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

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PREFACE

In the 80th Congress, the Honorable Louis E. Graham, a member of the Committee on the Judiciary of the House of Representatives, prepared a history of the committee. Its publication has proved to be of widespread interest and value. Since then the Judiciary Committee has operated under the provisions of the Legislative Reorganization Act of 1946. It is appropriate now to bring Mr. Graham's history of the committee up to date.

It is surprising how little examination there has been of the history of committees of Congress. When one considers the vital role congressional committees play in the legislative process, this is astounding. It is hoped that the history of the Committee on the Judiciary of the House of Representatives will contribute to a better understanding of our Nation's legislative process—the most successful means of constitutional democracy yet devised.

EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

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HISTORY OF THE COMMITTEE ON THE JUDICIARY

INTRODUCTION

The Judiciary Committee is the lawyer for the House of Representatives. It handles legislation concerning the administration of justice in judicial proceedings, civil and criminal, and in administrative proceedings. Similarly, this committee handles legislation concerning the Federal courts and judges and the revision and codification of the statutes of the United States. In impeachment proceedings the Judiciary Committee conducts the necessary investigations and reports its findings to the full House of Representatives. If impeachment is voted by the House, members of the Judiciary Committee are selected to prosecute the matter before the Senate. In keeping with this role as the law committee of the House, by tradition, only lawyers have been selected as members.

The Judiciary Committee of the House of Representatives handles about half the bills introduced in the House. For example, in the 83d Congress, of the 10,288 bills introduced in the House, 5,235 were referred to the Judiciary Committee. Clearly, this committee is one of the most active in Congress. Its work is divided among subcommittees. All the subcommittees have general jurisdiction over judiciary bills as assigned and each has a special area of jurisdiction. For example in the 84th Congress Subcommittee No. 1 had special jurisdiction over immigration and nationality. Subcommittee No. 2 had special jurisdiction over claims. Subcommittee No. 3 had special jurisdiction over patents, trademarks, copyrights, and revision of the laws. Subcommittee No. 4 had special jurisdiction over bankruptcy and reorganization. And Subcommittee No. 5 had special jurisdiction over antitrust matters.

On most legislation the subcommittee to which the measure is referred performs the bulk of the investigatory and other preparatory work. After the subcommittee concludes its consideration of a measure it reports back to the full committee. The full committee then deliberates and either favorably reports the legislation to the House of Representatives or tables the legislation. Only in rare instances does the full committee report legislation to the House of Representatives with an unfavorable recommendation instead of tabling it. Although the regular subcommittees handle the bulk of the legislation referred to the Judiciary Committee, there have been occasions when the appointment of special investigating or study subcommittees have been necessary.

LEGISLATION

The Judiciary Committee was originally established as a standing committee in 1813 for the precise purpose of considering matters pertaining to judicial proceedings. In the ensuing years additional responsibilities have been delegated to it. For example, most recently the Legislative Reorganization Act of 1946 transferred to the Judiciary Committee much of the jurisdiction of the Patents, Immigration, Claims, War Claims, and Revision of the Laws Committees and abolished these five committees. The present jurisdiction of the Judiciary Committee, as shown by Rule XI of the House of Representatives, is as follows:

RULE XI

POWERS AND DUTIES OF COMMITTEES

All proposed legislation, messages, petitions, memorials, and other matters relating to the subject listed below shall be referred to such committees, respectively:

* * * * * * *

12. Committee on the Judiciary.

§ 707. Judiciary.

(a) Judicial proceedings, civil and criminal generally.
(b) Apportionment of Representatives.
(c) Bankruptcy, mutiny, espionage, and counterfeiting.
(d) Civil liberties.
(e) Constitutional amendments.
(f) Federal courts and judges.
(g) Holidays and celebrations.
(h) Immigration and naturalization.
(i) Interstate compacts generally.
(j) Local courts in the Territories and possessions.
(k) Measures relating to claims against the United States.
(l) Meetings of Congress, attendance of Members and their acceptance of incompatible offices.
(m) National penitentiaries.
(n) Patent Office.
(o) Patents, copyrights, and trademarks.
(p) Presidential succession.
(q) Protection of trade and commerce against unlawful restraints and monopolies.
(r) Revision and codification of the Statutes of the United States.
(s) State and Territorial boundary lines.

