

Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Ogden

The absent Senators were: Senator Daniels (Chittenden District) and Senator Howland (Windsor District).

IMPEACHMENT SESSION; OATH ADMINISTERED; IMPEACHMENT RULES
AMENDED

At ten o'clock and fifteen minutes in the forenoon, on motion of Senator Bloomer, the Senate and Senators met in impeachment session for the trial of Malcolm M. Mayo, Sheriff of Washington County.

Thereupon, Senator Westphal, for the performance of her Constitutional duties for the trial of impeachment, received her oath of office from the Secretary.

Senator Bloomer, for the Committee on Rules, moved that the Senate amend its impeachment rules as previously adopted during the 1976 Adjourned Session, as follows:

First: In Rule 4(b) (2), first sentence, by adding after the word "final" the words *or evidentiary* and by adding at the end thereof a new sentence to read as follows: *All evidentiary questions shall be submitted to a member of the Senate Rules Committee designated by it for that purpose, and whose ruling shall be final unless appealed to the Senate, by a Senator, in accordance with its rules.*

Second: In Rule 6, by amending the title to read *Conference* and by striking out all after the first sentence.

Third: In Rule 11(d), by striking out the last sentence thereof and inserting in lieu thereof the following: *More than one representative for each side may take part in the opening argument, but the arguments are limited to a total of one (1) hour for each side.*

Fourth: In Rule 12(a), by adding at the end thereof a new sentence to read as follows: *No still or moving pictures, television or recording, except for transcript purposes, shall be allowed while the proceedings are in progress.*

Thereupon, the first amendment to the Impeachment Rules was severally agreed to.

Thereupon, the second amendment to the Impeachment Rules was severally agreed to.

Thereupon, the third amendment to the Impeachment Rules was severally agreed to.

Thereupon, the fourth amendment to the Impeachment Rules was severally agreed to on a roll call, Yeas 21, Nays 7.

Senator J. O'Brien, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Beauchamp, Bloomer, Boylan, Cummings, Delaney, Gannett, Gibb, Hewitt, Howrigan, Janeway, Mandigo, Morse, Newell, Niquette, Ogden, Partridge, Reynolds, Smith, Soule, Wallace, Westphal.

Those Senators who voted in the negative were: Alden, Crowley, Doyle, Grady, J. O'Brien, R. O'Brien, Sorrell.

Those Senators absent and not voting were: Daniels, Howland.

Thereupon, Senator Newell moved to amend Rule 8, in subparagraph (2) of subsection (b), second sentence, by striking out the word "may" where it firstly appears and inserting in lieu thereof the words *shall in compliance with the rules of evidence*

Thereupon, pending the question, Shall the Impeachment Rules be amended as moved by Senator Newell? Senator Newell requested and was granted leave to withdraw his recommendation of amendment.

Thereupon, Senator Janeway moved to amend Rule 8 by striking out subparagraph (2) of subsection (b) in its entirety and inserting in lieu thereof the following:

(2) *If a Senator wishes to interrogate a witness upon completion of the witness' testimony, he may do so either through direct questioning or by transmittal of his question (or questions) to a member of the Rules Committee who shall ask such question or questions of the witness.*

Which was agreed to.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

AFTERNOON

The Senate was called to order by the President.

Thereupon, a Motion to Dismiss the articles of impeachment was filed with the Secretary on behalf of the respondent, as follows:

"STATE OF VERMONT SENATE OF THE STATE OF VERMONT

STATE OF VERMONT
VS.
MALCOLM M. MAYO

} MOTION TO DISMISS

Now comes the respondent, Malcolm M. Mayo, by and through his attorneys, Richard E. Davis Associates, Inc., and hereby requests that the Honorable Senate dismiss the Articles of Impeachment for the following reasons:—

1. That the Senate lacks jurisdiction to hear the above cause pursuant to Chapter 2, Section 58 of the Vermont Constitution which provides in part as follows:

'Section 58—*Every officer of State, whether judicial or executive, shall be liable to be impeached by the House of Representatives, either when in office or after his resignation or removal for maladministration.*'

The operative words 'Officer of State' do not include the office of Sheriff for the respective counties within the State of Vermont and in particular the office of sheriff for Washington County.

The Vermont Constitution recognizes the existence of the office of sheriff and provides for the term and manner by which the sheriff is elected.

The Constitution also provides through the legislature the power to act to control the office of the sheriff with respect to counties.

The sheriff does not derive his power to act from the Vermont Constitution. The sheriff's power and authority to act rests in common law or with the legislature. The legislature has the power to change the common law. The office of sheriff is also controlled by the powers derived from the judiciary.

However, the powers of other constitutional officers such as that of the Governor emanate directly from the constitution and the legislature is without control over constitutional officers such as the Governor.

Authority for this proposition is derived from the following sources:

Under Chapter Two, Sections 47, 48, 49, and 50 indicate a distinction between officers of State such as the offices of the Governor, Lieutenant Governor and Treasurer of the State and those commonly referred to as county officers such as Assistant Judges, sheriffs and state's attorneys.

Under Chapter Two, Section 56 which states as follows:

'Section 56—Every officer, whether judicial, executive, or military, in authority under this State, before he enters upon the execution of his office, shall take and subscribe the following oath or affirmation of allegiance to this State, (unless he shall produce evidence that he has before taken the same) and also the following oath or affirmation of office, except military officers, and such as shall be exempted by the legislature.'

Under this particular section of the Constitution, the Constitution recognizes a distinction between every officer in authority under this State and the phrase found in Chapter Two, Section 58 which states 'every officer of State'.

The logical distinction that is easily ascertained in reading these two sections is that not every State officer is necessarily an *officer of State*.

