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## The Curious Case of Alcee Hastings

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## **Abstract**

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**KEYWORDS:** acquittal, impeachment, hastings

# The Curious Case of Alcee Hastings

**Alan I. Baron\***

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At 10:00 a.m. on October 20, 1989, the final act in a proceeding unique in American history began to unfold as the United States Senate was called to order by Senator Robert Byrd of West Virginia.

The Senators were convening to vote on the articles of impeachment brought by the House of Representatives against Alcee L. Hastings, United States District Judge for the Southern District of Florida, the first black ever to hold that position. Hastings also was the first black federal official ever to be impeached and was the first federal official impeached after having been acquitted by a jury in a criminal trial on similar charges. The outcome of the Senate vote was in doubt.

By any standard Hastings, at 53, had a remarkable record of achievement. He was raised in Florida by his grandmother because his parents were employed as domestics by wealthy families out of state. He graduated from Florida A & M Law School in 1963 and became a member of the Florida Bar. For thirteen years he had what he described as a “y’all come” general practice. In 1977, the Governor of Florida appointed Hastings to a state court judgeship. Two years later he was appointed by Jimmy Carter to the federal bench. His general reputation as a lawyer and judge was favorable and nothing turned up in the FBI background check which would have hindered his federal appointment. He is by all accounts a dynamic, even charismatic, speaker.

In 1981, Hastings was indicted by a federal grand jury in Miami on charges of engaging in a corrupt conspiracy with a Washington, D.C. attorney named William Borders. The object of the alleged conspiracy was to solicit a bribe from two criminal defendants in a racketeering case pending before Hastings. Hastings and Borders were tried separately. Borders was convicted by a jury in March 1982. Hastings was acquitted by a jury in February 1983.

The matter did not end there. In March 1983, two of Hastings’ judicial colleagues took the extraordinary step of filing a complaint alleging that Hastings had in fact engaged in a corrupt conspiracy, despite the jury

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verdict. They called for an investigation under a statute enacted in 1980<sup>1</sup> which gave the federal judiciary power to investigate and, to some extent, discipline its members.

A Judicial Investigating Committee made up of three circuit judges and two district judges conducted an inquiry which stretched over three years, including lengthy court battles, as Hastings challenged the Committee's right to obtain documents and testimony and attacked the constitutionality of the statute under which the Committee operated. Hastings refused to participate in the proceedings, claiming they were unconstitutional. On September 2, 1986, after hearing testimony from over 100 witnesses and receiving approximately 2800 exhibits, the Investigating Committee issued a report which concluded that there was clear and convincing evidence that Hastings had in fact engaged in a corrupt conspiracy with Borders to solicit a bribe. The Committee further concluded that Hastings had lied repeatedly at his trial and had falsified documents in order to mislead the jury.

The bedrock upon which the reputation of the judiciary rests is that the action of federal judicial officers is not for sale. Judge Hastings attempted to corruptly use his office for personal gain. Such conduct cannot be excused or condoned even after Judge Hastings has been acquitted of the criminal charges.

. . . .  
. . . With respect to Judge Hastings' post-indictment conduct, the Committee cannot overemphasize either its deliberateness or its seriousness.

. . . .  
. . . There is clear and convincing evidence that Judge Hastings sought to conceal his participation in the bribery scheme and to explain away evidence connecting him with the sale of justice and that he pursued these objectives through concocting and presented [sic] fabricated documents and false testimony in a United States District Court. Judge Hastings' conduct was premeditated, deliberate and contrived.<sup>2</sup>

On March 17, 1987, this Committee Report was adopted by the Judicial Conference of the United States. Chief Justice Rehnquist referred the matter to the House of Representatives for possible impeachment.

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1. 28 U.S.C. § 372(c) (1980).

2. REPORT OF THE INVESTIGATING COMMITTEE TO THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT 338-39 (1986).

The House, faced with a jury acquittal on the one hand, and the report of the Judicial Investigating Committee on the other, undertook an independent inquiry over a period of eighteen months. John Conyers, Jr., a veteran black congressman from Detroit, chaired the subcommittee which conducted the House investigation. As the inquiry began, he openly expressed his concern that racial motivations might underlie the continued investigation of a black judge who had been acquitted by a jury. After months of investigation and seven days of hearings, however, Conyers was convinced that Hastings had conspired with Borders to take a bribe and, moreover, had lied at his criminal trial. The Judiciary Committee reported seventeen articles of impeachment against Hastings.

On August 3, 1988, Conyers rose to speak on the floor of the House in support of the articles of impeachment. He recalled how his initial skepticism had been overcome as the facts developed during the investigation pointed to Hastings' guilt. He acknowledged how hard it was for him, as an outspoken black congressman, to have to report on the corrupt activity of one of a handful of black federal judges. He could not, however, turn his back on what he regarded as overwhelming evidence of Hastings' guilt.

Conyers' voice rang out in the hushed chamber:

We did not wage [the] civil rights struggle merely to replace one form of judicial corruption for another.

. . . .

. . . The principle of equality requires that a black public official be held to the same standard that other public officials are held to. A lower standard would be patronizing, a higher standard, racist. Just as race should never disqualify a person from office, race should never insulate a person from the consequences of wrongful conduct.

After Conyers finished, there was a pause. Representative Claude Pepper of Florida, the aged dean of the House, rose slowly to his feet, turned, looked squarely at Conyers and began to applaud. In an instant, everyone in the chamber gave Conyers a standing ovation. The members recognized that his position and his statement were acts of political and moral courage rarely witnessed in public life.

The House voted in favor of the articles 413 to 3; the Senate was formally advised that articles of impeachment had been voted and was asked to initiate the process for conducting a trial. The House appointed six Congressmen to serve as managers, or prosecutors, to try the case before the Senate.

Under the Constitution, the House has the sole power to impeach; the Senate has the sole power to try a public official on impeachment articles.

Impeachment has a long history dating back to the fourteenth century when the English Parliament began its struggle with the Crown for supremacy. The English institution served as something of a model for the Founding Fathers when they drafted the Constitution. Nine members of the American Constitutional Convention had been practicing lawyers in England, and were familiar with English impeachment practice. The term “high crimes and misdemeanors,” the American constitutional standard for removal from office, was lifted directly from English law. Its first use was in 1386 when the Earl of Suffolk was impeached by Parliament.

There are certain watershed distinctions, however, between American and English impeachments. The model was not adopted wholesale. For example, in England impeachment was not limited to public officials. In the United States, only the President, Vice President and certain “public officials of the United States,” including federal judges, are subject to impeachment.

The most important distinction is the fact that in England impeachment was a criminal proceeding. One could lose one’s head as well as one’s job. Many who were not beheaded spent years imprisoned in the Tower of London. Parliament could also be quite creative in fashioning a punishment for those convicted in an impeachment. The records reflect that in the seventeenth century, a hapless individual named Floyd was impeached and convicted for disparaging the King and Queen of Bohemia. He was punished by being led through London for two days on a horse, facing backwards, while holding the horse’s tail in his hands. He was then put in the pillory, branded with a “K” and later imprisoned for life in the Tower of London.

