

Chronology of Changes in the Size of the Committee on the Judiciary

When the House Judiciary Committee was first created on June 3, 1813, during the 13th Congress, it was composed of seven Members. At that time and until 1975, the House set size limitations in its Rules for the numbers of members of the standing committees. Since January 3, 1975, the House Rules have not fixed the size of committees, but have assigned to the party organizations the duty of determining the size of each committee.

The size of the Judiciary Committee has fluctuated over the years ranging from seven members during the 13th Congress to a high of 38 Members in the 92d and 93d Congresses. The first change in the size of the committee came during the 23d Congress, on December 5, 1833, when the rule that fixed the number and size of House committees was amended to permit those committees consisting of seven members to increase to nine members. The Judiciary Committee had nine members until the 44th Congress (1875–1877) when it had 11 members.

Eleven members continued to serve on the committee until the 46th Congress (1879–1881) when it had 15 members. The next change in the committee's size occurred in the 53d Congress (1891–1893) when the committee had 17 members. The membership remained at 17 until the 59th Congress (1905–1907) when it increased to 18.

In the 62d Congress (1911–1913) the committee had 21 members, the size it kept until the 69th Congress (1925–1927) when it expanded to 23 members. Between the 73d Congress (1933–1935) and the 80th Congress (1947–1949), the committee grew from 25 members to 27. The committee expanded to 32 members in the 85th Congress (1957–1959), 35 in the 88th Congress (1963–1965), and 38 members in the 92d and 93d Congresses (1971–1974).

In the 94th Congress (1975–1977), the first Congress in which committee size was not fixed by the House Rules, 34 members were elected to the committee. The membership remained at 34 until the 96th Congress (1979–1981) when it changed to 31. In the first session of the 97th Congress, the committee was composed of 28 members.

Major Investigations, Oversight Hearings, and Related Activities

In addition to its normal legislative functions the House Committee on the Judiciary has conducted several major oversight studies and investigations since the 80th Congress. Oversight includes meetings and hearings held for one of the following purposes: (1) To analyze the effectiveness of legislative programs and policies; (2) to review and attempt to regulate unacceptable forms of bureaucratic behavior; (3) to determine whether the Federal Government is implementing the policy objectives of Congress; and (4) to analyze national and international problems requiring Federal action. (Hearings or meetings held to consider or draft legislation or to authorize programs are deemed not to constitute oversight—even though some oversight of a program or agency may legitimately be a byproduct of the authorization and legislative process.)

During the first session of the 84th Congress, the Antitrust Subcommittee conducted a comprehensive series of hearings on current antitrust problems. The hearings extended over a period of 17 days during which testimony was taken from 55 Government officials and leaders in the fields of banking, farming, labor, and business. Among the issues studied by this subcommittee during these hearings were antitrust enforcement procedures, recommendations of the Attorney General's Committee to Study the Antitrust Laws, the forces involved in the merger movement, and the antitrust problems posed by new forces active in the economy.

These hearings resulted in the subsequent introduction of bills to amend the Celler-Kefauver Antimerger Act of 1950. The committee issued two reports on those merger problems which discussed the forces active in the merger movement and the effectiveness of existing legislation.

The Antitrust Subcommittee also held extensive hearings on the problems involved in the organization and operation of advisory groups to assist in the exercise of administrative responsibilities by Government officials, and the problems involved in the Government's use of businessmen serving in key positions without compensation ("WOCs"). During the 15 days of hearings on the WOCs and Government advisory groups, the subcommittee received testimony from WOCs who had formerly served in the Federal Government, and officials of the Departments of Commerce and Justice, the Office of Defense Mobilization, and the Civil Service Commission.

The subcommittee investigation revealed some of the conflict of interest problems inherent in the use of WOCs by the Federal Government. This investigation indicated the necessity for safeguards to avoid the possibility of Government abdication of policy-making functions to private bodies in its use of advisory groups. The subcommittee analyzed possible abuses of these advisory groups in relation to overt violations of the antitrust laws. The subcommittee issued two interim reports: "The Business Advisory Council for the Department of Commerce," December 12, 1955, which analyzed the operations and activities of a special advisory group created to assist the Secretary of Commerce; and "WOCs and Government Advisory Groups," April 24, 1956, which examined the practices and procedures of the Department of Commerce in the Business and Defense Services Administration, and its predecessor, the National Production Authority, in the utilization of WOCs and advisory groups.

During the 85th Congress the House Committee on the Judiciary established the Special Subcommittee to Study Supreme Court Decisions. The subcommittee was authorized to conduct an investigation and make findings and recommendations with reference to questions raised by certain decisions of the Supreme Court, rendered during the October 1956 term, which ostensibly affected powers of Congress to investigate violations of Federal laws relating to subversive activities and the enforcement of Federal criminal laws. The subcommittee held hearings, studied selected Supreme Court decisions and heard testimony from Federal and local law enforcement officials, and representatives of several bar associations.

The committee studied the decision in *Mallory v. United States*, 354 U.S. 449 (1957), and several other cases. The subcommittee made its

recommendations and legislative proposals to the full committee including a proposal designed to overrule the decision of the Supreme Court in the *Mallory* case.