Before the Legislative Reorganization Act of 1946 the powers and duties of the Committee on the Judiciary were fixed by section 4 of rule XI in the following words:

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.

There had been no change in the form of this rule since its adoption in the revision of 1880. This occurred on January 6, 1880, and was then rule No. 83. (See Congressional Record, 2d sess., 46th Cong., p. 205.)

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From the date of the creation of this committee on December 7, 1813, until the aforesaid revision in 1880, the jurisdiction of the committee under rule No. 83 was determined—

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.

In recent years the House Judiciary Committee has handled legislation in a number of diversified areas. Some of the significant matters include the Federal judiciary, antitrust, immigration and naturalization, criminal law, espionage, law revision, patents and copyrights, bankruptcy, administrative law, claims, interstate compacts, and constitutional amendments.

FEDERAL JUDICIARY

The Federal judicial system is, of course, a primary concern of the Committee on the Judiciary. Since the 80th Congress this has involved legislative provision for growth and improvement of the Federal judicial system. Additional district and circuit judges have been authorized as well as additional places where terms of court may be held. It has also been necessary to make provision for the increased cost of living. In 1955 the Judiciary Committee handled legislation to provide substantial salary increases for Federal judges, United States attorneys and other court officials. Also increases in fees for witnesses, jurors, and United States marshals and their deputies have been provided.

In 1953 the jurisdiction of the Court of Claims was modified and Congress made clear that the Court of Claims was to be considered a constitutional rather than a legislative court.

ANTITRUST

In recent years the House Judiciary Committee has given much attention to monopoly power and the antitrust laws. In 1951–53 and again in 1955, Chairman Emanuel Celler assembled special staffs to assist in investigations in the area. There were subcommittee studies of various industries such as steel, aluminum, newsprint, and pulp. There were also studies of the banking business, organized sports, fair-trade laws, the Korean mobilization program, and aspects of the Robinson-Patman and Clayton Acts. Antitrust legislation enacted during this period includes 1950 amendments to section 7 of the Clayton Act to prohibit mergers by purchase of assets where the merger would tend to substantially lessen competition, increase in penalties for violation of the Sherman Act, a uniform statute of limitations for antitrust cases and provision for a right to the Government for actual damages in antitrust cases.

IMMIGRATION AND NATURALIZATION

The subject of immigration and naturalization policy has commanded much attention from the Judiciary Committee. Legislation in this area handled by the Judiciary Committee includes revision of immigration and naturalization laws, extensions and liberalizing amendments to the Displaced Persons Act, amendments to the Refugee

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Relief Act; liberalized processes for naturalization of aliens who served with the United States Armed Forces in Korea, and heavier penalties for violations of immigration laws. Members of the Judiciary Committee have conducted extensive overseas investigations in conjunction with studies of immigration and naturalization laws and have served as United States delegates to international meetings on the subject.

CRIMINAL-LAW ENFORCEMENT AND PENAL CORRECTION

Criminal-law enforcement and penal correction comprise an important area of Judiciary Committee jurisdiction. This involves surveillance of the law-enforcement functions and correctional administration of the Department of Justice. Accordingly, in 1952, under Democratic direction, and 1953, under Republican control, the committee carried out extensive investigations of the Justice Department. These investigations primarily concerned the law-enforcement functions of the Department rather than correctional administration.

One of the most significant legislative contributions to Federal correctional administration in recent years was enactment of the Federal Youth Correction Act in 1950. This act provided Federal judges with additional and more flexible sentencing alternatives for offenders under 22 years of age. The purpose of this legislation is to reduce the development of habitual offenders and enhance the possibilities of rehabilitating youthful offenders.