This could not occur under the American Constitution. Only certain federal office holders are subject to impeachment; removal from office is the only sanction, with the possible additional sanction of being barred from holding federal office in the future. Impeachment in this country is a remedial process designed to protect the institutions of government and the citizens from persons unfit to hold positions of public trust. It is not designed to punish the offender. Impeachment, of course, is the only way to remove a federal judge from office because the Constitution provides for life tenure.

When Hastings and his counsel entered the Senate chamber on the morning of October 20, 1989, it was only the fifteenth time in our nation’s history that the Senate had been called upon to vote on articles of impeachment. There had been nine acquittals and five convictions; all of the latter were federal judges.

Hastings’ supporters were confident they would add another acquittal to the tally.

Two days prior to the vote, the Senators had heard nearly four hours of argument from the parties. Hastings had addressed them personally, proclaiming his innocence of any wrongdoing. Congressman John Bryant of Texas, the lead Manager for the House, had argued forcefully that Hastings was corrupt and a liar who had violated his position of public trust.

The following day the Senate deliberated behind closed doors for seven hours. Although the details of the debate are not public, several reports have surfaced. According to one source, the first four Senators to speak came out for acquittal. It appeared that a steamroller in favor of Hastings was under way. At that point Senator John Kerry of Nebraska, a Democrat who had served on the fact-gathering Senate Impeachment Committee, reportedly made an impassioned and persuasive argument in favor of conviction. Senator Warren Rudman of New Hampshire, a Republican and also a member of the Impeachment Committee, was said to have been a powerful advocate for conviction and convinced several Senators that Hastings had fabricated documents to defend himself. Senator Paul Sarbanes, a Democrat from Maryland, was described as an eloquent spokesman for conviction, emphasizing that the Senators were not acting as jurors in a criminal case. Senator Joseph Lieberman of Connecticut, who voted for acquittal, later stated publicly that the Senate's deliberations were "among the most thoughtful and impressive moments" of his first year in the Senate.

In order to convict, the House needed a two-thirds majority of the Senators present and voting. The number of votes necessary to convict was sixty-four because five Senators were not voting. Four were excused because they had been members of the House when the impeachment articles had been voted, and one was absent due to an earthquake in California.

The House Managers had been hearing only bad news as the vote neared. The day before the vote, Senator Arlen Specter of Pennsylvania, Vice Chairman of the Senate Impeachment Committee, issued a lengthy statement in support of his conclusion that Hastings should be acquitted. Specter, a former state prosecutor, had been one of the most active participants in the trial held before the Committee, aggressively questioning many of the witnesses, including Hastings. He knew every detail of the case, and his conclusions, made public in advance of the vote, gave Hastings a powerful ally at this critical moment.

Only moments before the vote began, Senator Lieberman was overheard saying that he would not vote for conviction. Lieberman, a former Attorney General of Connecticut, had also been very involved as a member of the Impeachment Committee. His questioning of witnesses, which came toward the end of each round of questioning because of his

status as a freshman Senator, was nevertheless keenly awaited. Soft-spoken and almost deferential in manner, Lieberman asked questions which were subtle and disarming while they probed to the core of the witness's testimony.

For the House, the worst news of all came from Senator Albert Gore of Tennessee, who told the House Managers about five minutes before the vote began that he believed a majority of Senators would vote for conviction, but that the House would fall short of the two-thirds majority required by the Constitution. That final bit of information seemed to dash any hope the House had that Hastings would be convicted. Simply put, as the House Managers headed for the well of the Senate chamber to hear the vote, they assumed Hastings was about to be acquitted.

The Senate rules require that when voting on an impeachment each Senator must rise from his seat and announce his decision "guilty" or "not guilty." It is a solemn occasion and does not permit any side conversations or wandering in and out of the cloakrooms. Majority Leader George Mitchell of Maine reminded the Senators of this requirement.

The public galleries were packed. Many there were supporters of Judge Hastings. Senator Byrd, a man of enormous personal dignity, is fiercely protective of the Senate's decorum. Sensing the tension and concerned that matters might get out of hand, he advised everyone in the chamber and in the galleries that the standing rules of the Senate gave him authority to enforce order whenever "confusion" or "demonstrations of approval or disapproval" occurred.

The clerk read the first article of impeachment. It was time to vote on Article One. Byrd proceeded:

The Chair reminds the Senate that each Senator, when his or her name is called, will stand in his or her place and vote guilty or not guilty. The question is on the first article.

Senators, how say you? Is the respondent, Alcee L. Hastings, guilty or not guilty? The roll-call is automatic. The clerk will call the roll.

<i>Mr. Adams?</i>	<i>Not Guilty</i>
<i>Mr. Armstrong?</i>	<i>Not Guilty</i>
<i>Mr. Baucus?</i>	<i>Guilty</i>
<i>Mr. Bentsen?</i>	<i>Guilty</i>
<i>Mr. Biden?</i>	<i>Not Guilty</i>
<i>Mr. Bingaman?</i>	<i>Not Guilty</i>

With Senator Jeff Bingaman of New Mexico voting not guilty, the Hastings forces were certain they had gained an acquittal. Bingaman was



the Chairman of the Senate Committee which heard the evidence. They already knew that the Vice Chairman, Senator Specter, was vigorously advocating acquittal. In their view it was unthinkable that the Senate would override the conclusions of these two men. According to one report, Hastings and his counsel put their pencils down and stopped tallying the votes. It was as good as over.

<i>Mr. Bond?</i>	<i>Guilty</i>
<i>Mr. Boren?</i>	<i>Guilty</i>
<i>Mr. Boschwitz?</i>	<i>Guilty</i>
<i>Mr. Bradley?</i>	<i>Not Guilty</i>

The first article of impeachment charged that Hastings had engaged in a corrupt conspiracy with a Washington, D.C. attorney named William Borders, to solicit a \$150,000 bribe from two racketeering defendants, the Romano brothers, in a case pending in Hastings' court. The Senate vote in October 1989, was the final chapter of a tale which had begun eight years earlier.

On July 20, 1981, a man named William Dredge walked into the United States Attorney's Office in Miami. Dredge told law enforcement officials that he had information concerning a bribery scheme involving Judge Hastings, a reputed organized crime kingpin named Santo Trafficante, and a Washington, D.C. lawyer who was coming to Miami the next day to meet with Trafficante. Trafficante allegedly controlled mob activities in South Florida. He was one of sixteen defendants in a major racketeering conspiracy case pending before Judge Hastings. Dredge later testified that his revelation sent a shock wave through the office; people were stunned by the information.

