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HOUSE OF REPRESENTATIVES



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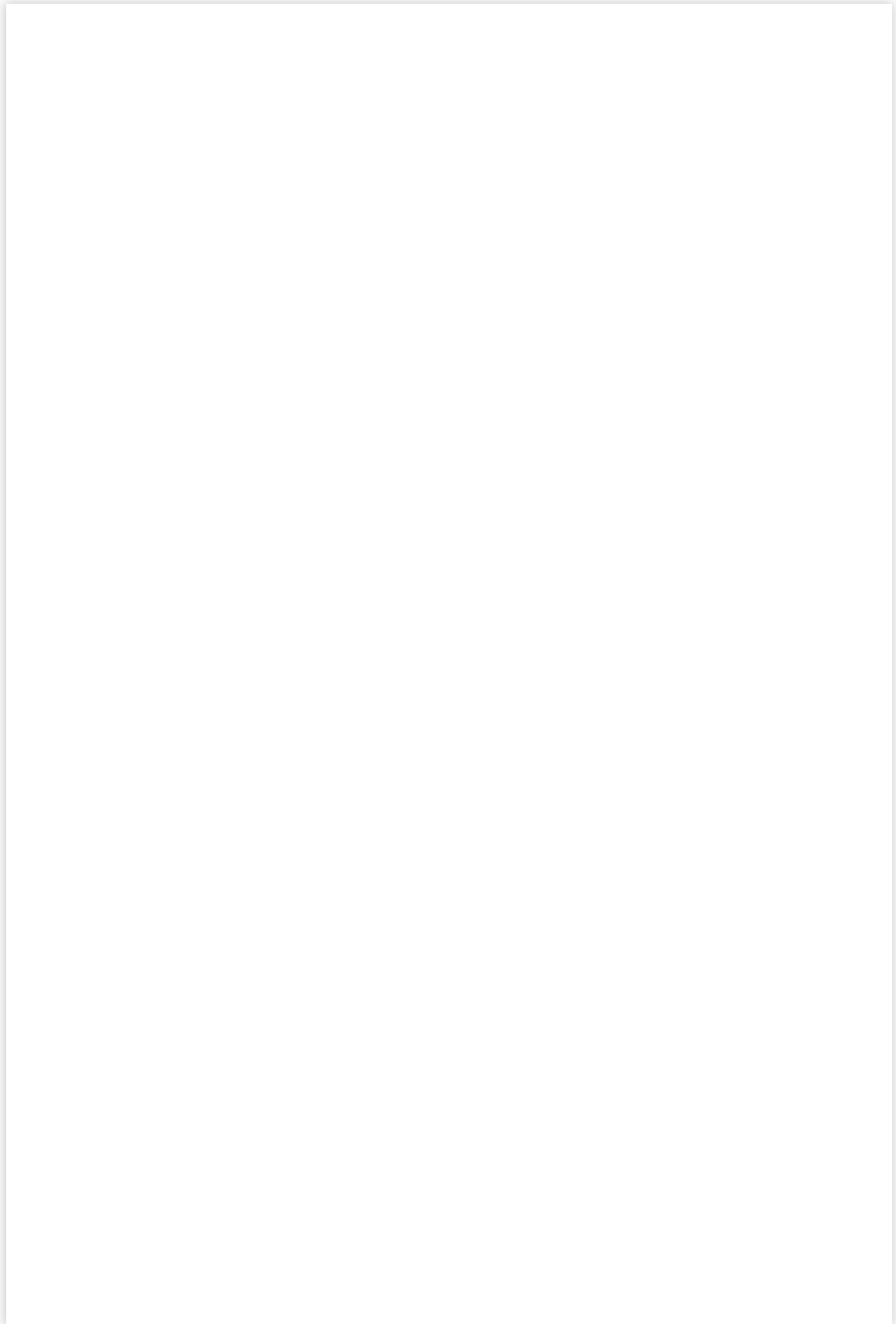
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FOREWORD

It has been exactly a decade since the Committee on the Judiciary of the House of Representatives last published a history of the committee. Since that time the committee has been charged by the House with the responsibility for consideration of several matters of unprecedented importance to the American people and our system of government. While the most obvious example of the extraordinary issues which the Committee on the Judiciary has confronted in the past 10 years has been the investigation, during the 93rd Congress, of whether sufficient grounds existed to impeach President Richard M. Nixon, numerous other significant constitutional and statutory matters have also been successfully dealt with over this period. During the 93rd Congress, for example, the committee was called upon to investigate and report to the House on the nominations of Gerald Ford and Nelson Rockefeller to be Vice President, the first two times in our history that the 25th Amendment was utilized. During the 94th Congress, and again in the first session of the 97th Congress, the committee extended and strengthened the Voting Rights Act, generally acknowledged to be the most effective civil rights law ever enacted. Also during the 94th Congress, the committee passed the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the most important antitrust legislation enacted since 1950.

