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HISTORY OF
THE COMMITTEE ON THE JUDICIARY OF
THE HOUSE OF REPRESENTATIVES

LETTER
FROM
THE HOUSE JUDICIARY COMMITTEE

TRANSMITTING

A DOCUMENT ENTITLED "HISTORY OF THE COM-
MITTEE ON THE JUDICIARY," PREPARED BY
THE HONORABLE LOUIS E. GRAHAM,
MEMBER OF THE COMMITTEE



JUNE 23, 1947.—Referred to the Committee on House Administration
and ordered to be printed

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HOUSE RESOLUTION NO. 241

IN THE HOUSE OF REPRESENTATIVES,

June 23, 1947.

Resolved, That the “History of the Committee on the Judiciary,” prepared by the Honorable Louis E. Graham, be printed as a House document.

Attest:

JOHN ANDREWS, *Clerk.*

II

HISTORY OF THE COMMITTEE ON THE JUDICIARY

June 1, 1947, marked the one hundred and thirty-fourth anniversary of the creation of the Committee on the Judiciary of the House of Representatives, since it was on Tuesday, June 1, 1813, that a motion was made by Mr. Jackson, of Virginia, to amend the Standing Rules and Orders of the House, so that an additional standing committee should be appointed at the commencement of each session, to be known as "a Committee on the Judiciary," to consist of seven members.

It has been thought wise to commemorate this anniversary, and I have been asked to prepare and read this history of the committee, and at the outset I am reminded and I am thinking of the words of the Psalmist as found in the Seventy-seventh Psalm and the fifth verse:

I have considered the days of old, the years of ancient times.

This is most appropriate since I begin this history with an excerpt from the Votes of the Assembly of Pennsylvania in the year 1683, and I read the following:

The Speaker reads to the House the orderly method of parliaments and the demeanor of the members thereof observed in England, which he recommended to them, as civil and good; as also the method observed by the English in committees. (Votes of the Assembly (Pennsylvania), 1st month, 12th day, 1683.)

Thus from these ancient records we learn much about "the orderly method of parliaments" and the early procedure of our first legislative bodies. It is authoritatively stated that the General Assembly of Pennsylvania furnished by far the largest part of our national law-making devices. Virginia had the beginnings of standing committees, yet Pennsylvania was much further advanced in the use of them.

Attempted imitation of Parliament is evident on the face of the First Pennsylvania Assembly's Journal. It occupied itself at the outset with a consideration of parliamentary practice and the formulation of a crude written procedure. With a degree of conservatism, surprising even for them, the Pennsylvanians held to this down to the inception of our National Government and carried it to Congress, whence its influence has spread throughout the length and breadth of the land. Its items were reenacted and improved from time to time, so that in Revolutionary days they formed a code of 19 neatly arranged and numbered rules. (Journal of Pennsylvania Assembly, November 30, 1776.)

In them, and still more in the assembly records, generally, is traceable through a devious history the interweaving of old English methods with innovations that are now especially a part of the practice of our National House of Representatives. Of these may be noted the power of the Speaker, the previous question, and various leading features of the committee system. (McConachie.)

Upon the opening of a Provincial Assembly in Pennsylvania, there were appointed committees for Ways and Means; Accounts; Revision of the Laws and Minutes; Revision of the Criminal Laws; Rules; Claims; Unfinished Business; and the President's message. These

continued throughout the whole of the session. McConachie, in his Congressional Committees, says of them :

Their names are suggestive of the early lists in the National House—indeed ; all the forms of opening proceedings at New York in 1789 seem to have been copied almost literally after those which had long prevailed in Philadelphia. Also from England the American Colonies, most notably Pennsylvania and Virginia, drew and transmitted to the legislative bodies of our Federal Union, the most common parliamentary forms relating to the use of select and standing committees, as well as the device known as the Committee of the Whole.

The day following the organization of the Senate in the First Congress—Tuesday, April 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.

This was the first Committee on the Judiciary in the Senate. Later, on Monday, April 13, Mr. Carroll and Mr. Izard were added to the Judiciary Committee. And on—

Friday, June 12, Mr. Lee in behalf of this committee reported a bill to establish the judicial courts of the United States.