<i>Mr. Breaux?</i>	<i>Guilty</i>
<i>Mr. Bryan?</i>	<i>Guilty</i>
<i>Mr. Bumpers?</i>	<i>Guilty</i>
<i>Mr. Burdick?</i>	<i>Not Guilty</i>
<i>Mr. Burns?</i>	<i>Guilty</i>
<i>Mr. Byrd?</i>	<i>Guilty</i>
<i>Mr. Chafee?</i>	<i>Guilty</i>
<i>Mr. Cochran?</i>	<i>Guilty</i>
<i>Mr. Cohen?</i>	<i>Guilty</i>
<i>Mr. Conrad?</i>	<i>Guilty</i>
<i>Mr. Cranston?</i>	<i>Not Guilty</i>

William Dredge operated an antiques store in North Miami. He was also a fence, a burglar, and a drug dealer. His criminal record dated back to 1943. Short, stocky, and bespectacled, Dredge looked more like a professor of literature than a career criminal. In March 1981, he was the subject of a narcotics investigation in Maryland and when he entered the United States Attorney's office in Miami, he wanted to make a deal. He would provide information about the bribery scheme in return for dismissal of the drug charges in Maryland.

Dredge outlined what he had to offer. He told Special Assistant United States Attorney Martha Rogers that on July 9 and 10, 1981 he had been staying in Washington, D.C. with a friend who was a big-time gambling figure in the area. While he was there, Santo Trafficante was also staying in the apartment. The gambler, who ultimately was identified as Joseph Nesline, went to dinner with Trafficante at the Lion D'Or Restaurant in Washington. Dredge related that he accompanied Mrs. Nesline to the restaurant and they had dinner at a separate table. Dredge learned that Trafficante was in town to see a Washington lawyer about a bribe to fix the criminal case pending before Hastings.

At first, Dredge did not identify Borders by name, but he told Rogers that the D.C. attorney was coming to Miami the next day to meet with Trafficante. Dredge went on to say that this same, as yet unidentified, lawyer had contacted him about arranging for Tom and Frank Romano, two brothers who had been convicted of racketeering in Hastings' court, to pay a \$150,000 bribe to have Hastings reduce their jail sentences to probation.

The FBI set up a surveillance at the Miami Airport the next day. By reviewing the passenger lists on flights to Miami from Washington, Rogers was able to single out William Borders as the attorney Dredge refused to identify. She knew Borders because she had worked as an Assistant United States Attorney in the District of Columbia before moving to Florida.

Rogers went to the Miami Airport to identify Borders when he got off the plane. She spotted him immediately. Rogers was terrified that Borders would recognize her, but he walked past her without even glancing her way.

Borders arrived in Miami around 4:00 p.m. on July 21. The FBI followed him as he took a cab to Dredge's house. About an hour later, Dredge drove Borders to a shopping center where Borders took a cab to the Fontainebleau Hotel. Borders was observed meeting with Santo Trafficante for five to ten minutes. Trafficante then drove Borders back to the airport. Agents observed Trafficante shake Borders' hand and heard him say "did a good job." Trafficante left Borders at the airport. Borders caught a 9:30 p.m. flight to Washington from Miami.

The FBI interviewed Dredge at length on July 23, 1981. Dredge told the agents that he went to the U.S. Attorney's Office because he wanted to let people know about Judge Hastings' misconduct. He stated that although it might sound unusual coming from someone in his position, he was very upset that a federal judge would be involved in taking a bribe. He also wanted to make a deal for dismissal of narcotics charges pending against him in Federal District Court in Maryland.

Dredge went on to relate that he had known William Borders for some time because Borders had represented him in certain legal matters. According to Dredge, Borders was acting as the middle man for a bribe to be paid by Santo Trafficante, who was under indictment for conspiracy to conduct the affairs of a union through a pattern of racketeering in a case pending before Hastings.

Dredge told the FBI that he was unlikely to obtain a great deal of information regarding the Trafficante matter because Borders was dealing directly with Trafficante, and Dredge would only learn what Borders happened to tell him.

Dredge then stated that he also had information regarding another bribe scheme involving Borders, Hastings, and two brothers, Tom and Frank Romano. According to Dredge, Borders had asked him to check out the Romano brothers in order to find out what kind of people they were. Borders told him that the Romanos were due to be sentenced by Hastings. Dredge made inquiry in Florida and determined that the Romanos were "stand up guys," which in underworld parlance meant they would live up to commitments and not inform the authorities. Borders then told Dredge to get word to the Romanos that the Judge would fix their sentences for \$150,000.

<i>Mr. D'Amato?</i>	<i>Not Guilty</i>
<i>Mr. Danforth?</i>	<i>Guilty</i>
<i>Mr. Daschle?</i>	<i>Guilty</i>
<i>Mr. DeConcini?</i>	<i>Guilty</i>
<i>Mr. Dixon?</i>	<i>Guilty</i>
<i>Mr. Dodd?</i>	<i>Not Guilty</i>
<i>Mr. Dole?</i>	<i>Guilty</i>

In early April, Dredge related, he had spoken with a "representative" of the Romanos, a man named "Brother" Moscato, when the Romanos themselves were in California. Dredge told Moscato that a lawyer in Washington, D.C. could help the Romanos with their criminal case problem. Telephone records show that Moscato called the Romanos in California on April 7, 1981. According to a memorandum in the files of the Romanos'

attorney, the Romanos thought the approach might be a setup by the government, or a scam by Moscato. In any event, they did not pursue the overture.

According to Dredge, he never actually spoke with the Romanos nor did he have any further contact with Moscato. When Borders kept asking Dredge about the Romano situation, he told Borders that the Romanos already had a deal with the Judge through someone else. Borders told him that the Romanos were crazy and that they could not have a deal. He challenged their other alleged contact with the Judge to name a time and place for Hastings to appear. Borders would also name a time and place. Borders guaranteed Hastings would appear where Borders promised and thereby prove he controlled the Judge.

Borders asked Dredge to recontact the Romanos. Dredge did not contact them, but he got back to Borders and told him the Romanos said they did not have that kind of money. Borders said the Judge couldn't believe they wouldn't come up with the money to stay out of jail.

When Dredge was asked by investigators why he kept stringing Borders along, he explained that he had only tried to help Borders because Joe Nesline had asked him to do it as a favor. Dredge thought Borders was lying when he said he controlled a federal judge. As Dredge put it, he thought Borders was "smoking Ajax." Dredge figured that if he kept stalling Borders, the matter would go away, particularly since he did not believe Borders really could deliver Hastings.

According to Dredge, something then occurred which changed his view. Dredge said he received a call from Borders on May 10, 1981. Borders told Dredge that the Romanos were scheduled to be sentenced, but that Hastings was going to postpone the sentencing to give the Romanos another chance to come up with the money. In fact, on May 11, the Romanos appeared in court to be sentenced. At the hearing, their attorney asked to postpone the sentencing. No prior motion had been filed and the government vigorously opposed the continuance. Hastings granted the delay. Dredge stated that when he heard this, he became convinced that Borders could produce because there was no other way Borders could have known in advance what the Judge was going to do.