During second session of the 85th Congress the Antitrust Subcommittee completed hearings on its investigation of the consent decree program of the Department of Justice. The subcommittee attempted to determine the effectiveness of the disposition of civil antitrust cases by consent decrees in antitrust enforcement and to restore competition to the industries concerned. The subcommittee also sought to eliminate the conditions that caused the Government to institute antitrust proceedings. After an extensive study of the oil pipeline decree and the A.T. & T. decree, the subcommittee's investigation disclosed a number of questionable activities under the decree program.

The Antitrust Subcommittee also conducted an investigation, including eight days of hearing, into the operations of the office of the U.S. Attorney for the Northern District of Illinois, Mr. Robert Tieken. The subcommittee investigated complaints that Mr. Tieken had abused the powers of his office and that in the conduct of his office may have violated Canons of Ethics and conflict of interest statutes. This inquiry led to the recommendation, contained in the subcommittee report on the matter issued in June 1958, that Mr. Tieken be removed from office "forth with."

During the 87th Congress the Special Subcommittee on State Taxation of Interstate Commerce held extensive hearings on State income taxation of mercantile manufacturing corporations and on the problems of sales and use taxes. (This study was authorized by Public Law 86-272.) The subcommittee heard over 100 witnesses and gathered approximately 1,500 pages of testimony. Extensive information and materials were assembled through comprehensive questionnaire surveys, worksheets, interviews, and hearings. This investigation represented the first study of its kind undertaken by the U.S. Congress. The subcommittee concluded that the existing system was inoperative. Although the subcommittee's investigation threw new light on the problems in this area and on solutions to them, it did not make recommendations.

The Subcommittee on Antitrust and Monopoly held extensive hearings during the 91st Congress in connection with its investigation of conglomerate mergers. The purpose of this investigation was to determine the necessity for revision of Federal antitrust laws in order to curb excessive concentration of economic power.

In numerous recent cases the Judiciary Committee's investigations and oversight activities have led to significant legislation. Four of the most notable examples have been the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Bankruptcy Reform Act of 1978, the Refugee Act of 1980, and the proposed revision of the Federal criminal code.

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, enacted during the second session of the 94th Congress, has been called the most significant antitrust legislation passed since the Celler-Kefauver Antimerger Act of 1950.

The final bill originated as three separate pieces of legislation and was the subject of more than two years of work in the Subcommittee on Monopolies and Commercial Law. The subcommittee held some 11 days of hearings and heard from some 25 witnesses including State

attorneys general, officials of the Department of Justice and the Federal Trade Commission, attorneys representing various businesses and business trade associations, and Emanuel Celler, former chairman of the Judiciary Committee.

Title I of the Act consists of amendments to the Civil Process Act of 1962. It provides the Department of Justice more authority in investigating possible antitrust violations by extending the reach of the civil investigative demand (CID), a kind of subpoena used in antitrust investigations. This title began as legislation introduced in both the 93d and 94th Congresses by Chairman Rodino.

Title II directs companies of a certain size to notify the Justice Department and the Federal Trade Commission 30 days before consummating mergers. This is a concept which had been sought for almost 20 years.

Title III authorizes State attorneys general to bring triple damage antitrust suits (*parens patriae*) in federal court on behalf of state citizens injured by violations of the Sherman Antitrust Act. This was the most heavily debated and controversial section of the law.

The first major revision of the Nation's bankruptcy laws in 40 years was enacted during the second session of the 95th Congress. The legislation was the product of over six years of study, hearings, research, and drafting beginning with the Commission on the Bankruptcy Laws of the United States, which had been established by the Congress in 1970.

The Bankruptcy Reform Act of 1978 was the culmination of three years of work by the Subcommittee on Civil and Constitutional Rights. Work on the legislation began during the 94th Congress with hearings on two bills. On the first day of the 95th Congress, subcommittee chairman Don Edwards and other subcommittee members introduced a new bill to establish a uniform bankruptcy law. In the course of the subcommittee's work, it held 46 days of hearings and heard from some 131 witnesses including academicians, bankruptcy judges, attorneys, the President of the National Conference of Bankruptcy Judges, the Chief of the Bankruptcy Division of the Administrative Office of the U.S. Courts, labor leaders, the chairman of the American Bar Association's Task Force on Revision of Bankruptcy Laws, the U.S. Attorney General, and officials from the Justice Department, the Federal Trade Commission, the Internal Revenue Service, and the Interstate Commerce Commission.

Early in the 95th Congress the subcommittee held four days of briefing sessions followed by 22 days of markup sessions. These sessions lasted over 42 hours and the subcommittee adopted over 100 amendments. The full committee began work on a clean bill later in the first session. However, a potential jurisdictional conflict with the Ways and Means Committee and later a floor amendment on the court and administrative structure for bankruptcy cases caused a delay in the progress of the legislation.

After additional hearings by the Subcommittee on Civil and Constitutional Rights and House and Senate floor action, the measure was signed into law on November 6, 1978. It created a new system of bankruptcy judges, modernized the federal bankruptcy law for creditors

as well as consumer and business debtors, and consolidated laws dealing with business reorganization.

