was in doubt and that was used and that is the issue for you to judge.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Floyd, you will have eight minutes.

REPRESENTATIVE FLOYD: Thank you, Mr. Chief Justice, Members of this Court: The defendant did not mention in oral argument a certain matter that I presume they will bring up in their final argument, so I am going to discuss it for just a minute and that is an allegation or statement on their part that all of the acts complained of occurred in prior terms and that therefore, the implication is that impeachment and removal from office will not actually result.

I simply call your attention to 22 O.S. 1181.1 with regard to ouster of officials that are not subject to impeachment. This Legislature acting as a legislative session set the stage there in the code for people to be ousted from office for acts committed in prior terms. So legislatively we have spoken. With regard to impeachment, we can go back to the N. B. Johnson case, 1965. In 1965, N. B. Johnson was impeached and ousted in 1965 for acts committed in '57 and '59. This Honorable Court sitting at that time took into account cases from throughout the nation that said that acts committed in prior terms could serve as a basis for ouster from office. I can cite you those cases, but I won't go into those. If you read the Response you can see them. I will also cite the Attorney General's opinion dated December 31, 1974, from Mr. Larry Derryberry, coming to the same conclusion and that conclusion being that you, as a Court of Impeachment, determine whether acts in a prior term can constitute a basis for impeachment and consequent removal. I simply call your attention to the precedent and ask that you consider it and that you determine it on the basis of the logic of the acts in a prior term, if it can be the basis for removal. To do otherwise is to condone illegal or impeachable acts during that period of time from the time a man is reelected and the time that he takes his new term. That would — that would be one specific example of a gross inequity that exists, to take any other position.

I will move to Article III. The allegation has been made that Secretary of State did not report or account for certain campaign funds in 1972 that were required to be accounted for under federal law. I can read you several campaign expenditures — the Federal Campaign Expenditure Act of 1971 and I can argue that his reports were not according to law. The other side can argue they were according to law. I'll also present to you the Federal Corrupt Practice Act which was also in effect at that time and has been since 1925, and we are prepared to show where — whenever the time comes, evidence to show that he violated both of those laws.

Now that is all I want to say with regard to our Response. I want to move into the — to the defense tactics. I want to show you what we have done — what they have done to us. We're here on a Motion to Dismiss that they filed and do you know what they have done? They have sifted the evidence. We haven't even presented evidence. They have done a good job. They have gotten questions flowing from all over the floor regarding your interest. Your interest is in the evidence. But, they have done a real good job. That is what they have done. That is not what we are here for today. Our job is to argue the Motion to Dismiss and they are asking you in that Motion to Dismiss, "Don't listen to evidence, dismiss it without letting the Board of Managers bring any evidence in here."

Now we are asking you to overrule that motion, because all we want is an opportunity to do, is to bring the evidence before you in proper form, with sworn witnesses, proper testimony, proper evidence that we can get in. So I am simply asking you to look, look, look, look, look at the defendant's tactics. Don't get all involved in evidence. This is not the proper time to consider evidence. This is the time to consider whether you want to hear evidence or not. Don't listen to the defense when he impugns the integrity of each and every member of the House of Representatives and say that these — that they laid these Articles at your feet without any evidence whatsoever. That is just not right. Do your job, Ladies and Gentlemen. Let us present evidence. Overrule the Motion to Dismiss.

Thank you.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Gentlemen of the Board of Managers: We have seven questions. One has just been withdrawn. We have six questions. We've got six questions. If the Clerk will read those one at a time in the record in which order they appear.

COURT CLERK: "Mr. Chief Justice: I will ask that the Board of Managers be asked the following question: 'Under Article III, what law or statute do you contend is violated as required by law?' " By Young.

REPRESENTATIVE FLOYD: Chief Justice, we allege that the Federal Campaign Act of 1971 was violated. I can give you the citation on that if it is necessary.

We also allege that the Federal Corruption Practice Act was also violated. Those are the two acts and I could pass the citations out to Senator Young, if he would like. I have copies of the acts with me as well.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question.

COURT CLERK: "Mr. Chief Justice: I request that the Board of Managers be asked the following questions: 'Does the Board of Managers agree that all acts set forth in the Articles occurred in a previous term of office?' " By Stipe.

REPRESENTATIVE FLOYD: Senator, I think that would require a look at the evidence and none of us are prepared to testify with regard to the evidence.

The evidence we will present will be presented to you by witnesses and it will be evidence that will be presented to you by witnesses, and will be presented to you in a proper form, but none of us are going to be witnesses in this case.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question?

COURT CLERK: "Mr. Chief Justice: I ask that the following questions be propounded to the Board of Managers. 'Would you give to the Court the dates as set forth in the Articles of each offense charged.' " By Stipe.

REPRESENTATIVE FLOYD: Mr. Chief Justice, again, that is a question we cannot answer. We will be presenting evidence. Hopefully from that evidence you will be able to draw the conclusions with respect to those representative dates, but we cannot testify as to that.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question?

COURT CLERK: "Mr. Chief Justice: Please ask the Board of Managers the following questions: 'Do you as a Board of Managers make a distinction between Articles of Impeachment and/or charges or specifications?' " By Lamb.

REPRESENTATIVE FLOYD: Mr. Chief Justice, thank you, Senator. As we read the law on Articles of Impeachment, Articles of Impeachment may be based upon charges made and on offenses so that you allege certain offenses and this is the position of the Board in stating my explanation to you in an actual form, the Board of Managers takes the position that you allege certain acts and offenses having been made resulting in a ground or grounds for impeachment.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk has another question. I will ask the Clerk to read.

COURT CLERK: "Mr. Chief Justice: Please ask the Board of Managers why Article I having one-half dozen separate charges does not violate 51 O.S.A. 57, that is, each article must be separately stated, article by article?" By Lamb.

REPRESENTATIVE FLOYD: Well, the answer to that, first of all, is that that particular section relates to the criminal code. If you look at 51 O.S. 71, I believe it's a statute, you will find the statute on impeachment and in that statute it provides that there can be — now this is by direct implication, the provision is by direct implication, and I will get one of my good lawyers to find that for me, that the Articles of Impeachment can include several counts and it was based upon that that we set out Article I, as based upon six different counts. If you will look in your Response to page four, the statute is cited 51 O.S. 71, you will find "If two-thirds of the Senators present shall vote yea upon any charge or count contained in the Article of Impeachment, the accused shall be adjudged guilty." So there is a direct implication that you can have one or more charges within the one article. Then the accused shall be adjudged guilty, that is two-thirds of the Senate present shall vote yea upon any charge or count contained in the Article of Impeachment, then the accused shall be adjudged guilty.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There is another question and still there is the last one here. Mr. Clerk read the next question, please, sir.

COURT CLERK: "Mr. Chief Justice: I will ask the Board of Managers the following question: 'What acts were alleged to be done in the present term of office?' " By Young.

REPRESENTATIVE FLOYD: The allegation on Count 1 is broad. Count 1, Article 1, as you notice there is no allegation with regards to the date. We are not sure just exactly what we are going to come up with there. We have a lot of evidence and with respect to whether or not we will find that we can present to you evidence on offenses in this term, I cannot yet say, and I hope I have been responsive. If I haven't, I will try again.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There is another question. The Clerk will read the question.

COURT CLERK: "Mr. Chief Justice: I would ask that the Board of Managers be asked the following question: 'Is it the con-

tention of the Board of Managers that we, as a Court of Impeachment, are to rule on violations of federal laws?' " By Crow.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Floyd?

REPRESENTATIVE FLOYD: Thank you, Mr. Chief Justice. Members of the Court: As all of you know impeachment can lie for an offense which is on the — which is not a violation of the criminal code, be it state or federal.

Now if we are to prove that a direct violation of a criminal code, be it state or federal, then that makes our job easier. It makes your job easier, but we are saying that a violation of a state or federal code criminally, even though no prosecution, if you find there has been a violation that might constitute an impeachable offense, whether it's a violation of a state law or a federal law and whether there be prosecution or no prosecution, only for certain acts that are not even violations of the law.

Does that explain it? If not, I will try again.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The last question, Mr. Clerk?

COURT CLERK: "Mr. Chief Justice: I move and ask that the following questions be asked the Board of Managers: 'Should not the counts be separately numbered and stated before they can be separately considered?' " By Grantham.

REPRESENTATIVE FLOYD: I believe that in Article I, we have six counts, they are not numbered as I recall, but I think they certainly could be numbered and considered and I think that they should be considered on an individual basis and then — then I believe you will recall in the last part of Article I, we have an allegation of the totality of the foregoing one through six constituting a totality — constituting and hopefully do, in fact, lay the grounds for impeachment — constitute impeachable offenses.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: We have an additional question. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: Will the Board of Managers define 'offense'?" By Funston.

REPRESENTATIVE FLOYD: I think an offense can be an offense of anything of any violation of the criminal code, be it state or federal; it can be an offense of moral turpitude, like you see, so I think it can run the gamut. Offense has about any kind of meaning that you, as a Court, want to give it and I think that offense is what the Court in its deliberation and then the conscience of each Member determine it to be, but those are examples and generally speaking, an offense is an act or series of acts.

Mr. Chief Justice, if I have not been responsive, I will try again.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Brown is recognized for seven minutes.

MR. BROWN: If the Court please, Members of the Senate: I will try to answer these questions as best I can. I have in my hand a certified copy of the House Journal. The House of Representatives had a chance to separately number and set out these offenses. They were voted down eighty to something. I hope that answers that. You are going to sit here and charge a man with an offense and not tell him when it was committed, how it was committed. They are sitting here telling you that they considered evidence and yet they don't want you to hear any of it and don't want you to know what that evidence is.

I have in my hand a House Report which

sets out all of the evidence and that report is made a part of the motion that we filed. You can read all of it. We have attempted to put excerpts in there and I will read part of it to emphasize it. Although Mr. Rogers had knowledge of Mr. Sanders' plot, none of the fruits of Mr. Sanders' labor ever came into the office of the Secretary of State to be officially filed. This is about these forgeries. A fair examination at last pertaining to this subject leads to determination that mere knowledge of a forged petition by the signing of the same which was never filed in his office standing alone is not a violation of law. That is the evidence they heard and they sit there and tell you that we heard this evidence, but I am claiming that they didn't hear anything. I am saying that they did hear something and here it is that they — here is what they heard. They heard it wasn't a violation of law and they want you to con — they don't want you to consider it but I think you have the right not only to consider it, but the duty to consider it. Not only the evidence but the lack of evidence and that is what this whole thing is. It is just a complete, utter, total lack of evidence.

They are sitting here, they have spent seven hundred dollars a day paying Mr. Cunningham to investigate this thing and in one breath, sitting here and telling you that they can't even — they don't even know whether Mr. Rogers has committed any offenses that occurred within the term of office. What happened to due process? You gentlemen sit here and enact these laws and we are all concerned about the rights of the individual. It is your duty to protect people. You are the Court. You are going to summarily deny the man the right of due process and not even tell him what he is charged with. You are going to sit here and tell him that we might come up with something later on down the line that has to do with this term of office. Well, look at these. Look at the Articles of Impeachment. They answer your questions. One of these things occurred in 1967, '68 up to '71. Not a one of them occurred during the last term of office. The majority of them occurred two terms ago and he has been reelected. Well, I don't know how many of you people sat on the Corn impeachment trial, and I don't know how many of you participated in the Wright trial, but let me make a distinction right here and right now. That had to do with allegations which were not known, not known by the public when they voted. Who in the State of Oklahoma did not know that John Rogers went fishing and closed his office? What are you going to do, pre-suppose that you have a paramount right over the public? The public knew about some of these things and I would call them "transgressions" if anything.

They have the right to elect public officials. None of us are perfect. We all make mistakes and they have voted John Rogers back into office after full knowledge of everything set out in that first count.

Excuse me just a moment, if you will, please.

You have a duty to consider this matter. Let me call something to your attention to show you. The utter hypocrisy and idiocy of the whole thing. In this same House Journal that we referred to, the House of Representatives adopted Article I. They didn't vote on each count. They are going to sit here and tell you all to do something they didn't do. They took the whole thing and just voted it in there. They didn't consider it as a separate count. Let me read it to you. Mr. Fried moved the adoption of Article I, as amended, which motion was called adopted and roll call as follows: And then they voted. There is not a thing in there about separate counts or anything else. And the provision with respect to separately stating it is clear. Let me go on just to show you how they steam-rolled and cannon balled this thing. They get down to Count 2, the same thing. Mr. Fried moved the adoption of Article II as amended.

REPRESENTATIVE FLOYD: Mr. Chief Justice.

MR. BROWN: And the motion — it was — excuse me, sir.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Representative Floyd.

REPRESENTATIVE FLOYD: I would like to interject an objection here and ask a ruling from the Chair as to whether it is the proper place for comment to be made upon anything that might have gone on in the minds of members of the House of Representatives when they adopted a bill, a resolution or some sort of law over there. I would like to urge the adoption of the position that it is not a proper time to comment upon that and I think the law is well settled on that point.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would you restate your position on that point, Mr. Brown?

MR. BROWN: I am sorry, I was talking to co-counsel, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: He presents the objection that you are arguing about something that took place in the House of Representatives prior to the adoption of the Articles of Impeachment and that is improper, in your last argument and I was wondering if you would restate your position?

MR. BROWN: Oh, if the Court please and Members of the Senate: I am reading verbatim from that portion that relates to the adoption of the Articles of Impeachment, not something that occurred prior to their adoption.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The objection, Mr. Brown, I believe is well taken. Possibly in your argument at the conclusion of the case, if there is a trial, it would be appropriate to mention that sort of matter if you care to, but the objection is sustained.

MR. BROWN: Well, if the Court please, I am getting at the point that Article III was never adopted by the House which is a matter this Court can consider.

REPRESENTATIVE FLOYD: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Representative Floyd.

REPRESENTATIVE FLOYD: The Articles of Impeachment were presented to the Senate with Articles I, II and III, and I believe that the record of the House of Representatives will very adequately reflect that the Articles were adopted and that that is the way they were presented and the fact that they were presented and accepted by the Senate is evidence enough for this group; that the Articles are properly here.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would you — would you state again, Mr. Brown, what your position on that point is?

MR. BROWN: Well, if the Court please, I take the position that Article III is not even properly before this Court.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: And you are reading from the Journal of the House to demonstrate that that is a fact?

MR. BROWN: Yes, I am reading a certified copy of the June 4th, 1975 Daily House Journal.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Representative Floyd, the Chair reverses its ruling on that. The matter before this Court as to Item 3 of the Article would seek a dismissal of that Article and I should think that the Mem-

bers of the Court would be interested even though it purports to carry a certificate that it was actually adopted; that Mr. Brown be permitted to submit to — to submit this to the Court. Go ahead, Mr. Brown.

MR. BROWN: Thank you, Your Honor. I will make that available. In any event, it all boils down to one thing. The House of Representatives wants you to pull their chestnuts out of the fire and I submit there is no evidence whatsoever, there is not a concrete allegation upon which you ought to spend a hundred thousand dollars of the State of Oklahoma's money on the continuing of a fiasco.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Your time has expired. You may conclude, Mr. Brown.

MR. BROWN: If the Court please, all right. Resolution Number 1031 was introduced and read at length and it was amended and gentlemen, Mr. Edmondson moved to amend the Articles of Impeachment at page four by adding the additional Article III and that is the Article that I have reference to, that Article was never formally adopted by the House.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Does that conclude your argument, Mr. Brown?

MR. BROWN: Yes, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The court reporter needs a recess. We will be in recess for about ten minutes.

(A recess was declared at 3:15 p.m. and resumed at 3:30 p.m.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Gentlemen, the Court will be in order. Would the Clerk call the roll, please. And will the Senators here in the chambers that haven't indicated your presence, please do so? The roll is being called. Any of you who have not indicated your presence, please do so.

Present: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keating, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Smith, Stipe, Terrill, Wadley, Watkins, Watson, Wolfe, Young, York.—41.

Absent: Field, Garrett, Howell, Lambert, Medearis, Taliaferro, Tinsley.—7.

COURT CLERK: 41 present; absent Field, Garrett, Howell, Lambert, Medearis, Taliaferro, Tinsley.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Brown, would you kindly make yourself available to questions.

MR. BROWN: Yes, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Seven questions have been directed to the Chair. The Clerk will please read the first question.

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'Is it your opinion that, if each charge in Article I were proven, the Board would then have the additional burden of proving that the acts charged and proven, taken together, constitute incompetence in office?' " By Cate.

MR. BROWN: Yes, sir. I take the position that is true and that in addition to that, they're obligated to prove each and every charge or all of it fails.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question, please?

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'Do you agree that Article II, taken alone without reference to action or conclusion of the House Committee constitutes a criminal act involving moral turpitude?' " By Smith.

MR. BROWN: Yes, sir, if provable, yes sir.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question, please.

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'If all evidence is ignored pro or con, do the impeachment charges constitute charges which would substantiate an impeachable offense which would support removal from office?' " By Grantham.

MR. BROWN: Would you re-read that question to me, please?

COURT CLERK: "If all evidence is ignored pro or con, do the impeachment charges constitute charges which would substantiate an impeachable offense which would support removal from office?"

MR. BROWN: Thank you. No.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Tinsley has come in and the record may so note. The next question.

COURT CLERK: "Mr. Chief Justice: I would ask Mr. Brown which, if any of the alleged acts would constitute an impeachable offense had they occurred during the present term?" By Funston.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question, please.

COURT CLERK: "Mr. Chief Justice: I would ask that Mr. Brown read the portion of the House Journal dealing with the adoption of Article III." By Funston.

MR. BROWN: If I can answer that question rather than read all of it. The first Article was amended and then at the end of all of the amendments, Mr. Fried, and I will quote, "Move the adoption of Article I as amended, which motion was declared adopted upon a roll call as follows:" And then you have the vote on it. Article II, which likewise contained amendments was handled the same way and Mr. Fried, "Again, move the adoption of Article II as amended, which motion was declared adopted upon a roll call as follows:" And then again they voted on that at that point. Mr. Edmondson moved to amend the Articles of Impeachment on page four by adding an additional Article III to read as follows: "Mr. Floyd moves that the rules be suspended for the purpose of inserting an amendment to Article III, which motion was declared adopted upon a roll call as follows: * * Therein the Speaker announced that all Articles of Impeachment against John Rogers, having received a majority vote of those present and voting, a quorum being present, have been adopted by the House of Representatives." In other words, I am simply saying there was no motion to move its adoption as amended.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question, please?

REPRESENTATIVE FLOYD: Mr. Chief Justice: If I may interject?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes, sir.

REPRESENTATIVE FLOYD: If it's proper.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes, Mr. Floyd.

REPRESENTATIVE FLOYD: I will call your attention to the same Journal at page 1066 whereby the inference of amendment was declared adopted and the vote is reflected there.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, sir. The next question.

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'Does the defense argue the proposition that the Articles of Impeachment do not state an impeachable offense or does the defense argue that there is no evidence to support the Articles of Impeachment? If the latter, does the defense have any authority that says that Articles of Impeachment must be so written that the evidence to support the Articles must be pled? In other words, must one plead the evidence for the Articles to be sufficient?' " By Murphy.

MR. BROWN: The Articles of Impeachment are insufficient on their face, save and except number two. They do not have to be specifically pled except as provided in that proposition of — in that provision of the statutes that says that the Articles of Impeachment shall state with reasonable certainty the offense in office for which the officer is impeached and if there be more than one, they shall be stated separately and distinctly. In other words, each Article has to be separately and distinctly stated. I hope I answered that.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question, please.

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'Is counsel for defense suggesting that offenses charged in Article I, although not individually numbered, but separately charged by paragraph fails to apprise the defendant of the actual charges made by the House of Representatives?' " By Berrong.

MR. BROWN: No, we do not contend that he is not sufficiently apprised, but you have adopted the rules of criminal procedure and you are obligated to follow that with respect to that evidence.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The next question, please.

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'Did the House vote on submitting Article III? If so, what was the vote?' " By Helm.

MR. BROWN: I am not a scholar in parliamentary procedure but I can answer that. They did vote after the Edmondson amendment — after the Edmondson amendment was voted on. It was amended two times after that and there was never any motion that it be accepted as amended. There was a vote. I can answer that.

SENATOR LAMB: Mr. President.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair recognizes Senator Lamb.

SENATOR LAMB: Could the Senate body have a copy of this Journal that they keep referring to, these pertinent pages, 1033, or whatever they are? They keep referring to them and neither side has taken a position — do we have copies of those? Could they be furnished?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will please arrange to get copies and furnish them to the members of the Court.

REPRESENTATIVE RIGGS: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes, sir.

REPRESENTATIVE RIGGS: Since the Senators or the Members of the Court are being furnished copies of the Journal, we would like to make it a point that they consider whether it's printed in the Journal or not that it should be the official — that this should be the Official Court of Record, because there may be various kinds of records in there and it should be the official Articles of Impeachment which were signed by the Chief Clerk of the House, the Official Copy which is before the Senate and that is what the Senate is concerned — should be concerned about and only that if not certified in the Journal.

MR. BROWN: I have a certified copy of that, counsel, certified by the Journal Clerk of the House of Representatives.

SENATOR GRANTHAM: Mr. President.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: In connection with furnishing the Journal, wouldn't it be possible only to furnish that part which deals with the question of the voting of the Articles of Impeachment rather than the whole thing and that would cut down the amount of mimeographing.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I believe the Senator was just request — the request was just for particular pages. The next question, please?

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'Please explain how it is that Article No. III was not properly adopted by the House of Representatives?' " By Martin.

MR. BROWN: I think that has been answered. There was never any motion that it be adopted after it had been amended.

