Modern Precedent on Impeachment Procedure: Impeachment Proceedings for Presidents Richard Nixon and Bill Clinton

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I. Introduction

In light of the ongoing investigation by several House Committees, Members of Congress and the public have expressed an interest in studying the rules, precedents, and practices that governed consideration of articles of impeachment against President Richard Nixon and President Bill Clinton, in 1974 and 1998, respectively.

This report is intended to provide Members of the 116th Congress and the public with a non-exhaustive overview of significant procedural elements of the impeachment proceedings for President Nixon and the impeachment of President Clinton.

Throughout the Nixon and Clinton impeachment proceedings, the House took steps to ensure that the gravity of considering the removal of a President was reflected in the manner in which it undertook hearings, debate, and votes. Both the 93rd and 105th Congresses worked to prioritize fairness, transparency, and bipartisanship throughout each impeachment inquiry. Those priorities were reflected in the procedures adopted by the House Judiciary Committee and the hearings and debate that followed them.

II. The Impeachment Proceedings Investigating President Richard Nixon, 93rd Congress

From December 1973 to July 1974, the House Judiciary Committee (“Committee”) conducted an impeachment inquiry to consider whether to report articles of impeachment against President Richard Nixon.\(^1\) On January 31, 1974, the Committee ordered reported H. Res. 803 by voice vote, providing appropriate power to the Committee to conduct an impeachment inquiry.\(^2\) On February 6, 1974, the full House debated and adopted H. Res. 803, which was adopted by a vote of 410-4.\(^3\) H. Res. 803 authorized the Committee to, among other things, subpoena witnesses, testimony, and documents.\(^4\) Following the adoption of H. Res. 803, the Committee adopted procedures for the handling of grand jury material, the presentation of evidentiary material by Committee staff, and procedures governing consideration and debate on articles of impeachment.\(^5\) Hallmark within these procedures was the Committee’s co-equal subpoena power and the ability of the President and his counsel to participate in proceedings.\(^6\)

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\(^1\) Report on the Activities of the Committee on the Judiciary of the House of Representatives during the 93rd Congress, 93rd Cong. 1, H.R. Rept. 93-1667 (January 2, 1975) [hereinafter “H.R. Rept. 93-1667”].

\(^2\) Investigatory Powers of Committee on the Judiciary with Respect to its Impeachment Inquiry, 93rd Cong. (February 1, 1974).


\(^4\) Resolution providing appropriate power to the Committee on the Judiciary to conduct an investigation of whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States, H. Res. 803, 93rd Cong. (1974) [hereinafter “H. Res. 803”].


\(^6\) Id. at 8-9; H. Res. 803, 93rd Cong. (1974).
A. PROCEDURES GOVERNING NIXON IMPEACHMENT PROCEEDINGS

Co-Equal Subpoena Power

On February 6, 1974, the full House voted to authorize the House Judiciary Committee (“Committee”) to investigate “fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America.”7 H. Res. 803 was considered by the Committee following Chairman Peter Rodino’s acknowledgment that the Committee’s existing subpoena power did not extend to considering impeachment.8 Subsequently, Chairman Rodino sought explicit authorization for the Committee to subpoena persons and documents with regard to the impeachment inquiry.

Reported out of the Committee on February 1, 1974, H. Res. 803 authorized the Committee to subpoena testimony, which could be taken at hearings or by deposition.9 Further, H. Res. 803 authorized the Committee to compel answers to written interrogatories in connection with the impeachment inquiry.10

Participation by the President’s Counsel

On May 2, 1974, the Committee unanimously adopted a set of procedures for the presentation of evidentiary materials by Committee staff.11 In the Committee’s report titled the “Impeachment of Richard M. Nixon, President of the United States,” Chairman Rodino notes that the May 2 procedures were consistent with four principles including the ability of the President’s counsel to: (1) be present and receive documents and materials presented to the Committee; (2) be present to hear the presentation of evidentiary material in executive or open session; (3) make his position known, orally or in writing, with respect to the evidentiary material received by the Committee and recommend witnesses for the Committee; and (4) cross-examine those witnesses as deemed appropriate by the Committee.12

Debate on Articles of Impeachment

On July 23, 1974, the Committee adopted procedures governing the debate of articles of impeachment.13 These procedures provided for “general debate of no more than ten hours on a motion to recommend a resolution, together with articles of impeachment, impeaching Richard M. Nixon and for consideration of the articles after the conclusion of general debate.”14