The Judiciary Committee has also handled a number of general criminal laws. Bank-robbery laws have been strengthened; laws against the transportation of indecent and obscene matter have been expanded; counterfeiting laws have been amended; foreign agents' registration provisions have been strengthened; punishment of illegal fireworks transportation has been enacted; bail jumping has been made a separate crime,and penalties against smuggling and harboring criminals have been increased. These are some of the criminal matters which have been considered by the House Judiciary Committee.

ESPIONAGE

As the cold war set in interest in internal-security legislation increased. The Judiciary Committee has handled legislation resulting in revision and extension of existing espionage and sabotage laws, tightening amendments to the Smith Act, provision for compelling witnesses to testify in cases involving the national security by granting them immunity from prosecution, and finally in 1954 the outlawing of the Communist Party. In 1955, a Commission on Government Security was established to make a thorough study of the problem of balancing the basic rights of individuals with the need to protect the national security.

LAW REVISION

A special staff of the House Judiciary Committee is concerned with the classification of all laws enacted by the Congress and the codification of specific areas of the law. After a law is enacted, this staff indicates to which title and section of the United States Code or District of Columbia Code it should be assigned. This is the day-to-

day implementation of the purpose of the United States Code to make the statutes of the United States easier to find.

The United States Code is of great convenience in finding Federal legislation but most of its titles are prima facie rather than legal evidence of the law. At present, however, 13 of the 50 titles have been enacted into positive law by Congress. These are titles 1, 3, 4, 6, 9, 10, 13, 14, 17, 18, 28, 32, and 35. The goal of the Judiciary Committee is to prepare all titles for enactment into positive law and thereby make reference to the numerous volumes of the Statutes at Large unnecessary.

In 1955, bills to codify Title 10, Armed Forces, and Title 32, National Guard, were enacted into law. A bill to codify Title 21, Food, Drugs, and Cosmetics, was favorably reported by the Judiciary Committee and passed the House of Representatives but was not acted on in the Senate.

PATENTS AND COPYRIGHTS

Pursuant to the Reorganization Act of 1946, the Judiciary Committee acquired jurisdiction over patents and copyrights. One of the more significant pieces of legislation enacted recently in the patent and copyright area modified United States law so as to comply with requirements for adherence to the Universal Copyright Convention. This involved, among other things, deleting from existing copyright law the requirement that foreign works be printed in the United States.

World War II and the Korean emergency created patent problems requiring legislative solution. During World War II a number of patentees gave to the United States Government royalty-free licenses to use their inventions for the duration of the war. Although hostilities closed in 1945, the war was not technically ended. Therefore, in 1950 the Judiciary Committee favorably reported a bill which became law to authorize the termination of these royalty-free licenses even though technically the war was not ended. Congress also enacted in 1950 a bill to extend the life of patents held by veterans of World War II.

Other recent legislation in this area involved permanent legislation to keep vital patents secret, simplification of trademark registration, and protection of recording and performing rights in literary works. Hearings were held by a subcommittee of the Judiciary Committee on proposals of a fixed royalty for recordings played in jukeboxes but the full committee took no action on the legislation.

BANKRUPTCY

Legislation concerning bankruptcy is one of the principal bodies of law under the jurisdiction of the Judiciary Committee. The Chandler Act of 1938 is the basic statutory provision now in effect in this area. As the Chandler Act approached its 10th year of existence, the National Bankruptcy Conference made a careful study of the act so that necessary improvements might be enacted. The Conference did propose many clarifying and perfecting changes in the law. After careful study by the House Judiciary Committee the bulk of these proposals were enacted in 1953.

Other recent bankruptcy legislation handled by the Judiciary Committee provides increases in referees' and trustees' compensation, amends requirements as to first meeting of creditors, makes provision for temporary appointment of referees, and provides that a referee continue in office pending the appointment of a new referee.

ADMINISTRATIVE LAW

For years the House Judiciary Committee has handled legislation affecting administrative agencies. Of particular importance is the Administrative Procedure Act enacted in 1946. Since that time legislation in this field has been of lesser significance. In 1950 judicial review of certain agencies' action was simplified. In 1954 the Supreme Court was authorized to make rules for judicial review of decisions of the Tax Court and, in the same year, legislation was enacted to permit wider judicial review of decisions of Government contracting officers.

