

BEFORE THE SENATE OF THE STATE OF ARIZONA  
SITTING AS A COURT OF IMPEACHMENT

In the Matter of the )  
Impeachment of: )  
 )  
EVAN MECHAM, Governor )  
of the State of Arizona. )

Phoenix, Arizona  
March 31, 1988  
10:07 a.m.

TRIAL VOLUME 24

BEFORE THE HONORABLE FRANK X. GORDON,  
PRESIDING OFFICER

For the Board of Managers: Storey & Ross  
By William P. French, Esq.  
and  
Brown & Bain  
By Paul Eckstein, Esq.

For the Respondent: Jerris Leonard, Esq.  
and  
Craft & Loesch  
By Winfred O. Craft, Jr., Esq.

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Reported by: David R. Minder  
and  
Robert M. Ferrara

Phoenix, Arizona  
March 31, 1988  
10:07 a.m.

(Pages 5221 - 5230 sealed by order of Presiding Officer.)

THE PRESIDING OFFICER: Thank you, ladies and gentlemen. The Court of Impeachment is reconvened. Have the record show the presence of all of the Board of Managers, their counsel, and counsel for the respondent.

I would like to explain at this point -- oh, I'm sorry.

Would you please call the roll.

THE CLERK: Senator Alston?

SENATOR ALSTON: Present.

THE CLERK: Senator Brewer?

SENATOR BREWER: Present.

THE CLERK: Senator Corpstein?

SENATOR CORPSTEIN: Here.

THE CLERK: Senator De Long?

SENATOR DE LONG: Present.

THE CLERK: Senator Gabaldon?

SENATOR GABALDON: Here.

THE CLERK: Senator Gutierrez?

SENATOR GUTIERREZ: Here.

THE CLERK: Senator Hardt?

SENATOR HARDT: Here.

THE CLERK: Senator Hays?

1 SENATOR HAYS: Here.  
2 THE CLERK: Senator Henderson?  
3 Senator Higuera?  
4 SENATOR HIGUERA: Here.  
5 THE CLERK: Senator Hill?  
6 Senator Kay?  
7 SENATOR KAY: Here.  
8 THE CLERK: Senator Kunasek?  
9 SENATOR KUNASEK: Here.  
10 THE CLERK: Senator Lunn?  
11 Senator Macdonald?  
12 SENATOR MACDONALD: Present.  
13 THE CLERK: Senator Mawhinney?  
14 SENATOR MAWHINNEY: Present.  
15 THE CLERK: Senator Osborn?  
16 SENATOR OSBORN: Present.  
17 THE CLERK: Senator Pena?  
18 SENATOR PENA: Here.  
19 THE CLERK: Senator Rios?  
20 SENATOR RIOS: Present.  
21 THE CLERK: Senator Runyan?  
22 SENATOR RUNYAN: Here.  
23 THE CLERK: Senator Sossaman?  
24 SENATOR SOSSAMAN: Here.  
25 THE CLERK: Senator Steiner?

1 SENATOR STEINER: Here.

2 THE CLERK: Senator Stephens?

3 SENATOR STEPHENS: Here.

4 THE CLERK: Senator Stump?

5 SENATOR STUMP: Present.

6 THE CLERK: Senator Taylor?

7 SENATOR TAYLOR: Present.

8 THE CLERK: Senator Todd?

9 SENATOR TODD: Here.

10 THE CLERK: Senator Usdane?

11 SENATOR USDANE: Here.

12 THE CLERK: Senator Walker?

13 SENATOR WALKER: Here.

14 THE CLERK: Senator West?

15 SENATOR WEST: Present.

16 THE CLERK: Senator Wright?

17 SENATOR WRIGHT: Here.

18 THE CLERK: Senator Hill?

19 SENATOR HILL: Here.

20 THE PRESIDING OFFICER: Senator Usdane?

21 SENATOR USDANE: Mr. Presiding Officer, I move that  
22 Senator Henderson be excused from attending today's  
23 proceedings.

24 THE PRESIDING OFFICER: That would require a  
25 two-thirds majority to sustain. All those in favor

1 signify by saying "aye." All opposed say "no."