<i>Mr. Domenici?</i>	<i>Guilty</i>
<i>Mr. Durenberger?</i>	<i>Guilty</i>
<i>Mr. Exxon?</i>	<i>Guilty</i>
<i>Mr. Ford?</i>	<i>Guilty</i>

<i>Mr. Fowler?</i>	<i>Guilty</i>
<i>Mr. Garn?</i>	<i>Guilty</i>
<i>Mr. Glenn?</i>	<i>Guilty</i>
<i>Mr. Gore?</i>	<i>Guilty</i>

On August 18, 1981, Dredge told the FBI that Borders had called and told him that he was coming to the Miami area in the next day or so. The purpose of the visit, according to Dredge, was to work out the details of the bribery deal between Trafficante and Hastings. The FBI determined that Borders had a reservation to fly from Washington, D.C. to Miami on August 21. They had Borders under surveillance from the time he left D.C. In fact, the woman sitting next to Borders during the flight who engaged him in conversation was an FBI agent. When Borders arrived in Miami, he took a cab to the Fontainebleau Hotel. He got out of the cab, walked down the sidewalk, and got into a car which immediately headed back to the airport. The driver was Santo Trafficante. Borders and Trafficante spoke for four minutes outside the Delta Airlines terminal and then Trafficante left.

On August 31, 1981, Dredge told the FBI that he had met with Borders in Washington a few days earlier. Borders said he wanted to deal with the Romanos as soon as possible and that the price was \$150,000. According to Dredge, Borders said he would only meet with the Romanos, not a representative. Dredge also told the FBI that while in Washington he overheard a conversation which suggested that someone was delivering money to Borders on behalf of Trafficante.

Throughout the month of August and into September, Dredge continued to negotiate with the Department of Justice in order to cut a deal to have the narcotics charges against him dismissed. Ultimately, Dredge agreed to plead guilty to a single felony count; the remaining counts were to be dismissed. Dredge, in return, agreed to introduce Borders to an undercover agent who would pose as one of the Romano brothers. The objective was to record conversations with Borders to determine definitively whether Judge Hastings was part of the scheme. Dredge refused to record any conversations or to testify in any prosecution. Dredge felt that if he testified, he would be "signing his death warrant because of who was involved."

On Thursday, September 10, 1981 at 1:29 p.m., in the presence of an FBI agent, Dredge placed a call to Borders and told him the Romanos were ready to deal. Dredge and Borders agreed to meet on Saturday, September 12, at 8:00 a.m. at the Miami Airport where Dredge would introduce him to Frank Romano.

This call triggered significant alterations in the travel plans of both Borders and Hastings. Prior to Dredge's early afternoon call to Borders, Hastings was scheduled to fly from Miami at 6:50 p.m. on September 11, arriving in Washington, D.C. at 9:00 p.m. Borders was scheduled to fly out of Washington, D.C. at 7:30 p.m. on September 11, arriving in Miami at 9:45 p.m. Thus, as their plans stood prior to Dredge's call to Borders on September 10, it would have been impossible for the two men to have met at National Airport.

Telephone records document that Hastings and Borders spoke late in the afternoon of September 10. Thereafter, Hastings canceled his existing flight plans and reserved a flight leaving Miami which arrived in Washington at 6:00 p.m., an hour and a half before Borders was scheduled to leave the city. As it turned out, however, Hastings' flight on the 11th was delayed until 6:00 p.m. He called Borders' office twice that day from Miami to advise him of the delay. Hastings ultimately arrived in Washington at 8:00 p.m. Borders skipped his 7:30 p.m. flight, taking a 9:30 p.m. flight instead. Had Borders taken his scheduled flight, he would have been on his way to Florida by the time Hastings' delayed flight arrived. No one actually observed a meeting between Hastings and Borders on the night of September 11, but a period of time existed when both men would have been in Washington. Hastings did not check into his hotel that night until after 10:00 p.m., more than two hours after his flight arrived in Washington.

The significance of an opportunity for Borders and Hastings to meet on the night of the 11th became apparent on the morning of the 12th. Borders was at that time introduced by Dredge to "Frank Romano," impersonated by a retired FBI agent named Paul Rico. The conversation between Borders and Rico was taped by a recorder concealed on Rico's person.

Borders displayed a remarkably detailed knowledge of the Romanos' case which could only have been the result of contact with someone intimately familiar with the case. Borders himself had no basis for such familiarity. He was not counsel in the case. He was not a member of the Florida Bar. The case had not received the type of publicity which would have brought it to Borders' attention in Washington. Nevertheless, Borders knew that the Romanos' property had been forfeited and that their criminal case was then on appeal. Borders stated to Rico that within ten days the Judge would sign an order returning a "substantial amount" of the property which had been forfeited. Thereafter, the Romanos should withdraw their appeal and their jail sentences would be reduced.

Rico then said, "How do I know . . ." whereupon Borders cut him off and responded, "Checks and balances . . . I don't get nothin', until the first

part is done . . . that will be a signal showing you that I'm, I know what I'm talking about, right?"

Borders proposed that the money be placed in escrow with Dredge and that the money be paid after the Judge issued an order reversing a substantial part of the forfeiture. Rico said he preferred not to use Dredge to hold the money.

Rico was aware that Borders claimed he could prove his influence with the Judge by having him appear at a given time and place. Rico now proposed an appearance by Hastings as a sign of his participation in the scheme. Rico asked Borders if he wanted to get back to him regarding the time and place of the Judge's appearance. Borders said that was unnecessary and immediately selected Wednesday, September 16, 1981, as the date for Hastings to show. Rico selected the main dining room in the Fontainebleau Hotel at 8:00 p.m. as the place for Hastings to appear.

Borders and Rico agreed to meet the following Saturday, September 19, at the Miami Airport, at which time Rico would make an "upfront" payment on the deal. As the meeting concluded, Borders reassured Rico, saying, "that's one hundred percent, one hundred percent, one hundred percent."

<i>Mr. Gorton?</i>	<i>Guilty</i>
<i>Mr. Graham?</i>	<i>Not Guilty</i>
<i>Mr. Gramm?</i>	<i>Guilty</i>
<i>Mr. Grassley?</i>	<i>Guilty</i>
<i>Mr. Harkin?</i>	<i>Not Guilty</i>
<i>Mr. Hatch?</i>	<i>Not Guilty</i>
<i>Mr. Hatfield?</i>	<i>Guilty</i>
<i>Mr. Heflin?</i>	<i>Not Guilty</i>

In the eyes of the House Investigators, Borders' statement that a "substantial amount," rather than all of the forfeited property, would be returned gives rise to a subtle but weighty inference supporting Hastings' involvement in the scheme. In order to understand the significance of that remark, one must review the history of the Romanos' prosecution.