This bill passed the Senate on July 17, and in the entry for Monday, July 23, we read :

The Secretary carried to the House of Representatives, for their concurrence, a bill to establish the judicial courts of the United States.

However, when this bill reached the House it was handled in a way entirely different from that used in the Senate as shown by the following excerpts from the proceedings of the House on the dates mentioned. Monday, July 20 :

A message from the Senate informed the House that they had passed the bill for establishing an executive department, to be denominated the Department of Foreign Affairs, with several amendments, to which they desired the concurrence of the House ; that they have also passed a bill to establish the judicial courts of the United States, to which they desire the concurrence of the House. * * * The bill sent from the Senate, "to establish the judicial courts of the United States," was read the second time, and ordered to be committed to a Committee of the Whole House on Monday next.

Nothing was done, however, until on Monday, August 24, when the following appears :

The House now resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to establish the judicial courts of the United States," Mr. Boudinot in the chair.

The bill was debated in the Committee of the Whole on August 29, 31, September 8, 9, 10, 11, 12, until on September 14 we find :

The House then went into a Committee of the Whole on the judiciary bill, Mr. Boudinot in the chair ; and having gone through the same, reported it to the House with several amendments, which were ordered to lie on the table.

On Tuesday, September 15 :

The House proceeded to consider the amendments reported by the Committee of the Whole to the bill to establish the judicial courts of the United States, which being concurred with, the bill, as amended, was ordered to be engrossed for a third reading.

And on Thursday, September 17 :

The bill for establishing the judicial courts of the United States was read the third time and passed. * * * A message from the Senate informed the House that * * * ; also, that they agree to some, and disagree to others, of the

amendments proposed by the House to the bill for establishing the judicial courts of the United States

And on Monday, September 21, we reach the final entry on this subject:

The House then proceeded to reconsider such of the amendments to the judiciary bill, as had been disagreed to by the Senate; and adopted them without debate.

Thus, by entirely different methods of procedure did the two Houses of Congress draft and report the First Judiciary Act of 1789, which has been characterized as "probably the most important and most satisfactory act ever passed by Congress."

In tracing the origin and development of the Committee on the Judiciary of the House of Representatives, the thirteenth standing committee created in the House, we must turn to the records and proceedings of the Thirteenth Congress, for therein do we learn of the creation of this committee.

A LOOK AT WASHINGTON IN 1813

In the census of 1810 the population was given as 8,208 persons, of whom about 6,000 were white, about 1,300 slaves, and approximately 900 free colored persons.

In the *Intelligencer* October 27, 1807, it is stated:

The Hall of the House of Representatives was on this day opened for the first time. Congress having met in open session.

This, of course, referred to the old Capitol, and the particular Hall mentioned is now the Statuary Hall.

It was in this room that the inauguration of James Madison, as President, was held on March 4, 1809.

The Senate side had been completed in 1800; at that time there was no dome and the central portion had not been completed. The two wings were connected by a long, low, narrow structure of wood and brick, a little more than a passageway and commonly spoken of as "the bridge."

These were the only parts completed at the time of the British invasion and constituted all there was then of the Capitol. Although the walls of the two wings were of sandstone, the roofs were made of wood, as was much of the interior.

On June 18, 1812, war was declared against Great Britain.

In July 1813, 1 month after the adoption of the resolution creating the committee, Phillip Stuart, a Representative from Maryland, introduced a resolution in the House of Representatives, calling attention to the defenseless state of the Capitol and authorizing the arming of its citizens. This warning was not heeded. The administration apparently being satisfied that adequate preparation existed. A little over a year from the date of the introduction of this resolution the very seats in which the Congress were conducting their deliberations were burned to ashes on Wednesday, August 24, 1814.

For here on that date, Vice Admiral Cockburn, after the defeat of the American forces at Bladensburg, led his officers into the Hall of the House of Representatives, followed by a crowd of cheering soldiers, waving firebrands. Mounting the Speaker's chair, he shouted for attention. Taking up the gavel, he rapped for order, and de-

manded, "Shall this harbor of Yankee Democracy be burned? Those in favor will say 'Aye.'" A loud chorus of "ayes" greeted this mock resolution and, as he descended from the rostrum, the soldiers stacked the furniture in piles and applied the torch. Similar scenes were enacted in the Senate Chamber and other parts of the building and soon the entire building was in flames.