2 The "ayes" appear to have it. They do have  
3 it, and it's so ordered. The record indicates, then, that  
4 there are 28 Senators present, one absent and one excused.

5 I would take this opportunity to explain to  
6 the members of the body what progress we had in the  
7 meeting that counsel had with the Court at 9 o'clock this  
8 morning.

9 Counsel for the Board of Managers and counsel  
10 for the respondent, as well as staff counsel for the  
11 Senate, met in chambers and talked about the format of the  
12 voting procedure that the Senate could use, and they  
13 arrived at a consensus which I would report to you.

14 I would explain to you that this consensus,  
15 of course, is not binding on you. You may choose to use  
16 any format you wish. But I do feel that you ought to hear  
17 what counsel believe to be the appropriate way of  
18 addressing the voting procedure.

19 I explained to them that I saw at least two  
20 or three methods of approaching the method of voting.  
21 First, the Senate could vote on Count I -- or rather  
22 Article of Impeachment I and Article of Impeachment III as  
23 a single -- each as single Articles without dealing  
24 individually with the subparts, either vote up or down on  
25 Article I, and then vote up or down on Article III, and if

1 either of those two Articles are sustained, then move to  
2 the next question, which would be the question of  
3 disqualification.

4           The second option that was discussed is to  
5 deal with each subparagraph under each of the two Articles  
6 of Impeachment individually so that under Article I, there  
7 are seven, as I understand, seven individual subparagraphs  
8 that would have to be voted on separately by the members,  
9 and under Article III, there are four individual  
10 subparagraphs, requiring, then, a total of 11 individual  
11 votes. And if the finding or the vote of the body was  
12 that any one of those 11 individual subparagraphs were  
13 sustained, then you would move to the next question, which  
14 is the vote on the disqualification.

15           Now, counsel unanimously, and without much  
16 discussion, agreed that they preferred the first  
17 provision, whereby it would be a straight up or down vote  
18 on each of the Articles separately.

19           As I mentioned to you, that is not binding  
20 upon you. You may choose whichever procedure you wish,  
21 but I would like to report to you that counsel feels that  
22 the best way to approach it is to have a straight up or  
23 down vote on each of the Articles without breaking them  
24 down individually into subparagraphs.

25           They also recommended that in the event that

1 any Article is sustained, they would like to have an  
2 opportunity to argue to you orally on the question of  
3 disqualification before you proceed to that vote.

4 Now, that is my report. I believe it's  
5 comprehensive on what the procedures were and the  
6 concensus.

7 Am I correct, Counsel?

8 MR. LEONARD: That's correct.

9 MR. FRENCH: Correct.

10 THE PRESIDING OFFICER: All right.

11 Senator Usdane?

12 SENATOR USDANE: A point of information, Mr.  
13 Presiding Officer. Let's take a theoretical here and say  
14 that on Article I, it's voted on as recommended by both  
15 counsel, that there are 20, and at that point you take the  
16 second vote.

17 If there is not a second vote sustaining him  
18 from -- keeping him permanently from office, do you then  
19 go to Article III and vote on that and take the vote in  
20 terms of the second vote on Article III?

21 THE PRESIDING OFFICER: I believe that would be  
22 correct.

23 SENATOR USDANE: Thank you.

24 THE PRESIDING OFFICER: Any other questions? Is  
25 there any other matter to be discussed at this time?

1 MR. ECKSTEIN: Mr. Presiding Officer, I understood  
2 our discussion in chambers that there would be a vote on  
3 both Article I and Article III, and then if there were a  
4 conviction on one or both, a vote on the disqualification  
5 clause. That's how I understood it, rather than a vote on  
6 Article I, if there were a conviction, a vote on the  
7 disqualification clause.

8 I think the agreement was -- the  
9 understanding was that you would vote on the substance of  
10 both Articles, if there were a conviction on either or  
11 both, then a vote on the disqualification clause.

12 THE PRESIDING OFFICER: That is correct, and I see  
13 Mr. Leonard nodding that that was the substance of our  
14 consensus.