In recent years the Judiciary Committee has favorably reported legislation affecting administrative agencies but the bills have not been enacted into law. For example, a bill to transfer the Tax Court from the executive to the judicial branch of the Government was favorably reported in 1949. The following year the Administrative Practitioners Act which would regulate by statute practice before administrative agencies was favorably reported by the Judiciary Committee but failed of enactment.

CLAIMS

By the Legislative Reorganization Act of 1946 the Claims Committee was abolished and its jurisdiction transferred to the Judiciary Committee. Since that time a subcommittee of the Judiciary Committee has devoted a substantial portion of its time processing public and private claims bills. There are many private claims bills introduced every Congress. For example, in the 83d Congress, 1953–54, there were 928 claims introduced in the House and processed by the subcommittee. In addition, the House Judiciary Committee has handled legislation amending the War Contract Settlement Act of 1944 and the Federal Tort Claims Act.

INTERSTATE COMPACTS

The House Judiciary Committee has considered a number of interstate compacts. The agreements between States cannot be put into effect without consent of Congress. The Judiciary Committee in recent years has considered such compacts for the purpose of determining whether congressional consent should be given to them. These have involved settlements of boundary disputes between States by interstate compact, the New York-New Jersey Waterfront Commission, a compact for mutual military aid between New York, New Jersey, and Pennsylvania, and a compact between Missouri and Illinois for bistate metropolitan development.

CONSTITUTIONAL AMENDMENTS

The Judiciary Committee also has jurisdiction of proposed amendments to the Constitution. In 1947, the 80th Congress passed a joint resolution which on ratification became the 22d amendment to

the United States Constitution limiting the Presidency to 2 terms for any 1 person. In 1951 the amendment abolishing the electoral college and the unit State vote for the election of President and Vice President was favorably reported by the Judiciary Committee but no further action was taken on it. The amendment would have provided direct election of the President and Vice President and would have apportioned the electoral votes of a State to each of the candidates in direct proportion to their popular votes. In each session scores of proposed constitutional amendments are referred to the committee.

OTHER LEGISLATION

Other legislation handled by the Judiciary Committee in recent years includes the tidelands legislation, provision for war-risk hazard and detention benefits for United States overseas employees and certain Korean emergency legislation.

Tidelands legislation has been extremely controversial. For a number of years prior to 1953 bills had been introduced to establish State ownership to land under coastal waters. In 1946 and again in 1952 tideland bills passed both Houses but were vetoed by President Truman. In 1953 tidelands legislation was again passed and this time was signed by President Eisenhower. One act, the Submerged Lands Act, established State ownership to submerged land 3 miles off the coast of Atlantic and Pacific Coastal States and about 10 miles off the coast of Gulf States. Another act, the Outer Continental Shelf Act, set up a program whereby the Federal Government could lease for mineral exploitation in the submerged lands beyond the State boundaries established in the Submerged Lands Act.

The Judiciary Committee also has handled legislation providing financial protection for employees of the United States stationed overseas and their families in the event the employees are injured or captured by military activity. Likewise, the committee handled the temporary extension of many pieces of legislation relating to the Korean emergency. During the 84th Congress an extensive study of the problems attending presidential inability was made by a 5-man subcommittee.

NUMBER OF MEMBERS OF HOUSE JUDICIARY COMMITTEE

To accomplish its designated tasks, the House Judiciary Committee currently has 32 members assigned to it. It has been recognized that more than the 27 members specified in the Legislative Reorganization Act of 1946 are necessary to properly perform committee duties. At the time of its creation, the committee consisted of seven members (Journal, p. 19, Annals, vol. 1, p. 32). The committee consisted of this number until 1833.

In the 1st session of the 23d Congress, on Thursday, December 5, 1833, the following is stated:

> Committees of the House, Mr. Hubbard again moved his amendments to the 55th rule, which fixes the number and size of the standing committees of the House, so as to make those formerly containing only 7 members now to contain 9, and those consisting of 3, now to consist of 5 members. The amendment was carried and the rule as amended was adopted. An order was passed for the appointment of standing committees. December 9 committee appointed.