Thomas and Frank Romano were indicted by a federal grand jury on twenty-one counts of racketeering, fraud, embezzlement, and false tax filings. The indictment also charged violations of the Racketeer Influenced Corrupt Organization statute ("RICO") which, under certain circumstances, could result in the forfeiture of property connected with illegal racketeering activity. The case was assigned to Judge Hastings within the first week he was on the bench.

In December 1980, the case was tried before Judge Hastings and a jury. In the course of the trial, the prosecution proved that the Romanos had

looted a construction project of over a million dollars. In addition, the government made a proffer to Judge Hastings, out of the presence of the jury, that the Romanos had a history of making payoffs. On December 23, 1980, the jury found the Romanos guilty on all counts.

The parties agreed to try the forfeiture issues separately to the Judge, without a jury. Judge Hastings heard part of the prosecution's proof on forfeiture on December 30. He then adjourned the hearing until February 20, 1981. Hastings concluded the evidentiary hearing on that date and asked the parties to submit memoranda of law and proposed findings of fact. On May 4, 1981, Hastings entered an order adopting the prosecution's position in its entirety, thereby forfeiting property owned by the Romanos worth \$1,162,016. The forfeiture statute under which Hastings had acted, however, would soon be modified.

On June 19, 1981, a panel of the Fifth Circuit Court of Appeals decided the case of *United States v. Martino*.<sup>3</sup> At issue was an interpretation of the RICO statute's provisions concerning the definition of an interest in property that was subject to forfeiture. The appellate court held that the term did not include income, profits, or receipts from racketeering activity.

This rather esoteric statutory issue had major implications for the forfeiture aspect of the Romano case. Application of the *Martino* decision, which was binding on Hastings, required the return of approximately \$845,000 in property from the original forfeiture of more than a million dollars. At a hearing on July 8, 1981, there was extensive argument regarding the impact of *Martino* on the Romano forfeiture order. The defense sought to have Hastings reconsider his order of May 4, 1981. Hastings stated that he was familiar with *Martino* and had read the briefs. Counsel for the Romanos argued that, under *Martino*, \$845,939 of the original forfeiture had to be vacated and the property returned to the Romanos. The government was reduced to arguing that *Martino* was wrongly decided. Hastings had also received a memorandum on the issue from his law clerk before going on the bench to conduct the hearing. At the conclusion of the hearing on July 8, Hastings stated from the bench that he was reaffirming his decision of May 4, 1981, requiring forfeiture of over a million dollars in property, despite the holding in *Martino*.

It is a reasonable inference that, on September 12, 1981, when Borders told the undercover agent that a substantial amount of the property would be returned, he could only have known that from a contact with Judge Hastings. Only the Judge could issue an order in the case. Borders was

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3. 648 F.2d 367 (5th Cir. 1981).



therefore making a commitment which directly involved Hastings' personal participation. Moreover, as of September 12, 1981, when Borders told the agent that Hastings was going to reverse his earlier order, there had been no hearings, briefs or arguments by counsel since July. When Hastings ultimately did issue an order on October 6, reversing the earlier decision, the government prosecutor in the case was stunned. There had been no forewarning that Hastings would change what he had decided in open court nearly three months earlier. Finally, Borders' representation that the Judge would return a substantial amount of the property rather than all of it, reflects a familiarization with the *Martino* decision and its esoteric reading of the RICO statute which Borders was unlikely to have acquired independently.

When Borders finished his meeting with the undercover agent, he flew from Miami to West Palm Beach and drove to a long-planned family reunion. He had told a friend he was going to spend the weekend at the reunion but, in fact, he stayed only briefly. He made a series of reservations and cancellations of airline flights back to Washington and ultimately flew from Orlando to Baltimore-Washington International Airport, on Saturday, September 12, 1981, arriving at 8:58 p.m.

Hastings was spending that weekend in Washington at the Sheraton Hotel. Jesse McCrary, a mutual friend of Hastings and Borders, was registered in the room next to Hastings. On Saturday night, Hastings, McCrary, and three women were in the Judge's room. According to the testimony of two of the women, the group postponed dinner at Judge Hastings' suggestion because they were waiting for someone. One of the women testified specifically that they were waiting for Borders. At around 10:00 p.m., Borders knocked on the door of the Judge's room. The group then went to dinner. Hastings testified at his criminal trial that Borders' appearance was a surprise and not prearranged. Prosecutors contended it was a prearranged meeting to discuss Borders' contact that morning with the man he thought was Frank Romano. There is no evidence to explain how Borders knew that the two men and three women would postpone dinner and be in a hotel room until he arrived at 10:00 p.m. on a Saturday night.

<i>Mr. Heinz?</i>	<i>Guilty</i>
<i>Mr. Helms?</i>	<i>Guilty</i>
<i>Mr. Hollings?</i>	<i>Guilty</i>
<i>Mr. Humphrey?</i>	<i>Guilty</i>
<i>Mr. Inouye?</i>	<i>Guilty</i>

Borders and undercover agent Rico had agreed that Hastings would appear at the main dining room of the Fontainebleau Hotel at 8:00 p.m. on September 16 as a signal that the Judge was part of the scheme. The FBI blanketed the hotel with agents in order to keep Hastings under surveillance. At 7:45 p.m. on September 16, he arrived in the company of a woman named Essie Thompson. Hastings had invited Ms. Thompson the previous night. He made no mention to her of meeting anyone at dinner, nor did he indicate where they would dine. During the twenty-five minute drive to the hotel, Hastings did not mention Borders or anyone else joining them. According to Thompson, the Judge greeted the hostess, stated there were reservations for Hastings, and they then proceeded to a table. Hastings later testified that he expected to meet Borders at the restaurant and that he so informed the maitre d'. Ms. Thompson testified she had no recollection of Hastings making such a statement.

Hastings' explanation that he was at the hotel to meet Borders has some distinct weaknesses. At the hotel Hastings did not act as if he were expecting Borders. The maitre d' seated them at a table for four and removed two place settings without protest by Hastings. When asked during the Senate trial why he had only made reservations for two persons, Hastings replied "that's all I was going to pay for." After about fifteen minutes, Hastings left the table and walked from the main dining room into the lobby. He looked into a lounge off the lobby and then returned to the dinner table. He did not page Borders nor did he look for him in other restaurants located in the hotel. Prosecutors claimed Hastings walked around to be certain he was seen.

When Hastings entered the Fontainebleau Hotel, Borders was not within a thousand miles of Miami. For weeks he had been planning to attend the championship fight between Tommy Hearns and Sugar Ray Leonard, scheduled in Las Vegas on September 16, 1981. Borders took a female friend, Madeline Petty, with him to the fight as a birthday present to her. Airplane tickets had been purchased two weeks before the fight. These plans were not secret. Borders was known as an avid fight fan who regularly attended championship matches. Several people, including Dredge, the undercover agent Rico, and Hemphill Pride, knew Borders planned to go to the fight. If Borders was manipulating an unsuspecting Hastings by arranging a meeting in Florida without intending to show up, he had chosen a risky occasion, when Hastings could easily have discovered that Borders had planned for weeks to be nowhere near Miami.