Further under Chapter Two, Section 25 the following is noted:

'Section 25—The Treasurer of the State shall, before entering upon the duties of his office, give sufficient security to the Secretary of State, in behalf of the State of Vermont, before the Governor of the State or one of the Justices of the Supreme Court. *And Sheriffs, before entering upon the duties of their offices, shall give sufficient security in such manner and in such sums as shall be directed by the Legislature.*'

Pursuant to this directive the Legislature acted and as a result passed into law Title 24, Section 291 of the Vermont Statutes Annotated.

Title 24, Section 291 of the Vermont Statutes Annotated provides in part as follows:

'Before entering upon the duties of his office, a sheriff shall become bound to the treasurer of the county in the

sum of \$10,000.00, with two or more sufficient sureties by way of recognizance, before a justice of the supreme court or the two assistant judges of the superior court in such county or give a bond to the treasurer executed by such sheriff with sufficient sureties in like sum to be approved by a justice of the supreme court or by the two assistant judges of the superior court, conditioned for the faithful performance of his duties and shall take the oath of office before one of such judges, who shall certify the same on the sheriff's commission. Such recognizance or bond and the commission shall be forthwith recorded in the office of the county clerk.'

In Title 17, Section 1 of the Vermont Statutes Annotated the following is stated:

'(4) 'County officers', except as provided in chapter 9 of this title, includes senators in the general assembly, judges of probate, assistant judges of the county court; state's attorney, sheriff, high bailiff and justices of the peace.'

'(7) 'State officers' includes the governor, lieutenant governor, state treasurer, secretary of state, auditor of accounts, and attorney general.'

Chapter 9 of that same title provides in part as follows:

Section 301. Definitions

'Primary,' the primary election provided for by this chapter; 'state officers', those specified in section 1 of this title and county officers, those so specified except justices of the peace.'

Under the enabling acts found on page 176 of the 1973 Adjourned Session the following appears:

'Sec. 7. County officers continued.

The districts whose freemen shall elect the assistant judges, sheriffs and state's attorneys under section 45 of chapter II of the constitution shall be the counties as defined in chapter 1 of Title 24.'

Therefore, it is easily recognizable that under the Constitution and legislative acts of this State there has been a distinction between officers of State with reference to Governor, Lieutenant Governor, Treasurer, Secretary of State and Attorney General and those offices commonly referred to as county officers which include Assistant Judges and sheriffs.

It must be remembered that the offices of Governor, Lieutenant Governor, Treasurer, Secretary of State and Attorney General are not only recognized in the Constitution as well as the sheriff but the Constitution provides for the administration of those high offices whereas the Constitution only

recognizes the tenure and existence of the office of sheriff and the control of the office of sheriff is left to the legislature.

A similar Constitutional provision is found in the Massachusetts Constitution which provides for impeachments by the House of Representatives and for trial by the Senate against 'any officer of the Commonwealth'.

In the case of the *Attorney General vs. Tufts, 131 Northeast 573*, the Supreme Judicial Court of Massachusetts interpreted the phrase 'officer of the Commonwealth' as it applied to a district attorney elected by the voters of a well defined district within the Commonwealth of Massachusetts.

The Court in this opinion held that a statute authorizing the Justices of the Supreme Court to remove district attorneys did not violate the Massachusetts Constitution which provided for impeachments by the House of Representatives against any officer of the Commonwealth.

This Court reasoned that the Massachusetts Constitution only recognized the existence of the office of district attorney and did not secure its tenure or more importantly confer any right in the office superior to the control of the legislature.

That Court went on further to state as follows:

'With reference to that article that was said in *Opinion of Justices, 167 Mass. 599, 600 46 Northeast 118, 119* rendered to the House of Representatives concerning the liability to impeachment of a county commissioner: There are several classes of civil officers within the Commonwealth; for example, town or city officers, county officers, officers of districts and state officers. In a certain sense, all of these officers may be deemed to be officers of the Commonwealth, and it is possible accordingly to take the view that all are subject to impeachment. But in our opinion this provision of the Constitution was not intended to include all civil officers of every grade within the Commonwealth.

On the one hand, it seems to us that the various officers of cities or towns do not fall within the class of officers of the Commonwealth, in the sense in which these words are used in the provision of the Constitution. On the other hand, officers elected by the people at large, or provided for in the Constitution for the administration of matters of general or state concern, are subject to impeachment. The intention of the framers of the Constitution in respect to such officers as county commissioners is not free from doubt. The office of county commissioner is created by statute, and the legislature can by statute determine in what manner an incumbent may be removed from office. They have some duties or functions which concern the people of the State at large. It seems to us that the better construction of the constitutional

provision is that the county commissioners are not subject to impeachment as officers of the Commonwealth.'

The determining factor in the *Attorney General vs. Tufts* opinion is that the legislature has control over the office of district attorney and that the office itself is not superior to the control of the legislature by any provision of the Constitution. The Constitution in Massachusetts states how the district attorney shall be elected and how a single act of one so elected shall vacate the office. It states nothing more.

The same can be said of the Vermont Constitution with regards to the office of sheriff. The Vermont Constitution merely recognizes the existence of the office of the sheriff and the manner in which the sheriff shall be elected and his tenure. The Constitution gives no rights superior to that of the legislature to the office of sheriff. Therefore the office of sheriff is unlike the office of the officers of state which include the offices of Governor, Lieutenant Governor, Secretary of State, Treasurer and (Attorney General). As stated before, those officers derive their power from the Constitution and are superior to the control of the legislature.