REPRESENTATIVE SHOTTS: Mr. Chief Justice: May I respond to that?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Representative Shotts, you may.

REPRESENTATIVE SHOTTS: The pages are coming to you but the procedure by which that was done, the final adoption was adopted in the House Rules — the House Rules said you can't amend something on the third reading on the final passage and the rules were suspended whereby the particular amendment could be given and made to it according to the House Rules. The rules were suspended which justified doing that and the bill would still be in final passage form. That was the procedure that was used in that. It was a suspension of the House Rules and would not require further vote — and there would not be required a further vote.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: One moment, please. We have another question. The Clerk will read the question.

COURT CLERK: "Mr. Chief Justice: I ask that Mr. Brown be asked the following question: 'One, does the accused request that we consider evidence in its Motion to Dismiss when there is no evidence before us? Number Two, what say the accused as to the sufficiency of the form of the Articles?' " By Porter.

MR. BROWN: I ask you to consider the lack of evidence that was presented. You don't charge a man with a violation with no evidence at all and you cannot condone either the lack or insufficiency of the evidence. These are the rules of criminal procedure that this body has adopted. Those are the rules. And I would like to clarify

one question, if I may, Mr. Chief Justice. The first question I was asked. Everything in the first Article — if everything in the first Article had been proved, if we took the position that he had to prove all of it and if that constituted incompetency, I answered only one part of that question. I stated that yes, you have to prove all of that, but I answered the other part in the negative. No, all of it taken together does not constitute incompetency nor does any part of it constitute incompetency.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: We have another question.

COURT CLERK: "Mr. Chief Justice: I ask that the Board of Managers read the provisions of the Federal Corrupt Practices Act which was violated by the Secretary of State." By Senator Funston.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Did the Managers catch the question?

REPRESENTATIVE SHOTTS: No, we did not.

REPRESENTATIVE FLOYD: I am sorry, Mr. Chief Justice. I misunderstood you. The Federal Corrupt Practices Act — I have a copy here and it is a very lengthy thing to read, but I can — I can read it if that is the question. I would be happy to pass it out, or turn this copy over to the Journal Clerk and let copies be made.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would it be possible for the counsel to pick up three or four lines of the gist of what you consider is involved?

REPRESENTATIVE FLOYD: Well, there are various provisions in this particular act and I can simply run through it, the particular provisions that we were interested in is Section 242, Duties as to His Contributions of Accounts and Receipts. It is the duty of the Treasurer or any political committee to keep an accurate account thereof and then provisions are made as to the name and address of any person making such contributions and all expenditures made or made on behalf of such committee and the name and address of every person whom such expenditure is made and the date thereon, and it goes on and on and on.

MR. BROWN: Is it alleged that we are the treasurer of our own —

REPRESENTATIVE FLOYD: The allegation is in the evidence that we plan to put on will be intended to prove that there was a violation of this act.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: If there are no further questions the arguments will be completed.

SENATOR YOUNG: Mr. President.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Young.

SENATOR YOUNG: I have one more.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: One moment, please sir. There is one last question to the Board of Managers. The Clerk will read it.

COURT CLERK: "Mr. Chief Justice: I ask the Board of Managers the following question: 'Concerning whether or not the House voted on Article III, would you comment on the Constitutional requirement that the House adopted the Articles of Impeachment?' " By Young.

REPRESENTATIVE FLOYD: The Constitutional requirement is simply that the House of Representatives adopt — adopt Articles and present them to the Senate in the — and in accordance with the Rules of the House and the Rules of the House in ef-

fect at the time that that was taken were to the effect that you can, by a suspension of the rules, amend an amendment or make a change in the amendment. That has already been done and that is precisely — that is what happened. There is a request on the suspension of the rules and it carried by the necessary two-thirds and then there was a vote on the amendment to the Article already adopted and so that is the provision (sic) that was followed and the Articles then were declared adopted by the Speaker and no question was arrived as to the — as to the procedure, whether it was defective or not. I don't think there is any defect in it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Again, if there are no further questions, the arguments will be concluded. Senator Howard is recognized. We have a motion on the desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move the doors of the Court be closed to discuss the Motion to Dismiss." By Howard.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Gentlemen of the Court: Under Section 30 of the Rule you have adopted, the Chair has the authority to order the doors closed and the gallery will be excused. The Court will now go into closed session.

(The Court went into closed session at 4:55 p.m. and resumed at 6:25 p.m., wherein proceedings had are as follows:)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court is in session. The Clerk will call the roll, please.

(Whereupon the roll was called.)

Present: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Hamilton, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—39.

Absent: Field, Garrett, Helm, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair observes that Senator Helm is here. Are there other Senators here whose names were called as being absent? The Clerk has on his desk a motion.

COURT CLERK: "Mr. Chief Justice: I move to vote separately on each of the six separate counts contained in Article I and to next vote on Article II, and then vote on Article III." By Funston.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Discussion. The vote will occur on the motion. The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Baldwin, Boatner, Butler, Capps, Cate, Dahl, Funston, Grantham, Hamilton, Helm, Holden, Howard, Keller, Lamb, Luton, McCune, Murphy, Pierce, Schuelein, Shatwell, Stipe, Terrill, Tinsley, Wadley, Watson, Wolfe, York, Young.—28.

Nay: Berrong, Birdsong, Crow, Dawson, Graves, Ham, Inhofe, Lane, Martin, Porter, Randle, Watkins.—12.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the vote.

COURT CLERK: 28 ayes; 12 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried.

Ladies and Gentlemen of the Court: Under your vote, the vote will now occur on unnumbered Division 1 of Article I — Subdivision 1 of Article I and the Clerk will take the vote.

SENATOR STIPE: Mr. President, what are we voting on? Mr. President, could you give me time to get a motion in writing on what we do with Paragraph 1 in Article I?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is granted time to prepare his motion. Gentlemen, we have an In Lieu Motion — well, we have a motion by Senator Stipe the Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move this Court sustain the Motion to Dismiss Paragraph 1, Article I." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Is this an In Lieu Motion, Senator Stipe?

SENATOR STIPE: No, I think the only motion we have, Mr. Chief Justice, that is the only motion up there. It is just an original motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Senate has voted Senator Funston's motion to take the first Article up, one sub-division at a time. The Stipe motion is that all of Article I —

SENATOR STIPE: No sir, my motion is just to paragraph one.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I might reiterate. I beg your pardon. Senator Stipe's motion is — read it again, will you, Mr. Clerk?

COURT CLERK: "Mr. Chief Justice: I move the Court sustain the Motion to Dismiss Paragraph 1, Article I."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Well, the Chair's mind is clear. If all minds are clear we will now vote on the motion which is to sustain the Motion to Dismiss as to Paragraph 1 of Article I. The vote will occur.

(Whereupon a vote was taken.)

Aye: Baldwin, Berrong, Boatner, Cate, Grantham, Hamilton, Helm, Howard, McCune, Martin, Randle, Stipe, Wadley, Young.—14.

Nay: Birdsong, Butler, Capps, Crow, Dahl, Dawson, Funston, Graves, Ham, Holden, Inhofe, Keller, Lamb, Lane, Luton, Murphy, Pierce, Porter, Schuelein, Shatwell, Terrill, Tinsley, Watkins, Watson, Wolfe, York.—26.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the vote.

COURT CLERK: 14 ayes; 26 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion has lost.

There is a motion on the Clerk's desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Paragraph 2 of Article I." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion. The Clerk will take the roll.

(Whereupon a vote was taken.)

Aye: Baldwin, Grantham, Hamilton, Howard, Martin, Randle, Stipe, Terrill, York, Young.—10.

Nay: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Graves, Ham, Helm, Holden,

Inhofe, Keller, Lamb, Lane, Luton, McCune, Murphy, Pierce, Porter, Schuelein, Shatwell, Tinsley, Wadley, Watkins, Watson, Wolfe.—30.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 10 ayes; 30 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails. The Clerk has a motion on the desk. He will please read.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Paragraph 3 of Article I." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Baldwin, Boatner, Hamilton, Holden, Martin, Stipe, Young.—7.

Nay: Berrong, Birdsong, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Helm, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York.—33.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 7 ayes; 33 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails. The Clerk has a motion on his desk. He will please read.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Paragraph 4 of Article I." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Baldwin, Boatner, Butler, Cate, Funston, Hamilton, Helm, Holden, Martin, Porter, Randle, Schuelein, Stipe, Terrill, Wadley, Young.—16.

Nay: Berrong, Birdsong, Capps, Crow, Dahl, Dawson, Grantham, Graves, Ham, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Murphy, Pierce, Shatwell, Tinsley, Watkins, Watson, Wolfe, York.—24.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 16 ayes; 24 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails.

The Clerk has a motion on his desk. The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Paragraph 5 of Article I." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Birdsong, Boatner, Butler, Capps, Cate, Funston, Grantham, Graves, Ham, Hamilton, Helm, Howard, Keller, Lamb, Lane, Luton, Martin, Murphy, Porter, Randle, Schuelein, Stipe, Terrill, Wadley, Watson, York, Young.—27.

Nay: Baldwin, Berrong, Crow, Dahl, Dawson, Holden, Inhofe, McCune, Pierce, Shatwell, Tinsley, Watkins, Wolfe.—13.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 27 ayes; 13 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: That motion is carried. Sub-division 5 of Article I is dismissed.

There is a motion on the Clerk's desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Paragraph 6 of Article I." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Dahl, Funston, Grantham, Graves, Ham, Hamilton, Howard, Lamb, Lane, Luton, McCune, Martin, Porter, Randle, Schuelein, Shatwell, Stipe, Terrill, Wadley, Watson, York, Young.—28.

Nay: Baldwin, Crow, Dawson, Helm, Holden, Inhofe, Keller, Murphy, Pierce, Tinsley, Watkins, Wolfe.—12.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 28 ayes; 12 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried. Article — or Sub-division 6 of Article I is dismissed.

Gentlemen of the Senate: It would be in order to complete the record that a motion be made — the Clerk has a motion on the desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move to overrule the Motion to Dismiss Article II." By Funston.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: That is an In Lieu Motion — there is an In Lieu Motion the Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Article II." By Hamilton.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the In Lieu Motion which is to sustain the Motion to Dismiss Article II. The vote will occur.

(Whereupon a vote was taken.)

Aye: Hamilton, Stipe, Terrill.—3.

Nay: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—37.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 3 ayes; 37 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion to sustain the Motion to Dismiss has failed.

The Chair rules that the in lieu motion having failed, that the Funston motion to overrule the Motion to Dismiss is now in order. The vote will occur on the Funston motion to overrule the Motion to Dismiss.

(Whereupon a vote was taken.)

Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—37.

Nay: Hamilton, Stipe, Terrill.—3.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 37 ayes; 3 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried and the Motion to Dismiss Article II is overruled and denied.

The Clerk has a motion. The Clerk will please read the motion.

COURT CLERK: "Mr. Chief Justice: I move to sustain the Motion to Dismiss Article III." By Funston.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on Senator Funston's Motion to Dismiss Article III — I am sorry, the Funston motion is to sustain the Motion to Dismiss Article III.

(Whereupon a vote was taken.)

Aye: Baldwin, Cate, Funston, Hamilton, Holden, Lamb, Lane, Martin, Stipe, Terrill, Young.—11.

Nay: Berrong, Birdsong, Boatner, Butler, Capps, Crow, Dahl, Dawson, Grantham, Graves, Ham, Helm, Howard, Inhofe, Keller, Luton, McCune, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Tinsley, Wadley, Watkins, Watson, Wolfe, York.—29.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 11 ayes; 29 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: That motion fails. There is a motion on the Clerk's desk. The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move to affirmatively overrule the Motion to Dismiss Article I, Paragraphs 1, 2, 3 and 4." By Lamb.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have heard the motion. The vote will occur on the motion.

SENATOR WATKINS: Point of order. Repeat that motion, please.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Watkins asked to have it repeated. Please repeat it.

COURT CLERK: "Mr. Chief Justice: I move to affirmatively overrule the Motion to Dismiss Article I, Paragraphs 1, 2, 3 and 4."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur.

(Whereupon a vote was taken.)

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York.—35.

Nay: Baldwin, Hamilton, Martin, Stipe, Young.—5.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 35 ayes; 5 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion carried — the Motion to Dismiss Paragraphs 1, 2, 3 and 4 of Article I is overruled and denied.

The Clerk has a motion on his desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move to overrule the Motion to Dismiss as to the remaining language in Article I, after deleting Paragraphs 5 and 6." By Grantham.

SENATOR GRANTHAM: Mr. President, I don't want to speak. I just want to explain that there is other language in these Paragraphs 1, 2, 3, 4, 5 and 6, so we want to offer it all — as to all of the language except 5 and 6 on which it was sustained.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have heard the Grantham motion to overrule the Motion to Dismiss as to all of the language in Article I, except Paragraphs 5 and 6. The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York.—37.

Nay: Hamilton, Stipe, Young.—3.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 37 ayes; 3 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried, and all of Article I — the Motion to Dismiss as to all of Article I is overruled, except Paragraphs 5 and 6.

The Clerk has a motion that the Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move to affirmatively overrule the Motion to Dismiss Article III." By Lamb.

SENATOR LAMB: Mr. Chief Justice: May I inquire, it is my understanding that the Chief Justice — from the Chief Justice that we have already affirmatively overruled the Motion to Dismiss Article II; is that correct, Mr. Clerk?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Lamb, the Court has overruled the Funston motion as to Article II and the Court has affirmatively overruled the Motion to Dismiss as to Sections 1, 2, 3 and 4 of Article I and then under the Grantham motion, it has overruled a Motion to Dismiss as to all of the language of Article I, Sections 5 and 6. — The Chair stands corrected. Senator Funston's motion was to overrule the Motion to Dismiss as to Article II — very well, Senator Lamb has the answer to his question. The motion now pending is by Senator Lamb that the Court affirmatively overrule the Motion to Dismiss Article III. The vote will now occur on that motion.

(Whereupon a vote was taken.)

Aye: Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Grantham, Graves, Ham, Helm, Howard, Inhofe, Keller, Lamb, Luton, McCune, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Tinsley, Watkins, Watson, Wolfe, York.—30.

Nay: Baldwin, Funston, Hamilton, Holden, Lane, Martin, Stipe, Terrill, Wadley, Young.—10.

Absent: Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—8.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the vote.

COURT CLERK: 30 ayes; 10 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion is carried. The Motion to Dismiss Article III is overruled and denied.

The Clerk has a motion on his desk. The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move to reconsider the vote on Article III." By Terrill.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator, there was a Funston motion to overrule the Motion to Dismiss as to Article II and then there was a Hamilton in lieu motion. Would the Senator care to state what it is he would like to have voted on again?

SENATOR TERRILL: Very simply, Mr. Chief Justice, I was conferring and made a mistake in my vote and the only way I can read into the record is to vote on a reconsideration vote and the Senate is welcome to vote that reconsideration down. That is the point, simply, sir.

SENATOR STIPE: As a point of information, Mr. Chief Justice, do our rules provide for any reconsideration?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Neither the Chair nor his counsel recall there being such a — such a rule. However, the Chair would like to ask unanimous consent for Senator Terrill's — for Senator Terrill to have his vote shown as he would like to show it in the record of the Clerk on both aspects of the vote concerning the Motion to Dismiss. If there is no objection, let the Senate — Senator Hamilton is recognized.

SENATOR HAMILTON: I am going to object to the unanimous consent request. There is no precedent to our Rules. I am sympathetic to Senator Terrill, but if we do it now, there may be a one vote issue come up later, one that we would never get the proceedings over with. I am going to object to the unanimous consent request.

SENATOR TERRILL: Mr. Chief Justice, I will withdraw that request or motion. It is in the record now, sir. I would appreciate that.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, withdrawn.

Gentlemen of the Court and Members of the Board of Managers and Mr. Rogers: You have heard the vote and you understand the pleadings now pending before this Court. At this time it is the privilege of the Court to afford the accused, Mr. Rogers, an opportunity to state his plea.

MR. BROWN: If the Court please, we — Mr. Rogers will deny the accusations and enter a plea of not guilty and we will ask for an immediate trial.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Brown is recognized. Mr. Brown, may the Chair inquire — to use technical language — the accused pleads not guilty to both the subdivisions of Article I, all of Article II and all of Article III; is that right?

MR. BROWN: That is correct, Your Honor, for the record.

SENATOR STIPE: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is recognized.

SENATOR STIPE: I think there ought to be a separate plea to each Article.

MR. BROWN: For the record, if the Court please, Mr. Rogers denies the accusation that is remaining in Article I and enters a plea of not guilty.

He denies the accusation in Article II, and enters a plea of not guilty and he denies the accusation in Count 3, and enters a plea of not guilty.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Brown, in order to obviate any question about it, the suggestion has been made by the Chair that Mr. Rogers be afforded an opportunity to personally verify what you have said. Mr. Rogers, would you please tell us, sir, what your plea to the four remaining paragraphs of Article I are?

SECRETARY OF STATE ROGERS: Not guilty.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: And sir, what is your plea to Article II of the charge?

SECRETARY OF STATE ROGERS: Absolutely not guilty.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: And Article III?

SECRETARY OF STATE ROGERS: Not guilty.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you.

The Clerk has a motion on his desk. And by the way, just a minute, Mr. Clerk.

MR. BROWN: If the Court please, we have a motion for a request for a speedy trial we would like to file at this time. It has been filed. Mr. Slater advises me that it has been filed. Your Honor, I would request that copies of that Motion be afforded Members of the Court.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Your motion for a speedy trail?

MR. BROWN: Yes, sir. In it, we requested that we be afforded a trial not later than June 30th.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: June 30th?

MR. BROWN: Yes, not later than June 30th.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Does the Clerk have copies available for the Members of the Court?

Will the Clerk and the Marshal please distribute those to the Members of the Court?

REPRESENTATIVE FLOYD: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Representative Floyd is recognized.

REPRESENTATIVE FLOYD: Am I correct in assuming that we can be heard on this motion, that each side will be given five minutes to argue the motion?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes, I suggest that we wait until it has been distributed, sir. And while distribution is being made, the Chair — Mr. Brown and Mr. Drummond and members of the Board of Managers, Mr. Floyd.

REPRESENTATIVE FLOYD: Yes, sir?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: This thing is a little

more awkward than it would be if you gentlemen were appearing before an individual judge or before a Court composed of a smaller number where we could get together and talk about it. Yesterday when the Presiding Officer was discussing the case with counsel and the Senate Committee, some suggestion was made that possibly the accused would like to file a Motion for Production of Record. Are you in a position to urge something of that character at this time?

REPRESENTATIVE FLOYD: I thought, if Your Honor please, that that might enter into the minds of the Court in determining the date when the case should be set for trial.

MR. BROWN: If the Court please, we are primarily interested at this point in a speedy trial.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, sir. Mr. Marshal and Mr. Clerk, could the Chair have a copy of that motion?

Ladies and Gentlemen of the Court: The Clerk has a Motion for a Speedy Trial on behalf of the accused and you have been furnished copies. Would the Clerk read the motion?

COURT CLERK: "Before the Senate of the State of Oklahoma, sitting as a Court of Impeachment. In the Matter of the Impeachment of John Rogers. Motion for a Speedy Trial. Comes now John Rogers and moves the Court of Impeachment to grant him a speedy trial in keeping with the provisions relating to the rights of an accused under the Constitutions of the State of Oklahoma and the United States of America.

The accused respectfully requests the Court to set a trial date at the earliest practical time and no later than June 30, 1975.

Dated this 20th day of June, 1975. John Rogers."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Gentlemen for the accused, I take it you have the right to open and close and under the Rules you have five minutes. Mr. Floyd has notified the Managers would like five minutes. When you are ready, we will hear you on your motion. Do you wish to reserve a minute for — let's have some order, gentlemen — do you want to reserve a minute for answer or do you want to use your five minutes?

MR BROWN: I will reserve one minute, if I may.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, sir, you may proceed.

MR. BROWN: If the Court please, Members of the Senate: The House of Representatives, the Members of the Board who are prosecuting this action have advised you that you should hear testimony with respect to these allegations that are set forth in the Articles of Impeachment.

This matter has been pending since March of this year. They've had ample opportunity within which to prepare. The people of this State are entitled to know and immediately know what your decision is with respect to this matter and we take the position that there being ample time for them to prepare their evidence and we have had a limited period of time in which to prepare and we are ready to go to trial and answer the charges.

We are requesting that you afford us that right of a speedy trial which is our God given right under the laws of this State and under the Constitution of the United States and the Constitution of the State of Oklahoma. To deny us the right of immediate trial would prejudice the rights of the accused in this case. Thank you.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Managers are recognized.

REPRESENTATIVE FLOYD: Thank you, Mr. Chief Justice. In State versus Graham, a 1974 case decided in the Oklahoma Court of Criminal Appeals, they set out that you take into account in determining whether or not a speedy trial has been granted. The Court said, and I am not saying that you are bound by that Court, but it is an honorable Court and it is a functionary arm of the State of Oklahoma, and certainly serves as a fine example. The Court said that the thing you want to take into account — the things you want to take into account are the lengths of the delay, the reason for the delay, the lack of the preservation of the right and whether or not the accused defendant asserted his right.

In this instance, we certainly have the defendant asserting his right to have the right of a speedy trial. He has asserted his right to the extent of asking that he be brought to trial ten days from today. And whether you call this an arraignment or a preliminary hearing or whatever, ten days is not very much time to get out subpoenas for witnesses and I am sure that he would have witnesses and we would have witnesses. Now it is true that the House of Representatives has been looking at this matter since March. It is also true that I have been on this case about ten days as well as all other members of the Board except for one. If you want a speedy trial, the way to get a speedy trial is to give us time to adequately prepare this so that we can competently present it to you. That is the way he can get a speedy trial.