Borders and Petty flew to Las Vegas from Washington National Airport on September 15 and did not return until Friday, September 18. When they arrived at National Airport, they parted company. Petty went home.

Borders took a 9:20 p.m. flight to Miami in order to make his scheduled meeting with the undercover agent the following morning to get his "upfront" payment. There is no evidence that anyone told Borders that Hastings had shown up at the Fontainebleau dining room on the 16th as promised. Nevertheless, Borders proceeded to Miami on the night of the 18th with apparent confidence that the sign had been given and that the upfront payment would be forthcoming.

<i>Mr. Johnston?</i>	<i>Guilty</i>
<i>Ms. Kassebaum?</i>	<i>Guilty</i>
<i>Mr. Kasten?</i>	<i>Guilty</i>
<i>Mr. Kennedy?</i>	<i>Guilty</i>
<i>Mr. Kerrey?</i>	<i>Guilty</i>
<i>Mr. Kerry?</i>	<i>Guilty</i>

On Saturday morning, September 19, 1981, Borders met at the Miami Airport with the undercover agent for the second time. Rico, still impersonating Frank Romano, was again wearing a recording device. After some banter about the fight, Rico stated "you did what you said you'd do." Borders acknowledged this statement and Rico replied, "Your man arrived and in fact he arrived a little early and, ah, you said you could do that and that's, ah, your end of the situation."

Borders got directly to the point. He asked "What's it in?" Rico replied "it" was in an envelope. He said he would put the envelope in a newspaper and give it to Borders.

Rico then stated, "Before we go any further, the last time we talked my understanding was that, ah, some property was going to be released." Borders replied that the property would be released within ten days. Borders then told Rico to file a motion for mitigation of sentence. "Just tell him [the attorney] you're tired of this appeal. Just see if the man will reduce the sentence."

Rico then left Borders to get the \$25,000 in cash which was stored in a locker. When Rico returned, he placed on the arm of a sofa a newspaper containing the envelope with the money. Borders picked up the newspaper and told Rico that the money would cover a sentence reduction for both Romanos. The two men then discussed when the balance of the bribe would be paid. Borders suggested it be paid when the order was entered returning the forfeited property. Rico proposed a second installment payment and then payment in full when the sentences were reduced. Borders objected and said this was not the deal. He again proposed that Dredge hold the money in escrow. Rico rejected that idea. They finally

agreed that the remaining \$125,000 would be paid on Saturday, October 3, 1981, after Judge Hastings issued the order. Borders then took an 11:00 a.m. flight back to Washington.

<i>Mr. Kohl?</i>	<i>Guilty</i>
<i>Mr. Lautenberg?</i>	<i>Guilty</i>
<i>Mr. Leahy?</i>	<i>Not Guilty</i>
<i>Mr. Levin?</i>	<i>Not Guilty</i>
<i>Mr. Lieberman?</i>	<i>Not Guilty</i>

The undercover agent and Borders had no further contact between September 19 and October 2, 1981. No order returning property to the Romanos was issued within ten days of September 19. The FBI obtained a court approved wiretap on Borders' business and residential phones. On Friday, October 2, Rico placed four calls to Borders' office. Borders was out of the office each time, but finally arranged to have a call patched through to him at another office. At 3:11 p.m., Rico spoke to Borders and expressed concern that nothing had happened regarding the order. Borders replied, "I think it has . . . I'll check into it." Borders suggested that the meeting scheduled for October 3 be postponed. Rico asked Borders if he knew what had gone wrong. Borders replied, "It's supposed to, ah, been done . . . the only thing I can say is a lack of communication in terms of through the mail." Borders promised he would look into the matter and told Rico to call him at home on Sunday morning.

At 4:50 that Friday afternoon, Borders' secretary phoned Judge Hastings' chambers and asked if he was available. She was told that he had left for the day. On Sunday morning, Rico called Borders as agreed and asked about the order. Borders explained, "I have not, ah, gotten an answer, 'cause I haven't been able to talk to anybody." Borders asked Rico to call again Monday afternoon.

On October 4, according to Judge Hastings' mother, Borders placed a telephone call to Hastings' home number. She testified that Hastings was not there, but she advised him of the call. There is no documented contact between Hastings and Borders on Sunday, October 4, but on Monday morning, October 5, Hastings told his law clerk, Jeffrey Miller, to do the Romano order returning a substantial amount of the forfeited property. According to Miller, Hastings specifically said, "I want the order today." Miller testified that it was unusual for the Judge to make such a request. Another law clerk who observed the conversation between Hastings and Miller stated that the Judge seemed disturbed that Miller had not completed the order. The Judge's directive was sufficiently strong that Miller left the

office and returned home, about a forty-five minute drive from the office, because the necessary papers were in his apartment. He worked on the order overnight and brought it to the office the next day to be typed.

Marilyn Carter, the Judge's deputy courtroom clerk, recalled that Tuesday evening, the 6th, Hastings stated that he was "sorry for the rush, but the order has to go out today." The order was signed by Hastings on October 6 and was mailed special delivery that evening.

In the meantime, Rico called Borders at 4:23 p.m. on Monday, October 5. Rico said he was anxious about the order. Borders said, "Okay, I understand. Look, I checked on that matter . . . and it wasn't in the mails. It was, it hadn't gone out yet . . . but that's been taken care of." Rico asked whether the order had gone out "today, then, probably." Borders replied, "It was probably today or first thing in the morning . . . I wanna give it a little time."

At 5:12 p.m. on October 5, 1981, Hastings placed a call to Borders' office. The following conversation took place between Hastings and Borders:

Borders:	Yes, my brother.
Hastings:	Hey, my man.
Borders:	Um hum.
Hastings:	I've drafted all those, ah, ah, letters, ah, for Hemp.
Borders:	Um hum.
Hastings:	[A]nd everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?
Borders:	Yea.
Hastings:	Oh. Okay.
Borders:	Uh huh.
Hastings:	All right, then.
Borders:	See, I had, I talked to him and he, he wrote some things down for me.
Hastings:	I understand.
Borders:	And then I was supposed to go back and get some more things.
Hastings:	All right. I understand. Well, then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with

	him. I'll send the stuff off to Colombia in the morning.
Borders:	Okay.
Hastings:	Okay.
Borders:	Right.
Hastings:	Bye bye.
Borders:	Bye.

At his criminal trial, Judge Hastings claimed that this was an innocent conversation with Borders in which they were discussing some letters Hastings was drafting to help their mutual friend, Hemphill Pride. The prosecution argued that this was a coded conversation between Borders and Hastings concerning the bribery scheme. The Judicial Investigating Committee reached the same conclusion.