The number remained the same until 1869, in the 2d session of the 41st Congress, when on December 9 (Congressional Globe, p. 62) Mr. Welker introduced a resolution authorizing the Speaker to assign Representatives admitted since organization of the present Congress to any of the committees as additional members.

On March 3, 1873, 3d session of the 42d Congress, a resolution was introduced by Mr. Banks amending the Rules of the House so that the standing committees with 9 members are to have 13 members (Congressional Globe, p. 2132).

On January 6, 1880, 2d session of the 46th Congress (Congressional Record, vol. 10, p. 203) a report was adopted fixing membership of committees at 15 from the time forward.

On August 21, 1893, 1st session of the 53d Congress (Congressional Record, vol. 25, p. 554) Speaker announced the appointment of 17 members to the Committee on the Judiciary.

On April 5, 1911, 1st session of the 62d Congress (Congressional Record, vol. 47, pp. 55–80) House Resolution 30 provided for increase of committee membership from 15 to 21.

On December 11, 1925, 1st session of the 69th Congress:

> On motion of Mr. Tilson, by unanimous consent,
> *Ordered*, That the membership of the Committee on the Judiciary be increased from 22 to 23 members until March 2, 1927 (Congressional Record, vol. 66, p. 725).

On December 12, 1927, 1st session of the 70th Congress (H. Res. 53 and H. Res. 54, Congressional Record, vol. 69, p. 491) election of 23 members of on the Committee the Judiciary announced.

On December 14, 1931, 1st session, 72d Congress (Congressional Record, vol. 75, p. 465) House Resolution 54, providing for 23 members on the Committee on the Judiciary agreed to by the House.

On March 14, 1933, 1st session of the 73d Congress (Congressional Record, vol. 77, p. 43) House Resolution 43, providing for 25 members on the Committee on the Judiciary agreed to by the House.

The Legislative Reorganization Act calls for 27 members on the Judiciary Committee and this is the number specified in rule X of the House Rules. However, the membership has often been changed for a particular Congress by the passage of House resolution calling for a greater number of members than prescribed by the current rule and/or by electing a greater number of members than is prescribed by the current rule. For example, at present there are 32 members on the Judiciary Committee. House Resolution 94 increased the committee to this number for the 84th Congress.

IMPEACHMENTS

Since, under the Constitution, impeachment proceedings must originate in the House of Representatives, and since the Committee on the Judiciary is the law committee of the House, all its members being lawyers, all matters of impeachment, and resolutions calling for investigation of such charges are referred by the House to the Committee on the Judiciary in the first instance.

In the nine impeachment proceedings which have resulted in trial, since the formation of the committee in 1813, the Committee on the Judiciary has done much to develop, clarify, and state the law of impeachment and in this respect has performed a great and lasting service to the country as a whole.

While the House of Representatives has the sole power of impeachment the Senate has the sole power to try all impeachments. However, the jurisdiction of the Senate does not attach until articles of impeachment have been exhibited to it by the House.

The several sections of the Constitution applicable to impeachment proceedings are hereinafter set out.

CONSTITUTION

Article I

Section 2, clause 5:

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachments.

Section 3, clause 6:

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the Members present.

Clause 7:

Judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictments, trial, judgments, and punishments according to law.

Article II

Section 4, clause 1:

The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

GOOD BEHAVIOR

Article III

SECTION I. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congess may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive

for their services, a compensation which shall not be diminished during their continuance in office.

SEC. II. The trial of all crimes, except in cases of impeachment, shall be by jury.

NATURE OF IMPEACHMENT

On January 3, 1913, in the Senate sitting in the trial of the impeachment of Judge Robert W. Archbald, Mr. Manager Henry D. Clayton, of Alabama, submitted on behalf of the House of Representatives a brief from which the following is an excerpt:

THE GENERAL NATURE OF IMPEACHMENTS

The fundamental law of impeachment was stated by Richard Wooddeson, an eminent English authority, in his Law Lectures, delivered at Oxford in 1777, as follows (pp. 499 and 501, 1842 ad.):

"It is certain that magistrates and officers entrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the Grand Inquest of the Nation, became suitors for penal justice, and they cannot consistently either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

"On this policy is founded the origin of impeachments which began soon after the Constitution assumed its present form.

