

# Fact Sheet On the Impeachment Process



Impeachment is a constitutional remedy rather than a judicial one. Unlike a criminal prosecution, its purpose is not to punish for violations of law. Its purpose is to protect the United States by removing from office public officials who abuse their power or violate the public trust.

## **Role of the House of Representatives**

The Constitution gives the House of Representatives “the sole Power of Impeachment.” This means that the House alone can initiate impeachment proceedings. A simple majority vote is required for the House to adopt the articles, which are then referred to the Senate. If the House adopts articles of impeachment, it will also appoint a number of its members to serve as managers, who present the articles to the Senate. The House has initiated impeachment proceedings (not just for Presidents but for other “civil Officers” as well) over 60 times in our history, but it has adopted articles of impeachment only 19 times.

## **Role of the Senate**

The Constitution gives the Senate “the sole Power to try all Impeachments.” As the Supreme Court put it, “the House [is] given the right to accuse and the Senate given the right to judge.” The Court has also said that the Senate has the discretion to determine how to “try” impeachment cases and that the Senate’s determinations are not subject to judicial review.

Of the 19 federal officials impeached by the House, the Senate has tried 15. Three of the remaining four (all judges) resigned before trial. The Senate expelled the fourth (a Senator) rather than try him, setting a precedent that Members of Congress should be expelled for misconduct rather than impeached. Of the 15 officials who were tried, 12 were judges, one was a Cabinet Secretary, and two were Presidents (Andrew Johnson and Bill Clinton). Richard Nixon was not impeached—he resigned after the House Judiciary Committee reported articles of impeachment, but before the House adopted them.

## **Trial procedures**

Impeachment trials are governed by a handful of provisions of the Constitution and 26 special impeachment rules, which the Senate has adopted apart from the normal Standing Rules. The impeachment rules require the Senate to proceed to the consideration of the articles of impeachment at 1 o’clock on the day after they are presented by the House managers.

The Constitution requires that the Chief Justice preside over the trial of the President. Under the impeachment rules, the Chief Justice decides procedural and evidentiary questions, though the Senate may vote to overrule the Chief Justice. The Constitution also requires Senators to be under oath. The oath is administered by the Chief Justice, before the Senate proceeds to consider the articles of impeachment. The text of the oath is prescribed by the impeachment rules and requires Senators to swear to “do impartial justice according to the Constitution and laws....”

Since 1935, the impeachment rules have permitted the Senate to appoint an impeachment trial committee to take evidence and testimony on behalf of the Senate and then report the evidence, without recommendation, to the Senate. The Senate has used a trial committee five times (beginning in 1986) for judicial impeachments, but not for President Clinton’s impeachment trial in 1999. The Senate as a whole tried President Clinton, without the use of a trial committee.

In President Clinton’s case, the Senate adopted a resolution outlining the trial schedule. It called for the House managers to present opening arguments outlining the charges against the President, and then for the President’s counsel to present their opening arguments controverting the charges. It then permitted Senators to question both

sides. Under the impeachment rules, Senators must submit their questions in writing to the Chief Justice, who then asks the questions for them. Senators asked over 150 questions during the Clinton trial.

The resolution in the Clinton case expressly provided for both a motion to dismiss the charges and a motion to subpoena witnesses to provide additional testimony following the opening arguments and questioning. Senator Byrd's motion to dismiss was rejected, but the House managers' motion to take video depositions of several witnesses was agreed to. Excerpts from the videos were played in the Senate instead of requiring the witnesses to testify before the Senate. Both sides were permitted to make closing arguments before the Senate began deliberating its verdict.

Under the impeachment rules, the Senate must conduct the trial and vote on the articles of impeachment in open session, but it may deliberate its verdict behind closed doors before voting in public. Under the rules, a Senator may not speak for more than 15 minutes during deliberation on the verdict. Senators are asked to vote either "guilty" or "not guilty" on each article of impeachment separately.

### **The grounds for impeachment and removal**

The Constitution provides for impeachment and removal upon conviction for "Treason," which is defined by the Constitution, "Bribery," which is defined by statute, and "other high Crimes and Misdemeanors," which is not defined and the meaning of which is still debated. The term is generally understood to encompass not just violation of criminal statutes, but abuses of power and violations of the public trust. In the final analysis, it is up to each Senator to decide whether the President's conduct warrants removal from office.

### **Conviction and removal**

The Constitution requires "the Concurrence of two thirds of the Members present" on any one article of impeachment to convict. Removal from office flows automatically from conviction; the Senate does not vote separately on removal from office if it votes to convict.

The Constitution provides that "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States...." While removal from office results automatically from conviction, disqualification from holding public office in the future does not. Disqualification requires a separate vote, but disqualification only requires a simple majority vote, not a two-thirds vote.

The Constitution also provides that after conviction and removal from office, the President "nevertheless shall be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

### **The Senate sits as a court not as a jury**

The House's role in conducting investigations and adopting articles of impeachment is sometimes compared to that of a grand jury in criminal proceedings. Similarly, the Senate's role has been compared to that of a trial jury.

But, as stated at the outset, an impeachment proceeding is fundamentally different from a criminal proceeding. The purpose of impeachment is not to punish wrongdoing, but to preserve constitutional government by removing unfit officials from positions of public trust.

Moreover, the Senate sits as a "Court of Impeachment," not as a mere jury. During President Clinton's trial, Senator Harkin objected to the House managers referring to Senators as "jurors." "Regular jurors ... are chosen ... with no knowledge of the case," he argued. "Not so when we try impeachments. ... Regular jurors cannot overrule the judge. Not so here. Regular jurors do not decide what evidence should be heard, [or] the standards of evidence, ... [or] what witnesses shall be called. Not so here. Regular jurors do not decide when a trial is to be ended. Not so here." Chief Justice Rehnquist sustained Senator Harkin's objection. "The Senate is not simply a jury," the Chief Justice ruled; "it is a court in this case."