A speedy trial doesn't necessarily just go to the date that you set the trial to commence. The trial can be speeded up by competent preparation and competent presentation on both sides. So we simply ask and we will present a motion; if this motion is overruled we simply ask that you wait until June — July 21 to go to trial. Give us thirty days.

The United States Supreme Court in 1972 in Barker versus Wingo said that a delay of four years was not excessive. A delay of four years not excessive. I say that to request a trial to begin ten days from today is unreasonable — is an unreasonable request. If you want justice to prevail, give us thirty days from today and we can start the trial on July 21. Thank you.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Mr. Brown will have an opportunity to close — The Court will be in order. Gentlemen — Ladies and Gentlemen: Mr. Brown is recognized.

MR. BROWN: Thank you, Your Honor. I have been involved in this lawsuit less than eight days and they have four lawyers sitting over there representing them and two lay persons.

They've had a chance to hear this evidence presumably in the House. They are familiar with it. They had an opportunity to consider the evidence. They know who their witnesses are. These cases that counsel cited are cases that hold that the accused has the right to a speedy trial and I think every member of this body would be derelict in his duty if he didn't afford us the right of an immediate trial and to assume that you can consider passing any trial for a period of four years is ludicrous.

Thirty days. They have had ample time, but we would concede the possibly ten days might not be enough time. We have to subpoena witnesses, too. We have to prepare. We would ask that the Court consider a date not later than July 7th, in any event, which would give them ample time within which to prepare.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you, Mr. Brown,

Gentlemen, we have — we have a motion that the doors be closed, but the Chair is aware of something that was barely mentioned and that is about a Motion for Production. I am sure that the Managers and the accused and your team of lawyers don't want to be here until midnight and I think I know some other people that may not want to, and I am wondering, even though you are not ready to say about your Motion for Production, if you would care to present it at this time so that if we close the doors we can talk about that as well when — as when we are going to have a trial, if we do. Do you care to speak to the Chair?

MR. BROWN: If the Court please, we are desirous of having a trial date established so that the House Committee cannot come in and request a delay by reason of the fact that there are certain motions that are pending.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The accused's rights are your responsibility, sir. Your point is recognized. A motion is — a motion to close the doors is on the desk of the Clerk. Mr. Clerk would you read the motion, please?

REPRESENTATIVE SHOTTS: Mr. Chief Justice: Is a motion before the Court at this time, is it just the motion before — just the motion before the Court at this time is that the trial be set no later than June 30th, not July 7th?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk has a motion to close the doors to consider if and when we will have a trial. The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move the doors be closed to discuss the accused's Motion for a Speedy Trial." By Howard.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Under Rule 30, the Chair will declare the doors closed. Just a minute, please. Senator Dawson is recognized. And Senator Dawson has presented a motion. Would the Clerk read the motion, please?

COURT CLERK: "Mr. Chief Justice: I take exception to the Presiding Officer's Order to Close the Doors and make a request for a ruling by the entire membership of the Court." By Dawson.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Are there ten seconds? The Clerk will count.

COURT CLERK: One, two, three, four, five, — five.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails. The door will be closed. The folks in the gallery are invited to wait outside for a little while and you will be notified when to return.

(Whereupon the doors of the Senate were closed at 7:15 p.m. and the following proceedings were had at 7:35 p.m.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court will be in session. The Clerk will call the roll, please.

Present: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Dawson, Funston, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Porter, Randle, Schuelein, Shatwell, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young. —39.

Absent: Field, Garrett, Grantham, Howell, Keating, Lambert, Medearis, Smith, Taliaferro. —9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The quorum is present.

The Clerk has a motion on his desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move that the trial on the merits of the Articles of Impeachment begin July 8, 1975 at 9:00 a.m." By Howard.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have heard the motion and the motion (sic) will occur upon the motion.

(Whereupon a vote was taken.)

Aye: Baldwin, Berrong, Birdsong, Boatner, Butler, Capps, Cate, Crow, Dahl, Funston, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Schuelein, Shatwell, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, Young.—34.

Nay: Dawson, Porter, Randle, Stipe, York.—5.

Absent: Field, Garrett, Grantham, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the results of the calling of the roll — of the vote on the motion.

COURT CLERK: 34 ayes; 5 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: By your vote, you have set the trial for July 8th on a Tuesday at 9:00 a.m.

REPRESENTATIVE FLOYD: Chief Justice, we have a motion we would like to withdraw. I believe it has been filed asking the Court to set a trial date for July 20th and we would like to withdraw that motion, if the Court please.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Permission is granted to withdraw the motion to set the trial date on July 20th. Is there further business to come before the Court?

MR. BROWN: If the Court please, Mr. Rogers at this time would urge that this Court consider as filed his motion — his discovery motion — his Motion for the Production of Evidence.

REPRESENTATIVE FLOYD: If the Court please.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator or Representative Floyd.

REPRESENTATIVE FLOYD: We have a copy of that Motion and we are prepared to argue it at this time.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Do you have copies of that Motion for Members of the Court?

MR. BROWN: Yes, we have copies.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will please distribute the Motion.

MR. BROWN: We have no objections to having it read if it will expedite matters.

REPRESENTATIVE FLOYD: Mr. Chief Justice: We have written Response that we have delivered to the Clerk. And we would also ask that it be distributed at this time, please sir.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk and Marshal will please distribute the Response to the Motion.

I hope the Members of the Court will not be impatient. I have seen Courts in time past save a lot of time by giving the lawyers time to talk to one another.

The record may show that Senator Grantham is present.

Gentlemen of the Court: The Clerk has

requested that you be asked whether you have a copy of the Motion to Produce and a Response to the Motion to Produce.

The Clerk is fearful there may be some Members of the Court who do not have copies of those instruments. If you do, please indicate and we will get them to you and if you don't, please indicate.

MR. BROWN: If the Court please, we may have resolved this issue by agreement between the parties subject to approval of the Members of the Court. I think we can agree that they will furnish that information that we have requested in seven days prior to the trial and have advised us that they will certify the witnesses seven days prior to the trial. Is that correct?

REPRESENTATIVE FLOYD: That's right.

MR. BROWN: And that they will in addition to that furnish us any other information that they may run across that might be favorable to the accused.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: What would be wrong, gentlemen, with the Chair sustaining the Motion to Produce on stipulation by the parties?

REPRESENTATIVE SHOTTS: We will prepare the Order for the Honorable Judge to sign then as to what we have agreed to because the Order is set out in their motion for everything that the Sub-Committee took up and we have agreed that that is not — non related to the charges, so pursuant to the stipulation of the parties, with your approval, I think that is satisfactory, if it is with the Court.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Is that satisfactory to you, Mr. Brown?

MR. BROWN: Yes, it is, sir.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, that disposes of that matter, I believe.

SENATOR HAMILTON: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Hamilton is recognized.

SENATOR HAMILTON: Mr. Chief Justice: So there will be no misunderstanding and that there will be no reason to call us back, I would like for the stipulations to be stated and dictated to the Court at this time so there will be no misunderstanding or otherwise, Your Honor, as to what was going to be produced during what period of time or otherwise and then I am going to move, at the end of that, that any matters not set forth in this stipulation not be considered.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You gentlemen have heard the Hamilton suggestion without a vote by the Court. Are you in a position to stipulate? Senator (sic) Shotts?

REPRESENTATIVE SHOTTS: I believe we are, Your Honor.

MR. BROWN: Yes, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court would like to hear your stipulation, if you can tell us.

REPRENSENTATIVE SHOTTS: Your Honor, the Board of Managers is agreeable that seven days prior to the trial, which will be July the 1st, that we will, at that time, certify all witnesses that will be called in the trial and we will present to Mr. John Rogers and his counsel at that time all of the evidence that the — that this Committee and that the Special Investiga-

tive or Investigation Committee of the House of Representatives has regarding each of those particular witnesses and we will further grant and provide to them all of the evidence we have favorable to Mr. John Rogers, regarding the items in Articles of Impeachment — of Impeachment that the Court has adopted today.

PRESIDING OFFICER CHIEF JUSTICE. WILLIAMS: Very well. Are you satisfied with the statement, Mr. Brown?

MR. BROWN: Yes, but for the benefit of the Court, I take it that what we are saying in essence is that we are agreeing that the motions and in all respects is valid and that you will comply insofar as it relates to those witnesses who are certified?

REPRESENTATIVE SHOTTS: To those witnesses that are certified and to the Articles of Ipeachment that were adopted.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well. I take it you both caught the part of the essence of Senator Hamilton's suggestion was that any matters not covered in your stipulation you would have no right to insist on production of later. Are all minds clear as to that point? Is there any further business to come before the Court at this time?

REPRESENTATIVE FLOYD: Chief Justice, we have a Motion on the desk with regard to production of certain documents and Mr. Riggs will present that and is prepared to present it, if the Court please.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Do you have copies of that for the Court?

REPRESENTATIVE FLOYD: Yes.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well. The Clerk will distribute the Motion. And the Chair suggests that possibly counsel for the two sides of this lawsuit would like to confer as to what agreement could be made, if any, with reference to the production of documents expressed in this Motion.

REPRESENTATIVE SHOTTS: We have done that, Your Honor, but no agreement has been reached and I think the defendant wants to resist the Motion.

MR. BROWN: Yes, Your Honor, we will agree that they can have access to all public records.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Under the Hamilton suggestion, the Chair would inquire of counsel if counsel would care to answer a stipulation into the record?

REPRESENTATIVE SHOTTS: They didn't agree.

MR. BROWN: No, Your Honor, we are not prepared to stipulate on that issue.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would you restate the statement you made a moment ago? The Chair misunderstood.

MR. BROWN: I said we will permit them or we would agree to permit them access to all public records, Your Honor.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair stands corrected.

I take it you gentlemen would like to be heard for five minutes on your Motion; I take it you gentlemen would like to resist for five minutes? The Board of Managers is recognized for five minutes.

REPRESENTATIVE FLOYD: Mr. Chief Justice: Let me ask a question if I may. We have a Motion prepared and we also have a written brief prepared for distribution. Has the written brief been distri-

buted and if not, we'd ask the Court to distribute that, please.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will distribute the brief, please. Did the Board of Managers desire to reserve one minute of your five minutes for your answer to their argument?

REPRESENTATIVE RIGGS: Yes, Your Honor, we do.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: When you are ready, the Court will hear you, gentlemen.

REPRESENTATIVE RIGGS: Mr. Chief Justice, Members of the Court of Impeachment: First of all, I will direct your attention to our Motion to require the production of these specified documents. By pointing out just precisely what documents we are asking for, we feel that in order to perfect and prosecute this case and get all of the evidence that is relevant before the Court, you will find in the very first paragraph of our Motion to Produce the Records and Documents, we specify the Income Tax Returns, both Federal and State, and all of the bank statements and records maintained or filed in the name of John Rogers; Mrs. John Rogers, the wife of John Rogers and the "Friends of John Rogers" or any other campaign accounts maintained by John Rogers or his agents during the period commencing January 1, 1966 and continuing to the present date.

Obviously that information relates primarily, if not exclusively to Article III of these Articles of Impeachment.

We feel they are necessary in order to get evidence before the Court on that point to enable the Court to make a just determination as to the validity of that Article.

In that regard, I would direct to your attention or would direct your attention to the specific statutes of this State. This is not an argument based on precedent or upon prior decisions of the Court of Impeachment but upon existing current effective statutes regarding impeachment procedure, specifically Title 51, Section 61 and Title 51 and Section 62, which deals with the productions specifically of books and papers of the accused.

We take the position that wide ranging discovery powers are clearly in the public interest in impeachment cases since much of the evidence in impeachment cases obviously will be found in the books and records of the accused.

But that is not always the case. In other kinds of trials necessarily, either civil or criminal. Certainly we have taken the position prior to this present time in earlier arguments today and will continue to maintain the position that this proceeding — this impeachment proceeding — is more in the nature of a civil proceeding rather than a criminal proceeding. Not all of the rights of the accused that you find in criminal cases can possibly apply and the principal reason is that the sanctions that the Court can render really do not relate in any way to the kind of sanctions that are rendered in criminal cases.

This party does not stand in the position of losing his liberty and that is the guideline ordinarily given to determine whether or not the proceeding is criminal or civil. Only ouster is available to this Court. For that reason, it is almost entirely or wholly civil.

I think you all understand that discovery rules and guidelines in civil matters are much, much broader than in criminal matters. Therefore, we will argue that the General Rules of Civil Procedure relating to evidence and judgment and so on govern this body unless the impeachment statutes you have been furnished in a body of law provide otherwise, and by a brief review of

those impeachment statutes you will find that they do not provide otherwise.

Most of the authorities in legal encyclopedias and the treatises research of law of impeachment proceedings across this country support this position.

I will specifically in that regard refer you to Corpus Juris Secundum No. 78, Section 81. In general, the Rules of Civil Procedure regarding discovery in Oklahoma clearly favor liberal and full disclosure. The only requirement seems to be relevancy. In fact, in a leading case on discovery in Oklahoma, which is the Carman versus Fischel case, 418 Pacific 2d 963, relevancy is further explained to mean not just that material which would be admissible into evidence in and of itself but which might lead to other information which would be admissible. So in other words, you could require discovery of information or records which might even be — which might not even be admissible into evidence if it could lead to other information which might be relevant and thus be admissible into evidence.

Even if you were to take the position that this should be more in the nature of a criminal proceeding, even though it doesn't have the same kind of punitive — of punishment that can be rendered, still there is generally speaking a broadening of the discovery procedure of the rule, even in criminal matters.

It is obvious in this case that the accused has exclusive access to the records that are needed which relate specifically to the third Article.

Since you have elected today to allow the Board of Managers to proceed with its prosecution of the third Article, the only way we can reasonably be expected to prosecute that Article would be by you giving us access to the material that will prove that Article, unequivocally and without those records, we will simply be unable to thoroughly and effectively prosecute that Article or for you to make an intelligent decision on it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Thank you, Senator (sic). The Court will hear from Mr. Brown.

MR. BROWN: Yes, sir. If the Court please, I would request that this Court be permitted to reconsider Article III.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Pardon me, Senator — there is a question by Senator Funston.

MR. BROWN: I am sorry.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: On the desk of the Clerk directed to Managers. Mr. Riggs, this question will be directed to the Managers by Senator Funston.

COURT CLERK: "I request that Representative Riggs repeat his reference to 'books and records of the accused' and give the citation." By Funston.

REPRESENTATIVE RIGGS: One of the citations I made in that regard was Title 51, Section 61, under the Oklahoma Impeachment Statutes, which says the Clerk of the Court at the request of the Chairman of the Board of Managers or of the accused shall issue subpoenas for witnesses or of the production of books or papers and then, of course, I did make a reference to that in my other argument regarding the general rules of discovery.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk has a question on his desk. The Clerk will read the question.

COURT CLERK: "Mr. Chief Justice: I request the Board of Managers be asked the following question: 'Would you not

think that when we adopted the Rules, specifically Rule 25 of the Criminal Procedure in our Rules, that we ruled against your motion?' " By Stipe.

REPRESENTATIVE RIGGS: That was not my understanding of Rule 25. I would like to look at it again hurriedly but I did not think that went to the question before the Court in this Motion. It had to do with the order of business of the Court and the procedure that was to be followed in trial.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There is a request — a question on the Clerk's desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: Please inquire of the Board of Managers: 'Since the accused could be subsequently prosecuted in a criminal action after this trial, shouldn't the accused be afforded protection against self-incrimination'." By Lamb.

REPRESENTATIVE RIGGS: I think the distinction to be made there is this. That a person cannot refuse merely in a criminal case to testify without even having any comments permitted upon that, but in any civil matter, he must, for example, take the stand and only on relevant matters where there is good reason to believe that a criminal prosecution might grow out of that can he invoke the Fifth Amendment. He cannot sit mute and he cannot refuse to invoke the Fifth Amendment and since most of the evidence indicates that this should be a civil case, then Mr. Rogers, the accused, would have to affirmatively invoke the Fifth Amendment not having that privilege that he would in a formal criminal proceedings to sit silent.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair has a question from Senator Hamilton.

COURT CLERK: "Mr. Chief Justice: Will the Presiding Officer rule as to whether or not these proceedings are civil or criminal in nature in light of Section 25 of the Court Rules." By Hamilton.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You read the rules, gentlemen, as to the admissibility of evidence in the order of the trial. This proceedings shall be conducted in the same manner as a criminal proceedings. I would say it's not really in the nature of a criminal proceedings because this Court has no authority either to put Mr. Rogers in jail or fine him. It's a case that somebody today has described as "Sui generis". It is a character all to itself.

There is a motion on the desk of the Clerk. The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move the Motion of the Board of Managers be denied without prejudice to the right of subpoena of any items from third parties." By Stipe.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is recognized.

SENATOR STIPE: Mr. Chief Justice, I know of no procedure and I have read the rules that we have adopted as to what our procedures would be and that was as in criminal cases whereby any defendant can be made to furnish anything. They have a Constitutional right to stand moot and certainly they have the Constitutional right against self-incrimination and whatever records they need, certainly they're talking about bank accounts and bank records, they can get those from the banks. And this would not prejudice their right to subpoena anything they can subpoena from third persons, but even under — well, there is just no cases and they don't cite any cases of any criminal procedure and that is what our rule says and I think we adopted the rules and I thought we knew what we were

doing when we adopted that rule and I think when we did adopt that rule that we ruled on this motion and that is why I make the motion.

REPRESENTATIVE RIGGS: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes, sir.

REPRESENTATIVE RIGGS: May I respond briefly to that?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Yes, you may, sir.

REPRESENTATIVE RIGGS: We had anticipated that the question of the nature of this proceedings would arise and especially with regard to the privilege to invoke the Fifth Amendment and we brief that question as it applies to any impeachment proceedings, and we would like the opportunity to have the Members of the Court be furnished a copy of that brief, because it is precisely in point with the issue that is now before the Court.

Furthermore, we feel again, and we will reiterate that particular — that Section 25 of the Rules that were adopted by the Court of Impeachment are not in point on this issue. They have to do with the order of trial. They state explicitly and precisely that in the trial of impeachment charges and the record on this trial commences with opening statements and so on and so on and shall be prescribed as in criminal proceedings, but it is limited to that.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Did the Chair understand, Mr. Riggs, that you have a further brief that you desire to submit to the Court?

REPRESENTATIVE RIGGS: Your Honor, this brief is not just on the question of our point, but it is the point of our Motion to Produce but goes to the issue of the right to refuse to testify or to produce information that might be incriminating with quotations around that. However, we have only one brief to the Fifth Amendment and impeachment proceedings. We can have copies made and we would like the Court to have copies. We would request that copies be made and distributed.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I would like to state in further response to Senator Hamilton's question awhile ago that Black's Law Dictionary states that "Impeachment: A criminal proceeding against a public officer before a quasi political court, instituted by a written accusation called 'Article of Impeachment' " and that falls under the definition of impeachment and that 220 Pacific 890 states, "Articles of Impeachment: The formal written allegation of the causes for an impeachment, answering the same purpose as an indictment in an ordinary criminal proceedings."

The Chair stands corrected to that point.

SENATOR STIPE: Mr. Chief Justice: I press my motion and ask that it be voted on.

REPRESENTATIVE RIGGS. Your Honor, is there a motion before the Court at this time?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There is a motion that your Motion to Produce be denied. The Clerk will call the roll — Senator Porter is recognized.

SENATOR PORTER: Mr. Chief Justice: I think that we ought to be afforded an opportunity to at least look at the law that deals specifically with the question of self-incrimination so we can intelligently vote. They indicate that they have a brief that goes to the meat of this and I would like to be furnished with their brief.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Could you gentlemen tear out the applicable pages and get it Xeroxed in fifteen minutes and pass it to the Court? I will lend you the Supreme Court Xerox machine if you need it.

MR. BROWN: Your Honor, if they can find one criminal case that holds to that theory, we will concede it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Howard is recognized.

SENATOR HOWARD: Instead of having it Xeroxed, why don't we just have it read? Catch him and have him read it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The suggestion was made — suggestion is made that you gentlemen could read this for the benefit of the Court. Are you in a position to read it to the Court?

The Court will be in order. The Clerk will read the brief.

COURT CLERK: "Before the Senate of the State of Oklahoma Sitting as a Court of Impeachment: In the Matter of: The Impeachment of John Rogers. Trial Brief Regarding Fifth Amendment Privileges in Impeachment Proceedings.

The Board of Managers considered the possibility that the question of whether the accused can avail himself of Fifth Amendment protection in this impeachment proceeding might arise. The Board has prepared this —"

SENATOR STIPE: My motion, Chief Justice — my motion or the motion that I made did not in any way relate to the Fifth Amendment privilege. My point of order, Mr. Chief Justice is this. The Motion to Produce and my motion are not related to the Fifth Amendment privilege and I think to read from the Fifth Amendment privileges, I think would be improper.

REPRESENTATIVE RIGGS: Your Honor, it simply is on the basis of any motion in which to produce evidence would be refused or denied would be that it would be incriminating under any rules of criminal procedure, although we still maintain this is essentially a civil proceedings and the Fifth Amendment is precisely an issue therein, and the effect that it has or with which it can be used in any kind of an impeachment proceedings or whether we characterize this as criminal or civil, the authorities in our brief go specifically to impeachment proceedings.

MR. BROWN: Your Honor, we request a vote on Mr. Stipe's motion, if we can.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion.

SENATOR TERRILL: Point of order.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Terrill is recognized.

SENATOR TERRILL: Mr. Chief Justice, some time has elapsed and I am wondering if the Presiding Officer may restate the motion that we are now about to vote on.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Will the Clerk please read the motion?