The sheriff can be considered as a 'state officer' but not as an 'officer of state'. Notwithstanding that the sheriff has statewide jurisdiction for the purpose of serving writs and has arrest powers he can not be considered an officer of state. Those powers to make statewide arrests and to serve writs throughout the state are derived solely from the court from which the particular process is issued. Under the doctrine expressed in *Peck v. Crane*, 25 Vermont 146, 147, the sheriff is (strictly) acting as an agent for the court in a ministerial function and derives no authority from the particular process other than the direction to serve same under force of law by said Court.

'A sheriff is under a duty to serve a writ of process committed to him, promptly and unhesitatingly, without regard to any knowledge, or supposed knowledge, of his own in regard to whether a cause of action existed. His duty is to obey the process, not to decide on its validity. Such an officer has no portion of judicial authority, nor the means of inquiry into the cause of action contained in the writs and declarations put into his hands for service. It is sufficient for his justification and acting that the process is regular on its face and issued by competent authority.' 70 *Am. Jur. 2d, Section 21, Page 146.*

Therefore, it is not significant that the office of sheriff has been decreed the right to make arrests or serve process within the State of Vermont. This in and of itself does not make the sheriff an officer of state. What is important in analyzing the sheriff's powers with regard to service of process and arrest is the authority from which he derives that power. The authority from which he derives the power to make statewide arrests and to serve process is from the issuing Court. The office of sheriff has no power to make arrests and issue writs.

Additional judicial authority that supports the proposition that a sheriff

is not an 'Officer of State' is found in the cases of *State v. Grant*, 81 p. 795 and *State ex Rel Dawson v. Martin* 126 p. 1080.

'The above rule seems to be the law of this State and we might observe that we have never heard of a county officer in any state being impeached by the Legislature'. 92 *ALR 2d, 1115, 1119.*

WHEREFORE, the respondent respectfully submits that the office of sheriff does not come within the provisions of Chapter Two, Section 58 as being an officer of state subject to impeachment by the legislative branch of government. Therefore the legislature and specifically the Senate has no power to impeach a sheriff within this State and therefore no jurisdiction to try the Articles of Impeachment now pending against the respondent.

Dated at City of Barre, County of Washington and State of Vermont this 17th day of May, 1976.

MALCOLM M. MAYO

By /s/ Oreste Valsangiacomo, Jr.

Richard E. Davis Associates, Inc.
His Attorneys"

Thereupon, arguments on the Motion to Dismiss were heard by counsel for the respondent and by the House Managers.

Thereupon, ruling on the Motion to Dismiss was taken under advisement by the Senate and Senators.

Thereupon, the trial proceeded and the House Managers delivered their opening argument on Article I.

Thereupon, counsel for respondent delivered their opening argument on Article I.

Thereupon, Senator Newell noted for the record his objection to the definition of "impeachable offense" as contained in Rule 2, subparagraph (6) of the impeachment rules.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

TUESDAY, MAY 18, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule *Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westpal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Ogden

The absent Senators were: Senator Daniels (Chittenden District), **Senator Smith (Washington District) and Senator Howland (Windsor District).

*Arrived during testimony of David Flint and was present during the remainder of the morning session; was absent from the afternoon session.

**Was present for the afternoon session.

IMPEACHMENT SESSION CONTINUES

Thereupon, Senator Bloomer, on behalf of the Rules Committee, recommended that the Motion to Dismiss filed by the respondent be ruled out of order as being untimely filed, and the Chair so ruled.

Thereupon, Senator Ogden appealed the ruling of the Chair, which ruling was then sustained by vote of the Senate on a roll call, Yeas 22, Nays 4.

Senator Ogden, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Beauchamp, Bloomer, Boylan, Crowley, Cummings, Delaney, Doyle, Gannett, Gibb, Hewitt, Janeway, Mandigo, Morse, Newell, Niquette, R. O'Brien, Partridge, Sorrell, Soule, Wallace, Westpal.

Those Senators who voted in the negative were: Grady, J. O'Brien, Ogden, Reynolds.

Those Senators absent and not voting were: Daniels, Howland, Howrigan, Smith.

Thereupon, trial of the impeachment cause resumed.

The House Managers commenced to introduce evidence relating to count (3) of Article I.

Thereupon, testimony was received from Diane Gallant.

Thereupon, testimony was received from David Flint.

Thereupon, testimony was received from Philip Gallant.

Thereupon, testimony was commenced to be received from Douglas Nicholson.

During the taking of direct examination from Douglas Nicholson, on motion of Senator Bloomer, the Senate adjourned.

AFTERNOON

The Senate was called to order by the President.

Thereupon, the remaining testimony was received from Douglas Nicholson.

Thereupon, testimony was commenced to be received from Officer Robert Brevilieri.

During the direct examination of Officer Brevilieri, the House Managers offered into evidence House Managers' #2 for Identification, being a statement made by Malcolm M. Mayo in connection with the Thrush Tavern incident referred to in count (3), the admission of which was objected to by counsel for the respondent.

Thereupon, upon recommendation of the Rules Committee, the Chair precluded and denied admission of the exhibit into evidence.

Thereupon, the House Managers asked that the Senate take judicial notice of the provisions of 24 V.S.A. § 299 and 13 V.S.A. § 1006, together with the language contained in Chapter II, Section 56 of the Vermont Constitution setting forth the oath of office taken by sheriffs.

Thereupon, the House Managers again offered into evidence House Managers' #2 for Identification, the admission of which was objected to by counsel for the respondent.

Thereupon, upon recommendation of the Rules Committee, the Chair again precluded and denied admission of the exhibit into evidence.

Thereupon, the testimony received from Officer Brevilieri was terminated.

The House Managers then commenced to introduce evidence relating to counts (1) and (2) of Article I.