In March 1980 the President signed the Refugee Act of 1980 which provides for a comprehensive refugee policy with the objective of creating a systematic and flexible procedure for the admission and resettlement of refugees in the United States. The haphazard response of the United States to 30 years of continuing refugee problems, and the Judiciary Committee's experience during the 94th and 95th Congresses with the emergency enactment and subsequent extensions of the Indochina Migration and Refugee Assistance Act of 1975 convinced the committee that enactment of this legislation was imperative.

The measure was introduced in the first session of the 96th Congress by committee chairman Rodino and cosponsored by Elizabeth Holtzman, chairwoman of the Subcommittee on Immigration, Refugees, and International Law. The subcommittee held five days of hearings and testimony was heard from 26 witnesses including the Attorney General, the Secretary of Health, Education and Welfare, the U.S. Coordinator of Refugee Affairs, as well as representatives of the General Accounting Office, Amnesty International, the American Civil Liberties Union, and the National Coalition for Refugee Resettlement. Testimony was also received from scholars and resettlement experts. The subcommittee had previously held three days of hearings in 1977 on the admission of refugees into the U.S. and heard from some eight witnesses.

This law was the first major revamping of refugee and immigration laws since 1965. It amends the definition of refugee to eliminate discrimination on the basis of outmoded geographical and ideological considerations. It separates the admission of refugees from that of immigrants under the preference system and authorizes the admission of up to 50,000 refugees per year. It also authorizes the admission of additional refugees in situations where it is foreseen at the beginning of the fiscal year that humanitarian concerns justify additional numbers and where unforeseen emergencies arise after the beginning of the fiscal year.

Procedures for consultation with Congress, including the House and Senate Judiciary Committees, on numbers and allocations of refugees to be admitted in these situations are carefully delineated. Previously, there had been some informal consultation with Congress, but the Act mandates formal consultation explicitly and sets forth detailed informational requirements.

Finally, the Act includes comprehensive and uniform provisions for Federal support of refugee resettlement and absorption to be administered by a newly-created Office of Refugee Resettlement within the Department of Health and Human Services.

The Judiciary Committee has also played a significant role from the beginning in attempts to revise the Federal Criminal Code; the legislation creating the National Commission on Reform of Federal Criminal Laws was reported by the committee during the 89th Congress. Four members of the committee served on the National Commission, which issued its report in 1971.

Although criminal law revision bills were introduced in the House during the 93th and 94th Congresses, most of the work on these bills occurred in the Senate. During the 95th Congress, however, the House Subcommittee on Criminal Justice began working on the recodification legislation early in the first session. The subcommittee's work included roundtable discussions with Members of Congress, Federal judges, and other persons interested in the Federal criminal justice system; some 16 open-discussion meetings at which the Senate-passed bill, a bill introduced by Representative Cohen, and recodification legislation from previous Congresses were studied in detail; 23 hearings, at which some 110 witnesses testified; and some 16 markup meetings, during the course of which the subcommittee drafted its recodification bill. The subcommittee began circulation of a tentative draft of its bill in June 1978, and on July 28, 1978, the subcommittee ordered a clean bill introduced and reported favorably. Because of the lateness of the session, the Judiciary Committee was unable to take up the subcommittee's bill, and on October 4, 1978, the committee adopted a resolution authorizing the subcommittee to report on its findings with regard to the recodification of Federal criminal laws. The subcommittee's report was published as Committee Print No. 29 of the 95th Congress.

In the 96th Congress, the Subcommittee on Criminal Justice, dissatisfied with previous revision efforts, undertook to draft its own revision legislation. Initially, the subcommittee devoted 74 public meetings to drafting a new title 18. During this process, information and recommendations were sought and received from the Department of Justice, the American Bar Association, the Business Roundtable, the American Civil Liberties Union, and many other groups. The subcommittee studied current statutory and case law, the recommendations of the Brown Commission, the provisions of the Model Penal code and the codes of the various States, and the previous legislative proposals for reform. During August 1979, the subcommittee circulated a draft code to interested groups, academics, and other portions of the public for comment.

In September and October 1979, the subcommittee held 10 more days of hearings. Witnesses representing over 40 organizations testified or submitted written statements to the subcommittee. Following the hearings, the subcommittee devoted an additional 69 meetings to revising the draft legislation. On January 7, 1980, Representatives Drinan and Kindness introduced H.R. 6233, the product of the subcommittee's work. Finally, on March 11, 1980, the subcommittee voted 7-1 to recommend H.R. 6915, a "clean" version of the proposal, to the full Judiciary Committee.

On April 23, 1980, the full Committee began mark up of H.R. 6915. During 18 days of mark up, the Committee considered more than 90 amendments to the bill. On July 2, 1980, the Judiciary Committee voted by voice vote to recommend H.R. 6915, as amended, to the House of Representatives.

Despite the unprecedented attention given this legislation, however, time ran out during the 96th Congress, and H.R. 6915 never reached the House floor. Nonetheless, work has continued on this project in the 97th Congress.