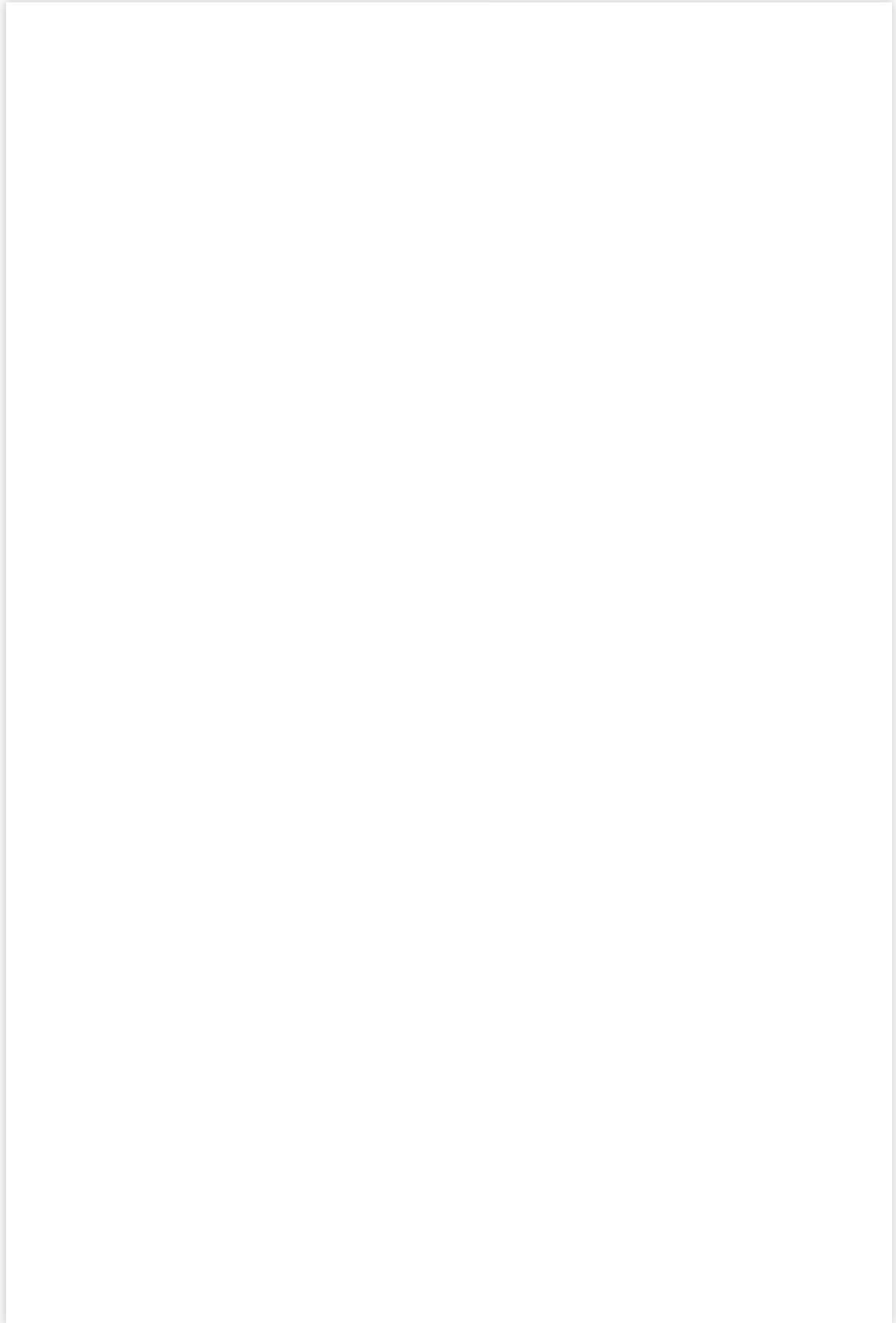
In the 95th Congress, the Judiciary Committee was asked to take action relating to two proposed constitutional amendments. First, the committee favorably reported H.J. Res. 554, a resolution to amend the Constitution to provide for representation of the District of Columbia in Congress. Subsequently, the committee approved H.J. Res. 638, to extend the ratification period for the proposed Equal Rights Amendment. The 95th Congress also saw the Judiciary Committee pass the Bankruptcy Reform Act of 1978, the first major revision of the bankruptcy laws enacted in 40 years.