The citizens of Washington quickly subscribed to a fund to build a temporary Capitol. It was built during the fall of 1814 and spring of 1815 and stood on a portion of the ground where the present Supreme Court Building stands. It was known as the "Brick Capitol" and it was here that President Monroe was inaugurated in 1817.

This manifestation of public spirit on the part of the citizens undoubtedly aided in preventing the removal of the Capitol. The vote, which was taken in October 1816, revealed 54 for removal as 83 against. A writer in the *Intelligencer* mentioned as an inducement for a favorable consideration of Georgetown—

that board for the Members will be provided in the town at \$10 per week instead of \$16 as charged by Washington hotels.

THE THIRTEENTH CONGRESS

The Thirteenth Congress extended from March 4, 1813, to March 3, 1815. It consisted of three sessions—the first, from May 24, 1813, to August 2, 1813, 71 days; the second, from December 6, 1813, to April 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 and a part of the second sessions was Henry Clay, of Kentucky. He resigned January 19, 1814, and on that day Langdon Cheves, of South Carolina, was elected Speaker. James Madison was serving his second term as President from March 4, 1813, to March 3, 1817. The 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.

It was during this first session that the initial move was made to create a standing committee to be known as the Committee on the Judiciary. Thus it was almost a quarter of a century after the meeting of the First Congress that the Committee on the Judiciary of the House came into existence.

However, in the first session of the preceding Twelfth Congress an effort had been made in this direction as evidenced by the following (24 Cong. Ann. 1086) :

Monday, February 24, 1812, Mr. Gold offered the following resolution: "*Resolved*, That a committee be appointed to inquire whether any, and if any, what alteration is necessary in the judicial system of the United States, and that they report by bill." Agreed to, and a committee of five appointed.

The author of this resolution was Thomas R. Gold, Representative from New York and later a member of the Committee on the Judiciary in the first session of the Fourteenth Congress.

Mr. Gold was not a Member of the Thirteenth Congress and, of course, was not named on the committee when Henry Clay, as Speaker, appointed the first committee.

In the proceedings and debates of the House of Representatives of the United States at the first session of the Thirteenth Congress, begun at the city of Washington May 24, 1813, we learn that on Tuesday, June 1—

A motion was made by Mr. Jackson, of Virginia, to amend the Standing Rules and Orders of the House by adding the following thereto:

"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 on the Judiciary 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 deem expedient.

"*Ordered*, That the said amendments do lie on the table."

In the proceedings of Thursday, June 3, the following entry appears:

THE JUDICIARY

Mr. J. G. Jackson 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."

Mr. Jackson said he had been induced to submit this resolution from the consideration that our laws are in many instances defective, and it is of the utmost importance that they should be amended, and that this object could be best attained by the appointment of a standing committee to whom should be referred all propositions for establishing new courts and regulating these powers.

He recollected two cases falling within his own observation which had led him to contemplate some such provision, and it was not without some surprise that he found it had been passed over so long. As long ago as during the existence of the internal taxes one of those cases occurred. It would be recollected, he said, that prosecutions might be commenced in State courts for the penalties attendant on the infraction of those laws. In pursuance of this provision a prosecution had been commenced in Virginia in an inferior court; judgment was rendered against an individual, who it was manifest had not conformed to the provisions of the law. The case was carried to a higher court, however, and on the ground that the Constitution had vested the judicial powers of the United States in the Supreme Court, and such other courts as Congress might establish, it was decided that it was not in the power of Congress to confer jurisdiction on the State courts. The offenders, of course, escaped. Another case occurred in the course of the last year, in which a prosecution was instituted against a post rider for having opened the public mail traveling from Ohio to Kentucky. The fact was notorious. The same question occurred again, and the same decision took place. The individual was permitted to escape without punishment.

An amendment to our laws was unquestionably necessary in this respect. To consider such cases, and the various applications for altering the organization or location of courts, etc., he considered the appointment of a standing committee necessary. With this view, and also to render the decision of the House more uniform on these applications, as they would be if all referred to the same committee, he had thought proper to propose this amendment to the rules.