* * * * * * *

"Such kinds of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper—and have been the most usual—grounds for this kind of prosecution."

Referring to the function of impeachments, Rawle, in his work on the Constitution (p. 211) says:

"The delegation of important trusts affecting the higher interests of society is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign States, or the baser appetite for illegitimate emoluments are sometimes productions of what are not unaptly termed 'political offenses' (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

"The involutions and varieties of vice are too many and too artful to be anticipated by positive law."

In Story on the Constitution (vol. 1, 5th ed., p. 584) the parliamentary history of impeachments is briefly stated, as follows:

"800. In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. * * * One cannot but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confining the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the polity of the State, and of sufficient dignity to maintain the independence and reputation of worthy public officers."

Elmore Whitehurst, Esq., formerly clerk of the Committee on the Judiciary of the House and now Assistant Director, Administrative Office of the United States Courts, in a brief prepared on this subject, has summed up, the Nature of Impeachments, in the following manner:

Impeachment came into our Constitution from England. There it was a criminal proceeding with all the accouterment of a criminal trial, and with a possible penalty upon conviction of a sentence of ignominious death with confiscation of property. When it reached the United States Constitution the criminal penalties were stripped from impeachment. Judgment upon conviction was limited to removal from office with a possible judgment barring the defendant from again

holding office of trust or profit. Impeachment was changed from a criminal to a civil proceeding. Since there were no other precedents to guide, when the first impeachments came to trial in this country, English precedents naturally were followed. Thus it came about that for more than 150 years of our history the real nature of impeachment under our Constitution was obscured by confusion of thought brought about by the fact that impeachment proceedings were conducted as if they were criminal trials. The Judiciary Committee, particularly in recent years, has fought vigorously and successfully to establish general acceptance that impeachments in this country are not criminal trials but are solely ouster proceedings and should be tried as such.

Another very able statement of the nature of impeachment is found in the speech of Hon. Hatton W. Sumners in the House, in the Congressional Record, June 12, 1933.

Mr. Whitehurst has also set out the method of examination of impeachment charges, as follows:

It is the practice of the Judiciary Committee to make a preliminary informal examination of charges brought against judges. If, in the opinion of the committee, the action is warranted, a resolution is reported to the House authorizing and directing the committee to conduct an investigation of the charges and giving the power to subpena persons and papers. An exhaustive examination into the charges follows the adoption of the resolution by the House. Hearings are conducted before a subcommittee at which the accused and the accusers are accorded the privilege, usually exercised, to appear in person, to be represented by counsel, and to examine and cross-examine witnesses. The accused may testify in his own behalf. The evidence is printed, and after full consideration in executive session the committee makes its report to the House. If the judgment of the committee is for impeachment, articles of impeachment are drafted and presented to the House with the committee report. After debate, the House votes on the question of impeachment. If an impeachment is voted by a majority of the House, managers are appointed to conduct the trial in the Senate. The managers are agents of the House. In practice they are named from members of the Judiciary Committee by the chairman, who presents the names to the House in a resolution, which is ordinarily agreed to without debate. The managers present themselves at the bar of the Senate and demand the impeachment of the accused in the name of the House of Representatives and of all of the people of the United States. A summons is issued to the accused to appear and answer. The Senate organizes itself into a court of impeachment, and the trial is held in the Senate Chamber. The managers conduct the prosecution, while the respondent, as the accused is termed, is represented by counsel of his own choosing.

CASES OF IMPEACHMENT

In the 167 years of this Nation's existence under the Constitution the Senate of the United States has sat as a Court of Impeachment in 12 cases.