Thereupon, testimony was received from Timothy Chapin.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

WEDNESDAY, MAY 19, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien

Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

The absent Senator was: Senator Daniels (Chittenden District).

IMPEACHMENT RULES AMENDED; IMPEACHMENT SESSION CONTINUES

Senator Bloomer, for the Committee on Rules, moved that the Senate amend its impeachment rules as previously adopted during the 1976 Adjourned Session in Rule 2, subparagraph (6), by striking out the words "designated as such in an article"

Which was agreed to.

Thereupon, trial of the impeachment cause resumed.

The House Managers continued to introduce evidence relating to counts (1) and (2) of Article I.

Thereupon, testimony was commenced to be received from Earle W. Kelly, Jr.

During the cross-examination of Earle W. Kelly, Jr., on motion of Senator Bloomer, the Senate adjourned.

AFTERNOON

The Senate was called to order by the President.

Thereupon, further testimony was received from Earle W. Kelly, Jr.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

THURSDAY, MAY 20, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings *Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Ogden

The Senators absent were: Senator Daniels (Chittenden District) and Senator ** Howland (Windsor District).

*Was present for the morning session; arrived during the further recross-examination of Earle W. Kelly, Jr. (after the Senators) during the afternoon session.

**Arrived during the further recross-examination of Earle W. Kelly, Jr. (after the Senators) during the afternoon session.

IMPEACHMENT SESSION CONTINUES

Thereupon, trial of the impeachment cause resumed.

The House Managers continued to introduce evidence relating to counts (1) and (2) of Article I.

Thereupon, further testimony was received from Earle W. Kelly, Jr.

During the cross-examination of Earle W. Kelly, Jr., Senator Alden appealed the ruling of the Chair which excluded evidence to be given by the witness explaining why he was in contact with the Attorney General's office prior to assuming his duties with the Sheriff's Department.

Thereupon, the ruling of the Chair was sustained by vote of the Senate on a roll call, Yeas 18, Nays 10.

Senator Alden, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Hewitt, Howrigan, Mandigo, Morse, Newell, Niquette, Partridge, Sorrell, Soule, Wallace, Westphal.

Those Senators who voted in the negative were: Alden, Crowley, Delaney, Grady, Janeway, J. O'Brien, R. O'Brien, Ogden, Reynolds, Smith.

Those Senators absent and not voting were: Daniels, Howland.

Thereupon, further testimony was received from Earle W. Kelly, Jr.

During the recross-examination of Earle W. Kelly, Jr., on motion of Senator Bloomer, the Senate adjourned until one o'clock in the afternoon.

AFTERNOON

The Senate was called to order by the President.

Thereupon, the remaining testimony was received from Earle W. Kelly, Jr.

Thereupon, pending any questions to be propounded by the Senators to the witness, Senator Bloomer moved that the Senate vote by roll call on four (4) separate areas of inquiry by the Senators,

Which was agreed to.

Thereupon, the first question, Shall any Senator be allowed to ask witness Kelly the substance of any conversation he had with the Attorney General? was decided in the negative on a roll call, Yeas 7, Nays 20.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Crowley, Delaney, Grady, J. O'Brien, R. O'Brien, Reynolds.

Those Senators who voted in the negative were: Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Howrigan, Janeway, Mandigo, Morse, Newell, Niquette, Ogden, Partridge, Smith, Sorrell, Soule, Wallace, Westphal.

The Senators absent and not voting were: Daniels, Hewitt, Howland.

Thereupon, the second question, Shall any Senator be allowed to ask witness Kelly the substance of any conversation he had with the Deputy Attorney General? was decided in the negative on a roll call, Yeas 9, Nays 18.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Crowley, Delaney, Grady, Howrigan, J. O'Brien, R. O'Brien, Ogden, Reynolds.

Those Senators who voted in the negative were: Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Janeway, Mandigo, Morse, Newell, Niquette, Partridge, Smith, Sorrell, Soule, Wallace, Westphal.

Those Senators absent and not voting were: Daniels, Hewitt, Howland.

Thereupon, the third question, Shall any Senator be allowed to ask witness Kelly the substance of any conversation he had with any state policeman? was decided in the negative on a roll call, Yeas 8, Nays 19.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Crowley, Delaney, Grady, Howrigan, J. O'Brien, R. O'Brien, Reynolds.

Those Senators who voted in the negative were: Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Janeway, Mandigo, Morse, Newell, Niquette, Ogden, Partridge, Smith, Sorrell, Soule, Wallace, Westphal.

Those Senators absent and not voting were: Daniels, Hewitt, Howland.

Thereupon, the fourth question, Shall any Senator be allowed to ask witness Kelly the substance of any conversation he had with the Governor? was decided in the negative on a roll call, Yeas 8, Nays 19.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Crowley, Delaney, Grady, Howrigan, J. O'Brien, R. O'Brien, Reynolds.

Those Senators who voted in the negative were: Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Janeway, Mandigo, Morse, Newell, Niquette, Ogden, Partridge, Smith, Sorrell, Soule, Wallace, Westphal.

Those Senators absent and not voting were: Daniels, Hewitt, Howland.

Thereupon, further examination of Earle W. Kelly, Jr. was conducted by the Senators.

Thereupon, further recross-examination of Earle W. Kelly, Jr. was conducted by counsel for the respondent and his testimony was terminated.

Thereupon, Paige MacDonnell Kelly was called to the witness stand by the House Managers.

Thereupon, pending the taking of direct examination from Paige MacDonnell Kelly, on motion of Senator Bloomer, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, MAY 21, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley *Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge

Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator **Alden Ogden Howland

The Senators absent were: Senator Daniels (Chittenden District) and Senator Delaney (Grand Isle District).