COURT CLERK: "Mr. Chief Justice: I move the motion of the Board of Managers be denied without prejudice to the right of subpoena of any item from third parties."

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Butler, Cate, Hamilton, Helm, Howard, Keller, Lane, Pierce, Stipe, Terrill, Young.—11.

Nay: Berrong, Birdsong, Boatner, Capps, Crow, Dahl, Dawson, Funston, Grantham, Graves, Ham, Holden, Inhofe, Lamb, Luton, McCune, Martin, Murphy, Porter, Randle, Schuelein, Shatwell, Tinsley, Wadley, Watkins, Watson, Wolfe, York.—28.

Absent: Baldwin, Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will give us the report on the motion before the Court.

COURT CLERK: 11 ayes; 28 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails. The Court will hear Mr. Brown for five minutes on the Motion to Produce.

MR. BROWN: If the Court please, Members of the Court: I have never heard of any process whereby a defendant in this type of action or any criminal action should be compelled to give evidence against himself. There is no such authority and in the remaining minute that is allotted to the Board, if they can cite any authority whereby a defendant in a criminal action, and you people have adopted the rules for the procedure in this case to the effect that you're going to follow the rules of the criminal procedure, it abhors me to believe that you would just completely violate all of the theories of due process and all of the rights of any defendant in a criminal — in any type of a criminal proceedings or any proceedings whereby a man is accused of a crime and they accuse him with bribery, corruption, forgery and you're going to compel him to give evidence against himself. If you do that, it is my suggestion that you attach to that a motion that you suspend the writ of habeas corpus while you're at it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Board of Managers is recognized for a minute.

REPRESENTATIVE RIGGS: Your Honor, we feel that the question of whether this is purely a criminal case or not goes to the heart of our motion in that we have to maintain it cannot be and this Court of Impeachment cannot hold that it is. The principal reason is that the loss of liberty is what determines or the possibility of the loss of liberty is what determines whether or not a proceeding is criminal. Certainly some kind of criminal sanction such as the — such as a fine. This office is a public trust. It does not belong to the person who holds it and any ouster from office has been held to be civil in nature, all of the case law in this State will hold that. All encyclopedias and treatises on the law will support that position. For that reason, any refusal based upon — against incrimination is not valid. Only if by taking the stand and refusing or by formally refusing to provide any evidence requested or ordered by the Court could the fundamental — could this fundamental be involved and then it would have to be shown as to how it could lead directly to a criminal prosecution. That hasn't been done here, only in a purely criminal proceeding can the accused stand behind the Fifth Amendment without even so much as taking the stand for himself or formally invoking this amendment or that right and that hasn't been done in this case.

REPRESENTATIVE FLOYD: Chief Justice: If we have a couple of seconds, I would like to add something to that.

The United States versus Sullivan in an early 19 — The United States Supreme Court in an early 1927 case said this with regard to the Fifth Amendment claim on the part of a California bootlegger who did not want to turn over his income tax returns to the Court, when charged with income — income tax law violations. The

Court said he claimed that the privilege against the self-incrimination afforded him complete defense because filing a return was intended to incriminate him by revealing the unlawful source of his income. Speaking for the Court, The United States Court, Mr. Justice Holmes rejected this claim on the grounds that it amounted to an extreme if not an extravagant application of the Fifth Amendment.

The only time the Fifth Amendment is available is when, if you did not invoke it, you would be subject to criminal liability and criminal prosecution.

Thank you.

MR. BROWN: Your Honor —

SENATOR GRANTHAM: Mr. President, Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: I would like to hear the reading of the rest of this which the Clerk started to read.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: He sent it out to be copied, Senator Grantham. There is a question on the desk of the Clerk directed to Mr. Riggs. I believe the Clerk will read the question.

COURT CLERK: "Mr. Chief Justice: I request that Mr. Riggs of the Board of Managers state which items in the Articles of Impeachment the Board contemplates substantiating in whole or in part through production of the tax returns called for in the Board's Motion." By Dawson.

REPRESENTATIVE RIGGS: Article III at this point certainly obviously would not be a relevant matter but it is conceivable that the Court itself would want to consider that evidence in line with the others of the other Articles. The Board of Managers certainly, at this point, would maintain it wouldn't turn out to be relevant but it may be that you will want to consider this in regard to those others.

We do have another copy of the brief which we would furnish the Court to be read.

SENATOR STIPE: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Stipe is recognized.

SENATOR STIPE: I will ask the Court to inquire if the other side has a brief. It seems if we have one side of the brief read and the other one not read, we are not being fair to the parties and I would object to the reading of one side's brief until both sides have prepared briefs. Otherwise it would not be fair; it would not be a valid situation.

MR. BROWN: Your Honor, we do have a brief. It is the Board of Managers' brief that we will adopt and ask that it be distributed to the Members of this Court. It's their Response to our Motion for Production wherein their brief they state that — that this is not authorized in the law and the law in no way contemplates anything in this type of discovery to an impeachment proceedings. We'll adopt their brief.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk has available only four copies of the Board of Managers' brief. Due to the lateness of the hour, the Members of the Court may waive having reproduced copies laid on your desks of the Board of Managers' brief. The Chair is not suggesting that anybody's rights be cut off. Mr. Brown has said he will adopt the brief — the portion of the brief he has read of the Board of Managers.

MR. BROWN: No, that is the Board of Managers' Response to our Motion for Production of Evidence. When we filed our Motion, they filed a Response and in that Response they set this out. We will adopt that in its entirety.

REPRESENTATIVE RIGGS: Mr. Chief Justice: That brief, of course, was prepared in order to contest that Motion to Produce. However, in the spirit of cooperation we did agree to produce that evidence regardless of whatever the authorities on the point is. We prepared both briefs and we have no objections to this and certainly if they are willing to call that their brief, it contains exactly what law is available to guide you by on both sides of that issue and we will be happy to have you consider all of the relevant authorities on it and for that reason we would certainly not object to this brief being in evidence.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: One moment, please. The Court — the Chair has another document here — has another document here — there is a question on the desk of the Clerk. The Chair will ask the Clerk to read the question directed to the Managers.

COURT CLERK: "Mr. Chief Justice: I will ask that this question be asked of the Board of Managers: Is there a case referred to in your brief from any Court in the United States in an impeachment proceeding where the defendant has been ordered to produce income tax records?" By Hamilton.

REPRESENTATIVE RIGGS: Senator Hamilton, the case that I cited was not an impeachment case. It was the United States Supreme Court's case. It was a criminal matter, so I think that the relation there I might simply reiterate for the Court, if the Court will permit me to, that in the Johnson impeachment case, the defendant in that case voluntarily delivered over the income tax returns and bank records, et cetera.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair has a question from Senator Dawson.

COURT CLERK: "Mr. Chief Justice: I request that the Presiding Officer give interpretation as pertains to the Board's Motion to Produce to the sentence in Section 25 of the adopted Rules which reads as follows: 'The Court may, by specific ruling, receive as evidence any matter considered by the Court to be germane and material to the proceedings.' " By Dawson.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Chair is of the opinion that certainly the Court by specific rulings may receive such evidence as it considers to be germane. However, the Chair is of the view that the Members of this Honorable Court would not knowingly overrun an accused's Constitutional rights as the Court might determine they exist.

REPRESENTATIVE RIGGS: Mr. Chief Justice, may we be advised as to what Constitutional rights are being referred to in an impeachment proceedings where the accused is the party standing on his Constitutional rights? Until the briefs are in on the matter and introduced, we don't feel that the Court and the Members can consider and determine what Constitutional rights are involved and certainly we feel that the Court has the right to determine whether all of the Constitutional rights are, and they are a safeguard of an accused in a criminal proceedings where it is something less than that and we submit that this is something less than that.

SENATOR LUTON: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Luton.

SENATOR LUTON: A point of information.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Luton is recognized.

SENATOR LUTON: A point of information. What order of business are we on?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court, sir, is considering the Motion of the Managers for the production by the accused of documents.

SENATOR LUTON: Further point on that order of business, what motion is pending before this Court at this time relating to that Motion?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There was a motion by Senator Stipe which failed. At that point some of the Members of the Court started sending up questions and counsel has been undertaking to answer the questions. At this time, Senator, there are two motions that have been handed to the Clerk. One of them is from Senator Porter — let me see that motion, Mr. Clerk — yes, that's the motion, "I move that we grant the request of the Board of Managers that the accused present documents as requested." Now there is also a motion that has been handed the Clerk from Senator Funston moving for adjournment until 9:30 o'clock tomorrow morning. I believe that I will ask the Clerk to read the Motion to Adjourn. I think it takes precedence. The Clerk will read the Funston Motion to Adjourn.

SENATOR HAMILTON: Mr. Chief Justice.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Hamilton is recognized.

SENATOR HAMILTON: I have a motion that has laid on the desk prior to any one of them that they close the doors and consider deliberation on this motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You are right. The Clerk will read the Hamilton motion.

COURT CLERK: "Mr. Chief Justice: I move that the doors be closed to discuss the motion." By Hamilton.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Would Senator Dawson care to make a motion that we close the doors?

SENATOR DAWSON: No, but if you make that decision, may we have an exception?

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Under Section 30, the Chair rules that the doors will be closed, exception by Senator Dawson will be read by the Clerk.

COURT CLERK: "Mr. Chief Justice: I take exception to the Presiding Officer's Order to Close the Doors and make the request for a ruling by the entire membership of the Court." By Dawson.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Dawson is entitled to see how many will join in his motion. The Clerk will count. The Dawson objection is sustained. What is the last part of that motion?

The vote will occur on whether or not the doors will be closed. The Clerk will record the vote.

(Whereupon a vote was taken.)

Aye: Birdsong, Butler, Capps, Cate, Crow, Dahl, Grantham, Ham, Hamilton, Howard, Keller, Lane, Luton, Randle, Schuelein, Stipe, Terrill, Wadley, Young.—19.

Nay: Berrong, Boatner, Dawson, Funston, Graves, Helm, Holden, Inhofe, Lamb, McCune, Martin, Murphy, Pierce,

Porter, Shatwell, Tinsley, Watkins, Watson, Wolfe, York.—20.

Absent: Baldwin, Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the result of the vote.

COURT CLERK: 19 ayes; 20 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The nays have it. The motion to close the doors is denied.

The Funston motion to adjourn until 9:30 o'clock now is in order and a vote will occur on the motion to adjourn until 9:30 o'clock tomorrow morning. Senator Pierce is recognized.

SENATOR PIERCE: I move to table the Funston motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Pierce moves to table the Funston motion to adjourn until 9:30 o'clock tomorrow morning.

SENATOR HAMILTON: Point of order. I bring a point of order that is not in writing and not proper.

SENATOR HAM: Point of order, Mr. President. Point of order.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Ham is recognized for a point of order.

SENATOR HAM: That Motion to Adjourn is not subject to being tabled.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: I notice some prominent Members of the Court who are nodding assent to Senator Hamilton or Senator Ham's suggestion. The vote will occur on the motion to adjourn.

(Whereupon a vote was taken.)

Aye: Cate, Funston, Graves, Murphy, Randle, Young.—6.

Nay: Berrong, Birdsong, Boatner, Butler, Capps, Crow, Dahl, Dawson, Grantham, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Pierce, Porter, Schuelein, Shatwell, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York.—33.

Absent: Baldwin, Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the result of the motion — the vote on the Motion to Adjourn.

COURT CLERK: 6 ayes; 33 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails. Senator Porter.

SENATOR PORTER: Now Mr. President, I press my motion.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Porter motion is that the Motion to Produce the Documents be granted. The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move that we grant the request of the Board of Managers that the accused present documents as requested." By Porter.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: You have heard the motion. The vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Birdsong, Capps, Dahl, Dawson, Funston, Ham, Holden, Inhofe, Luton, McCune, Martin, Porter, Schuelein, Tinsley, Wadley, Watkins, Watson, York.—18.

Nay: Berrong, Boatner, Butler, Cate, Crow, Grantham, Graves, Hamilton, Helm, Howard, Keller, Lamb, Lane, Murphy, Pierce, Randle, Shatwell, Stipe, Terrill, Wolfe, Young.—21.

Absent: Baldwin, Field, Garrett,

Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will announce the results of the vote on the motion.

COURT CLERK: 18 ayes; 21 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The motion fails. Senator Lamb is recognized.

SENATOR LAMB: Point of information, Chief Justice. Was the Porter motion exactly the same motion that was presented by the Managers so if we have — what you have had is a motion then is based upon the Porter motion?

REPRESENTATIVE RIGGS: Mr. Chief Justice —

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk has a motion on his desk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move that the motion of the Board of Managers be denied." By Young.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: A vote will occur on the motion.

(Whereupon a vote was taken.)

Aye: Berrong, Boatner, Butler, Cate, Crow, Graves, Hamilton, Helm, Holden, Howard, Keller, Lamb, Lane, Luton, Murphy, Pierce, Schuelein, Stipe, Terrill, Wadley, Young.—21.

Nay: Birdsong, Capps, Dahl, Dawson, Funston, Grantham, Ham, Inhofe, McCune, Martin, Porter, Randle, Shatwell, Tinsley, Watkins, Watson, Wolfe, York.—18.

Absent: Baldwin, Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Will the Clerk announce the result of the vote?

COURT CLERK: 21 ayes; 18 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Motion of the Board of Managers for Production of Documents and Instruments is denied.

REPRESENTATIVE RIGGS: Mr. Chief Justice —

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: There is a motion on the desk of the Clerk. The Clerk will read.

COURT CLERK: "Mr. Chief Justice: I move we stand adjourned until July 8, 1975 at 9:00 a.m." By Howard.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the Howard motion.

(Whereupon a vote was taken.)

Aye: Berrong, Boatner, Butler, Capps, Cate, Crow, Dahl, Funston, Grantham, Graves, Ham, Hamilton, Helm, Holden, Howard, Inhofe, Keller, Lamb, Lane, Luton, McCune, Martin, Murphy, Pierce, Randle, Schuelein, Shatwell, Stipe, Terrill, Tinsley, Wadley, Watkins, Watson, Wolfe, York, Young.—36.

Nay: Birdsong, Dawson, Porter.—3.

Absent: Baldwin, Field, Garrett, Howell, Keating, Lambert, Medearis, Smith, Taliaferro.—9.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the vote on the motion.

COURT CLERK: 36 ayes; 3 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Ladies and Gentlemen of the Court: You have just been adjourned by your own vote until July 8, at 9:00 a.m.

(Whereupon, Court was adjourned until 9:00 a.m., July 8, 1975.)

C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

I, HARVEY W. STEPHENS, a Certified Shorthand Reporter, duly certified under and by laws of the State of Oklahoma, do hereby certify that the foregoing Transcript of Proceedings of the Impeachment Trial of the Senate of the 35th Legislature, is a true and correct transcript of proceedings had on Friday, June 20, 1975.

I further certify that I am not an attorney or counsel of any of the parties or a relative or employee of any attorney, counsel or party connected with the action or otherwise interested in the action.

WITNESS MY HAND, in the City of Tulsa, County of Tulsa, and State of Oklahoma, on this, the 25th day of June, 1975.

s / Harvey W. Stephens
Certified Shorthand Reporter,
State of Oklahoma.

Tuesday, July 8, 1975

PRESIDING OFFICER CHIEF JUSTICE BEN T. WILLIAMS: Gentlemen: The Court will be in order. The Clerk will call the roll, please.

(Whereupon the roll was called.)

The following Members of the Court were present: Berrong, Birdsong, Boatner, Capps, Cate, Crow, Dahl, Field, Funston, Garrett, Grantham, Graves, Helm, Holden, Howard, Howell, Inhofe, Lambert, Lane, Luton, McCune, Medearis, Pierce, Porter, Shatwell, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, York, Young.—33.

The following Members of the Court were absent: Baldwin, Butler, Dawson, Ham, Hamilton, Keating, Keller, Lamb, Martin, Murphy, Randle, Schuelein, Smith, Stipe, Wolfe.—15.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Are there Senators present who have not indicated your presence? Are there Members of the Court who have not indicated your presence? Would the Clerk announce the roll call, please?

(Whereupon the roll call was announced that there were 33 present, 15 absent.)

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Very well, gentlemen, we have a quorum present and then, if other Members of the Court would come in, we would appreciate it if you would call our attention to it so that your presence may be noted.

The Court notes that the Board of Managers is present and the Accused is present by Counsel, Mr. Drummond.

The Court of Impeachment of the First Period of the 35th Legislature is now in session.

We'll ask that Senator Shatwell lead us in prayer.

Will the Members of the Court and those in the gallery please stand.

SENATOR SHATWELL: Our Heavenly Father, as we come before You on this occasion and as we survey the past, we are so grateful for our health, our strength, our many blessings of life that You have seen fit to bestow upon us.

Lord, we are grateful indeed for this opportunity to serve in State Government. May we ever be conscious of our sober responsibilities of this Office that we hold. We are thankful for all of these men and for this woman who have indicated their willingness to serve their communities, their state and their nation.

We pray that Your blessings will rest with this Court of Impeachment today and, Lord, even more than that we pray, O God, that Your blessings, Your annointing and Your approval will rest with each life that is represented here.

May we review, O God, all of those things that are before us in a conscientious and noble manner.

We pray, also, that as each of our members depart from this Capitol today, we realize that many of them will be taking vacations, Lord, our prayer is that You will sustain each one, that You will be with each family, wherever they might go.

Lord, we pray Your blessings and Your approval upon all the process today. In the name of the Lord, we ask for Thy glory. Amen.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: Mr. Chief Justice, there is a motion on the Clerk's desk and I request the Clerk read it.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move that the Journal reflecting the Proceedings of the Oklahoma State Senate Sitting as a Court of Impeachment be corrected in accordance with the list of suggested corrections hereto attached and made a part hereof and that the Chief Justice of the Supreme Court as Presiding Officer of the Oklahoma State Senate Sitting as a Court of Impeachment and the Court Clerk and the Journal Clerk be authorized to make any additional corrections of any errors in the Journal reflecting the proceedings of said Court of Impeachment." By Grantham.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Senator Grantham is recognized.

SENATOR GRANTHAM: Mr. Chief Justice, I ask that the attached list be waived in that the attached list will be passed to each Member of the Senate and if there are no questions, I believe the motion is self-explanatory. And if there are no questions, I press the motion for adoption.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: If there are no objections or questions, the vote will occur on the Motion.

(Whereupon a vote was taken.)

Aye: Berrong, Birdsong, Boatner, Capps, Cate, Crow, Dahl, Field, Funston, Garrett, Grantham, Graves, Helm, Holden, Howard, Howell, Inhofe, Lambert, Lane, Luton, McCune, Medearis, Pierce, Porter, Shatwell, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, York, Young. —33

Nay: —0

Absent: Baldwin, Butler, Dawson, Ham, Hamilton, Keating, Keller, Lamb, Martin, Murphy, Randle, Schuelein, Smith, Stipe, Wolfe. —15

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the roll.

COURT CLERK: 33 ayes; 0 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Motion is carried and adopted.

The Court has a communication from the Chief Justice at this time. The Clerk has that communication. Will you read it, please?

COURT CLERK:

"State of Oklahoma
Office of the Governor
Oklahoma City

July 1, 1975

Chief Justice Ben T. Williams
Members of the Oklahoma State Senate
State Capitol Building
Oklahoma City, Oklahoma

Dear Mr. Chief Justice and Members of the Senate Sitting as a Court of Impeachment:

This is to advise you that John Rogers, Secretary of State of Oklahoma, submitted his resignation to be effective July 1, 1975, to me on June 27, 1975.

Sincerely,

s / David L. Boren"

And attached:

"John Rogers
Secretary of State

TO THE GOVERNOR OF THE STATE OF OKLAHOMA

I, John Rogers, hereby resign as Secretary of State of the State of Oklahoma effective July 1, 1975.

s / John Rogers"

"State of Oklahoma
Office of the Governor
Oklahoma City

July 1, 1975

Chief Justice Ben T. Williams
Members of the Oklahoma State Senate
State Capitol Building
Oklahoma City, Oklahoma

Dear Mr. Chief Justice and Members of the Senate Sitting as a Court of Impeachment:

This is to advise you that I have appointed Jerome W. Byrd as Secretary of State to succeed John Rogers. Mr. Byrd meets the legal requirements for Secretary of State. He was administered the oath of office on July 1, 1975 by Justice William A. Berry and is presently serving as Secretary of State of Oklahoma.

Sincerely,

s / David L. Boren"

And attached:

"State of Oklahoma
Office of the Governor
Oklahoma City

ORDER OF APPOINTMENT

TO: Secretary of State
Oklahoma State Capitol
Oklahoma City, Oklahoma

Dear Sir:

Please file for record the following executive order.

By virtue of the authority vested in me as Governor of the State of Oklahoma, I hereby appoint as Secretary of State:

Jerome W. Byrd, Sr.
2204 NW 59th
Oklahoma City, Oklahoma

to serve an unexpired 4 year term ending January 8, 1979. Confirmation is not required. Mr. Byrd succeeds John Rogers.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

s / David L. Boren"

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: These communications will be filed and made a part of the record.

Senator Murphy is present.

The Board of Managers is recognized.

REPRESENTATIVE FLOYD: We have filed with this Court a Motion to Declare and I believe that has been distributed.

We recite in our Motion the resignation of the Secretary of State.

We also recite the appointment of Mr. Byrd and the fact that he is now serving in that Office as Secretary of State and we then request that the Honorable Court declare the Articles of Impeachment moot and it is therefore - it has therefore been moved so we will ask that Motion be pressed if there are no questions.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Note that Senator Murphy is present.

Gentlemen, the Motion has been presented to declare the Articles of Impeachment against John Rogers, Secretary of State, moot.

Senator Grantham is recognized.