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8 See Legal Aspects of Impeachment: An Overview, Department of Justice, Office of Legal Counsel at 43 (February 1974) (stating that “[o]n January 7, Chairman Rodino…announced that the Committee’s subpoena power does not extend to impeachment and that, after the House reconvenes on January 21, the Committee would seek express authorization to subpoena persons and documents with regard to the impeachment inquiry.”).
9 Investigatory Powers of Committee on the Judiciary with Respect to its Impeachment Inquiry, 93rd Cong. 2 (February 1, 1974).
10 Id. at 3.
12 Id. at 9.
13 Id. at 10.
14 Id.
Under the July 23 procedures, each article was to be considered separately for purposes of amendment and would be immediately voted upon as amended. Subsequent debate on specific articles lasted from July 24 to July 30, 1974. Upon conclusion of Committee consideration of the articles of impeachment, the Committee recommended that the House of Representatives impeach President Nixon.15

B. ACTION BY THE HOUSE COMMITTEE ON THE JUDICIARY

Committee Investigation

From May 9, 1974, to June 21, 1974, the Committee considered evidentiary material in both open and executive session. The evidentiary material included “approximately six hundred fifty “statements of information” and more than 7,200 pages of supporting evidentiary material presented by the inquiry staff.”16 All evidentiary material presented by Committee staff, as well as transcripts, copies of official documents, and affidavits, were compiled for Members of the Committee. Following the presentation by Committee staff, the Special Counsel to the President appeared before the Committee to make his own presentation to Members.

After hearing from Committee staff and the Special Counsel to the President, the Committee heard testimony from nine witnesses, including those suggested by the President’s Counsel pursuant to Committee-adopted procedures. These witnesses were questioned by Committee staff, Committee Members, and the Special Counsel to the President, again, pursuant to Committee-adopted procedures particular to the impeachment inquiry.

To conclude the Committee’s hearings pursuant to H. Res. 803, the Committee heard the Special Counsel to the President’s closing argument.17

Committee Debate

The Committee conducted televised hearings from July 24-30, 1974. During these televised hearings, Members participated in general and amendment debate on two articles of impeachment. Debate on article one lasted four days, while debate on article two and the later-added article three lasted one day.

Following debate on the articles of impeachment, the Committee released its report recommending the impeachment of President Nixon on August 20, 1974.18

C. CONCLUSION ON NIXON IMPEACHMENT PROCEDURES

The impeachment proceedings against President Richard Nixon presented the first presidential impeachment in over a hundred years. In light of this, the Committee undertook an extensive review of precedent and constitutional underpinnings for the consideration of impeachment. This review concluded in Members of the 93rd Congress laboring over how best to conduct impeachment proceedings and developing rules and procedures that would later be followed in

16 Id. at 9.
17 Id.
18 Id.
large part during the 1998 impeachment of President Bill Clinton. Paramount within those rules and procedures developed by the Members involved in the 1974 proceedings was a commitment to fairness and thoroughness, demonstrated by the actions and words of Members on both sides of the aisle.

III. The Impeachment of President Bill Clinton, 105th Congress

After receiving the Starr Report on September 9, 1998, the House voted the next day on how to handle the report and its contents and authorized the House Judiciary Committee to conduct a deliberative review. H. Res. 525 was adopted by the House by a vote of 363-63 House on September 11, 1998. Specifically, H. Res. 525 directed the Committee to conduct a deliberative review of the Starr Report and determine “whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced.” As a result of this directive, Chairman Henry Hyde issued procedures related to handling the Starr Report entitled “Procedures Applicable to the Review of the Communication from the Independent Counsel” to contain leaks and address other security concerns. For three weeks in September 1998, Committee staff reviewed documents and Committee Members met in executive session three times to consider staff recommendations regarding the public release of documents related to and included in the Starr Report.

Following the Committee’s review of the Starr Report, the Committee decided to pursue a formal impeachment inquiry pursuant to its directive under H. Res. 525. As a result of that decision, the Committee considered H. Res. 581, authorizing the Committee to conduct an impeachment inquiry, as well as procedures governing the impeachment inquiry, on October 5, 1998. These procedures were notably similar to those utilized during the 1974 impeachment proceedings of President Nixon and allowed the President’s Counsel to participate meaningfully. Further, H. Res. 581 authorized co-equal subpoena power for the Chairman and Ranking Member of the Committee in lockstep with the Committee’s handling of the Nixon impeachment proceedings.