Prior to the creation of the Committee on the Judiciary three of these had been disposed of, to wit:

That of William Blount, a Senator of the United States from Tennessee, in 1798–99; John Pickering, judge of the United States District Court for the District of New Hampshire, 1803–4; and that of Samuel Chase, Associate Justice of the Supreme Court of the United States, 1804–5. The charges against Blount were dismissed for want of jurisdiction, Pickering was removed from office, and Chase acquitted.

The first Court of Impeachment to be held after the creation of the Committee on the Judiciary of the House in 1813 was that of James H. Peck, judge of the United States District Court for the District of Missouri. This trial lasted from Monday, April 26, 1830, to Monday, January 31, 1831.

The case of Judge Peck originated as a result of a memorial by an individual, which was referred to the Committee on the Judiciary

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and was by that committee reported to the House with a recommendation in favor of impeachment.

On March 23, 1830, Mr. Buchanan, chairman of the committee, submitted a report from the Committee on the Judiciary recommending the impeachment of James H. Peck.

Judge Peck was impeached in a single article containing a number of specifications on the ground that he had grossly abused his power as a judge in sentencing an attorney to 24 hours' imprisonment and suspension from the bar of his court for 18 calendar months for writing and publishing a moderate criticism of one of Judge Peck's decisions in a case in which the attorney had appeared on behalf of the plaintiff, with the result that the attorney was practically prevented from further participation in the case. The respondent was acquitted by the Senate on all of the articles presented against him on the ground that he was justified in assuming that he was legally clothed with the power that he had exercised, and that the element of malice had not been established. The vote was 22 to 21 against conviction.

Five managers were selected by ballot, three of whom were members of the Committee on the Judiciary. They were Mr. Buchanan, of Pennsylvania; Mr. Storrs, of New York; Mr. Wickliffe, of Kentucky; Mr. Spencer, of New York; and Mr. McDuffie, of South Carolina, the three first named being members of the committee.

On April 26, 1830, Messrs. Buchanan and Storrs appeared before the bar of the Senate and impeached Judge Peck in the following manner, to wit:

> Mr. President, we have been directed in the name of the House of Representatives and of all the people of the United States, to impeach James H. Peck, judge of the District Court of the United States for the District of Missouri, of high misdemeanors in office, and to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same. We have also been directed to demand that the Senate take order for the appearance of the said James H. Peck to answer to said impeachment.

While Judge Peck was acquitted, nevertheless, as a result of this trial the act of March 2, 1831, defining and limiting the power of judges to punish for contempt was passed. It is entitled "An act declaratory of the law concerning contempt of court," and was enacted to remedy the wrongs this case disclosed. The history of this act is interesting and important. One of the main questions in the case was whether the power of the Federal courts to punish contempts was derivable from the common law or whether it was limited by the act of September 24, 1789, the 17th section of which provided that all the said courts of the United States—

> shall have power to administer all necessary oaths or affirmations, and to punish by fine and imprisonment, at the discretion of said courts, all contempts of authority in any cause or bearing before the same.

Upon the one hand, the contention was that the Federal courts were of limited jurisdiction, and unless a statute or constitutional provision could be found conferring power, no such power could be exercised. Upon the other hand, the claim was made with great vigor and zeal that all courts have the inherent right to protect themselves and to maintain their authority by punishing for contempt all who disturb the court or who directly or indirectly defy its orders and decrees or do anything to bring court or judge into disrepute. It was claimed

that all the power to punish contempts of every kind possessed and exercised by the courts in England before the Revolution was possessed by and could be lawfully exercised by the Federal courts. Nothing was settled by the result of the trial of Judge Peck. To meet the doubt and settle the uncertainty as to the power of the Federal courts to punish contempt, Mr. Draper, a Member of the House, introduced the following resolution:

> *Resolved*, That the Committee on the Judiciary be directed to inquire into the expediency of defining by statute all offenses which may be punished as contempt of the courts of the United States.

To which the following amendment was added:

> And also to limit the punishment of the same (Gales & Seaton, for 1831, p. 559).

The act of 1831 was reported by Mr. Buchanan from the Committee on the Judiciary in pursuance of this resolution.