SENATOR GRANTHAM: Mr. Chief Justice: The following procedure was set out in 1913. I have a motion that I will file on the Clerk's desk and ask that the Clerk read.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will read the motion.

COURT CLERK: "Mr. Chief Justice: I move that the Motion of the House Managers be sustained." By Grantham.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The vote will occur on the motion if there is no discussion or questions.

(Whereupon a vote was taken.)

Aye: Berrong, Birdsong, Boatner, Capps, Cate, Crow, Dahl, Field, Funston, Garrett, Grantham, Graves, Helm, Holden, Howard, Howell, Inhofe, Lambert, Lane, Luton, McCune, Medearis, Murphy, Pierce, Porter, Shatwell, Taliaferro, Terrill, Tinsley, Wadley, Watkins, Watson, York, Young. —34

Nay: —0.

Absent: Baldwin, Butler, Dawson, Ham, Hamilton, Keating, Keller, Lamb, Martin, Randle, Schuelein, Smith, Stipe, Wolfe. —14

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Clerk will declare the vote.

COURT CLERK: 34 ayes; 0 nays.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: The Court has declared the Articles of Impeachment against John Rogers, Secretary of State to be moot. He no longer is in office.

I think that one of the Senators has come in but I believe he was present for the roll call before — Senator Young — I am sure he answered the roll call before.

Senator — or Representative Floyd is recognized.

REPRESENTATIVE FLOYD: As the Board of Managers we have prepared a formal Order to be proposed for filing in the matter. I believe that formal Order has been distributed. It is simply a formal Order declaring the Articles moot and for the record, I would like to see the Order inserted into the record.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: This Order, Gentlemen, merely memorializes the action you have already taken.

As your Presiding Officer, if there are no objections I shall sign that Order as such a memorialization of the action you have just taken.

There being no objections, it's the Order and it will be filed.

BEFORE THE SENATE OF
THE STATE OF OKLAHOMA
SITTING AS A COURT
OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF)
JOHN ROGERS)

ORDER

Now on this 8th day of July, 1975, this matter comes on for hearing.

After due consideration of the fact that John Rogers, the Accused, has resigned from the office of the Secretary of State of the State of Oklahoma and is no longer the holder of that office, and

After due consideration of the fact that Jerome W. Byrd is now the Secretary of State of the State of Oklahoma.

It is hereby declared by this Court of Impeachment that the Articles of Impeachment in this matter are now moot and further that this Court of Impeachment should proceed no further in this matter.

By order of this Court by vote taken on this 8th day of July, 1975.

s / Ben T. Williams
Chief Justice
Presiding Officer
Court of Impeachment

Gentlemen, is there any other business that should come before the Court of Impeachment?

Representative Floyd is recognized.

REPRESENTATIVE FLOYD: Mr. Chief Justice, if I may take just one-half a minute to say that our Board of Managers has been extended every courtesy by the Attorneys for Mr. John Rogers for which we are appreciative.

The Board of Managers has been extended every courtesy by Members of this Court and we have been extended assistance by the Chief Justice on questions we have had by various people and Duchess Bartmess and Marian Opala and to all of you we sincerely say we appreciate very much the cooperation we have had and the manner in which this matter has been handled.

Thank you very much.

PRESIDING OFFICER CHIEF JUSTICE WILLIAMS: Your remarks will be in the record.

Gentlemen of the Court: I would like to rise to a point of personal privilege for a moment.

The circumstances that bring us together are regrettable but I would like to express the appreciation of the Presiding Officer and of our Court for the courtesy shown us by the Members of this Court, by the Members of the Board of Managers and by the Accused and his Attorneys.

I would like to express to you gentlemen as Members of the Court that these lawyers have handled themselves most capably and have done a tremendous job of preparation on each side of the case.

Again, we express our gratitude to you for the opportunity of having worked with the Members of the Senate in this endeavor.

Are there others that wish to be heard?

It appears that there is no further business before the Impeachment Court of the First Period of the 35th Legislature.

The Senate sitting as a Court of Impeachment in the case of John Rogers, Secretary of State, is adjourned sine die.

(Whereupon the Court of Impeachment was adjourned at 9:37 a.m., July 8, 1975.)

CERTIFICATE

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

I, HARVEY W. STEPHENS, a Certified Shorthand Reporter, duly certified under and by laws of the State of Oklahoma, do hereby certify that the foregoing Transcript of Proceedings of the Impeachment Trial of the Senate of the 35th Legislature, is a true and correct transcript of the proceedings had on Tuesday, July 8, 1975.

I further certify that I am not an attorney or counsel of any of the parties or a relative or employee of any attorney, counsel or party connected with the action or otherwise interested in the action.

WITNESS MY HAND, in the City of Tulsa, County of Tulsa, and State of Oklahoma, on this, the 4th day of August, 1975.

s / Harvey W. Stephens,
Certified Shorthand Reporter,
State of Oklahoma.

APPENDIX

PRECEPT

THE STATE OF OKLAHOMA
THE COURT OF IMPEACHMENT
OF THE STATE OF OKLAHOMA, SS:

TO FRANK TRUEL, Greetings:

You are hereby commanded to deliver to and leave with John Rogers, if conveniently found, or, if not, to leave at his usual place of abode with some member of his family over sixteen years of age, a true and attested copy of the within Writ of Summons, together with a true copy of the Articles of Impeachment and in whichsoever way you perform the service, let it be done on or before the 6th day of June, 1975.

FAIL NOT, and make return of this Writ of Summons, with your proceedings thereon endorsed, on or before the appearance day mentioned in the said Writ of Summons.

Done by direction of Chief Justice Ben T. Williams, Presiding Officer of the said Court, at the City of Oklahoma City, this 6th day of June, 1975.

s / Lee Slater
Clerk of the Court
of Impeachment

WRIT OF SUMMONS

THE STATE OF OKLAHOMA
THE COURT OF IMPEACHMENT
OF THE STATE OF OKLAHOMA, SS:

TO JOHN ROGERS, Greetings:

Whereas, the House of Representatives of the State of Oklahoma did, on the 5th day of June, 1975, exhibit to the Senate Articles of Impeachment against you, the said John Rogers, a true copy of which Articles of Impeachment are attached hereto, and demand that you, the said John Rogers, should be put to answer the accusations as set forth in said Articles, and that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and justice.

You, the said John Rogers, are therefore hereby summoned to be and appear before the Court of Impeachment of the State of Oklahoma, at the Senate Chamber in the City of Oklahoma City, on the 20th day of June, 1975, at 1:00 p.m., and then and there to answer or plead to the Articles of Impeachment, to abide by, obey and perform such orders, directions and judgments as the said Court shall make in the premises according to the Constitution and Laws of the State of Oklahoma.

HEREOF, YOU ARE NOT TO FAIL.

Done by direction of Chief Justice Ben T. Williams, Presiding Officer of the said Court, at the City of Oklahoma City, this 6th day of June, 1975.

s / Lee Slater
Clerk of the Court
of Impeachment

RETURN OF SERVICE

IN THE COURT OF IMPEACHMENT
OF THE STATE OF OKLAHOMA
RETURN OF SERVICE

I, Frank Truel, Marshal of the above Court of Impeachment, state that on the 6th day of June, 1975, I received the within Writ of Summons, with attachments, and that, as directed by the Presiding Officer and Clerk of said Court, I served same by delivering a true and attested copy of said Writ of Summons, with a true copy of the Articles of Impeachment attached thereto, on the said JOHN ROGERS, personally, in Oklahoma City, Oklahoma, on the 6th day of June, 1975.

I further state that I also, on the 6th day of June, 1975, delivered a true and attested copy of said Writ of Summons, with a true copy of the said Articles of Impeachment attached, to the Honorable Glenn Floyd, Chairman of the Board of Managers of the House of Representatives.

Dated this 6th day of June, 1975.

s / Frank L. Truel
Marshal

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

MOTION TO DISMISS

Comes now John Rogers, and moves to dismiss Articles I, II, and III of the Articles of Impeachment filed herein for the following reasons, to-wit:

I

That precedent exists for the granting of this motion by reason of the impeachment proceedings involving Lt. Governor Trapp and Governor Johnston wherein the House voted articles of impeachment which were dismissed by the Senate upon motion.

II

That Article I of the Articles of Impeachment is vague, uncertain and duplicitous in that it charges six (6) acts or omissions within one Article contrary to 51 OSA § 57 which provides:

> "The articles of impeachment shall state with reasonable certainty, the offense in office for which the officer is impeached, and if there be more than one, they shall be stated separately and distinctly. Laws 1915, ch. 131 § 7."

III

All acts of omission or commission alleged occurred in prior terms of office.

IV

The Articles of Impeachment refer in several places to "incompetency" as a basis of impeachment. Since incompetency is the physical or mental inability to carry out the duties of the office (Tafoya vs. New Mexico State Police Board, 472 P2d. 973, 976, 977) and there is no evidence that either of these conditions exists, this ground for impeachment should be disregarded at the outset.

V

That the only evidence submitted or considered and upon which the impeachment was founded is contained in the House Majority Report which is incorporated and made a part hereof by reference. Certain excerpts are attached for convenience.

VI

That Article I alleges six (6) separate acts:

A. The letter from John Rogers to Mica Company.

The only possible ground that this might come under would be corruption in office. The letter is shown as Exhibit IV in the House Majority Report. It does not state or imply what the Articles of Impeachment assert. A reading of this letter clearly establishes that it constitutes no basis for impeachment nor is it in any way corrupt. Exhibit V, the letter from Linda Callaway, was not written by John Rogers nor is there any evidence that he sponsored, authorized or knew of it.

B. Closing the office of Secretary of State on August 1, 1968.

The only ground for impeachment under which this could fall would be willful neglect of duty. John Rogers admitted this occurred. Everyone in the State of Oklahoma knew that it occurred because of the publicity attendant upon it. The people of the State of Oklahoma exercising their solemn franchise twice thereafter re-elected John Rogers. If the people have accepted his conduct should their representatives do otherwise? Aside from the above, the House Majority Report found, (page 30), and the law is, that there was no statutory prohibition against this act. There being no duty to keep the office open, there can be no neglect of duty in closing it.

C. Failure to report forged Liquor by the Drink Petitions.

This is alleged to be willful neglect of duty. If this offense had been committed it might possibly fall within those offenses relating to neglect of duty, corruption in office, or an offense involving moral turpitude. The evidence before the House shows unequivocally that the petitions referred to were neither seen by John Rogers nor submitted to him in his official capacity. The majority report found, and the law is, that under 34 OSA § 6.1 John Rogers had no duty to report the existence of any forged petitions until they were presented to him in his official capacity.

John Rogers testified that he reported in general terms his knowledge to an Assistant Attorney General. The Assistant Attorney General did not deny that this conversation took place but testified that he did not recall it. The advice which Mr. Rogers said he received concerning the matter coincides with the conclusion drawn by the Majority Report, that is that there was nothing he could do unless or until forgeries were submitted to him as the Secretary of State.

(It is not our intention to go outside of the evidence attached to the Majority Report, which is what the House considered in voting on impeachment, but in addition, the transcript of the testimony of John Rogers will reflect that he also advised the Chief Executive of the State of Oklahoma in specific terms as to the alleged knowledge he had and was told by the Governor that he would handle the matter. This fact would be corroborated by the now missing Crime Bureau Report and Robert Sanders' testimony.)

D. Failure to exercise care with respect to the preservation of documents.

The only possible ground for impeachment that this might encompass would be that of willful neglect of duty. The documents in question consisted of 1969 Liquor by the Drink Petitions. Any official actions with respect to them had long since passed. They therefore had no worth, value, or importance, and there was no purpose whatsoever in maintaining or preserving them. Their loss, theft, or destruction could not possibly produce any detriment to the people of this State. The recommendations contained in the Majority Report

(page 39) concerning clarification of the Records Management Act and the Preservation of Essential Records Act would indicate that there is some question as to whether the Liquor by the Drink Petitions even fall within the purview of either of these acts. Certainly a technical violation at best dealing with non-essential records could not constitute **willful** neglect of duty.

The evidence is that once John Rogers learned of Robert Sanders' activities concerning forged petitions he was denied any access to the office while unattended. Any activity by Sanders prior to that time is meaningless.

E. Use of official facilities for political polls.

The only possible ground for impeachment under which this could fall would be corruption in office. In this regard the evidence before the House was that:

a) The use of the WATS Line did not cause any monetary loss to the State,
b) the employees involved were not under the merit system,
c) the conduct involved occurred after office hours,
d) there was no statutory prohibition against the activities complained of.

The committee states on page 6 of its Majority Report with respect to this matter; "It is not an impeachable offense." Thus all the evidence before the House on this ground for impeachment was that none existed.

F. Failure to transmit copies of newly enacted legislation to the District Court Clerks.

In this respect the evidence before the House as shown by the report was as follows:

"No evidence was brought before the committee concerning this allegation." (page 20)

VII

That Article II of the Articles of Impeachment alleges that John Rogers solicited funds from numerous persons while considering the validity of the 1971 Liquor by the Drink Petition and specifically solicited funds from one Bob Naifeh and Johnny Monsour for his personal use in exchange for the validating of said petition. There was no evidence however with respect to any persons other than Naifeh or Monsour. The testimony presented to the committee indicated that John Rogers solicited money for future political campaigns. (Again it is not our intention to go outside the scope of the Majority Committee Report but from comments made on the floor of the House it is evident that the testimony with respect to these two was self-impeaching, unreliable, and not entitled to credence.)

The majority of the House Committee which had the opportunity to carefully consider this evidence did not believe it sufficient to support Articles of Impeachment. It is obvious from the way the House voted on the first Article of Impeachment that it did not have the opportunity to thoroughly review the evidence and testimony supporting these Articles. It is therefore respectfully submitted that in considering this motion greater weight should be given to the Majority Report, and it be determined that there was not sufficient evidence before the House to support impeachment on this ground.

VIII

Article III of the Articles of Impeachment alleges that John Rogers failed to report or account for a campaign contribution to his United States Senate race as required by law. The only evidence with respect to this allegation is the testimony of John Rogers to the effect that he received money from David Hall, then Governor, and spent it prior to the time that the law required him to report or account for said funds. There is no evidence to establish any violation of any law, State or Federal, with respect to this allegation.

CONCLUSION

We therefore respectfully request that this Honorable Court consider, as obviously the House of Representatives did not, the evidence which supports the charges against John Rogers, and having so considered it find that it is wholly insufficient to support the Articles of Impeachment. That this was the conclusion reached by the majority of the House Committee, the only body which has had the opportunity to hear all of the testimony, observe the demeanor of the witnesses, determine their credibility, and fully and completely weigh the evidence. Certainly the members of the committee who made the findings were in a much better position to make a determination than those members of the House who simply voted "Yea" or "Nay". John Rogers therefore respectfully requests that the impeachment proceeding against him be dismissed.

Respectfully submitted,
s / John Rogers,
Accused

(House Majority Report, Exhibit IV
attachment to Motion to Dismiss)

Mica Corporation
2701 Jasper Street
Wichita Falls, Texas

Gentlemen:

This letter is to inform you that Mr. Jack Wettengel is not the Assistant Secretary of State of Oklahoma, nor has Mr. Wettengel even been associated with this office in the past three years.

My assistant for the past 2½ years has been Mrs. Linda L. Callaway and the only employee of this office permitted to act as registered agent for foreign corporations.

I have recently changed Mrs. Callaway's duties and subsequently her title to that of Director of Foreign Corporations. She is still the only employee of this department permitted to act as registered agent for foreign corporations.

If you should care to have Mrs. Callaway represent you in the above mentioned capacity now or at anytime in the future, please complete the attached form No. 5 and her fee in the amount of $25.00. She will be happy to pay the required "Change of Registered Agent Fee" in your behalf.

Yours very truly,
s / John Rogers
Secretary of State

(House Majority Report, pp 18 and 19
attachment to Motion to Dismiss)

* * *

"Q. What did Mr. Tenny (sic) tell you that you should do about the forgeries?"

"A. He told me that I didn't know they existed until they came through my office."

"Q. Those were his words —"

"A. Well, words to that effect, is that unless I found the petitions, forged petitions in what was filed with my office I had no standing as to knowledge. That was what he told me."

"Q. Did you indicate to Mr. Tenny (sic) how you had become aware of the forged petitions?"

"A. I don't think so."

"Q. Did you mention specifically Mr. Sanders name?"

"A. I don't think so."

"Q. Did you on that particular day or at any time shortly thereafter directly contact the Attorney General regarding your knowledge of the forgeries?"

"A. I don't think so."

"Q. In other words your sole contact as you best recall was your trip to the Attorney General's office and relaying in general terms this information to Mr. Tenny (sic)?"

"A. Oh, yes. I was going to say that was my sole contact to the best of my recollection and you may find out different, there maybe (sic) some others down there but to the best of my recollection that was my sole contact with the Attorney General's office."

Both the Attorney General and the only assistant Mr. Rogers mentioned by name have advised the Committee that they have no knowledge of such a conversation.

In researching the law relative to this area the Committee gave special attention to 34 O.S. 1971, Section 6.1, which reads as follows:

> "Section 6.1 The Secretary of State shall disqualify all signatures on any sheet of any petition which is not verified by the person who circulated said sheet of said petition as provided in 34 O.S. 1961, Section 6, and the Secretary of State shall notify the Attorney General of any and all violations of this act of which he has knowledge." (emphasis added)

This statute states specifically in the emphasized language above that it applies to a specific act, House Bill 1320, Chapter 206, 1969 Session Laws, and therefore does not apply

to this entire statutory title. The Committee has concluded that this statute does not pertain to Secretary Rogers' knowledge of Mr. Sanders' forgeries.

The weight of evidence also showed that the proponents did not knowingly file any forged petition with their initiative petition drive that had been prepared by Mr. Sanders. Mr. Sanders testified as follows:

> "*** With just a very few days left in the 90 day legal period we had retrieved all of the forged petitions and at that time I burnt the forged petitions and I burnt the originals. They were all destroyed. *** "

Therefore, although Mr. Rogers had extra-official knowledge of Mr. Sanders' plot, none of the fruits of Mr. Sanders' labor ever came into the office of the Secretary of State to be officially filed.

A thorough examination of the laws pertaining to this subject leads to the determination that mere knowledge of forged petitions by the Secretary of State, which were never filed in his office, standing alone is not a violation of law.

Although the knowledge of the Secretary of State concerning the commission of a crime and his failure to report such act to the proper law enforcement officials does not violate any specific statutory provision, the Committee feels such failure is morally and ethically wrong. The Committee further feels in addition to the duty imposed by the taking of the oath of office by the Secretary of State to obey and defend the Constitution and the laws of the State of Oklahoma, there is a further duty imposed to report any irregularities which come to his attention by virtue of the exercise of his official duties. It was a function of the Secretary of State to rule on the validity of initiative petitions received by him.

* * *

(House Majority Report, p. 24 attachment to Motion to Dismiss)

* * *

O.S. 1959, Sections 157-159, 19 O.S. 1959, Sections 232-234, and House Bills Nos. 659, 906 and 1016 enacted by the Twenty-eighth Legislature, but is cumulative to these laws."

Section 565 of Title 74 of the Oklahoma Statutes provides:

"Section 565. **Every State officer** and the heads of all departments, boards, commissions, agencies and institutions of the State of Oklahoma **who have in their custody public records and archives deemed by them to be unnecessary for the transaction of the business of their offices shall consult with the State Librarian for the purpose of determining if such records and archives are desired for deposit in the archives division of the Oklahoma State Library.** Upon certification by the State Librarian that such records and archives are or are not desired for such purpose then such custodian shall, in conformity with such determination, apply to the Commission for authorization to destroy or transfer such records and archives to the Oklahoma State Library as hereinafter provided. Upon the filing of such application the Commission shall have authority to authorize or direct the disposition of such records and archives by any one or more of the following methods:

1. By destruction; provided that no records and archives less than five (5) years old shall be destroyed.

2. By transfer to the custody and control of the Oklahoma State Library and there retained. The State Librarian may, in his discretion, microfilm such records and archives, especially if so doing would aid in the preservation of their contents.

* * *

(House Majority Report, p. 30 attachment to Motion to Dismiss)

* * *

in the Republican party. John Rogers, by his own account, likewise actually responded in a partisan manner. His judgment in closing his office had nothing to do with the merits of the questions standing alone.

It is the opinion of the Committee that one holding an office of public trust must perform the duties of his office objectively and indiscriminately without the impetus of political overtones.

We find, however, no specific statutory prohibition of this act. Historically, elected department heads have had broad discretionary authority in this area while appointed department heads are regulated more closely.

The members of your Committee do not condone such a capricious act, nor do we believe the Legislature or the general public supports such conduct which suggests a willful disregard of the duties and responsibilities of the Office of Secretary of State.

I.

Allegation of Improper Solicitation by the Secretary of State and an Employee to Act as Service Agent for Foreign Corporations

Your Committee received information and supportive testimony that the Secretary of State mailed to many foreign corporations a letter (Exhibit IV) soliciting and by innuendo virtually requiring foreign corporations to use Mrs. Linda Callaway, the Assistant Secretary of State, as the service agent for those corporations.

Mr. Jack Wettengel, a former Assistant Secretary of State from 1963 to 1967, testified as follows:

"Q. Jack, did you continue to serve in the state service agent after you left?"

"A. Yes."

"Q. And do you recall some of the companies that you represented receiving letters from Mrs. Linda Callaway who had then become Assistant Secretary of State soliciting her services in state service agent?"

"A. Do I recall letters that she sent out?"

* * *

(House Majority Report, pp35-37
attachment to Motion to Dismiss)

* * *

The Committee feels although the State of Oklahoma nor its legislative branch should be responsible for policing federal law to insure that they are adhered to, they would be derelict in the performance of their duty and responsibility entrusted to them by the House of Representatives if they did not report the following information.