20 Id. at 23.
23 Id. at 25.
24 Id. at 26.
26 See Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States; Meeting of the House Comm. on the Judiciary, 105th Cong. (October 5, 1998).
A. PROCEDURES GOVERNING THE CLINTON IMPEACHMENT INQUIRY

Co-Equal Subpoena Power

H. Res. 581 authorized the Committee to exercise a co-equal subpoena power modeled after the subpoena power wielded in 1974.\(^{28}\) The purpose of a co-equal subpoena power during the 1998 proceedings was for the investigation to be “fair, impartial and bipartisan.”\(^{29}\)

Participation by the President’s Counsel

The procedures adopted by the Committee on October 5, 1998, allowed the President’s counsel a similar means of participation as was afforded in 1974. Specifically, the procedures allowed the President’s counsel to: (1) be invited to respond to evidence and testimony orally or in writing, as determined by the Committee; (2) submit written requests for the receipt of additional testimony or evidence; (3) attend all hearings, including those held in executive session; (4) raise objections relating to the examination of witnesses or the admissibility of evidence or testimony; and (5) question any witnesses.\(^{30}\)

Pursuant to the October 5 procedures, the President’s counsel questioned Kenneth Starr for about an hour during his appearance before the Committee on October 19, 1998.\(^{31}\) Later, the President’s counsel requested that the Committee call fifteen witnesses.\(^{32}\) The Committee accommodated the President’s request and held two days of hearings to question the witnesses.\(^{33}\)

Debate on Articles of Impeachment

From December 10-12, 1998, the Committee debated and passed four articles of impeachment against President Bill Clinton under its authority provided by H. Res. 581. In the Committee’s report on its activities for the 105th Congress, it states “[t]he procedure used to consider the articles of impeachment was similar to and predicated upon the procedures used in 1974.” Like the debate on articles of impeachment for President Nixon, the four articles were voted on separately. Each of the four proposed articles was adopted and ordered reported favorably to the House and the Committee reported H. Res. 611, a resolution impeaching President Bill Clinton, on December 16, 1998.\(^{34}\)

Comparison to 1974 Procedures and Proceedings

The Committee itself noted the similarity of its procedures to the 1974 procedures, and many Members specifically requested that the procedures adopted in 1974 be closely following in

\(^{28}\) Authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of William Jefferson Clinton, President of the United States, H. Res. 581, 105th Cong. (1998) [hereinafter “H. Res. 581”].

\(^{29}\) Investigatory Powers of the Committee on the Judiciary with Respect to its Impeachment Inquiry, H.R. Rept. 105-795, 105th Cong. 4 (1998) (“Thus, maximum flexibility and bipartisanship are reconciled in this resolution.”).

\(^{30}\) Activities report p 27 (procedures)


\(^{33}\) Id.

\(^{34}\) H.R. Rept. 105-845, 105th Cong. 29-30 (1998).
1998.\textsuperscript{35} However, there were slight differences in the way these procedures were applied during proceedings in 1998. Specifically, the President’s counsel was placed under a reasonable time restraint for questioning during the 1998 proceedings, typically questioning witnesses for around one hour.\textsuperscript{36} Further, the 1998 proceedings differed from the 1974 proceedings in length. In 1974, the impeachment inquiry – from authorization to reporting articles – lasted nearly seven months.\textsuperscript{37} In 1998, a number of Minority members requested that a near-term end date be agreed to at its commencement.\textsuperscript{38} While no end date was included in H. Res. 581, the impeachment inquiry was conducted expeditiously and completed two and a half months after adoption of H. Res 581.\textsuperscript{39}

B. ACTION BY THE HOUSE COMMITTEE ON THE JUDICIARY

Committee Investigation

Following the passage of H. Res. 581, authorizing the Committee to begin its impeachment inquiry, Committee staff began investigating the allegations included in the Starr Report and other evidence. In the interest of an expeditious inquiry, staff met with the White House to discuss ways to achieve that goal. The Committee began its inquiry by seeking information from the White House, which it did not immediately supply, and sending requests for admission to the President, which were answered in writing.\textsuperscript{40}