In the decision of the Supreme Court in *Ex Parte Robinson* (19 Wall. 211) there is found a very clear statement as to the nature and character of the offenses punishable under this act.

Following the foregoing impeachment trial which has been set out somewhat in detail came the impeachments of West H. Humphreys, judge of the United States District Court for the Middle, Eastern, and Western Districts of Tennessee; he was removed from office; the trial lasted from May 7 to June 26, 1862.

Next was that of Andrew Johnson, President of the United States; he was acquitted; the trial lasted from February 25 to May 26, 1868.

Next was that of William W. Belknap, Secretary of War; he was acquitted; the trial lasted from March 3, 1876, to August 1, 1876.

Next was that of Charles Swayne, judge of the United States District Court for the Northern District of Florida; he was acquitted; the trial lasted from December 14, 1904, to February 27, 1905.

Then followed the trial of Robert W. Archbald, additional circuit judge of the United States from the third judicial circuit and designated a judge of the United States Commerce Court; he was removed from office; the Senate sat as a court of impeachment from July 13, 1912, to January 13, 1913.

Next was that of George W. English, judge of the United States District Court for the Eastern District of Illinois; he resigned from office November 4, 1926; the court of impeachment adjourned to December 13, 1926, when on request of the House managers, the impeachment proceedings were dismissed.

Next came the trial of Harold Louderback, judge of the United States District Court for the Northern District of California; he was acquitted; the trial lasted from May 15 to 24, 1933.

The last time that the Senate sat as a court of impeachment was that of Halsted L. Ritter, judge of the United States District Court for the Southern District of Florida; he was removed from office; the trial lasted from April 6 to 17, 1936.

These trials have vastly changed the concept of the real nature of impeachments in this country, but due to their great length, the mass of testimony, the law, and the rulings, they are not separately discussed at this time.

PROCEDURE IN IMPEACHMENT TRIALS

The accused may appear in person or by attorney, or he may not appear at all. In case he does not appear the House does not ask that he be compelled to appear, but the trial proceeds on a plea of "not guilty."

It has been decided that the Senate has no power to take into custody the body of the accused. The writ of summons to the accused recites the articles and notifies him to appear at a fixed time and place and file his answer.

In all cases respondent may appear by counsel, and in one trial, when a petition set forth that respondent was insane, the counsel of his son was admitted to be heard and present evidence in support of the petition but not to make arguments.

In trials before the Senate witnesses have always been examined in open Senate and never by a committee, although such procedure has been once suggested.

No jury trial is possible as a part of an impeachment trial under the Constitution.

The House of Representatives has consulted its own inclination and convenience about attending its managers at an impeachment. It did not attend at all in the trials of Blount, Swayne, and Archibald, and after attending at the answer of Belknap, decided that it would be represented for the remainder of the trial by its managers alone.

At the trial of the President the House in Committee of the Whole, attended throughout the trial, but this is exceptional.

In the Peck trial the House discussed the subject and reconsidered its decision to attend the trial daily.

While the Senate is deliberating the House does not attend; but when the Senate votes on the charges, as at the other open proceedings of the trial, it may attend. While it has frequently attended in Committee of the Whole, it may attend as a House.

The question in judgment in an impeachment trial has occasioned contention in the Senate, and in the trial of President Johnson the form was left to the Chief Justice. In the Belknap trial there was much deliberation over this subject. In the Chase trial the Senate modified its former rule as to form of final question. The yeas and nays are taken on each article separately, but in the trial of the President the Senate, by order, voted on the articles in an order differing from the numerical order, adjourned after voting on one article, and adjourned without day after voting on 3 of the 11 articles. After a conviction, the Senate votes on the punishment.

The Constitution of the United States (art. 1, sec. 3, par. 7) limits the judgment to removal and disqualification.

In Congress impeachment proceedings are not discontinued by a recess, and the Pickering impeachment was presented in the Senate on the last day of the Seventh Congress, and at the beginning of the Eighth Congress the proceedings went on from that point.

But an impeachment may proceed only when Congress is in session.