15 Several Senators raised --

16 Senator Kay?

17 SENATOR KAY: Mr. Presiding Officer, I would move  
18 that we adopt the first option as a Court of Impeachment.

19 THE PRESIDING OFFICER: All right. There's a  
20 motion before the House -- before the body.

21 Senator West?

22 SENATOR WEST: Mr. Presiding Officer, just for  
23 clarification to Senator Kay, then, who made the motion,  
24 if Senator Kay would yield.

25 Does that preclude any Senator from excising

1 one of the paragraphs or changing the language with a  
2 substitute motion or an amendment?

3 SENATOR KAY: Mr. Presiding Officer, Senator West,  
4 if we're voting on the Article, that would preclude it.  
5 Nevertheless, before a vote is taken, before the vote is  
6 called, I would imagine, in line with precedent, Article  
7 I, Section F, where we did excise a specific Article, I  
8 guess any member of the court can make that motion prior  
9 to voting on the entire Article. That would be my  
10 thinking. I don't know if -- it's not up to me.

11 THE PRESIDING OFFICER: I think ultimately it would  
12 be decided by this body.

13 SENATOR WEST: Mr. Presiding Officer, as long as we  
14 clearly understood that the options are open to excise  
15 either paragraphs, words, or sections, and that option is  
16 clearly open to any member of this body, then I would  
17 support Senator Kay's motion.

18 THE PRESIDING OFFICER: Senator Stephens?

19 SENATOR STEPHENS: Point of information, I guess.  
20 This would be considered a rules amendment and, therefore,  
21 would need 20 votes or a simple majority?

22 THE PRESIDING OFFICER: Are we now talking about  
23 the voting procedure?

24 SENATOR STEPHENS: No, the motion in regards to  
25 Senator Kay's motion, at least as I as interpret it, would

1 be a change to the Rules, adding some specificity on how  
2 the vote would be taken.

3 THE PRESIDING OFFICER: I don't see it as being a  
4 rules change, just a procedural matter.

5 SENATOR STEPHENS: So therefore, a simple majority?

6 THE PRESIDING OFFICER: Yes.

7 Senator Usdane?

8 SENATOR USDANE: Mr. Presiding Officer, for members  
9 of the floor, the only problem I can see is a political  
10 one in terms of voting in that manner, and that would be  
11 if a section, as Senator West has suggested, could not be  
12 taken out, it is conceivable that a Senator would feel  
13 that on three out of the seven, there is foundation, and  
14 there is none on the other four, and by voting on that  
15 whole Article, the illusion created is that all  
16 subsections that we originally voted on separately were  
17 sustained.

18 I think that might cause Senators some  
19 dilemma, and I wanted to point that out so that that would  
20 be an understanding. If, theoretically, Senator West was  
21 to ask for a section to be taken out that he didn't carry  
22 a vote in the affirmative or in the negative on, he might  
23 not feel comfortable voting on that Article at all if it  
24 was not taken out. So, I see some dilemma with it.

25 THE PRESIDING OFFICER: I understand that.

1 Senator Kunasek?

2 SENATOR KUNASEK: Well, I was just going to point  
3 out that the dilemma works both ways, that Senator Usdane  
4 mentions. If you're going to vote individually, and there  
5 was a section taken out that you would have voted "aye" on  
6 that then you were going to end up voting "no" on, if it  
7 was included in a package, it's a dilemma that goes both  
8 ways, and I think the only way to resolve it is a vote of  
9 the body.

10 With regard to the West concern of being able  
11 to excise, I think the only way to address that is to vote  
12 "no" on the Kay amendment -- on the Kay motion. If you're  
13 not concerned about that, then you vote "aye" on the Kay  
14 motion.

15 THE PRESIDING OFFICER: Other debate?

16 Senator Usdane.

17 SENATOR USDANE: Yes. I'm sorry, Mr. Presiding  
18 Officer. There's been a request from membership on the  
19 floor, or at least one member, with an understanding that  
20 it would be possible to discuss this in a caucus which is  
21 called directly upon the recess, that will come to the  
22 call of the gavel for reconvening, so that we could get  
23 Senators' opinions without taking 45 to 50 minutes now  
24 debating this subject.