No opposition being made to the motion, it was adopted without division.

Nothing further seems to have been done at this session. The explanation is probably this: On Wednesday, May 26, preceding, the standing Committees on Elections, Ways and Means, Claims, Com-

merce and Manufactures, Public Lands, District of Columbia, Post Offices and Post Roads, Revisal and Unfinished Business and Accounts had been appointed, and, inasmuch as Mr. Jackson's resolution did not pass until June 3, it is altogether likely that it was determined to pass over the appointment of this committee until the next session. War against Great Britain had been declared on June 18, 1812, and was still in progress, and the minds of the Representatives were occupied with matters other than those of the judiciary.

Then, in Proceedings and Debates of the House of Representatives at the second session of the Thirteenth Congress, begun at the city of Washington, Monday, December 6, 1813, in the proceedings of Tuesday, December 7, we find the following:

STANDING COMMITTEES

A motion was made by Mr. Dawson that the House do now proceed to the appointment of the several standing committees, except the Committee on Elections; and, the question being taken, it passed in the affirmative. Whereupon, the following committees were appointed, viz: Committee of Ways and Means * * * ; 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.

The Members appointed on the Committee on the Judiciary were 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. John Dawson, of Virginia, was the Member making the motion. A brief sketch of the lives of the seven members of the first Committee on the Judiciary follows:

Charles Jared Ingersoll was the son of Jared Ingersoll, a member of the Federal Constitutional Convention, and was elected as a Democrat to the Thirteenth Congress; he served as United States district attorney for Pennsylvania, 1815-29; elected to the Twenty-seventh and three succeeding Congresses, March 4, 1841-March 3, 1849; appointed Minister to France in 1847, but was not confirmed by the Senate; appointed United States judge for the district of Connecticut April 8, 1853; and died in Philadelphia, Pa., May 14, 1862. He was the first chairman of the committee.

Hugh Nelson served in the State Senate of Virginia, 1786-91; member of the State house of delegates in 1793 and served as speaker; judge of the general courts; elected to the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, and Seventeenth Congresses, and served from March 4, 1811, until his resignation on January 14, 1823, having received an appointment in the Diplomatic Service; appointed by President James Monroe as United States Minister to Spain on January 15, 1823; died at his home, Belvoir, Albemarle County, Va., March 18, 1836.

Timothy Pitkin, member of State House of Representatives of Connecticut; served as clerk of the house, 1800-1802, and as speaker, 1803-5; elected as a Federalist to the Ninth Congress; reelected to the Tenth and to the five succeeding Congresses and served from September 16, 1805, to March 3, 1819; defeated for Speaker of the House of Representatives in the first session of the Thirteenth Con-

gress by Henry Clay; delegate to the convention which framed the new State constitution in 1818; again a member of the State house of representatives, 1819-30; died in New Haven, Conn., December 18, 1847.

Richard Stockton was both a Senator and Representative from New Jersey; elected as a Federalist to the United States Senate and served from November 12, 1796, to March 3, 1799; member of the State general assembly; elected to the Thirteenth Congress, March 4, 1813-March 3, 1815; died near Princeton, N. J., March 7, 1825.

Israel Pickens, a Representative from North Carolina and a Senator from Alabama; member of State senate in 1809; elected as a Democrat from North Carolina to the Twelfth, Thirteenth, and Fourteenth Congresses, March 4, 1811-March 3, 1817; register of the land office of Mississippi Territory, which included the present State of Alabama, 1817-21; Governor of Alabama, 1821-25; appointed to the United States Senate from Alabama; declined appointment of judge of the United States Court for the District of Alabama in 1826; died near Matanzas, Cuba, April 24, 1827.

Thomas Montgomery, judge of the circuit court of Lincoln County, Ky.; member of the State house of representatives in 1811; elected as a Democrat to the Thirteenth Congress, and reelected to the Sixteenth and Seventeenth Congresses; died in Stanford, Ky., April 2, 1828.