John Rogers, Secretary of State, gave certain testimony, under oath, on the 26th day of May, 1975, wherein he admitted possible violations of the Federal Elections Campaign Act of 1971.

Mr. Rogers testified he received $22,000 from Governor David Hall.

"Q. Now you did state also that Governor Hall had given you $25,000?"

"A. Yes sir."

"Q. How was this money received?"

"A. In the mansion he handed me $25,000 in cash. I stuck it in my pocket. We talked a while. Before I got out of the mansion, he asked back $3,000, I believe it was."

"Q. To your best recollection, when did this conver— (sic) take place?"

"A. It was before the first primary."

"Q. Was it before or after the first federal reporting date that you were telling me about?"

"A. Oh, way before it."

"Q. As I recall that would have been some time in April of 1972 to the best of my recollection?"

"A. Yes sir."

"Q. Why was it not reflected on your report?"

"A. It was. Oh, well, prior to the April 6th or whatever the beginning time is, only the moneys that have ... I have a CPA who is also a friend who made out my reports. I signed them and I think that they are correct. Prior to the reporting or the federal law, moneys that came in and were expended were not accounted for and that is the reason why there wouldn't be an accounting for them at that date."

"Q. In other words, you're saying that the $25,000 less the $3,000 or in essence the $22,000 that you received from Hall was expended prior to the April, 1972 reporting date?"

"A. Plus some."

"Q. Was this . . . did Governor Hall indicate to you whether or not this was a personal contribution or from whom it might have been obtained?"

"A. I believe that he indicated that he obtained it from several people, that were not . . . that would rather have me be the nominee than somebody else that was running."

"Q. Had you previous to that date asked him to raise campaign funds for you?"

"A. Yes, I'm sure I had. I don't know that, I don't remember it but I'm sure that that's what brought it about."

"Q. What I'm trying to get . . . I'm sure he didn't call you up and say come on over to the mansion John, I've got $25,000 for you."

"A. No, that's right. The thing that sticks in my mind is that he gave it to me but I'm sure I asked him for it."

"Q. Did he ever mention any names of individuals that he had raised the $25,000 from?"

"A. No sir, he did not.

"Q. Do you know why he took back the $3,000 shortly after he had given it to you?"

"A. I'm not absolutely certain, no."

"Q. Did he give you any indication of why he took it back?"

"A. If I recall, if I recall correctly I think he told me he was going to use it to go to Russia."

This contribution was neither reported nor deposited in the Friends of Rogers Campaign Bank Account with the Village Bank in Oklahoma City.

Mr. Rogers admitted making a $750 campaign expenditure to Bob Sanders or his company, Survey Research Associates in 1972.

"Q. Well, Mr. Rogers, Mr. Sanders has testified in fact here with the committee meeting that over a period of time you participated in taking polls for you, is that a correct statement?"

"A. Well, he gave me the knowledge how to do it and he did participate in the operations or the actual mechanics of it. Not being acquainted with it myself."

"Q. How — in what manner was he paid by you for taking these political polls?"

"A. He was not paid by me to my knowledge, to my remembrance."

"Q. Do you recall ever having paid him anything either personally or through your office?"

"A. Well, I've looked up the fact that there was a check written out of a campaign to him, but through my office the answer is still no."

"Q. What campaign fund was he paid through from your checking?"

"A. I believe the Senate campaign fund."

"Q. That would have been your 1972 Senate campaign?"

"A. Yes, Sir."

"Q. Do you recall how much and approximately when he was paid?"

"A. I recall that the check was $750.00 and I do not have the approximate date, I just don't know."

This expenditure was not reported although other expenditures as small as $20.21 were listed.

After careful consideration of this issue, this Committee decided that an alleged violation of federal campaign reporting laws was not a proper subject for investigation by a legislative committee. Rather, it is more properly within the purview of federal law enforcement agencies and the United States District Attorney.

B.

Allegations were made which came to the attention of the Committee by Mr. Jim Reynolds that individuals were compensated by....

* * *

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

BOARD OF MANAGERS
RESPONSE
TO
MOTION TO DISMISS

Comes now the Board of Managers of the House of Representatives of the State of Oklahoma and responds as follows to the Motion to Dismiss filed herein by the Accused, John Rogers:

INTRODUCTION

The Board respectfully submits that the said Motion to Dismiss is improper in both its form and content and should not be entertained by the Honorable Court of Impeachment. Said motion is not limited to the sufficiency and/or form of the charges against the Accused, which should be its proper scope, but instead deals almost wholly with the kind and sufficiency of the evidence to support said charges. It goes without saying that there is as yet no evidence before the Court upon which either the Board or the Accused could comment or draw conclusions.

The Motion to Dismiss places great emphasis upon the Majority Report of the John Rogers Investigative Committee (see items V, VI-A, VI-B, VI-C, VI-D, VI-E, and VI-F of Motion to Dismiss), arguing in effect that the Senate sitting as a Court of Impeachment should adopt the accused's interpretations of the conclusions of said Majority Report, which Report was rejected in open session after full debate by the House of Representatives.

Furthermore, if the Court were considering the evidence of the Accused's guilt or innocence, the proper action would be directed toward a verdict of guilty or not guilty (see Section 34 of the Rules of the Court of Impeachment), not a dismissal. Clearly, when there is no evidence before the Court, no verdict as to guilt or innocence is possible, and, conversely, when the evidence has been submitted, a mere dismissal is not proper since a final resolution of the question must then, in fairness, be reached. In no way should a partial, selective, self-serving presentation by the Accused of the evidence against the Accused be considered by the Court in any kind of disposition of the matter before it.

Finally, it is improper for either the Board of Managers or the Accused to comment on evidence not before the Court or to draw conclusions based upon facts not in evidence. Any motion to dismiss an impeachment action, it is suggested, should be based solely upon any purely legal defects, that is, a failure to meet either the constitutional or statutory requirements governing impeachments. Only through some kind of preliminary hearing procedure could matters of evidence be considered on a motion to dismiss, and it would then be in the nature of a demurrer to the evidence rather than a motion to dismiss; but there are no provisions either constitutionally or statutorily for preliminary

hearings in impeachment proceedings, nor has the Impeachment Court provided for such in its Rules. Be that as it may, should the Court elect to entertain the Accused's motion, the Board of Managers will answer said motion point by point, as follows:

I

Although the Articles of Impeachment against Lt. Governor Trapp and the Articles of Impeachment against Governor Johnston were dismissed, those proceedings are not binding upon this Honorable Court except as it chooses to be so bound. This Court has the responsibility, when faced with such a Motion to Dismiss, if it chooses to consider it, to determine if on the face of the Articles, the Articles of Impeachment containing the allegations, when taken in their strongest light, support the finding that there is cause to believe that the Accused has committed an impeachable offense. To dismiss the Articles of Impeachment upon the Motion filed is to say that even though all the allegations may be true and supported by evidence, none constitute impeachable offenses, as perceived in the mind of each individual Senator. Surely, this Honorable Court does not and will not accept that viewpoint.

II

Article I is not vague, uncertain and duplicitous. 51 O.S.A. § 57 provides:

> "The articles of impeachment shall state with reasonable certainty, the offense in office for which the officer is impeached, and if there be more than one, they shall be stated separately and distinctly. Laws 1915, ch. 131 § 7."

The word "they" must be interpreted to mean separate offenses and not separate Articles since the entire section relates to "offenses in office" and to "articles of impeachment" in the singular. "Articles of Impeachment" is a singular noun in the same sense as "Indictment" or "Information". The six alleged offenses are set out in Article I separately and distinctly and there is no question in the mind of a reader as to their meaning. This clarity is illustrated by the fact that the Accused, in his motion, proceeds to categorize them as individual offenses, thus reflecting his understanding of the separate allegations. The purpose of 51 O.S.A. § 57 is to promote clarity and understanding by requiring the alleged offenses to be stated separately and distinctly and this was so done in the Articles of Impeachment.

Although the law relating to indictments and information is not applicable directly, an analysis is helpful. 22 O.S. 401 requires that "The indictment or information must contain:

> 1. The title of the action, ...
>
> 2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended."

The Oklahoma Court of Criminal Appeals, in Hickey v. State, 54 Okl. Cr. 78, 14 P. 2d 424 (1932) said, with regard to 22 O.S. 401, "Any words in indictment clearly and intelligently setting forth offense are sufficient." We think this test is adequate for the Articles and we submit to this Honorable Court that the Articles meet the test.

The Court should further be advised that Title 51 O.S.A. § 71 explicitly reflects the acceptance of this procedure wherein it reflects as follows:

> "§ 71. PROCEDURE—VOTE—RECORDS.—The Senate, when sitting as a court of impeachment, shall have power to prescribe and adopt such rules of procedure as it may deem expedient for the orderly trial of the impeachment cases. When an accused person has been placed upon trial and the case is ready to be submitted to the Senators, sitting as members of a court of impeachment, for their decision, **the roll of the members shall be called in open session upon each separate charge or count**, contained in the articles of impeachment. Each Senator, when his name is called shall, if in his judgment the particular charge submitted has been proven, vote 'yea' otherwise he shall vote 'nay' which yea and nay vote shall be recorded in the journal of the court. If two-thirds of the Senators present shall vote yea upon **any charge or count contained in the article of impeachment, the accused shall be adjudged guilty**, and the judgment of the court shall be that he be removed from office. The proceedings of the court of impeachment shall be recorded by the clerk in a record kept for such purpose, when any case is finally concluded the record shall be signed by the presiding Justice or presiding officer, attested by the clerk and by him filed in the office of the Secretary of State as a permanent record." (Emphasis added)

Particular attention should be given to the latter underlined sentence wherein several counts or charges are referred to in one article of impeachment. Thus we have a direct implication that various charges and counts can be included in an Article of Impeachment and thus the contention by the Accused that Article I is vague, uncertain and duplicitous is clearly without merit.

III

Not all acts of omission or commission alleged occurred in prior terms of office and even if that were the case, impeachment and removal from office can be effected for acts committed in a prior term.

Article 8 of the Oklahoma Constitution contains the general provisions relating to the subject of impeachment. Said provisions are as follows:

> Art. 8. § 1: "The Governor and other elective State officers including the Justices of the Supreme Court, shall be liable and subject to impeachment for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office."
>
> Art. 8. § 2: "All elective officers, not liable to impeachment, shall be subject to removal from office in such manner and for such causes as may be provided by law."
>
> Art. 8. § 3: "When sitting as a Court of Impeachment, the Senate shall be presided over by the Chief Justice, or if he is absent or disqualified, then one of the Associate Justices of the Supreme Court, to be selected by it, except in cases where all the members of said court are absent or disqualified, or in cases of impeachment of any Justice of the Supreme Court, then the Senate shall elect one

of its own members as a presiding officer for such purpose. The House of Representatives shall present all impeachments."

Art. 8. § 4: "When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation, impartially to try the party impeached and no person shall be convicted without the concurrence of two-thirds of the Senators present."

Art. 8. § 5: "Judgment of impeachment shall not extend beyond removal from office, but this shall not prevent punishment of any such officer on charges growing out of the same matter by the courts of the State."

Art. 8. § 6: "The Legislature shall pass such laws as are necessary for carrying into effect the provisions of this article."

These constitutional provisions were construed by the Oklahoma Supreme Court in the case of State ex rel. Trapp Acting Governor v. Chambers 220 L. 890, wherein the Court states:

"The Legislature, being otherwise in legal session, is, by the Constitution, given definite governmental duties, and has exclusive jurisdiction over matters of Impeachment, and the actions of the Senate and House of Representatives, in the exercise of this jurisdiction, are not subject to review or interference by the courts."

The object of impeachment was eloquently stated by the Alabama Supreme Court in the case of State v. Buckley, 54 Ala. 599:

"The object of prosecutions of impeachment in England and the United States is to reach high and potent offenders — such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organization and powers of those tribunals. These prosecutions are therefore conducted by the representatives of the nation, in their public capacity, in the face of the nation, and on a responsibility which is at once felt and reverenced by the whole community."

Based upon Oklahoma's constitutional provisions and the Oklahoma Supreme Court decision in the Trapp case, supra, it is clear that in Oklahoma, impeachment is neither a civil nor criminal action but is unique, and any decision reached by the Oklahoma State Senate in this case as to procedure, jurisdiction or law is final and not reviewable by the courts.

The Oklahoma Senate sitting as a Court of Impeachment in the N.B. Johnson impeachment trial was faced with the question of whether acts in a prior term could form the basis of impeachment and ouster from office. That Honorable Court held that although the two acts alleged occurred in 1957 and 1959, the impeachment and removal could lie in 1965 and that Honorable Court proceeded with the Articles of Impeachment and N. B. Johnson was removed from office in 1965, notwithstanding the fact that the acts complained of occurred in 1957 and 1959, which was during a prior term.

That precedent was set after carefully considering the question of acts in a prior term.

The Court in that instance considered several cases from other jurisdictions, among which are the following:

The Supreme Court of Iowa in State of Iowa v. Welch, 109 Iowa 20, held:

> "The very object of removal is to rid the community of a corrupt, incapable, or unworthy official. His acts during his previous term quite as effectually stamp him as such as those of that he may be serving. Re-election does not condone the offense."

The Iowa Court held further:

> "The defendant was entitled to the office until his successor was elected and qualified. Being his own successor, the identical officer continued through both terms. His disqualification to continue in the particular office results from the commission of some of the prohibited acts during his incumbency."

> "The commission of any of the prohibited acts the day before (re-election) quite as particularly stamps him as an improper person to be intrusted with the performance of the duties of the particular office, as though done the day after. The fact of guilt with respect to that office warrants the conclusion that he may no longer with safety be trusted in discharging his duties."

The Honorable Court also considered the Nebraska case of State v. Hill, 37 Neb. 80, in which the Nebraska Court said:

> "The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired, and he is no longer in office, that object is attained, and the reason of his impeachment no longer exists; but, if the offender is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of the same office."

An early New Mexico case was also considered. The Supreme Court of New Mexico in the early case of Territory v. Sanches, 94 P. 954 rejected the defense that the acts done by the defendant were committed by him while holding the same office in the term immediately preceding the one in which his trial took place. The Court asked the question:

> "Is a public officer less unfit to hold office, or are the people less injuriously affected by his holding it, because the act demonstrating his unfitness was committed on the last day of one term of office rather than on the first day of the next succeeding term."

Although the Board of Managers does not presume to declare that this Honorable Court must follow examples of other states or precedents in Oklahoma's history, the Board does suggest that the logic followed in those cases is just as sound today and therefore, the Board of Managers hereby urges this Honorable Court to follow the examples set in the other states and accept the precedent set by the Oklahoma State Senate sitting as a Court of Impeachment in Oklahoma in 1965, by refusing to dismiss the Articles of Impeachment on the grounds that acts complained of occurred in prior terms.

IV

"Incompetency" under the Oklahoma Constitution means what this Honorable Court determines it shall mean. It is for this Court to determine what constitutes incompetency and what constitutes the elements of competency for public office.

The Board of Managers hereby submits the following examples of generally acceptable definitions of Incompetency:

Black's Law Dictionary, Page 906:

> "INCOMPETENCY. Lack of ability, legal qualification, or fitness to discharge the required duty."

Ballentine's Law Dictionary, Page 602:

> "INCOMPETENCY. Inefficiency; a lack of some requisite ability. ... Inadequacy or insufficiency, either physical or mental, as the incompetency of a child for hard labor or of an idiot for intellectual labor. ... Want of qualification or eligibility. Of public officer:—the absence of a physical, moral, or intellectual quality, incapacitating one to perform the duties of his office, characterized by gross neglect of duty or gross carelessness in the performance of duty, lack of judgment, and want of sound discretion. ..."

The Supreme Court, Appellate Division of the State of New York held, in 1937, that incompetency as a ground for suspension and removal of a public officer has reference to any physical, moral or intellectual quality, the lack of which incapacitates one to perform the duties of his office. (299 N.Y.S. 466)

The case cited by the Accused had to do solely with the question of whether physical ability is an element of competency and the New Mexico Court clearly held that it is. But that is not all the New Mexico Court said. The Court went on to talk about mental and moral capacities as being elements of competency, and that case does not stand to the proposition that only physical and mental capacities are relevant, as the Accused would imply.

To limit the definition of incompetency to that of physical or mental inability to do the job, as suggested by the Accused, is to ignore the most important ingredient of competence, namely, that of high moral and intellectual capacity; that is, competency flowing from a conscientious and high minded moral attitude toward public service.

V

The Board of Managers hereby submits that no evidence at all has yet been introduced and it is hereby submitted that any discussion by the Accused or the Board of what may or may not be put in as evidence is not only improper, but impossible at this state of the proceedings.

The Accused proceeds to draw many conclusions regarding the six allegations and even discusses evidence not mentioned in the Articles. He further draws conclusions regarding what grounds for impeachment each act might constitute. All of this is clearly

improper at this stage of the proceedings and the Board respectfully requests this motion be overruled.

VI

With regard to Article III, the Accused argues in Section VIII of his motion that certain evidence is all that exists. This is clearly improper and the Board respectfully urges this Court to overrule the Motion to Dismiss and proceed to an orderly disposition of the matter.

CONCLUSION

Throughout the Accused's Motion to Dismiss, he prevails upon the Court to accept not only the findings of the Majority Report of the John Rogers Investigation Committee of the House, but its conclusions as well. No mention is made of the fact that it was the **conclusions** of the Majority Report which were rejected by the full House, not its findings. Carefully selected excerpts from said Report are brought to the Court's attention by the Accused in his effort to get the Court not to consider the full evidence against him and reach its own independent conclusions.

The action by the House in voting Articles of Impeachment came after full study and debate regarding the Majority Report and other factors — after the Report was subjected to the fullest kind of scrutiny by the entire House so that even members of the Committee who supported the Majority Report voted for certain Articles of Impeachment following the full consideration — yet the Accused asks the Court to ignore that determination by the House and even to forego full consideration of its own.

Furthermore the Accused misrepresents the Majority Report by suggesting it somehow vindicated him, when, in actuality, it did everything but vindicate him. As a matter of fact, the members of the House Investigating Committee acknowledged to the House that they had voted 4-1 to recommend impeachment of the Accused on essentially the same grounds voted by the full House. That vote was just prior to their discovering new, incriminating evidence of yet an additional offense, for which reason they asked that the investigation of the Accused continue. It was only that request for additional investigation and the committee's conclusion that it was necessary which was rejected by the House, not the case they had already established against the Accused. That case won overwhelming endorsement by the House, and should be presented to the Court for a final resolution.

The Board of Managers is cognizant of the fact that the Senate sitting as a Court of Impeachment is both a court of first impression and a court of last resort, that it is neither bound by precedent nor strictly the rule of law. It is bound only to do justice under its own rules and convictions. The Board thus requests the Court of Impeachment neither to slavishly bow to prior procedure, rulings, and decisions of Courts of Impeachment, nor to ignore them. The Board submits herein citations of such action of prior Courts of Impeachment for this Court's consideration with the full confidence that the weight of such "authority" supports the actions of the House of Representatives in voting Articles of Impeachment against the Accused and strongly rejects any kind of summary dismissal of them.

It is, therefore, respectfully submitted by the Board of Managers that this Honorable Court overrule the Accused's Motion to Dismiss and proceed to an orderly trial of the impeachment matters.

Respectfully Submitted
BOARD OF MANAGERS
HOUSE OF REPRESENTATIVES
s / Glenn E. Floyd,
Chairman

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

MOTION FOR PRODUCTION

Comes now John Rogers and moves the Court of Impeachment to require the Board of Managers of the House of Representatives to produce for his use and benefit any of the following in their possession or subject to their control:

I

Transcripts of the testimony of all witnesses appearing and testifying before the Special Investigating Committee of the House of Representatives, First Session of the 35th Legislature.

II

All exhibits introduced, considered, or examined at the hearings held by said Special Committee.

III

Any document, record, memorandum, paper, material, or thing containing evidence or information that might be favorable to the Accused.

IV

The names and whereabouts of any persons known to the Board of Managers who have any knowledge or information relating to the subject matter of the Articles of Impeachment which might be favorable to the Accused.

V

Any and all other documents, papers, records, materials or things whether in writing or mechanically, photographically, electronically, or otherwise reproduced that have ever been considered, examined, or brought to the attention of the Board of Managers of the House of Representatives in connection with this matter.

Dated this 20th day of June, 1975.

s / John Rogers

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

BOARD OF MANAGERS
RESPONSE
TO
MOTION FOR PRODUCTION

Comes now the Board of Managers and for its Response to the Motion for Production filed by the Accused, states:

TO PROPOSITIONS I, II, AND III

The transcripts and other exhibits requested therein are first, not the property of the Board of Managers but are the property of the House of Representatives. It would not be proper for this Court to require the Board of Managers to produce these items.

The Board of Managers would specifically refer this Court to the case of Atchison, T. & S. F. Ry. Co. v. State, 113 P. 921. It has long been the rule of Judicial decisions that a court cannot, and will not, go behind a bill or resolution adopted by a legislative body. To do so would be a violation of all rules of law established in this State.

The only justification that the Accused could have in law for requesting these matters is under 22 O.S. 749, wherein in Section A it states:

> "In the investigation of a criminal offense, the district attorney or any peace officer may take the sworn statement of any person having knowledge of such criminal offense. Any person charged with a crime shall be entitled to a copy of any such sworn statement upon same being obtained."

The items requested under Propositions I, II, and III certainly do not fall within the category of sworn statements taken by a district attorney or any peace officer. Possibly the Board of Managers, after being appointed would fall into the category of a "district attorney or a peace officer." The law, in no way, contemplates applying this type of discovery to impeachment proceedings.