25 And so I might ask if it is not inopportune,

1 if Senator Kay would withdraw his motion until the Court  
2 recesses, reconvened, and then that we would vote on the  
3 way of this proposal at that time.

4 THE PRESIDING OFFICER: Along that line, before  
5 Senator Kay responds, I might mention that I advised  
6 counsel that they be available to answer any questions  
7 that you have concerning the advantages or disadvantages  
8 of using either of those formats, and they have agreed  
9 they would be available to answer questions you have. So  
10 if you need that information before you caucus or discuss  
11 this matter further, I think it appropriate for you to ask  
12 them questions.

13 Senator Kay?

14 SENATOR KAY: Mr. Presiding Officer, I ask  
15 unanimous consent that the motion be withdrawn.

16 THE PRESIDING OFFICER: All right. Without  
17 objection, then, the motion is withdrawn.

18 Mr. Leonard?

19 MR. LEONARD: Mr. Presiding Officer, might I have  
20 just two minutes to express the position of respondent?

21 THE PRESIDING OFFICER: Yes, you may.

22 MR. LEONARD: I would hope that during your caucus,  
23 you would try to combine the thought of Senator Kay and  
24 Senator West. I think counsel feel that the final vote on  
25 each of the Articles ought to be a vote up or down.

1                   Now, if, on the other hand, as Senator West  
2 points out, there is a provision that is disturbing in a  
3 count to a member, it seems to me perfectly appropriate  
4 both as a matter of law, as well as parliamentary  
5 procedure, for a member to say, "I would like to move to  
6 eliminate or delete a specific subsection."

7                   I think what counsel feels is that whatever  
8 is left in the Article, whether it be the entire Article  
9 with each of the subdivisions, or if it be just one  
10 paragraph left, that there ought to be a vote up or down  
11 on that Article as opposed to having what my notes would  
12 indicate would be 11 separate votes. That, I think, would  
13 be prejudicial both to the Board of Managers, as well as  
14 to the respondent.

15                   So while you caucus, I would hope you would  
16 consider our view, that the proposal by Senator Kay and  
17 really incorporating the recommendation of the Chief  
18 Justice does not mean that you could not eliminate by a  
19 majority vote some provision that's in each one of the  
20 Articles.

21                   THE PRESIDING OFFICER: Mr. French, do you wish to  
22 respond to what Mr. Leonard just stated?

23                   MR. FRENCH: Mr. Presiding Officer, I don't think  
24 so. I think that you've stated it correctly as to what we  
25 think is best. We think that what you outlined is best,

1 and we would stand ready to address any questions from the  
2 Senators during caucus, or whenever.

3 THE PRESIDING OFFICER: Senator Higuera?

4 SENATOR HIGUERA: Mr. Presiding Officer, will Mr.  
5 Leonard yield?

6 MR. LEONARD: I do, Senator.

7 SENATOR HIGUERA: Mr. Leonard, last week I asked  
8 you what was Mr. L'Ecuyer's role, and you said that he was  
9 one of your witnesses, and he would assist on Article III.

10 I'm under the impression that you have rested  
11 your case on Article III, and at this time I'd like to ask  
12 you, what do you propose Mr. L'Ecuyer's role from now on?

13 MR. LEONARD: Senator, Mr. L'Ecuyer is here because  
14 we technically have not really finished with the Article,  
15 but I certainly wanted him here, Senator, just in case any  
16 of you out in the hallway wanted to ask any questions of  
17 him. And particularly, you, Senator, if you had some  
18 questions to ask him about his testimony, or something, he  
19 would be available. But he'll be leaving shortly.

20 SENATOR HIGUERA: Thank you very much.

21 THE PRESIDING OFFICER: Senator West?

22 SENATOR WEST: Mr. Presiding Officer, Mr. French,  
23 please.

24 MR. FRENCH: Senator West?

25 SENATOR WEST: Mr. French, I heard you just respond

1 to the Presiding Officer, but I was still a little bit  
2 confused. I would like your response directly to Mr.  
3 Leonard's comments to this body before we go into caucus.