*Was present for the morning session and most of the afternoon session; left during the final stages of cross-examination of Paige MacDonnell Kelly.

**Was present for the morning session and most of the afternoon session; left just prior to the calling of witness Milford W. Ramey.

IMPEACHMENT SESSION CONTINUES

Thereupon, trial of the impeachment cause resumed.

The House Managers continued to introduce evidence relating to counts (1) and (2) of Article I.

Thereupon, further testimony was received from Paige MacDonnell Kelly.

During the cross-examination of Paige MacDonnell Kelly, on motion of Senator Bloomer, the Senate adjourned until one o'clock in the afternoon.

AFTERNOON

The Senate was called to order by the President.

Thereupon, the remaining testimony was received from Paige MacDonnell Kelly.

Thereupon, Milford W. Ramey was called to the witness stand by the House Managers.

Thereupon, pending the taking of direct examination from Milford W. Ramey, the question, Shall the Senate permit the admission of testimony resulting from the taking of polygraph tests of any witness to be called for this impeachment trial? was decided in the negative on a roll call, Yeas 3, Nays 23.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Crowley, Partridge, Wallace.

Those Senators who voted in the negative were: Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Hewitt, Howland, Howrigan,

Janeway, Mandigo, Morse, Newell, Niquette, J. O'Brien, R. O'Brien, Ogden, Reynolds, Smith, Sorrell, Soule, Westphal.

Those Senators absent and not voting were: Alden, Daniels, Delaney, Grady.

Thereupon, the witness was excused and his testimony was terminated.

ADJOURNMENT

On motion of Senator Bloomer the Senate adjourned, to reconvene again on Monday, May 24, 1976, at ten o'clock in the forenoon.

MONDAY, MAY 24, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley *Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator **Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer ***Partridge

Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

The Senator absent was: Senator Daniels (Chittenden District).

*Was present for the morning session; left during the direct examination of Harold George Linde.

**Was present for the morning session; left during the direct examination of Harold George Linde.

***Was present for both the morning and afternoon sessions, except for the debate and vote on the motion to adjourn.

IMPEACHMENT SESSION CONTINUES

Thereupon, trial of the impeachment cause resumed.

The House Managers continued to introduce evidence relating to counts (1) and (2), and also count (4), of Article I.

Thereupon, testimony was received from Gordon Dewey.

Thereupon, testimony was commenced to be received from Beverley Smith.

Upon completion of the direct examination of Beverley Smith, on motion of Senator Bloomer, the Senate adjourned until one o'clock in the afternoon.

AFTERNOON

The Senate was called to order by the President.

Thereupon, pending the cross-examination of Beverley Smith, Senator Bloomer moved that when the Senate adjourns its afternoon session, it be until eight o'clock and thirty minutes in the morning on Tuesday, May 25, 1976. Thereupon, pending the question, Shall the Senate adjourn its afternoon session until eight o'clock and thirty minutes in the morning on Tuesday, May 25, 1976? Senator Beauchamp moved to amend the motion by striking out the words and figures "eight o'clock and thirty minutes in the morning on Tuesday, May 25, 1976" and inserting in lieu thereof the words and figures *nine o'clock and thirty minutes in the morning on Wednesday, May 26, 1976*,

Which was disagreed to on a roll call, Yeas 8, Nays 20.

Senator Beauchamp, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Beauchamp, Delaney, Gibb, Grady, Howland, Mandigo, Ogden, Reynolds.

Those Senators who voted in the negative were: Alden, Bloomer, Boylan, Crowley, Cummings, Doyle, Gannett, Hewitt, Howrigan, Janeway, Morse, Newell, Niquette, J. O'Brien, R. O'Brien, Smith, Sorrell, Soule, Wallace, Westphal.

Those Senators absent and not voting were: Daniels, Partridge.

Thereupon, the recurring question, Shall the Senate adjourn its afternoon session until eight o'clock and thirty minutes in the morning on Tuesday, May 25, 1976? was decided in the affirmative.

Thereupon, the remaining testimony was received from Beverley Smith.

Thereupon, testimony was received from Marie Jones.

Thereupon, testimony was received from Harold George Linde.

Thereupon, testimony was commenced to be received from David Evans.

Thereupon, upon completion of the taking of direct examination from David Evans, the Chair ruled that the House Managers could *not* proceed to then introduce evidence relating to Article II from this same witness and that the Senate would vote upon each article of impeachment separately pursuant to Rule 4(e) (2).

Thereupon, Representative Drew resigned as a House Manager and departed from the Senate Chamber.

Thereupon, further testimony was received from David Evans.

ADJOURNMENT

During the cross-examination of David Evans, on motion of Senator Bloomer, the Senate adjourned until eight o'clock and thirty minutes in the morning, May 25, 1976.

TUESDAY, MAY 25, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District

Senator Gibb
Reynolds

Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

The Senators absent were: Senator Daniels (Chittenden District) and Senator Delaney (Grand Isle District).

IMPEACHMENT SESSION CONTINUES

Thereupon, trial of the impeachment cause resumed.

The House Managers continued to introduce evidence relating to counts (1), (2), (3) and (4) of Article I.

Thereupon, pending the taking of further testimony from David Evans, Senator Bloomer, on behalf of the Rules Committee, recommended that the filing of a Motion to Dismiss by the respondent at any stage of the proceedings be ruled out of order, since the Senate would then be voting upon a "final question" as defined in subparagraph (4) of Rule 2 without the choice of "sustaining" or "rejecting" an article as required by Rule 2 and Rule 4(e). The Chair so ruled.

The Chair also ruled that no votes would be taken by the Senate as to the extent of any penalty to be imposed, in the event of conviction of the respondent upon any Article, until the conclusion of the entire case.