The Board of Managers would agree that any sworn statement taken in its investigation would be provided to the Accused and his attorneys, but the items requested are those of the property of the House of Representatives of the State of Oklahoma and for this Court to assume its jurisdiction extends behind the face of the Articles of Impeachment adopted by the House of Representatives would be unreasonable and improper execution of Judicial authority recognized in this State.

TO PROPOSITIONS IV AND V

This Court has adopted the rules of criminal procedure to govern its deliberations in trial of this matter. Again, the Board of Managers would refer the Court to 22 O.S. 749, Subsection A quoted above and put out to this Court that the items requested in IV and V are totally the work production of the Board of Managers in its investigation.

The Oklahoma Court of Criminal Appeals in Curtis v. State, Okla. Cr., 518 P.2d 1288 (1974) stated that field notes of an investigator, while questioning an accused person constituted "part of the work production" **and which the defendant was not entitled to by way of pretrial inspection.**

It is therefore respectfully the position of the Board of Managers that the Motion for Production filed by the Accused should be dismissed instanter and in its entirety.

Respectfully Submitted,
Board of Managers
House of Representatives
State of Oklahoma
s / Glenn E. Floyd,
Chairman

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

MOTION TO REQUIRE PRODUCTION
OF RECORDS AND DOCUMENTS

Comes now the Board of Managers of the House of Representatives of the State of Oklahoma, duly qualified and acting prosecutors in the matter of the impeachment of John Rogers, Secretary of State, and moves the State Senate sitting as a Court of Impeachment in the above styled cause to order the said John Rogers, the Accused, and his legal counsel to produce any and all income tax returns, both Federal and State, and any and all bank statements and records maintained or filed in the name of John Rogers, Mrs. John Rogers (the wife of John Rogers) and the "Friends of John Rogers" or any other campaign accounts maintained by John Rogers or his agents, during the period commencing January 1, 1966 and continuing to the present date. In support of its motion for production of records and documents, the Board further alleges and states:

1. That the aforementioned income tax returns and bank statements and records constitute material evidence in the prosecution of John Rogers, and that the production of said documents and records for inspection by any and all parties to the instant proceeding is essential to complete, fair and just disposition by this Honorable Court of this matter.

2. That the aforementioned documents and records are in the possession and control of the Accused, his legal counsel, and his agents, and are not presently available to the Board of Managers of the House of Representatives.

3. That pursuant to the provisions of Title 51, Oklahoma Statutes 1971, Sections 61 and 62, the Senate sitting as a Court of Impeachment is empowered to issue orders and subpoenae for the production of books or papers and for the enforcement of such orders.

4. That this motion is offered in the interests of substantial justice, and not for purposes of harrassment or delay.

WHEREFORE, PREMISES CONSIDERED, the Board prays this Honorable Court to order the Clerk of the Senate to issue subpoenae to John Rogers, Mrs. John Rogers and the legal counsel, attorneys, and agents of John Rogers for the production of any and all income tax returns, both Federal and State, and for the production of any and all bank statements and records filed or maintained in the names of John Rogers, Mrs. John Rogers, and the "Friends of John Rogers," an organization, and all other campaign organizations controlled by John Rogers or his agents, within a reasonable time, not to exceed ten (10) days, noncompliance with said subpoenae to be punishable by contempt and such other relief as may be provided by law.

Further, the Board prays that the Court issue an order directing John Rogers, the wife of the said John Rogers, and the legal counsel and attorneys for John Rogers to produce

forthwith the aforementioned documents, books and papers, and for any and all other orders and directives as provided by law for obedience to the orders and mandates of this Court.

Respectfully submitted
Board of Managers
House of Representatives
State of Oklahoma
s / Glenn E. Floyd,
Chairman

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

BRIEF IN SUPPORT OF MOTION TO
REQUIRE PRODUCTION OF DOCUMENTS

Under the Oklahoma Impeachment Statutes, Title 51 O.S. 1971 § 61 provides:

> "The clerk of such court, at the request of the chairman of the Board of Managers, or of the accused, shall issue subpoena for witnesses, **and for the production of books or papers**, and in case of disobedience of any such process, the court may order its clerk to issue process for the arrest of such witness or for the seizure of books or papers. All process shall be served or executed by the marshal or his assistant, or by any sheriff or deputy in the several counties of the State." (emphasis added)

Further, as the power of enforcement, Title 51 O.S. 1971 § 62 provides:

> "The Senate sitting as a court of impeachment shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts and judgments to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, process, precepts and judgments, and to make all orders, rules and regulations which it may deem essential or necessary for the orderly transaction of its business."

Obviously the authors of this legislation intended to vest the Senate sitting as a Court of Impeachment with broad powers regarding the discovery of evidence. Such wide ranging discovery powers are clearly in the public interest in impeachment cases, since much of the evidence of offenses constituting statutory grounds for prosecution under Title 51 O.S. 1971 § 55 may be found only in books and records of the Accused. Thus a requirement to produce books and records which may contain material evidence of wrongdoing protects the public interest by promoting full disclosure of relevant facts to the court, thereby serving the ends of fairplay and substantial justice.

Judicial proceedings for the removal of state officers are civil rather than criminal in character. As such, the proceedings are governed by general rules of civil procedure such as those relating to evidence and judgment, unless the impeachment statutes specifically provide otherwise. See 81 C.J.S. States § 78 (c) (1953). Further, since impeachment is not a criminal prosecution, the privilege against self-incrimination set out in the Oklahoma Constitution, Article 2 Section 21, and the Fifth Amendment to the United States Constitution is not applicable and may not be asserted in such cases.

In addition to the statutory authority previously cited for the proposition that the Senate as an Impeachment Court has broad powers to compel discovery of documents held by either party, the general rules of civil procedure in Oklahoma clearly favor liberal

and full disclosure. Title 12, Oklahoma Statutes 1971 § 482 provides that the court in a civil case may compel a party to produce documents held by one party for inspection by the adverse party. Further, 12 O.S. 1971 § 548 provides that for good cause shown and upon proper notice to parties, the court may order a party to permit such documents to be copied by the other, so long as the subject matter is relevant. See Carman v. Fishel, 418 P. 2d 963 (Okla. 1966); Jones Packing Co. v. Caldwell, 510 P. 2d 683 (Okla. 1973).

In Carman v. Fishel, a leading case on discovery in Oklahoma civil cases, it was held that the "relevancy" provision of the statute does not mean that such materials must be admissible as evidence, but means that the materials may be admissible as evidence in and of themselves, or might lead to the disclosure of other evidence which is admissible.

Further, regarding the trial courts broad discretionary powers of discovery, the Carman court said:

> "We are also mindful of the fact that the statute on discovery necessarily invests the trial court with a wide discretion in determining when and to what extent such act shall be applicable in a particular proceeding. If the trial court were not clothed with discretion in such matters, the obvious purpose of the statute to afford to litigants more precise and certain justice would be defeated." 418 P.2d 963, 968.

The broadening of the power of courts to promote discovery in the trial of lawsuits is an unmistakable trend today, in criminal as well as civil cases. See, e.g., Wardives v. Oregon, 93 S. Ct. 2208 (1973); Williams v. Florida, 90 S. Ct. 1893 (1970). This trend is exemplified by rules 34 and 45 of the Federal Rules of Civil Procedure, and particularly by Rule 14 of the Rules for District Courts of Oklahoma, adopted July 23, 1973 by the Supreme Court of Oklahoma which provides "Discovery rules and statutes shall be liberally construed..." provided that certain privileged communications shall be protected.

Thus, under the broad discretionary powers granted to the Court of Impeachment by the provisions of Title 51, Chapter 2, and under the general rules of civil procedure in Title 12 of the Oklahoma Statutes, it is clear that in proceedings much as the instant matter the court has the power to order disclosure of material documents.

It is obvious that in the instant case, the Accused, John Rogers, has essentially exclusive access to financial records and documents which may well contain evidence highly relevant to the issue of his alleged misconduct in office. The interests of substantial justice demand that such documents be produced for inspection by this court and by the adverse party, movants herein.

WHEREFORE, PREMISES CONSIDERED, the movant Board of Managers of the Oklahoma House of Representatives prays this honorable court to exercise its statutory discretion and order respondent John Rogers and his attorneys and agents to produce any and all income tax returns, bank records and statements and other pertinent financial records made since January 1, 1966, for inspection by this court and by the mov-

ant Board of Managers in order that all relevant evidence may be fully disclosed and considered by the triers of fact, promoting a prompt and just disposition of the case.

Respectfully submitted,
BOARD OF MANAGERS,
HOUSE OF REPRESENTATIVES,
STATE OF OKLAHOMA
s / Glenn E. Floyd,
Chairman

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

MOTION FOR SPEEDY TRIAL

Comes now John Rogers and moves the Court of Impeachment to grant him a speedy trial in keeping with the provisions relating to the rights of an accused under the Constitutions of the State of Oklahoma and the United States of America.

The Accused respectfully requests the Court to set a trial date at the earliest practical time and no later than June 30, 1975.

Dated this 20th day of June, 1975.

s / John Rogers

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

MOTION TO SET TRIAL DATE

Comes now the Board of Managers of the House of Representatives of the State of Oklahoma and respectfully requests that the trial in this matter be set to commence on July 21, 1975 or thereafter.

The Board respectfully urges this Honorable Court that in light of the short time lapse from the date on which the Board had the responsibility initially imposed upon it for the trial of this matter, that this request is not unreasonable.

The Board further submits that this is the minimum time in which it can review the evidence gathered by the House Investigating Committee and other materials relevant hereto and make adequate preparations for the competent presentation of these matters at trial.

The Board further respectfully submits that in light of the fact that a trial date of July 21, 1975 would result in the trial being held less than forty-five days from the date the Articles were delivered to the Senate that this is certainly a speedy trial under any definition one cares to reasonably make.

Respectfully submitted,
BOARD OF MANAGERS
HOUSE OF REPRESENTATIVES
STATE OF OKLAHOMA
s / Glenn E. Floyd,
Chairman

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

TRIAL BRIEF
REGARDING
FIFTH AMENDMENT PRIVILEGES
IN IMPEACHMENT PROCEEDINGS

The Board of Managers considered the possibility that the question of whether the Accused can avail himself of Fifth Amendment protection in this impeachment proceeding might arise. The Board has prepared this memorandum which may be of assistance to the Court in its consideration of the question.

It must be conceded initially that there is a right against self-incrimination in the course of an impeachment trial at least with respect to testimony which would lead to a real apprehension of criminal prosecution. The privilege against self-incrimination can be claimed in any proceeding whether criminal or civil, administrative or judicial, investigatory or adjudicatory. In Re Gault 387 U.S. 1 (1967)

Although the privilege can be raised in any type of proceeding it is clear that the privilege offers protection only against the prospect of a "criminal" prosecution. Thus the courts have recognized that there is no privilege against self-incrimination if the only penalties are of a civil nature. As was stated in Bowles v. Seitz, 62 F. Supp. 773, 775 "It was intended that the constitutional privilege against self-incrimination should apply only to criminal cases in the ordinary sense of that term." Although In Re Gault expanded the meaning of criminal cases to include delinquency cases which had previously been labeled civil, it is clear that the privilege extends only to those cases which are of an inherently criminal nature though they may be labeled otherwise. Before discussing whether the impeachment action is itself criminal in nature, we should recognize the consequences of testimony which might lead to a reasonable apprehension of ordinary criminal prosecution. The test is that the witness need not answer those questions that lead to a reasonable apprehension of criminal prosecution provided that the compelled disclosures lead to "substantial hazards of self-incrimination." California v. Byers, 402 U. S. 424 (1971), Marchetti v. United States, 390 U. S. at 61. Further a remote or speculative possibility of incrimination is not enough to support the claim of privilege. Mason v. United States, 224 U. S. 362; United States v. Sullivan, 274 U. S. 259.

Once the possibility of criminal prosecution is removed then the privilege against self-incrimination is also removed and testimony can be compelled. Thus a grant of transactional immunity or exemption from prosecution by statute of limitations eliminates a Fifth Amendment right to refuse to testify as established by a long line of cases ranging from Brown v. Walker, 163 U. S. 662, 672 through Lefkowitz v. Turley, 414 U. S. 70 (1974). The rule has been expressed in this way:

> "For the history of the privilege establishes not only that it is to be interpreted literally, but also that its sole concern is, as its name indicates, with the danger to

> a witness forced to give testimony leading to the infliction of 'penalties affixed to the criminal acts...' (Boyd v. United States, 116 U. S. 616, 634) Immunity displaces the danger. Once the reason for the privilege ceases, the privilege ceases." Ullmann v. United States, 350 U. S. at 438, 439 (1956)

As expressed originally in the Brown cases, supra, and reiterated in Moore v. Backus, 78 F. 2d at 577 and in United States v. Thomas, 49 F. Supp. at 550 the same principle applies to cases where the statute of limitations has run. Thus it should be kept in mind that the privilege against self-incrimination exists only in the case of a possibility of a criminal prosecution.

Is impeachment itself a criminal action? In Oklahoma the answer must be "no". Although the proceedings are punative the procedure to be followed is civil procedure unless the statutes governing impeachment provide otherwise. 81 C. J. S. 78 (c) (1953). There are no Oklahoma cases specifically on this point but certain guidelines are available to determine whether impeachment should be considered criminal for Fifth Amendment purposes.

Historically criminal cases are those which subject the violator to the potential loss of freedom, and Bowles v. Seitz, supra, tells us that the privilege "should apply only to criminal cases **in the ordinary sense of that term.**" (emphasis added) In Re Gault, supra, did not alter this basis concept. In fact the Gault case may be considered to have reinforced the concept of incarceration as the determinative element of a criminal prosecution. Gault, while stating that the proceedings could not be governed by their mere label, looked to the nature of the punishment and concluded that since it involved a loss of liberty it was of a criminal nature. If loss of liberty is the key element of a criminal action then impeachment is by definition not criminal. Article VIII Section 5 of the Oklahoma Constitution specifically provides:

> "Judgment of impeachment shall not extend beyond removal from office...."

There are cases which recognize that certain forfeitures can be in the nature of a criminal punishment and in such cases there is a right to the Fifth Amendment privilege against self-incrimination. It should be made clear at once that the mere fact that a forfeiture or penalty is involved does **not** in itself give rise to the privilege against self-incrimination. If it were otherwise, every defendant in every tort or breach of contract case could claim the Fifth Amendment. What is the character of the forfeiture that gives rise to the protection of the Fifth Amendment? It is not the punative nature of the decree alone because many tort claims allow "punative" damages and certain contract violations allow multiple damages, yet these punative awards are not sufficient to give rise to the right against self-incrimination. For instance an award of treble damages has been held insufficient to give rise to the privilege. Bowles v. Seitz, supra. Nor does the privilege exist merely because defendant's answer might expose him to civil action or pecuniary loss. Heaton Hospital, Inc. v. Emrick, 264 A.2d 806 (1971). The distinction between those penalties which are considered civil and those which are considered criminal has historically been that only those forfeitures which arise out of a core element of illegality (i.e. forfeiture of an automobile due to presence of contraband) will be considered criminal. This position is expressed in United States v. United States Coin and Currency, 401 U. S. 715 (1971) where the Supreme Court stated:

> "When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise." at page 721.

According to the Oklahoma Constitution, impeachment and removal from office may be based on non-criminal acts so that this is clearly not the kind of forfeiture to which the court speaks.

> "...elective State officers...shall be liable and subject to impeachment for wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office." Article VIII, Section 1.

Most importantly, forfeiture of office by an elected official should not be considered a penalty within the meaning of the Fifth Amendment rights for compelling public policy reasons. Our democratic form of government rests upon the assumption that the office is more important than the man who holds it. The office holder is but a servant, a temporary custodian of the public trust who owes the public the highest duty of service and obedience. When the office holder violates that trust, it is the right and privilege of the people to remove him from his position. It is not acceptable to think of an elected official as a contractual employee who has property rights to his employment, because the office belongs to the people and not to the man.

Even if the "right" of employment is supposed, this is not such a right as will invoke the protection of the Fifth Amendment. In the case of Zuckerman v. Greason, 231 N.E. 2nd 718 (1967) the court held that an attorney, once given immunity from criminal prosecution, could be disbarred based upon his testimony. The court said:

> "These men have made the disclosures which have contributed to the disciplinary measures which have been imposed upon them. They are not charged with crime .... A proceeding looking to disbarment is not a criminal case.... They had no privilege against making disclosure usable only in a disciplinary proceeding. The constitutional privilege applies only in the case of evidence which might be used against them in a criminal case..." (at page 721).

This deprivation of livelihood is directly analogous to removal from office and the court specifically held that the compelled testimony would be available for use in a punitive disbarment action. It would be inconsistent to allow a lower standard of accountability for elected public officials than is demanded of officers of the court.

Two final elements should be considered. First, the embarrassment and degradation of an impeachment proceeding does not give rise to Fifth Amendment protections. Brown v. Walker, 161 U. S. 605 (1896); U. S. v. Thomas, 49 F. Supp. 547 (1943); U. S. v. Frascone, 299 F.2d 824 (1962) certiorari denied 370 U. S. 910. Lastly, the mere fact that elements of criminal actions may be present is not sufficient to bring the entire action within the orbit of criminal cases for Fifth Amendment purposes. In California v. Byers, 402 U.S. 424 (1971) the Supreme Court discussed whether any disclosure which might lead to criminal prosecution is privileged. In holding that all disclosures were not so privileged the Court said:

"An organized society imposes many burdens on its constituents. It commands the filing of tax returns for income...informational reports on the manufacturing process and the content of products, on the wages, hours, and working conditions of employees...the volume and content of pollutants discharged into our waters and atmosphere. Comparable examples are legion.

In each of these situations there is some possibility of prosecution — often a very real one — for criminal offenses disclosed by or deriving from the information the law compels a person to supply. Information revealed by these reports could well be a 'link in the chain' of evidence leading to prosecution and conviction. But under our holdings the mere possibility of incrimination is insufficient to defeat the strong policies in favor of a disclosure called for by statutes like the one challenged here." (at page 427, 428)

How much more compelling must be the public policy which says that an office holder must be accountable to the public for his acts in office? To characterize the impeachment proceeding as criminal merely because some of the elements in the hearing may relate to criminal matters does violence not only to the philosophy of California v. Byers but also to the concept of impeachment as a tool for holding people accountable for unethical or improper acts which need not be criminal. Since the privilege to take the Fifth Amendment with respect to specific questions which raise a substantial risk of criminal prosecution is protected and viable, there is no need or rationale to justify labeling the entire proceeding as criminal.

Based upon long standing considerations of history and public policy it must be recognized that the impeachment proceeding is not criminal and does not, per se, give right to any privilege against self-incrimination.

The significance of determining that impeachment is in itself a criminal proceeding lies in the fact that determining impeachment to be feasible allows the defendant to be compelled to take the witness stand and to testify to non-criminal allegations which nonetheless are impeachable. Thus the defendant is forced to testify while preserving his right, as discussed earlier, to take the Fifth Amendment on specific questions where he might be liable to criminal prosecution and for which he has not been granted transactional immunity. There are compelling public policy reasons for adopting this approach. An elected official should be considered to be in a fiduciary relationship to the public. In that relationship the official has a duty of faithful performance of his office which includes the duty to account for his stewardship of the office. Breach of those obligations is clearly grounds for removal from office. To allow procedure inhibition to emasculate that duty of accountability is to allow an official to breach his fiduciary duty in order to preserve his possession of the office — a position totally at odds with our understanding of public service and with the reality of impeachment. To establish a form in which an official is bound to his duty of accountability is not to deprive him of his basic rights because it could not be said that the official has a right of possession of the office and because the official's privilege against self-incrimination as to criminal matters is in no way diminished. It should be noted that the courts have recognized that those who seek public office waive certain rights; most notably the right of privacy and the protection against libel and slander which an ordinary citizen might enjoy for the compelling reason that the public has a right to hear an unimpeded discussion of the official's performance in office. (New York Times v. Sullivan), 376 U.S. 254 (1964). The right to not only refuse to answer specific questions but also **to completely avoid the witness stand** is

a mere tactical advantage, unnecessary to the preservation of core Fifth Amendment protections, which in an impeachment trial should be considered waived for the same compelling reasons that the courts have diminished an elected official's right of privacy and protection against libel. In other words, the defendant should be estopped from asserting a privilege which is contrary to responsibilities he willingly and knowingly assumed when he voluntarily sought elective office. The tactical advantage of criminal procedure must not be blindly applied where it will thwart the duty of an elected official to act for his performance in office.

Respectfully submitted,

BOARD OF MANAGERS
HOUSE OF REPRESENTATIVES
STATE OF OKLAHOMA
s / Glenn E. Floyd,
Chairman

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

DEMURRER

Comes now the Accused, John Rogers, and demurs to the Articles of Impeachment filed herein for the reason that the same fails to state that the accused is currently in office, occupying the office of Secretary of State and susceptible to impeachment.

That the Articles filed herein allege that he was elected in 1966 and took the oath of office and that he was again elected in 1970 and took the oath of office. There is no allegation that he was elected in 1974 or that he took the oath of office.

That the Accused, John Rogers, withdraws his plea of not guilty for the purposes of filing this motion and requests that this matter be considered immediately prior to trial on July 8, 1975.

s / John Rogers,
Accused

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

BOARD OF MANAGERS
MOTION
TO
OVERRULE
DEMURRER

Comes now the Board of Managers of the House of Representatives and moves this Honorable Court to overrule the Demurrer of the Accused, John Rogers.

The Board of Managers respectfully advises the Honorable Court as follows:

I.