On its face the conversation makes no sense. Hastings initiates a call. He tells Borders he has drafted letters for Hemp and wants to know if Borders heard from Hemp since Hastings and Borders talked. Borders replies he had talked to Hemp and Hemp wrote some things down for Borders. There is no indication what these "things" are, nor does the fact that Hemp "wrote things down" for Borders seem responsive to Hastings' inquiry. Hastings nevertheless replies "I understand." Borders then goes on to state that he was supposed to go back and "get some more things." Since Borders still has not identified what these "things" are, it is hard to understand why he was to go back and get some more of them. Nevertheless, the exchange is clear to Hastings. He again replies "I understand" and goes on to elaborate that, in view of what he has heard from Borders, "there's no great big problem at all." This is the first time anyone has suggested the existence of any "problem" and it is difficult to see how Borders' information has solved the problem, since Borders is still waiting for more "things." Nevertheless, Hastings states he will send the "stuff off to Colombia."

Evidence external to the conversation supports the conclusion that this conversation was not about letters for Hemphill Pride. Pride testified that he never asked for any letters on his behalf, had no knowledge of them, and would have regarded any such letters as meddling in his affairs. Pride says he never wrote anything down for Borders and was not supposed to get anything for Borders thereafter. Pride utterly disavowed whatever it was that Hastings and Borders were up to.

A linguist who analyzed the conversation at the request of the House also concluded that it was a code, although he was not in a position to say what in fact the conversation was about. The House investigators concluded

that the interpretation which most readily comports with the facts is that Hastings, who was about to sign the order, wanted to check with Borders to be certain that the Romano deal was still in place, even though the order was late. Accordingly, Hastings initiated the call to let Borders know that he had “drafted all those, ah, ah, letters, ah, for Hemp” (The order is drafted.), but he wanted to know “did you hear if, ah, you hear from him after we talked.” (Have you talked to Romano and is the deal still on?). Borders replies that he “talked to him and he, he wrote some things down for me.” (I have spoken to Romano. He gave me the downpayment.) Hastings acknowledges that he understands what Borders is saying and then Borders continues, “I was supposed to go back and get some more things.” (I was supposed to get the rest of the money.) Hastings replies again that he understands what Borders is saying and reassures Borders that “there’s no great big problem at all. I’ll send the stuff off to Colombia in the morning.” (The order will go out tomorrow morning.)

Rico called Borders at midday on October 7 to inquire about the status of the order. This time Borders stated, “It went out yesterday morning.” This assertion is consistent with Borders’ October 5 conversation with Hastings in which the Judge said he would “send the stuff off to Colombia in the morning.” The order was delivered on the 7th and Rico called Borders to advise him he had received the order and to arrange to make the final payment of \$125,000. They agreed that Rico would come to Washington and call Borders to arrange to make the payoff.

<i>Mr. Lugar?</i>	<i>Guilty</i>
<i>Mr. Matsunaga?</i>	<i>Guilty</i>
<i>Mr. McCain?</i>	<i>Guilty</i>
<i>Mr. McClure?</i>	<i>Guilty</i>
<i>Mr. McConnell?</i>	<i>Guilty</i>
<i>Mr. Metzenbaum?</i>	<i>Not Guilty</i>
<i>Ms. Mikulski?</i>	<i>Not Guilty</i>

The National Bar Association was holding a testimonial dinner on October 9, 1981, to honor William Borders for his service as a past president of the organization. One of the persons sponsoring the dinner was Judge Hastings. By prearrangement, Borders picked Hastings up at the airport the morning of October 9. After going to the L’Enfant Plaza Hotel to register and to contact Hemphill Pride, Borders and Hastings made several stops before arriving at Borders’ law office where a message was waiting for Borders to call “Frank” at the Twin Bridges Marriott Hotel. It was, of course, the undercover agent prepared to turn over the rest of the

money. Borders returned the call and arranged to meet "Frank" at the hotel in an hour.

The FBI assumed Borders would meet with the undercover agent in the hotel room. Cameras and microphones were strategically hidden in the room to record and film what transpired. Borders, however, refused to enter the room. He told "Frank" to "get it" because he wanted to take a ride. Borders and the agent got into Borders' car with a bag containing \$125,000 in \$100 dollar bills on the floor between them. As they started to leave the parking lot, the FBI pulled them over and arrested Borders. Rico was wearing a body recorder and Borders can be heard stating calmly, "We're busted," as sirens begin to wail in the background.

The FBI has been severely criticized for not "letting the money run" to see if Borders gave part of the money to Hastings. Hastings charged that the reason the FBI did not let the money run was that the FBI knew he was innocent and that the money was never intended for him.

A review of FBI files shows that the Bureau's scenario for the payoff never contemplated that Borders would be permitted to leave the hotel with the money. The agents planned to confront Borders with overwhelming evidence of his guilt, including the money and the tape recordings of his conversations with the undercover agent, in the hope that Borders would roll over and cooperate in order to gain lenient treatment. If Borders agreed to cooperate, the plan was to have him contact Hastings and to arrange a pass of the money under controlled circumstances.

The FBI underestimated Borders. After being confronted with the evidence, he asked for his lawyer and then refused to talk. Indeed, before the Hastings impeachment was completed, Borders, rather than testify, went to jail for contempt on two separate occasions.

At approximately 3:00 p.m. on October 9, 1981, Judge Alcee Hastings learned that his friend, William Borders, had been arrested. He was told that the charge was conspiracy to commit bribery in connection with a case connected with Judge Hastings. Hastings also learned that the FBI wanted to interview him and he was given the names and telephone numbers of the agents to contact.

Hastings was at the L'Enfant Plaza Hotel in Washington, D.C. when he heard the news of Borders' arrest. His reaction was to leave Washington immediately and return to Florida, thereby avoiding the FBI. He quickly packed a bag and left the hotel without checking out, leaving behind a suit he had sent to the hotel's valet service. The suit was retrieved by the FBI several days later.

Hemphill Pride was also staying at the L'Enfant Plaza. He offered Hastings a ride to the airport. Pride assumed that Hastings was heading for



National Airport, located about four miles and a ten-minute drive from the hotel. Hastings declined the offer and left Pride standing in the lobby. Outside the hotel, Hastings took a cab to Baltimore-Washington International Airport located thirty five miles away. The ride took an hour and cost \$50.00. Hastings did not check the flights at either airport. Had he done so, he would have learned there was a 4:30 p.m. direct flight to Miami from National Airport with fourteen seats available.

Once at the BWI Airport, Hastings engaged in a series of phone calls to Florida. At 4:37 p.m. he called his home and spoke for about four minutes. He then placed a second call to his home and spoke for about two minutes. It is likely that he spoke to his mother, with whom he shared the house. About twenty minutes later, Hastings placed a collect call from a second pay phone at the airport to the home of his girlfriend, Patricia Williams. The call lasted a minute or less. Hastings told Williams to call him back at a third pay phone, which she did. He then told her to go to a pay phone and call him again at the same number. About fifteen minutes later, she called Hastings from a pay phone located in a shopping mall near her home. This call lasted a minute or less. Hastings then called her at the mall pay phone from a fourth pay phone at the BWI Airport. This call lasted about four minutes.