Finally, during the 96th Congress, the Committee passed the Refugee Act of 1980, for the first time establishing a coherent and comprehensive statutory framework to guide our refugee policy. And the committee as well considered at length the recodification of our Federal criminal laws.

Given the nature of the issues for which the Committee on the Judiciary has been responsible in recent Congresses, and the length of time which has passed since the publication of the last comprehensive history, the Members of the committee believed it was important that an up-to-date study be prepared. It is our hope that this history, along with those previously published, will provide a more complete picture of the role of the committee in the legislative process and will contribute to a better understanding of how our democracy works.

PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives.

Washington, D.C., February 1982.



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An Introduction to the Judiciary Committee

The Judiciary Committee has been called the lawyer for the House of Representatives as a consequence of its jurisdiction over matters relating to the administration of justice in Federal courts, administrative bodies, and by law enforcement agencies, and to its infrequent, but important, role in most impeachment proceedings.

A standing Committee on the Judiciary was established by the House of Representatives on June 3, 1813 to consider legislation relating to judicial proceedings. Since then, the scope of the committee's concern has expanded to include not only civil and criminal judicial proceedings and Federal courts and judges, but also Federal statutes relating to bankruptcy, mutiny, espionage, counterfeiting, monopolistic practices, immigration, refugees, and international law, revision and codification of Federal law, and claims against the U.S. Government. The Judiciary Committee is responsible as well for legislation apportioning representation in the House, establishing the dates for the meetings of Congress, and regulating the attendance of Members and their acceptance of incompatible public offices. The committee is normally assigned legislation dealing with State and Federal boundary lines, and interstate compacts and agreements. Additionally, the Judiciary Committee has referred to it proposed constitutional amendments, legislation to insure and protect civil liberties, and measures relating to Presidential succession. Finally, the committee has jurisdiction over Federal prisons, and patent, copyright, and trademark matters.

In 1974, the House of Representatives voted to assign responsibility for measures relating to Federal holidays and celebrations, which for many years were referred to the Judiciary Committee, to the Committee on Post Office and Civil Service. In 1975, the House granted the Judiciary Committee responsibility for measures relating to Communist and other subversive activities affecting U.S. internal security.¹ In 1979, the Speaker of the House transferred the responsibility for identifying court proceedings and actions of vital interest to the Congress to the Judiciary Committee from the Select Committee on Congressional Operations.²

Because of the predominantly legal nature of the committee's work, it has been the custom, dating perhaps into the 19th century, that members of the committee have a legal background. A periodic check of committee membership from 1813 until the 80th Congress disclosed no

¹H. Res. 988, 93d Cong., 2d Ses., Oct. 8, 1974; H. Res. 5, 94th Cong., 1st Ses., Jan. 14, 1975.

²Pursuant to section 402 of Public Law 91-510 (2 U.S.C. § 412(a)(2)), the Joint Committee on Congressional Operations was originally mandated to undertake this project. In 1977, when the Joint Committee was abolished, the House pursuant to H. Res. 420, 95th Cong., 1st Ses., March 28, 1977, directed the Select Committee on Congressional Operations to take over this responsibility. When the Select Committee was not reconstituted in the 96th Congress, the Speaker, on May 8, 1979, transferred this function to Judiciary.

member of the Committee on the Judiciary without legal training or experience, while an examination of its roster each year from the 80th Congress (1947–48) to the present revealed that no one without such credentials has been appointed to the committee.³

The legislative workload of the committee is heavy and, in recent years, about one-third of all measures introduced in the House have been referred to Judiciary for consideration. In 1974, a study by the House Select Committee on Committees reported that “the workload of the (Judiciary) Committee is the heaviest in the House by any of the usual measurements—number of bills assigned, number and length of hearings, number of bills reported, staff and amount of money spent.”⁴ Not surprisingly, its weighty agenda has frequently placed the committee in a central role in American politics, most notably during its consideration of impeachment charges against an incumbent President of the United States in 1974.