4 (Discussion off the record.)

5 MR. FRENCH: Senator West, and the other Senators,  
6 we've taken the position of the one vote on each of the  
7 Articles because if we don't do that, I'm afraid that you  
8 could get into perhaps 15, 20 votes in regard to these  
9 matters, and I think it would become very, very  
10 convoluted.

11 I'm not saying, Senator West, that if there's  
12 some particular item in one of the Articles that you don't  
13 particularly go along with, that you shouldn't address  
14 that. But I still think there should be one vote as  
15 opposed to 15 or 20 votes.

16 I've found from trying a lot of lawsuits and  
17 also sitting on the bench that the less forms of verdict,  
18 if you will, that you have, the less likely the jury would  
19 be confused. I think if you get into a lot of votes, that  
20 could happen to the best of us, and it certainly could  
21 happen to me.

22 SENATOR WEST: Mr. French, if I hear you right,  
23 you're in agreement, basically, that the the body should  
24 reserve unto itself the right to exercise either certain  
25 paragraphs or language in there by a majority vote of the

1 body, if they so deem proper?

2 MR. FRENCH: I think that's correct, Senator West,  
3 so long as we don't get into a whole lot of number of  
4 votes on those, but I think certainly you have that right.

5 THE PRESIDING OFFICER: Are there other statements?  
6 I believe Senator Kay's motion has been withdrawn.

7 Any other questions by Senators at this  
8 point?

9 If not, do I have a motion for recess or  
10 should I just call the recess? I will call the recess at  
11 this time, subject to the sound of the gavel or no later  
12 than 4:30 this afternoon.

13 We stand at recess.

14 (Recessed at 10:25 a.m.)

15 (Reconvened at 4:40 p.m.)

16 THE PRESIDING OFFICER: Thank you, ladies and  
17 gentlemen. The the Court of Impeachment is reconvened.  
18 Show the presence of a majority of the Board of Managers,  
19 their counsel and counsel for the respondent.

20 The first thing I would like to mention is  
21 that the Board of Managers have filed a trial memoranda in  
22 your books that is exhibit -- rather, Document Nos. 94 and  
23 95. I have been asked by Mr. Leonard to mention to you  
24 that he will have his trial memoranda ready and filed on  
25 Monday.

1           He would like to have you understand that you  
2 are reading, when you read over the weekend, the Board of  
3 Managers' trial memoranda, that they might have a  
4 different viewpoint on some of those subjects. And they  
5 are asking your indulgence to wait until Monday until you  
6 form your final opinions on the law on those things and  
7 keep an open mind until they have theirs filed.

8           I think that is as fairly as I can state it.  
9 They didn't have it ready, but will be having it for you  
10 Monday.

11           I think we are in the process and have  
12 distributed, have we not, the instructions? So the record  
13 will reflect that the instructions on the law have been  
14 distributed to the members of the Court.

15           Senator Kay, do you wish at this time to  
16 reurge your motion concerning the method of voting?

17           SENATOR KAY: Yes, Mr. Presiding Officer.

18           I move that the Court of Impeachment vote  
19 upon Article I, thereafter Article III, and in the event  
20 that there is an affirmative conviction on either Article  
21 I or Article III, thereafter to vote on the  
22 disqualification clause.

23           THE PRESIDING OFFICER: Is there any debate on that  
24 motion?

25           There being no debate, it would require an

1 affirmative vote of a majority of the Members of this body  
2 at this time to grant that motion or sustain that motion.

3 All those in favor signify by saying "aye."  
4 All opposed say "no."

5 The "ayes" appear to have it, they do have  
6 it, and it is so ordered.

7 Is there any other matter to be taken up by  
8 the Court at this time? If there is not -- Senator  
9 Usdane -- Senator Alston.

10 SENATOR ALSTON: Mr. Presiding Officer, I would  
11 like to let it be known that I have turned over my filed  
12 cash to Mr. Leonard that I received in the mail, and I  
13 know other Senators have, as well.

14 Mr. Craft indicated earlier to me that there  
15 may be some holdouts among us because he has not gotten 30  
16 five-dollar bills.