Thomas J. Oakley, surrogate of Dutchess County, N. Y., in 1810; elected as a Federalist to the Thirteenth Congress; member of the State assembly; attorney general of New York; elected as a Clinton Democrat to the Twentieth Congress; judge of the Superior Court of New York City; appointed Chief Justice in October 1847, and served until his death in New York City, May 11, 1857.

John G. Jackson, who introduced the resolution of June 1, 1813, to create a Committee on the Judiciary, was a civil engineer; appointed surveyor of public lands of what is now the State of Ohio in 1793; member of the Virginia House of Burgesses, 1798-1801; elected as a Democrat to the Eighth, Ninth, Tenth, and Eleventh Congresses, and served from March 4, 1803, to September 28, 1810, when he resigned; member of the State house of delegates in 1811 and 1812; brigadier general of Virginia Militia in 1812; elected as a Democrat to the Thirteenth and Fourteenth Congresses; while in Congress fought a duel with Joseph Pearson, of North Carolina; appointed United States district judge for the western district of Virginia in 1819, and served until his death in Clarksburg, Va. (now West Virginia), March 28, 1825.

John Dawson, who moved the appointment of the Committee on the Judiciary on December 7, 1813, was both a delegate and a representative from Virginia; member of the State house of delegates, 1786-89; member of the Congress of the Confederation in 1788 and 1789; delegate to the State convention in 1788 that ratified the Federal Constitution; elected privy councilor in 1789; elected as a Democrat to the Fifth and eight succeeding Congresses, and served from March 4, 1797, until his death; was bearer of dispatches from President John Adams to the Government of France in 1801; served as aide to Gen. Jacob Brown and to Gen. Andrew Jackson in the War of 1812; died in Washington, D. C., March 31, 1814.

Thus to two sons of the Old Dominion fall the honors of being first to introduce the resolution and first to move the creation of the Committee on the Judiciary in the House of Representatives.

The committee was soon put to work, for on Friday, December 10 :

On motion of Mr. Hempstead * * * it was

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.

More work was to follow, for on December 15, 20, 21 the committee was instructed to inquire into certain matters. On Friday, December 24, we read as follows :

Mr. Ingersoll, from the Judiciary Committee, reported a bill for the appointment of an additional judge in the Missouri Territory, and for other purposes, which was twice read and committed.

This bill was read the third time and passed. On Thursday, December 30 :

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."

We now see the committee at its appointed task, a work which has continued without interruption throughout the succeeding Congresses for the past 134 years.

Before leaving the Thirteenth Congress it is well to remember the following: On August 2, 1813, Egbert Benson, Member from New York, resigned. His departure removed the last tie binding the present Congress to the past. Egbert Benson had been a delegate to the Annapolis convention in 1786; had served in the Congress of the Confederation 1784-85, 1786-88; member of the State constitutional convention in New York in 1788, which ratified the Federal Constitution, and had served in the First and Second Congresses under the Constitution from March 4, 1789, to March 3, 1793.

It is indeed interesting to turn from the past and look ahead through the succeeding century and a third's history of this truly great committee.

CHAIRMEN

During the 134 years of its existence, 40 different men have served as chairman of the committee. The list is as follows in the order of their first term of service as chairmen :

- Thirteenth Congress, second session, Charles J. Ingersoll, Pennsylvania.
- Thirteenth Congress, third session, Charles J. Ingersoll, Pennsylvania.
- Fourteenth Congress, first session, Hugh Nelson, Virginia.
- Fourteenth Congress, second session, Hugh Nelson, Virginia.
- Fifteenth Congress, first session, Hugh Nelson, Virginia.
- Fifteenth Congress, second session, Hugh Nelson, Virginia.
- Sixteenth Congress, first session, John Sergeant, Pennsylvania.
- Sixteenth Congress, second session, John Sergeant, Pennsylvania.
- Seventeenth Congress, first session, John Sergeant, Pennsylvania.
- Seventeenth Congress, second session, Hugh Nelson, Virginia.
- Eighteenth Congress, first session, Daniel Webster, Massachusetts.
- Eighteenth Congress, second session, Daniel Webster, Massachusetts.
- Nineteenth Congress, first session, Daniel Webster, Massachusetts.