Committee Organization

On June 1, 1813, Mr. Jackson of Virginia moved to amend the Standing Rules and Orders of the House, so that an additional standing committee would be appointed at the commencement of each session, to be known as “a Committee on the Judiciary,” and to consist of seven members. This motion was adopted without division on June 3, 1813.

The Senate had organized its Judiciary Committee during the 1st Congress.⁵ The House of Representatives, however, from the 1st through the 12th Congresses had operated without such a committee. In this period bills affecting the court system, and certain other matters that were to be within the jurisdiction of the Judiciary Committee, were handled in the Committee of the Whole⁶ or by other committees.

THE 13TH CONGRESS

The 13th Congress extended from March 4, 1813, to March 3, 1815. It sat in three sessions—the first, from May 24, 1813, to August 2, 1813 (71 days); the second, from December 6, 1813, to August 18, 1814 (134 days); and the third, from September 19, 1814, to March 3, 1815 (166 days). The Speaker of the House, during the first session and a part of the second, was Henry Clay, of Kentucky. He resigned January 19, 1814, and on that day was succeeded by Langdon Cheves, of South Carolina. James Madison was serving his second term, as President from March 4, 1813, to March 3, 1817. At that time, the

³ Analysis of Committee's membership by the Congressional Research Service for the first 20 years of the committee's existence, every 10 years since 1833, and 80–94th Congress inclusive.

⁴ U.S. Congress. House. Select Committee on Committees. *Monographs on the committees of the House of Representatives*. Washington. U.S. Government Printing Office (1974), p. 108.

⁵ McConachie, “Congressional Committees,” records that on Apr. 7, 1789, “Messrs. Ellsworth, Paterson, Maclay, Strong, Lee, Bassett, Few, and Wingate were appointed a committee to bring in a bill for organizing the judiciary of the United States.” On Apr. 13, 1789, Mr. Carroll and Mr. Izard were added.

⁶ E.g., the first Judiciary Act of 1789 originated in the Senate Judiciary Committee; it was reported to the Senate on June 12, 1789, and was passed on July 17. In the House, the Judiciary Act was considered by the Committee of the Whole. 1 *Annals of Congress*, 659, 796–834, 887–894 (1789–1790).

House consisted of 182 Members, representing 18 States and 4 Territories. The population of the United States, as shown by the census of 1810, was 7,239,881. The ratio of representation was 1 Representative for every 35,000 of population.

The proceedings and debates of the House of Representatives of the United States at the 1st session of the 13th Congress show for Thursday, June 3, 1813:

THE JUDICIARY

Mr. J. G. Jackson, [of Virginia] called up the resolution which he submitted for consideration a day or two ago, in the following words:

Resolved, That the following be added to the standing rules and orders of the House: An additional standing committee shall be appointed, at the commencement of each session, viz: a Committee on the Judiciary, to consist of seven members. It shall be the duty of the said Committee to take into consideration all such petitions and matters or things touching Judicial proceedings, as shall be presented or may come in question and be referred to them by the House, and to report their opinion thereupon, together with such propositions relative thereto as to them shall seem expedient.

No opposition being made to the motion, it was adopted without a division,"⁷

Although its creation thus was authorized on June 3, 1813, the Committee on the Judiciary was not organized until December 7, 1813. Standing Committees on Elections, Ways and Means, Claims, Commerce and Manufacturers, Public Lands, District of Columbia, Post Offices and Post Roads, Revisal and Unfinished Business, and Accounts had been appointed on May 26, 1813. Problems associated with the war against Great Britain, which had been declared on June 18, 1812, however, prevented further action with respect to the Judiciary Committee until the 2d session of the 13th Congress.