Thereupon, the remaining testimony was received from David Evans.

Thereupon, the House Managers again offered into evidence House Managers' #2 for Identification, being a statement made by Malcolm M. Mayo in connection with the Thrush Tavern incident referred to in count (3), the admission of which was objected to by counsel for the respondent.

Thereupon, upon recommendation of the Rules Committee, the Chair precluded and denied admission of the exhibit into evidence.

Thereupon, Senator Crowley appealed the ruling of the Chair which precluded the admission into evidence of House Managers' #2 for Identification. Thereupon, the ruling of the Chair was sustained by vote of the Senate on a roll call, Yeas 23, Nays 5.

Senator Crowley, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Beauchamp, Bloomer, Boylan, Cummings, Doyle, Gannett, Gibb, Hewitt, Howrigan, Janeway, Mandigo, Newell, Niquette, J. O'Brien, R. O'Brien, Ogden, Partridge, Reynolds, Smith, Sorrell, Soule, Westphal.

Those Senators who voted in the negative were: Crowley, Grady, Howland, Morse, Wallace.

Those Senators absent and not voting were: Daniels, Delaney.

The House Managers then rested, for Article I.

Counsel for the respondent commenced to introduce evidence relating to Article I.

Thereupon, approval was granted by the Rules Committee pursuant to Rule 7 to permit counsel for the respondent to call Stanley MacPherson and Corporal James Jollota to the witness stand, despite the fact that these two (2) witnesses did not appear on any witness list 5 days prior to the commencement of the impeachment trial.

Thereupon, on motion of Senator Bloomer, Rule 8(b) was suspended to permit testimony to be received from these two (2) witnesses, despite their status as employees of the General Assembly.

Thereupon, testimony was received from Stanley MacPherson.

Thereupon, testimony was received from Corporal James Jollota.

Thereupon, testimony was received from David McManis.

Thereupon, the Chair ruled that both parties could call any person to testify at the impeachment trial as disclosed by their *original* witness lists filed in April with the Secretary of the Senate.

Thereupon, testimony was received from Lawrence Douglas Rouelle.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned until nine o'clock and thirty minutes in the morning.

WEDNESDAY, MAY 26, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule *Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace

Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

The Senators absent were: Senator Crowley (due to illness) and Senator Daniels (Chittenden District).

*Was present for the morning session; left during the direct examination of David Evans.

IMPEACHMENT SESSION CONTINUES; ARTICLE OF IMPEACHMENT REJECTED

Thereupon, trial of the impeachment cause resumed.

Counsel for the respondent then rested, for Article I.

The House Managers then commenced to introduce rebuttal evidence relating to Article I.

Thereupon, pending introduction of rebuttal evidence, approval was granted by the Rules Committee pursuant to Rule 7 to permit the House Managers to call Lt. Lloyd Howard, Assistant Attorney General William Keefe, Assistant Attorney General Paul Hudson, and Deputy Attorney General Gregory A. McKenzie to the witness stand despite the fact that these four (4) witnesses did not appear on any witness list 5 days prior to the commencement of the impeachment trial.

Thereupon, testimony was received from Lt. Lloyd Howard.

Thereupon, testimony was received from Assistant Attorney General William Keefe.

Thereupon, testimony was received from Assistant Attorney General Paul Hudson.

Thereupon, testimony was received from Deputy Attorney General Gregory A. McKenzie.

The House Managers again rested, and the introduction of evidence was concluded for Article I.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned until one o'clock in the afternoon.

AFTERNOON

The Senate was called to order by the President.

Thereupon, the House Managers delivered their final argument on Article I.

Thereupon, counsel for respondent delivered their final argument on Article I.

Thereupon, the House Managers delivered their rebuttal argument on Article I.

No debate was held by the Senate on Article I.

Thereupon, the Senate proceeded to vote, and the pending question, Is the impeachment of Sheriff Malcolm M. Mayo sustained in accordance with Article I of the Articles of Impeachment? was decided in the negative on a roll call, Yeas 8, Nays 20.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted to sustain the article were: Doyle, Gannett, Howland, Janeway, Morse, Partridge, Sorrell, Wallace.

Those Senators who voted to reject the article were: Alden, Beauchamp, Bloomer, Boylan, Cummings, Delaney, Gibb, Grady, Hewitt, Howrigan, Mandigo, Newell, Niquette, J. O'Brien, R. O'Brien, Ogden, Reynolds, Smith, Soule, Westphal.

Those Senators absent and not voting were: Crowley, Daniels.

Thereupon, trial of the impeachment cause resumed.

No opening arguments were delivered on Article II.

The House Managers commenced to introduce evidence relating to Article II.

Thereupon, testimony was received from David Evans.

Thereupon, testimony was received from Sidney H. Bradley, Jr.

Thereupon, testimony was received from Donald Denko.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

THURSDAY, MAY 27, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator *Morse Newell
Chittenden District	Senator **Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator ***Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

The Senators absent were: Senator Crowley (due to illness) and Senator Daniels (Chittenden District).

*Was present for the morning session; was absent for the afternoon session.

**Arrived in the afternoon during the direct examination of Clement Confessore and was present for the remainder of the afternoon session.

***Arrived in the morning during cross-examination of Jerry P. Rillo, Sr. and was present for the remainder of the morning session and for the afternoon session.

IMPEACHMENT SESSION CONTINUES

Thereupon, trial of the impeachment cause resumed.

The House Managers continued to introduce evidence relating to Article II.

Thereupon, testimony was received from Jerry P. Rillo, Sr.

Thereupon, testimony was received from Gregory Blackburn.