17 Additionally, Mr. Presiding Officer, I would  
18 like to be out of order for just a moment and wish the  
19 Arizona Wildcats the very, very best in Kansas City this  
20 weekend. And on Monday each Senator has on their desk an  
21 Arizona Final Four Pennant. And we all, I think, are  
22 proud of our Wildcats and wish them well.

23 Thank you.

24 THE PRESIDING OFFICER: I think that's not out of  
25 order at all, and I think that could be a unanimous vote

1 on the part of the Arizona State Senate.

2 Is there anything else?

3 I would like to wish you luck over the  
4 weekend in reading all the matters that we have furnished  
5 for you to read. I was talking with my clerks a little  
6 while ago and saying probably I have never seen a  
7 situation in which a debating or a deliberative body would  
8 have been so abstractly prepared for hearing oral  
9 arguments on Monday than the one that we have here.

10 You will have had not only all the evidence  
11 before you at the time, you will have had trial memoranda  
12 by both sides, you will have had staff counsel's version  
13 of instructions to you on the law before you will hear the  
14 closing arguments of the attorneys.

15 I don't think in any case that I have tried  
16 has so much information been available to the members of  
17 the deliberating body before they hear closing arguments  
18 and before they are ready to make their vote. So, I think  
19 you have before you a wonderful opportunity.

20 If you do take advantage of all the reading  
21 material that you have this weekend, it would be a very  
22 difficult thing to read it all, but I hope you are able to  
23 get through it to the best degree that you can.

24 Was there someone else? Senator Wright.

25 SENATOR WRIGHT: Mr. Presiding Officer, I believe

1 that Senator Alston, and I think it was Senator Kay, who  
2 have forced open disclosure here, and I would hope that  
3 Mr. Leonard is prepared to present receipts to each of us  
4 who turned over our five-dollar bills from an anonymous  
5 Democrat in Tucson. And for the benefit of that person,  
6 be they watching, I, too, turned my \$5.00 over to Mr.  
7 Leonard today.

8 THE PRESIDING OFFICER: Senator Todd.

9 SENATOR TODD: Mr. Presiding Officer, I don't need  
10 to wait for my receipt. I got my receipt when I turned  
11 over my five.

12 THE PRESIDING OFFICER: All right. Senator Usdane,  
13 is there a motion at this time?

14 SENATOR USDANE: In a moment, Mr. Presiding  
15 Officer.

16 I just want to comment that I didn't get a  
17 receipt, but I turned it over, and he was very gracious  
18 about accepting it, so the Tucsonian will know.

19 And I'll move, Mr. Presiding Officer, that  
20 the Court of Impeachment recess until Monday, April the  
21 4th, 1988, at 9:00 a.m.

22 THE PRESIDING OFFICER: Under the rules it will  
23 require a majority to sustain that motion.

24 All those in favor signify by saying "aye."  
25 All those opposed say "no."

1                   The "ayes" appear to have it. They do have  
2 it, and it is so ordered.

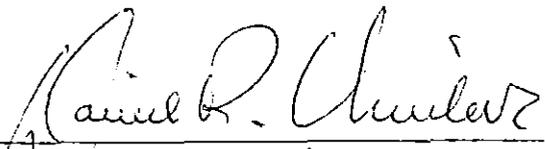
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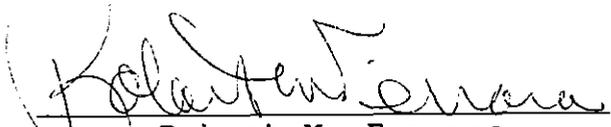
STATE OF ARIZONA                    )  
  )  
DISTRICT OF ARIZONA                )            SS.

I HEREBY CERTIFY that I am a duly appointed, qualified and acting Official Court Reporter before the Senate of the State of Arizona sitting as a Court of Impeachment.

I FURTHER CERTIFY that the foregoing printed pages, numbered 5231 to 5252, inclusive, constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction.

DATED at Phoenix, Arizona, this 31st day of March, 1988.

  
\_\_\_\_\_  
David R. Minder

  
\_\_\_\_\_  
Robert M. Ferrara