The second session commenced on December 6, 1813. The record of the proceedings of Tuesday, December 7, 1813, shows:

STANDING COMMITTEES

A motion was made by Mr. Dawson [John Dawson of Virginia], that the House do now proceed to the appointment of the several Standing Committees, except the Committee of Election; and the question being taken, it passed in the affirmative. Whereupon, the following committees were appointed, viz:

Committee of Ways and Means—* * *
 Committee of Commerce and Manufacturers—* * *
 Committee on the Public Lands—* * *
 Committee on the Post Office and Post Roads—* * *
 Committee for the District of Columbia—* * *
Committee on the Judiciary, Mr. Ingersoll, Mr. Nelson, Mr. Pitken, Mr. Stockton, Mr. Pickens, Mr. Montgomery, and Mr. Oakley.
 Committee of Revisal and Unfinished Business—* * *
 Committee of Accounts—* * *⁸

The Members appointed to the first Committee on the Judiciary were a distinguished group. The committee consisted of Charles Jared Ingersoll, of Pennsylvania; Hugh Nelson, of Virginia; Timothy Pitken, of Connecticut; Richard Stockton, of New Jersey; Israel Pickens, of North Carolina; Thomas Montgomery, of Kentucky; and Thomas J. Oakley, of New York.

⁷ 26 Annals of Congress, 132-133 (1813).
⁸ *Id.*, pp. 783-784.

The principal work of the committee was reflected in its initial assignments. The proceedings for Friday, December 10, 1813, for example, show:

On motion of Mr. HEMPSTEAD,

* * * * *

Resolved, That the Committee on the Judiciary be instructed to inquire into the expediency of making provision, by law, for the appointment of an additional Judge of the Supreme Court, in the Territory of Missouri, exclusively for the District of Arkansas, with leave to report by bill or otherwise.⁹

The proceedings for Friday, December 24, 1813, show:

On motion of Mr. INGERSOLL,

Resolved, That the Committee on the Judiciary be instructed to inquire into the expediency of altering the judicial system of the United States.

Resolved, also, That the same committee be instructed to inquire into the expediency of providing by law for the more effectual punishment of crimes against the United States, and that they have leave to report by bill or otherwise.¹⁰

Committee Jurisdiction

When the Judiciary Committee was originally established as a standing committee in 1813, its purpose was to consider matters pertaining to judicial proceedings. At the time of its organization on December 7, 1813, the committee's jurisdiction was governed by House Rule No. 83 which directed it:

to take into consideration all such petitions and matters or things touching judicial proceedings as shall be presented or may come in question and be referred to them by the House.

Subsequently, on January 6, 1880, Rule No. 83 was revised to read as follows:

All proposed legislation shall be referred to the committees named in the preceding rule, as follows, namely:

Subject relating * * *

4. To judicial proceedings, civil and criminal law: to the Committee on the Judiciary.¹¹

There was no change in the form of this rule until 1946, although it later became section 4 of House Rule XI.

In the ensuing years, numerous additional responsibilities have been delegated to the Judiciary Committee. For example, the Legislative Reorganization Act of 1946 abolished a number of standing committees and transferred to Judiciary much of the jurisdiction of the following five committees: Patents (created in 1837), Immigration and Naturalization (created in 1893), Claims (created in 1794), War Claims (created in 1883), and Revision of the Laws (created in 1868).

On January 14, 1975, House Resolution 5 of the 94th Congress abolished the Committee on Internal Security and transferred to the Judiciary Committee jurisdiction over subversive activities affecting the internal security of the United States. A provision transferring records and staff of the Internal Security Committee to the Judiciary Committee was deleted as obsolete on January 4, 1977. (Rule Xm, § 682(b), 95th Congress.)

⁹ *Id.*, p. 788.

¹⁰ *Id.*, p. 805.

¹¹ See Congressional Record, 46th Cong., 2d sess., p. 205.

With the exception of Claims (established in 1794), the Committee on the Judiciary is older than all the committees it now includes.

The present jurisdiction of the Judiciary Committee is defined in Rule X of the House of Representatives. The relevant section of the rule reads as follows:

RULE X

ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

The Committees and Their Jurisdiction

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

- * * * * * * *
- (m) **Committee on the Judiciary**
 - (1) **Judicial proceedings, civil and criminal generally.**
 - (2) **Apportionment of Representatives.**
 - (3) **Bankruptcy, mutiny, espionage, and counterfeiting.**
 - (4) **Civil liberties.**
 - (5) **Constitutional amendments.**
 - (6) **Federal courts and judges.**
 - (7) **Immigration and naturalization.**
 - (8) **Interstate compacts generally.**
 - (9) **Local courts in the Territories and possessions.**
 - (10) **Measures relating to claims against the United States.**
 - (11) **Meetings of Congress, attendance of Members and their acceptance of incompatible offices.**
 - (12) **National penitentiaries.**
 - (13) **Patent Office.**
 - (14) **Patents, copyrights, and trademarks.**
 - (15) **Presidential succession.**
 - (16) **Protection of trade and commerce against unlawful restraints and monopolies.**
 - (17) **Revision and codification of the Statutes of the United States.**
 - (18) **State and territorial boundary lines.**
 - (19) **Communist and other subversive activities affecting the internal security of the United States.**

In addition to the jurisdictional areas specifically enumerated in Rule X, in recent years the House Judiciary Committee has been asked to handle several other important responsibilities. Of those, the most significant was the impeachment investigation and hearings involving President Nixon in 1974. (See pages 24-36 for a detailed discussion of the committee's historical role in impeachment.) Also notable have been the committee's investigations of the nominations of Gerald Ford and Nelson Rockefeller to be Vice President, the first times that the 25th Amendment has ever been implemented. (See page 36 for a discussion of this subject.) Other new areas where the committee presently actively exercises jurisdiction include refugee matters (both oversight and legislative responsibility) and international law (with responsibility for prisoner exchange treaties, among other subjects). Also, as already noted (see page 1 above and footnote 2), in 1979 the Speaker of the House transferred the responsibility for identifying court proceedings of vital interest to the Congress to the Judiciary Committee from the Select Committee on Congressional Operations.

AUTHORIZATION OF FUNDS FOR THE DEPARTMENT OF JUSTICE

Perhaps the most noteworthy recently acquired responsibility of the Judiciary Committee has been to authorize appropriations for the Department of Justice. Since 1837, the Rules of the House have included the provision now found at clause 2 of Rule XXI:

[N]o appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

Despite the fact that the Department of Justice was created by an act of Congress in 1870—more than 30 years after adoption of this rule—and legislative jurisdiction over every activity within the Department reposes in the Judiciary Committee, until 1978 the Department had never been required to come before the committee, nor indeed before the Congress, for authorization of its annual appropriations. The act of 1870 creating the Department, the subsequent creation of subdivisions within the Department, and the authorization of certain activities of the Department were treated in themselves as the requisite authorization of appropriations.

In 1976, however, Congress enacted Public Law 94–503, title II of which explicitly states that beginning in fiscal year 1979 no sums shall be deemed to be authorized to be appropriated for the Department of Justice. Under the terms of the 1976 statute, specific authorizing legislation is now required in order for the Department to qualify for the appropriating process. Consideration of this authorizing legislation has become the province of the Judiciary Committee and its seven subcommittees.

SUBCOMMITTEE JURISDICTION

For many years, under the chairmanship of Emanuel Celler, the Judiciary Committee operated through five unnamed subcommittees with flexible, essentially unfixed jurisdictions. Matters considered by each subcommittee were as assigned and referred by the chairman.

The five subcommittees and their special jurisdiction were as follows:

Subcommittee No. 1—Special jurisdiction over immigration and nationality.

Subcommittee No. 2—Special jurisdiction over claims.

Subcommittee No. 3—Special jurisdiction over patents, trademarks, copyrights, and revision of the laws.

Subcommittee No. 4—Special jurisdiction over bankruptcy and reorganization.

Subcommittee No. 5—Special jurisdiction over antitrust matters.

At the close of the 92nd Congress in 1972, Mr. Celler left the House after 50 years as a Representative, 22 as Judiciary Committee chairman.

On January 23, 1973, the Democratic Caucus of the full House adopted new rules, including a rule entitled “Committee and Subcommittee Organization and Procedure.” Section 2(a) of that rule provided that “All subcommittees shall have fixed jurisdiction as determined by the full Committee.”

At the suggestion of newly designated Judiciary Committee Chairman Peter W. Rodino, Jr., the Democratic Caucus of the committee, at a meeting on January 30, 1973, agreed to the appointment of an *ad hoc* subcommittee to examine and make recommendations regarding the matter of committee reorganization, including the question of fixed subject matter jurisdiction for each subcommittee.