The House Managers then rested, for Article II.

Counsel for the respondent commenced to introduce evidence relating to Article II.

Thereupon, testimony was received from Sharon Cloutier.

Thereupon, testimony was commenced to be received from Phillip Anthony.

During the cross-examination of Phillip Anthony, on motion of Senator Bloomer, the Senate adjourned until one o'clock in the afternoon.

AFTERNOON

The Senate was called to order by the President.

Thereupon, the remaining testimony was received from Phillip Anthony.

Thereupon, testimony was received from Aime Jacques.

Thereupon, testimony was received from Clement Confessore.

Thereupon, testimony was received from Dr. Frank H. Caffin.

Thereupon, testimony was received from Sidney H. Bradley, Jr., (recalled to witness stand).

Thereupon, testimony was received from Gordon Dewey.

Thereupon, testimony was received from Sheriff Malcolm M. Mayo.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

FRIDAY, MAY 28, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb
	Reynolds

Bennington District	Senator Cummings Hewitt
---------------------	----------------------------

Caledonia District	Senator Morse Newell
--------------------	-------------------------

Chittenden District	Senator Grady Niquette J. O'Brien Sorrell
---------------------	--

Essex-Orleans District	Senator Boylan Mandigo
------------------------	---------------------------

Franklin District	Senator Soule Howrigan
-------------------	---------------------------

Grand Isle District	Senator Delaney
---------------------	-----------------

Lamoille District	Senator Westphal
-------------------	------------------

Orange District	Senator R. O'Brien
-----------------	--------------------

Rutland District	Senator Beauchamp Bloomer Partridge
------------------	---

Washington District	Senator Doyle Smith Wallace
---------------------	-----------------------------------

Windham District	Senator Gannett Janeway
------------------	----------------------------

Windsor District	Senator Alden Howland Ogden
------------------	-----------------------------------

The Senators absent were: Senator Crowley (due to illness) and Senator Daniels (Chittenden District).

IMPEACHMENT SESSION CONTINUES; ARTICLE OF IMPEACHMENT REJECTED

Thereupon, trial of the impeachment cause resumed.

Counsel for the respondent continued to introduce evidence relating to Article II.

Thereupon, testimony was received from Ronald Pierce.

Counsel for the respondent then rested, for Article II.

The House Managers then commenced to introduce rebuttal evidence relating to Article II.

Thereupon, testimony was received from Timothy Austin.

The House Managers again rested, and the introduction of evidence was concluded for Article II.

Thereupon, the House Managers delivered their final argument on Article II.

Thereupon, counsel for respondent delivered their final argument on Article II.

Thereupon, the House Managers delivered their rebuttal argument on Article II.

No debate was held by the Senate on Article II.

Thereupon, the Senate proceeded to vote, and the pending question, Is the impeachment of Sheriff Malcolm M. Mayo sustained in accordance with Article II of the Articles of Impeachment? was decided in the negative on a roll call, Yeas 8, Nays 20.

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted to sustain the article were: Beauchamp, Doyle, Gibb, Janeway, Morse, Sorrell, Wallace, Westphal.

Those Senators who voted to reject the article were: Alden, Bloomer, Boylan, Cummings, Delaney, Gannett, Grady, Hewitt, Howland, Howrigan, Mandigo, Newell, Niquette, J. O'Brien, R. O'Brien, Ogden, Partridge, Reynolds, Smith, Soule.

Those Senators absent and not voting were: Crowley, Daniels.

ADJOURNMENT

Thereupon, Senator Bloomer moved that the Senate adjourn until Tuesday, June 1, 1976, at ten o'clock in the morning,

Which was agreed to on a roll call, Yeas 15, Nays 14.

There being a tie, the Secretary took the casting vote of the President who voted "Yea".

Senator Ogden, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Bloomer, Boylan, Delaney, Doyle, Gannett, Grady, Morse, Niquette, J. O'Brien, R. O'Brien, Smith, Sorrell, Soule.

Those Senators who voted in the negative were: Beauchamp, Cummings, Gibb, Hewitt, Howland, Howrigan, Janeway, Mandigo, Newell, Ogden, Partridge, Reynolds, Wallace, Westphal.

Those Senators absent and not voting were: Crowley, Daniels.

TUESDAY, JUNE 1, 1976

The Senate was called to order by the President.

ROLL CALL

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Daniels Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle *Smith Wallace
Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

*Arrived in the afternoon during the cross-examination of Margaret Stauff and was present for the remainder of the afternoon session.

IMPEACHMENT SESSION CONTINUES

Thereupon, trial of the impeachment cause resumed.

No opening argument was delivered by the House Managers on Article III.

Thereupon, counsel for the respondent delivered their opening argument on Article III.

The House Managers commenced to introduce evidence relating to Article III.

Thereupon, testimony was received from Sheriff Clement F. Potvin of Caledonia County.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned until one o'clock in the afternoon.

AFTERNOON

The Senate was called to order by the President.

Thereupon, testimony was commenced to be received from Margaret Stauff.

During the taking of direct examination from Margaret Stauff, Senator Crowley appealed the ruling of the Chair which excluded evidence to be given by the witness which would divulge the contents of a handwritten note authored by a second person named Edna at the Village Annex in Waterbury, the admission of which had been objected to by counsel for the respondent on the grounds of the hearsay rule.

Thereupon, the ruling of the Chair was sustained by vote of the Senate on a roll call, Yeas 21, Nays 8.

Senator Crowley, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted in the affirmative were: Alden, Beauchamp, Bloomer, Boylan, Cummings, Delaney, Gannett, Gibb, Grady, Howland, Howrigan, Janeway, Newell, Niquette, J. O'Brien, R. O'Brien, Ogden, Partridge, Reynolds, Soule, Westphal.