On October 9, 1998, the day after the passage of H. Res. 581, the Subcommittee on the Constitution held a hearing on the background and history of impeachment. At this hearing, nineteen witnesses testified as to the constitutional standard for impeachment.\textsuperscript{41} Ten days later, the Committee heard testimony from Kenneth Starr on his report after requests from Democrats that he be called to testify.\textsuperscript{42} Mr. Starr was questioned by Committee Members, staff, and the President’s counsel.\textsuperscript{43} On December 1, 1998, the Committee heard testimony from witnesses on the law of perjury. On December 4, 1998, the White House exercised its right under Committee procedures governing the impeachment inquiry to request the Committee call certain witnesses for testimony. Pursuant to this request, the Committee held two days of hearings, including hearing testimony from the President’s counsel.\textsuperscript{44}

\textsuperscript{35} See id.; Hearing before the Committee on Rules on H. Res. 525, 105\textsuperscript{th} Cong., 2d Sess. 108 (1998) (Lofgren statement that “…our best yardstick is our historical experience. We must compare the procedures used today with what Congress did a generation ago…”).
\textsuperscript{36} Impeachment of William Jefferson Clinton, President of the United States, H.R. Rept. 105-830, 105\textsuperscript{th} Cong. 126 (1998) [hereinafter “H.R. Rept. 105-830”].
\textsuperscript{37} See H.R. Rept. 93-1667, 93\textsuperscript{rd} Cong. (1974).
\textsuperscript{38} See Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States; Meeting of the House Comm. on the Judiciary, 105\textsuperscript{th} Cong. (October 5, 1998).
\textsuperscript{39} H.R. Rept. 105-830, 105\textsuperscript{th} Cong. 127-8 (1998).
\textsuperscript{40} Id. at 126.
\textsuperscript{41} Id.
\textsuperscript{42} Hearings on Impeachment Inquiry Pursuant to H. Res. 581: Hearing Before the Comm. on the Judiciary, 105\textsuperscript{th} Cong., 2\textsuperscript{nd} Sess (November 1, 1998).
\textsuperscript{43} H.R. Rept. 105-830, 105\textsuperscript{th} Cong. 126 (1998).
\textsuperscript{44} H.R. Rept. 105-830, 105\textsuperscript{th} Cong. 126 (1998).
Committee Debate

From December 10, 1998, to December 12, 1998, the Committee debated and adopted four articles of impeachment. During this time, the Committee considered two amendments to the articles, which were adopted, and one censure resolution accompanying the articles, which was defeated.

C. CONCLUSION ON CLINTON IMPEACHMENT PROCEDURES

The procedures that governed the 1998 impeachment of President Bill Clinton largely mirrored those adopted in 1974 at the request of Members calling for the House to follow historical precedent. Although the application of the procedures in 1998 differed slightly from their application in 1974, Members recognized and respected the similar construction of the two impeachment inquiries in light of a shared commitment to fairness.

IV. Conclusion

Modern presidential impeachments have featured in lofty discussions of constitutional law, moral imperatives, and the necessity of fairness in impeachment proceedings. The priorities of the 93rd Congress—fairness and thoroughness—were echoed in 1998, and the success of the procedures that governed the two proceedings demonstrates their usefulness should the House again encounter calls for the removal of a sitting President.

In closing, a 1998 quote from a Member of the Minority provides a thoughtful overview of the House’s responsibility to follow historical precedent on presidential impeachments:

Under our Constitution, the House of Representatives has the sole power of impeachment. This is perhaps our single most serious responsibility short of declaration of war. Given the gravity and magnitude of this undertaking, only a fair and bipartisan approach to this question will ensure that truth is discovered, honest judgments rendered and the constitutional requirement observed. Our best yardstick is our historical experience. We must compare the procedures used today with what Congress did a generation ago when a Republican President was investigated by a Democratic House.

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45 Id. at 127.
46 Id. at 128-36.
47 Hearing before the Committee on Rules on H. Res. 525, 105th Cong., 2d Sess. 108 (1998) (Lofgren statement that “…our best yardstick is our historical experience. We must compare the procedures used today with what Congress did a generation ago…”); H.R. Rept. 105-845, 105th Cong. (1998).
48 Id.