The Oklahoma Constitution makes no requirement that the Articles of Impeachment recite specifically that the officer sought to be ousted has been elected or has taken the oath of office. The Constitution simply provides that certain officials are subject to impeachment and it further provides that:

> "The House of Representatives shall present all impeachments." Article VIII, Section 3.

The Constitution makes no mention of the form of the Articles.

II.

The Statutes of the State of Oklahoma make no provisions for the form of Articles of Impeachment. The Statutes make no requirement that the Articles of Impeachment recite specifically that the officer sought to be ousted has been elected or has taken the oath of office.

The Statutes provide that:

1. "The House of Representatives shall present all impeachments." 51 O.S. 52

2. "The articles of impeachment are the written accusation of the officer, drawn up and approved by the House of Representatives." 51 O.S. 56.

There is no statutory authority regarding form of Articles of Impeachment and therefore an Article is not defective as to form as long as it properly advises the officer as to the offenses of which he has been accused.

III.

The Articles of Impeachment recite in at least eight different places that the officer against whom the Articles of Impeachment are lodged is the Secretary of State, John Rogers, holding office presently:

1. Page 2, line 21 "John Rogers, Secretary of State"

2. Page 3, line 15 "John Rogers, Secretary of State"

3. Page 4, lines 4 and 5 "John Rogers as Secretary of State"

4. Page 4, line 8 "John Rogers, in the official capacity aforesaid"

5. Page 4, lines 18 and 19 "John Rogers, Secretary of State"

6. Page 4, lines 28 and 29 "John Rogers, while acting in his official capacity as Secretary of State"

7. Page 5, line 6 "John Rogers, Secretary of State"

8. Page 5, line 19 "John Rogers, Secretary of State"

There can be no doubt that the Articles of Impeachment are lodged against John Rogers, the present Secretary of State of the State of Oklahoma.

IV.

The Accused, John Rogers, Secretary of State, has already entered an appearance in this matter by filing certain pleadings:

1. Motion To Dismiss: Filed at 3:00 p.m., June 16, 1975.

2. Motion For Production: Filed on June 20, 1975.

3. Motion For Speedy Trial: Filed June 20, 1975.

4. Demurrer: Filed 4:55 p.m. on June 25, 1975.

The Accused, John Rogers, Secretary of State, has further entered an appearance by personally appearing on June 20, 1975, and entering a plea of Not Guilty to each of the three Articles of Impeachment.

The Accused, John Rogers, Secretary of State, has not, before the filing of the hereinbefore mentioned Demurrer, raised any questions as to the form of the Articles of Impeachment. The opportunities to so do have been ample. To raise the issue at this late date seems highly irregular. The issue could have been raised many times prior to this, if it is even a proper issue to raise in an impeachment proceeding.

V.

Even if there is a slight defect as to form, the Articles are not insufficient because of a defect in the matter of form unless it tends to prejudice the substantial rights of the Accused upon the merits.

An analogy can be drawn:

> 22 O.S. 410 states:
> "Immaterial informalities to be disregarded — No indictment or information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in the matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits."

The Accused has made no allegations in his Demurrer that his rights have been prejudiced in any way.

VI.

There can be no doubt that in light of the above that John Rogers, Secretary of State, is fully aware that Articles of Impeachment have been lodged against him and the Board of Managers respectfully urges this Honorable Court that the constitutional and statutory standards have been adequately met.

Therefore, the Board of Managers respectfully urges this Honorable Court to overrule the Demurrer of the Accused in this matter and proceed to trial on the merits on July 8, 1975, as hereinbefore ordered by this Honorable Court.

Respectfully submitted,
BOARD OF MANAGERS
HOUSE OF REPRESENTATIVES
STATE OF OKLAHOMA
s / Glenn E. Floyd,
Chairman

HOUSE OF REPRESENTATIVES
STATE OF OKLAHOMA

June 26, 1975

In the Matter of:
The Impeachment of John Rogers,
Secretary of State

Mr. Lee Slater, Clerk
Court of Impeachment
State Capitol Building
Oklahoma City, Oklahoma 73105

Dear Mr. Slater:

Pursuant to 51 O.S. 61, the Chairman of the Board of Managers in the above captioned matter hereby requests that the attached subpoena duces tecum be served upon:

Friday Fitzgerald, Vice President, Fidelity, N.A., Oklahoma City, Oklahoma

Respectfully submitted,
BOARD OF MANAGERS
HOUSE OF REPRESENTATIVES
STATE OF OKLAHOMA
s / Glenn E. Floyd,
Chairman

SUBPOENA

THE STATE OF OKLAHOMA
THE COURT OF IMPEACHMENT
OF THE STATE OF OKLAHOMA, SS:

To: Friday Fitzgerald, Vice President, Fidelity, N.A., Oklahoma City, Oklahoma, Greetings:

YOU ARE HEREBY COMMANDED to submit for inspection to the persons serving this subpoena duces tecum as authorized by the Court of Impeachment of the 35th Oklahoma Legislature pursuant to the authority vested in the Court of Impeachment under 51 O.S. 61, the following:

All books and records relating to any and all accounts in the name of Robert Callaway and/or Linda Callaway held in this bank from 1966 to present.

FAIL NOT.

Done by direction of Chief Justice Ben T. Williams, Presiding Officer of the Court of Impeachment, at the City of Oklahoma City, this 26th day of June, 1975.

s / Lee Slater
Clerk of the Court of Impeachment

DIRECTION OF SERVICE

THE COURT OF IMPEACHMENT
OF THE STATE OF OKLAHOMA,

To Bob Craig, Greetings:

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

Dated at Oklahoma City, this 26th day of June, 1975.

s / Lee Slater
Clerk of the Court of Impeachment

RETURN OF SERVICE OF SUBPOENA BY MARSHAL OF
THE COURT OF IMPEACHMENT

I certify that I received the foregoing subpoena on the 26th day of June, 1975, and that I delivered a copy of said subpoena to the following named person(s) personally at the address and on the date set forth opposite each name, to wit:

Name	Address Where Served	Date of Service
Richard L. Killmon	Robinson / at Robert S. Kerr	

I certify that I received the foregoing subpoena and served it by leaving a copy thereof at Robinson at Robert S. Kerr, Oklahoma City, which is his usual place of residence, with _____, a member of his family over fifteen (15) years of age.

Dated on the 26th day of June, 1975.

s / Bob Craig
Marshal of the Court of Impeachment

BEFORE THE SENATE OF THE STATE OF OKLAHOMA
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF:)
)
THE IMPEACHMENT OF JOHN ROGERS)

MOTION
TO
DECLARE

Comes now the Board of Managers of the House of Representatives and represents to this Honorable Court as follows:

1) John Rogers, the Accused in this matter, on June 27, 1975 submitted his resignation to Governor David L. Boren. (Letter attached as Exhibit)

2) Governor David L. Boren advised this Court of said resignation in a letter of July 1, 1975. (Letter attached as Exhibit)

3) John Rogers, the Accused, is no longer the Secretary of State of the State of Oklahoma.

4) Governor David L. Boren, on July 1, 1975 appointed Jerome W. Byrd to the office of Secretary of State. Jerome W. Byrd is duly qualified to hold said office and is now serving as Secretary of State of the State of Oklahoma. (Letter and Order attached as Exhibit)

5) Under the Constitution of the State of Oklahoma, the Impeachment proceedings are now moot since Impeachment extends only to removal from office.

Therefore, the Board of Managers hereby requests that this Honorable Court declare the said Articles of Impeachment to be moot.

Dated this 7th day of July, 1975.

Respectfully submitted,
BOARD OF MANAGERS
HOUSE OF REPRESENTATIVES
STATE OF OKLAHOMA
s / Glenn E. Floyd,
Chairman

(Note: Attachments referred to above are printed in the transcript on pages 68 and 69)

RULES

RULES

OKLAHOMA STATE SENATE
35th Legislature

SITTING AS A COURT OF IMPEACHMENT

SECTION 1. When the Senate shall receive notice from the House of Representatives that Managers are appointed on its part to conduct an impeachment against any person and are directed to carry Articles of Impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the Managers for the purpose of exhibiting such Articles of Impeachment, agreeable to such notice.

SECTION 2. When the Managers of an Impeachment shall be introduced at the Bar of the Senate and shall signify that they are ready to exhibit Articles of Impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant-at-Arms to make proclamation that, "The Managers of the Honorable House of Representatives are present to present Articles of Impeachment against_____," after which the Articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the Managers that the Senate will take proper action on the subject of impeachment, of which due notice shall be given to the House of Representatives.

SECTION 3. Upon such Articles being presented to the Senate, the Senate shall, within ten (10) days thereafter, organize as a Court of Impeachment for the trial of the person or persons accused. At an hour of a day fixed by the Senate, the Senate shall organize as a Court of Impeachment, and before proceeding to the consideration of the Articles of Impeachment, the Presiding Officer shall administer or order the Clerk of the Court to administer the oath hereinafter provided to the Members of the Senate then present and the other Members of the Senate as they, from time to time, shall appear.

SECTION 4. The Court of Impeachment shall be presided over by the Chief Justice, or, if he is absent or disqualified, then one of the Associate Justices of the Supreme Court, to be selected by it, except in cases where all of the Members of said Court are absent or disqualified, or in cases of impeachment of any Justice of the Supreme Court, then the Senate shall elect one of its own Members as Presiding Officer for such purpose. The House of Representatives shall present all impeachments.

SECTION 5. Upon adoption of these Rules and while the Senate is sitting as a Court of Impeachment, the Sergeant-at-Arms shall be the Marshal of the Court and all Assistant Sergeants-at-Arms as named by the Court shall be Assistant Marshals and as such shall exercise all powers and obligations of such office as authorized by these Rules.

SECTION 6. The Marshal of the Court shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer shall prescribe the forms of process for the enforcement of the orders and judgment of the Court of Impeachment.

SECTION 7. Upon the adoption of these Rules and while the Senate is sitting as a Court of Impeachment, the Secretary of the Senate shall be the Clerk of the Court of Impeachment, and as such shall exercise all powers and obligations of such officer as authorized by these Rules. Upon the adoption of these Rules and while the Senate is sitting as a Court of Impeachment, the Chief Clerk and the Senate Journal Clerks shall be the Journal Clerks of the Court of Impeachment. The Presiding Officer shall administer all oaths prescribed by these Rules.

SECTION 8. The Journal Clerks of the Court shall cause a record of the proceedings in cases of impeachment to be kept in a special journal, which shall be examined and approved by the Presiding Officer of the Court.

SECTION 9. The President Pro Tempore of the Senate is hereby designated and authorized by the Court of Impeachment to employ court reporters, stenographers and all other personnel necessary to properly carry out the duties and functions of the Court of Impeachment. Provided, unless otherwise ordered, the Senate Journal Clerk shall be the Journal Clerk of the Court of Impeachment.

SECTION 10. Upon the presentation of Articles of Impeachment and the organization of the Senate as a Court of Impeachment, as hereinbefore provided, a writ of summons shall issue to the Accused, with a copy of said Articles, notifying him to appear before the Court of Impeachment on a date and time certain, and at a place to be fixed by the Court and named in such writ, and file his answer or plea to such Articles of Impeachment, and to stand to and abide the orders of the Court of Impeachment thereon; which writ shall be served by the Marshal or his assistant, and due return thereof made such number of days prior to the day fixed for such appearance as shall be named in such summons, either by the delivery of an attested copy thereof to the person accused, or, if that cannot be conveniently done, by leaving such copy at the last known place of abode of such person, with some member of his or her family over sixteen years of age. If the Accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his plea or answer to such Articles of Impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

SECTION 11. At the time fixed on the day appointed for the return of the summons against the person impeached, the Court of Impeachment shall convene and the Clerk of said Court shall administer an oath to the returning officer substantially in the form following, viz:

"I,_____, do solemnly swear that the return made by me upon the process issued on the____day of_____, by the Senate of the State of Oklahoma, organized as a Court of Impeachment, against_____, is truly made, and that I have performed such service as therein described. So help me God.", which oath shall be entered in the record.

SECTION 12. The person impeached shall then be called to appear and answer to the Articles of Impeachment against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing, and the capacity in which he appears. If he does not appear, either by agent or attorney, the same shall be so recorded.

SECTION 13. The hour of the day at which the Court shall sit upon the trial of an impeachment shall be fixed by the Court, either by general order or by motion from day to day; and when the hour for such sitting shall arrive, the Presiding Officer of the Court shall so announce, and shall cause proclamation to be made of the opening of such Court, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial as a Court of Impeachment, or of the legislative session, shall not operate as an adjournment of the Court; but on such adjournment the Court shall continue the consideration of such impeachment proceedings from day to day or to any further date until the final conclusion thereof.

SECTION 14. The Presiding Officer shall have the power to make all orders, mandates and direct the Clerk of such Court to issue all writs and process authorized by these Rules, or by the Court of Impeachment, administer oaths and may make and enforce such other regulations and orders in the premises as the Court may authorize or provide.

SECTION 15. The Court of Impeachment shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, process and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts or judgments, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice. The Marshal of the Court, under the direction of the Court of Impeachment, may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs and precepts of the Court.

SECTION 16. Witnesses shall be sworn in the following form, viz:

"You do solemnly swear (or affirm) that the evidence you shall give in the impeachment trial now pending shall be the truth, the whole truth, and nothing but the truth; so help you God." This oath shall be administered by the Clerk of the Court or the Presiding Officer.

Form of subpoena to be issued on the application of the Board of Managers or of the party impeached, or his counsel:

"To_____, Greetings:

You and each of you are hereby commanded to appear before the Court of Impeachment of the State of Oklahoma at the hour of_____o'clock,____M. on the_____day of _____, 1975, at the Senate Chamber in the City of Oklahoma City, then and there to testify in the cause which is before the said Court in which the House of Representatives has impeached_____and remain in attendance from day to day until discharged by this Court.

FAIL NOT.

Done by direction of_____, Presiding Officer of the Court of Impeachment, at the City of Oklahoma City, this_____day of_____, 1975.

_____
Clerk of the Court of Impeachment"

Form of direction of the service of said subpoena:

"The Court of Impeachment of the State of Oklahoma to_____, Greetings:

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

Dated at Oklahoma City, this____day of_____, 1975.

_____
Clerk of the Court of Impeachment"

Form of oath to be administered to the members of the Senate sitting in the trial of impeachments:

"I do solemnly swear (or affirm), that I will faithfully and impartially try the impeachment against_____and do justice according to the law and the evidence. So help me God."

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

"The State of Oklahoma,
The Court of Impeachment of the State of Oklahoma, ss:

To_____, Greetings:

Whereas, the House of Representatives of the State of Oklahoma did, on the____day of _____, 1975, exhibit to the Senate Articles of Impeachment against you, the said _____, a true copy of which Articles of Impeachment are attached hereto, and demand that you, the said_____, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and Justice:

You, the said_____, are therefore hereby summoned to be and appear before the Court of Impeachment of the State of Oklahoma, at the Senate Chamber in the City of Oklahoma City, on the____day of_____, 1975, at____o'clock____m., and then and there to answer or plead to the Articles of Impeachment, to abide by, obey and perform such orders, directions and judgments as the said Court shall make in the premises according to the Constitution and Laws of the State of Oklahoma.

HEREOF, YOU ARE NOT TO FAIL.

Done by direction of_____, Presiding Officer of the said Court, at the City of Oklahoma City, this____day of_____, 1975.

_____
Clerk of the Court of Impeachment"

Form of direction of the service to be endorsed on said writ of summons:

"The State of Oklahoma, ss:
The Court of Impeachment of the State of Oklahoma, to_____, Greetings:

You are hereby commanded to deliver to and leave with_____, if conveniently found, or if not, to leave at his usual place of abode with some member of his family over sixteen years of age, a true and attested copy of the within writ of summons, together with a true copy of the Articles of Impeachment and in whichsoever way you perform the service, let it be done on or before the_____day of_____, 1975.

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

Done by direction of_____, Presiding Officer of the said Court, at the City of Oklahoma City, this_____day of_____, 1975.

_____
Clerk of the Court of Impeachment."

Form of oath to be administered to officers of the Court of Impeachment:

"I,_____, do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity. So help me God."

Substantial compliance with the forms prescribed in this section shall suffice. All process shall be served by the Marshal of the Court or his assistants, unless otherwise ordered by the Court.

SECTION 17. If the Court of Impeachment shall at any time fail to sit for the consideration of Articles of Impeachment on the day or hour fixed therefor, such Court may, when reconvened, continue the proceedings without debate, or may fix a day and hour for resuming such consideration, and such Court may adjourn its sessions and the proceedings before it to such dates as may suit its convenience or serve the ends of justice.

SECTION 18. Any person before the Court who shall file or present for filing any pleadings, or who shall make any statement or remark, designed in disrespect toward, or in contempt of the Court or any Members thereof, may be deemed guilty of contempt of Court and may be expelled from the courtroom and otherwise punished, as the Court may direct.

SECTION 19. During any session of the Court no Member of the Court shall be permitted to engage in any conduct which would be detrimental to perfect decorum in the Senate Chamber. The Marshal is authorized and empowered to enforce proper rules of order and decorum on the part of visitors and spectators. Visitors and spectators may be permitted to enter the gallery and to depart at pleasure, so long as they do not disturb the Court or any of its Members. The Marshal may, upon the order of the Court, remove or refuse admission to any spectator or visitor.

SECTION 20. While the Senate is sitting as a Court of Impeachment, access to the lower floor of the Senate Chamber shall be denied to all persons, except Members and

Officers of the Court, House Managers, the Accused and his or her counsel and witnesses. Representatives of the news media will be permitted in the section reserved for their use. No person shall be permitted to use flash bulbs, lights or other illuminating devices in the Senate Chamber or Galleries, and any other equipment tending to disturb the decorum of the Court may be prohibited upon order of the Court.

SECTION 21. Counsel for the parties shall be admitted to appear and be heard upon an impeachment as upon the trial of a cause in the courts of the State.

SECTION 22. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if he shall require, such motion or motions shall be committed to writing and read at the Clerk's table.

SECTION 23. Witnesses shall be examined by one person on behalf of the party introducing them, and then cross-examined by one person on the other side, unless the Presiding Officer of the Court shall otherwise order.

SECTION 24. No Member of the Court of Impeachment shall be called as a witness by either party.

SECTION 25. In the trial of impeachment charges, the rules governing the admissibility of evidence, and the order of trial, commencing with the opening statement of counsel, shall be the same as is prescribed and recognized by the courts in the trial of criminal proceedings in this State, except as may be otherwise provided by these Rules. The Court may, by specific ruling, receive as evidence any matter considered by the Court to be germane and material to the proceedings. The rules of evidence prohibiting the admission of hearsay evidence shall prevail and shall be interpreted in accordance with the rules of evidence applicable to judicial proceedings in the State of Oklahoma.

SECTION 26. If a Member of the Court wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing and put by the Presiding Officer.

SECTION 27. The Members of the Court, by a majority vote of those present, shall determine all questions of procedure in any impeachment trial in said Court.

SECTION 28. Any motions or demurrers which would go to the merits of the case or would have the effect of terminating the case shall be ruled upon by a vote of the Members of the Court. The Presiding Officer shall decide all other motions, demurrers, questions of evidence, or other incidental matters arising during such proceedings. Provided, however, that any Member of the Court, any Member of the Board of Managers, or the Accused in person or by his attorney, may take exception to any ruling of the Presiding Officer, and if any such exception is accompanied by a request for ruling by the entire membership of the Court, the question shall be put to the Court for ruling thereon if the exception and request for ruling is supported by ten (10) or more Members of the Court. In the event the question on any controverted ruling is put to the Court, the same shall be by roll call vote. It is further provided that the Presiding Officer, at his discretion, may allow an equal amount of time to the Board of Managers and the Accused or his attorneys, for argument thereon.

SECTION 29. All questions and all motions shall be argued for not exceeding five (5) minutes on each side, unless the Presiding Officer shall, by order, extend the time.

SECTION 30. All orders and decisions of the Presiding Officer shall be made without debate by any Member of the Court of Impeachment except when the doors shall be closed and, in that case, no Member shall speak more than once on any one question, and for not more than ten (10) minutes on any question unless by unanimous consent. Upon motion in writing presented by any Member of the Court to close the doors and exclude all persons from the presence of the Court, the same shall be considered by the Court and adopted upon a majority vote of those Members of the Court present and voting, or upon the order of the Presiding Officer.

SECTION 31. The case, on each side, shall be opened by one person, as in criminal trials. The final argument on the merits may be made by three persons on each side, unless otherwise ordered by the Presiding Officer, upon application for that purpose, and the argument shall be opened and closed on the part of the House of Representatives by the Board of Managers.

SECTION 32. No Member of the Court of Impeachment shall vote upon any separate Article of Impeachment who has been absent from the trial during the taking of all the testimony of any one witness upon such Article. The question of whether or not any Member of the Court shall be entitled to vote upon any Article of Impeachment may be raised by a Member of the Court only, and when raised shall be decided by a majority of the Members of the Court present. The decision of the question by a majority of the Members of the Court present shall be a final determination of the matter.

SECTION 33. After submission of the case for final determination, the doors shall be closed for deliberation and the Presiding Officer shall preside over the deliberations of the Members of the Court of Impeachment.

SECTION 34. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each Article of Impeachment separately; and, if the impeachment shall not, upon any separate count or charge contained in the Articles, be sustained by the votes of two-thirds of the Members present, a judgment of not guilty shall be entered as to such count; but if the person accused in such Articles of Impeachment shall be convicted upon any separate count or charge of said Articles by the votes of two-thirds of the Members present, the Court shall proceed to pronounce judgment upon such count.

SECTION 35. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present and voting in open session.

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