Those Senators who voted in the negative were: Crowley, Daniels, Doyle, Hewitt, Mandigo, Morse, Sorrell, Wallace.

The Senator absent and not voting was: Smith.

Thereupon, the remaining testimony was received from Margaret Stauff.

Thereupon, testimony was received from Eugene Champayne.

Thereupon, testimony was received from John Hodska by means of the reading into the record the testimony taken from him at a deposition held on February 12, 1976, with counsel for both parties present at such time.

Thereupon, testimony was received from Gerald Ranges.

Thereupon, testimony was received from Officer James B. Moran.

The House Managers then rested, for Article III.

Counsel for the respondent then rested, for Article III.

ADJOURNMENT

On motion of Senator Bloomer, the Senate adjourned.

WEDNESDAY, JUNE 2, 1976

The Senate was called to order by the President.

The roll of the Senate was thereupon called by the Secretary, Robert H. Gibson, and it appeared that the following named Senators were present:

Addison District	Senator Gibb Reynolds
Bennington District	Senator Cummings Hewitt
Caledonia District	Senator Morse Newell
Chittenden District	Senator Crowley Daniels Grady Niquette J. O'Brien Sorrell
Essex-Orleans District	Senator Boylan Mandigo
Franklin District	Senator Soule Howrigan
Grand Isle District	Senator Delaney
Lamoille District	Senator Westphal
Orange District	Senator R. O'Brien
Rutland District	Senator Beauchamp Bloomer Partridge
Washington District	Senator Doyle Smith Wallace

Windham District	Senator Gannett Janeway
Windsor District	Senator Alden Howland Ogden

IMPEACHMENT SESSION CONTINUES; ARTICLE OF IMPEACHMENT REJECTED; FINAL JUDGMENT ENTERED; IMPEACHMENT SESSION DISSOLVED

Thereupon, trial of the impeachment cause resumed.

Thereupon, the House Managers delivered their final argument on Article III.

Thereupon, counsel for respondent delivered their final argument on Article III.

Thereupon, the House Managers delivered their rebuttal argument on Article III.

A short debate was then held by the Senate on Article III.

Thereupon, the Senate proceeded to vote, and the pending question, Is the impeachment of Sheriff Malcolm M. Mayo sustained in accordance with Article III of the Articles of Impeachment? was decided in the negative on a roll call, Yeas 18, Nays 12 (the necessary two-thirds vote required by the Constitution *not* having been attained).

Senator Bloomer, having demanded the yeas and nays, they were taken and are as follows:

ROLL CALL

Those Senators who voted to sustain the article were: Beauchamp, Bloomer, Boylan, Crowley, Daniels, Doyle, Gannett, Gibb, Hewitt, Janeway, Mandigo, Morse, Partridge, Smith, Sorrell, Soule, Wallace, Westphal.

Those Senators who voted to reject the article were: Alden, Cummings, Delaney, Grady, Howland, Howrigan, Newell, Niquette, J. O'Brien, R. O'Brien, Ogden, Reynolds.

Thereupon, pursuant to Rule 4(e)(2), judgment was entered by the President on the verdict rendered by the Senate, as follows:

"By virtue of the votes taken by the Senate, judgment is hereby entered that the articles of impeachment presented to the Senate on March 19, 1976, by the House of Representatives against Sheriff Malcolm M. Mayo are hereby *rejected*."

Thereupon, the purposes of the impeachment session having been accomplished, on motion of Senator Bloomer, the impeachment session was dissolved *sine die*.

SENATE RECONVENES

Thereupon, the Senate resumed its business of the session.

REMARKS JOURNALIZED

Senator Janeway addressed the Chair, and on motion of Senator Crowley, his remarks were ordered entered in the Journal, and are as follows:

"Mr. President:

Two weeks ago a new Senator from Lamoille County was sworn in and the Senate moved immediately to the impeachment proceedings which have just concluded.

The simple ceremony of swearing in held a special poignancy for us as she took the place of her late husband who had occupied that seat during his many years of service here. It seems fitting we not only welcome her warmly but I trust the Senate will permit me at this time to restate the respect and affection we held for our late colleague, Fred Westphal.

Fred was an intensely private person. None of the usual data is available in state publications regarding his background or accomplishments. Because of his well known reticence in these respects we know only that he represented his town and district in the House of Representatives from 1963 through 1967 and served as the Senator from Lamoille County since 1969.

He loved the Senate. He believed in its processes, respected its customs and was devoted to its work. He was a careful researcher, a powerful opponent, a loyal ally and a man of very strong convictions. Some of us disagreed with him from time to time, I for one, but all of us respected him for his forthrightness, for his courage and for his intellect. We enjoyed his earthy humor and we envied his judgment in good wine which we were sometimes privileged to share with him.

Though he believed in working quietly in his own way without fanfare, he held important committee chairmanships and sat on a number of boards and commissions. He served with a conscientious and single-minded devotion to his duty even though in the last months his health was wavering. We were saddened to see him stricken in the past year, nor did it seem right to us that this should happen to our strong and sturdy friend. He may have felt this himself though it was never obvious and he showed no sign of self-pity. He did what needed to be done and did it without ostentation.

We salute with affection his widow and successor. May we all rise also to honor our friend and fellow member whose service with us was so long and distinguished."

FINAL ADJOURNMENT

At eleven o'clock and forty-six minutes in the morning, on motion of Senator Bloomer made pursuant to a joint resolution of the two Houses (J.R.H. 81), the Senate adjourned without day.

Attest:

Robert H. Gibson
Secretary of the Senate