The new chairman had already devoted substantial energies to the projected reorganization even in advance of the opening of the Congress. Together with senior committee members he met on several occasions in late 1972 to plan for an expanded subcommittee structure. It was his feeling that more nearly fixed jurisdictions, together with greater subcommittee autonomy under the leadership of the full committee would produce even stronger legislation.

Immediately after the caucus of the full House acted, therefore, the Judiciary Democrats were in a position to create a constructive *ad hoc* panel. Such a panel, however, would have proceeded even without the action of the full House.

Chairman Rodino appointed Representative Robert Kastenmeier to chair the *ad hoc* subcommittee, and designated as members Mr. Mann and three freshman Members, Ms. Jordan, Ms. Holtzman, and Mr. Owens. The participation of the new Members was a major factor in more widely opening the planning process. Mr. Rodino served as an *ex officio* member.

Subsequent to its creation, Mr. Hutchinson—then ranking minority member of the committee—was also invited to participate as an *ex officio* member of the *ad hoc* subcommittee, and he designated Messrs. McClory, Froehlich, and Lott as additional, minority participants.

The subcommittee met formally on six occasions between February and May 1973, studying a wide variety of proposals and circulating a number of draft recommendations. Ultimately, in June 1973, the full committee adopted the final draft of the panel's report—a report that realigned the five unnamed subcommittees by establishing seven permanent subcommittees with both fixed names and fixed jurisdictions.

Pursuant to the *ad hoc* subcommittee's recommendations, the Judiciary Committee established the following seven subcommittees:

Subcommittee on Immigration, Citizenship and International Law (later: Immigration, Refugees, and International Law).

Subcommittee on Claims and Governmental Relations (later: Administrative Law and Governmental Relations).

Subcommittee on Courts, Civil Liberties and the Administration of Justice.

Subcommittee on Civil and Constitutional Rights.

Subcommittee on Monopolies and Commercial Law.

Subcommittee on Crime.

Subcommittee on Criminal Justice.

According to the report of the *ad hoc* subcommittee, in making its recommendations the panel was proceeding on three premises:

(1) The interrelatedness of matters within the jurisdiction of a given subcommittee maximizes the expertise which can be brought to bear on these matters, since a continually growing fund of knowledge and experience can be developed and sustained, rather than being

dissipated by the necessity of considering from time to time matters of little or no substantive relationship to each other.

(2) The specific identification of subcommittees with subject areas enhances the ability of the public in general, and interested individuals and organizations in particular, to recognize and monitor congressional activities on matters of public concern.

(3) The investing of subcommittees with specified jurisdiction assists new members of the committee in obtaining assignment to those subcommittees which consider matters of interest and concern to them.

Historical Background of the Subcommittees

Subcommittee on Immigration, Refugees, and International Law

(formerly Subcommittee No. 1—Immigration and Nationality)

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SAM B. HALL, Jr., Texas
PATRICIA SCHROEDER, Colorado
BARNEY FRANK, Massachusetts

HAMILTON FISH, Jr., New York
DAN LUNGREN, California
BILL MCCOLLUM, Florida

Prior to the Legislative Reorganization Act of 1946, jurisdiction over immigration and naturalization matters was divided. On August 18, 1893, a Committee on Immigration and Naturalization had been established as a standing committee, and before that it had functioned as a select committee. At that time, the Immigration and Naturalization Committee exercised a general, but not an exclusive, jurisdiction over the subject of immigration. In 1882 (47th Cong., 2d sess.), for example, the President's message concerning "the construction of the law restricting immigration of laborers from China," was referred to the Judiciary Committee. The Committee on Immigration and Naturalization was given exclusive jurisdiction over the subject of naturalization in 1906. In 1946, all authority over immigration and naturalization was transferred to the Judiciary Committee and since that time has been a primary responsibility of its members.

When the subcommittees were titled after the 1973 reorganization, subcommittee No. 1 was named Subcommittee on Immigration, Citizenship, and International Law with jurisdiction over:

- (a) Immigration and naturalization.
- (b) Deportation, extradition, and crimes committed outside the United States.
- (c) Passports, travel, and international compacts and organizations.
- (d) Admiralty matters.
- (e) Treaties.
- (f) Offshore mineral rights.
- (g) Grand jury matters.
- (h) Oversight of the Immigration and Naturalization Service.

In 1978, prior to the beginning of the 96th Congress, the subcommittee was renamed the Subcommittee on Immigration, Refugees and International Law. This change reflected the fact that following