Within a few minutes after his last conversation with Williams, Hastings made a reservation on a Delta Airlines flight to Miami departing at 6:30 p.m., with an intermediate stop at Fort Lauderdale. Hastings' airline ticket was altered at the departure gate by a handwritten notation crossing out Fort Lauderdale as his destination and substituting Miami. In fact, Hastings got off the plane in Fort Lauderdale. He then had to rent a car because his own automobile was in the parking lot at the Miami airport where he had left it to fly north.

A search for Hastings was initiated in Florida when the FBI could not locate him in Washington. At no time did Hastings contact the FBI. Hastings later testified at his criminal trial that upon arriving in Fort Lauderdale he first drove home and looked in on his mother. However, when FBI agents visited his home that night trying to locate Hastings, his mother said he had not been there, nor had she heard from him. It is certain that Hastings went to Patricia Williams' house. Around midnight, two FBI agents who were assigned to find and interview Hastings went to Williams' house on the chance he was there. When the agents appeared, Hastings agreed to be interviewed.

Hastings acknowledged that Borders had been a personal friend for many years and that he had been in Washington to attend a testimonial dinner in Borders' honor. He related that Borders had picked him up at the

airport, and that he had gone to Borders' law office. Borders had left the office and Hastings had gone to his hotel by taxi. According to Hastings, he had a conversation with Hemphill Pride at the hotel and had then taken a nap. He soon received a call from Pride who said Borders had been arrested and that it somehow involved Hastings. Hastings decided to return to Florida immediately because he felt he could defend himself better on his own turf. Hastings described Borders as a clandestine, cryptic individual, and he denied any involvement in a bribery scheme.

At his criminal trial, Hastings testified that he was motivated to return to Florida because he had called his mother from his hotel room in Washington, had found her hysterical, and had been asked by her to come home. The computer-generated record of long distance telephone calls from Judge Hastings' hotel room does not reflect any such call from him to his mother's home.

On December 29, 1981, a grand jury sitting in Miami returned an indictment charging Hastings and Borders with conspiracy and obstruction of justice. Borders was also charged with two counts of interstate travel to facilitate the conspiracy. The Judge and Borders were tried separately because Hastings challenged the government's right to indict a sitting federal judge. He claimed that he had to be impeached and removed from office before he could be charged. Although Hastings lost this argument, it had the effect of severing his case from Borders' case and delaying his trial for nearly a year.

After his indictment, Hastings was represented at various times by a battery of lawyers, several of whom were veterans of the criminal defense bar. Throughout the pretrial proceedings, however, Hastings declined to identify who his trial counsel would be. On the eve of trial, Hastings announced that he would be represented by Patricia Williams, who was then also his fiancée. In addition, Hastings intended to act as his own counsel. Williams had little or no prior criminal trial experience and in representing himself, Hastings was violating the most hoary of legal maxims: The lawyer who represents himself has a fool for a client. Why would Hastings do such a thing? To those who studied the trial, including the Judicial Investigating Committee, the lack of objective and detached trial counsel participating in Hastings' representation meant that the propriety of Hastings' tactics at trial were not subject to appropriate scrutiny.<sup>4</sup>

Hastings is a formidable witness. He is quick, articulate, even charming, and he knew every facet of his case down to the smallest details.

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4. REPORT, *supra* note 2, at 356-58.

At his criminal trial, his bravura performance was sufficient to convince the jury to acquit. Both the Judicial Investigating Committee and the House investigators concluded, however, that Hastings had lied repeatedly at his trial.<sup>5</sup>

At his criminal trial, and at his trial before the Senate, Hastings was faced with various incriminating facts which called for explanations. He did not shrink from providing them:

- Borders was “rainmaking,” trading on Hastings’ name without the Judge’s knowledge. Hastings had nothing to do with the scheme.

- He went to the Fontainebleau Hotel on September 16 because he was supposed to meet Borders.

- He told his law clerk to complete the Romano forfeiture order on October 5 only because the law clerk was leaving at the end of October and Hastings wanted this matter completed before the clerk left.

- The telephone conversation with Borders on October 5, 1981, was in fact about letters for Hemphill Pride. At his criminal trial, Hastings even produced handwritten drafts of letters for Pride which he claimed to have written on October 5 while sitting on the bench during a jury trial. These drafts, however, did not surface in the proceedings until a month before his criminal trial and over a year after they were allegedly written. Indeed, Senator Specter during the Senate impeachment trial noted that the six pages of handwritten text were remarkable because they contained no corrections, scratch-outs, or erasures despite the fact that they were allegedly written while Hastings was on the bench, presiding at a trial.

- Hastings explained that he went to BWI Airport instead of National Airport on October 9, not to avoid the FBI, but because he thought there were no non-stop flights to Miami from National Airport. It seems clear, however, that for some period of time Hastings acted in a manner consistent with a determined effort to avoid the FBI. The reason is obvious if one accepts the conclusion that Hastings participated in the bribery scheme. When Hastings learned that Borders was arrested, he would be desperate to find out what Borders had told the authorities. Had Borders remained silent? Had he implicated Hastings? Hastings would not want to confront the authorities until he knew the answers to those questions. The cab ride to BWI and the elaborate use of pay phones at the airport may have been intended to buy time and obtain this information before Hastings faced the FBI.

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5. COMMITTEE ON THE JUDICIARY, IMPEACHMENT OF JUDGE ALCEE HASTINGS, REP. NO. 810, 100th Cong., 2d Sess. 30-31 (1988).

◦ Hastings gave various explanations at his criminal trial concerning his intricate maneuvers with pay phones from the airport. On direct examination he said a baby was crying nearby which led him to move to another phone. On cross-examination he said he thought a possible government agent was “breathing down my whole existence.”

<i>Mr. Mitchell?</i>	<i>Guilty</i>
<i>Mr. Moynihan?</i>	<i>Not Guilty</i>
<i>Mr. Murkowski?</i>	<i>Guilty</i>
<i>Mr. Nickles?</i>	<i>Guilty</i>
<i>Mr. Nunn?</i>	<i>Guilty</i>
<i>Mr. Packwood?</i>	<i>Not Guilty</i>
<i>Mr. Pell?</i>	<i>Guilty</i>
<i>Mr. Pressler?</i>	<i>Guilty</i>
<i>Mr. Pryor?</i>	<i>Not Guilty</i>
<i>Mr. Reid?</i>	<i>Guilty</i>
<i>Mr. Riegle?</i>	<i>Guilty</i>

In retrospect there are several nagging questions which are certain to puzzle legal scholars and historians who study the Hastings case.

The most perplexing factual question is why, if Hastings participated in the scheme, he failed to issue the order reducing the forfeiture within ten days of September 19, as Borders had promised. The order did not go out until October 6, a week later. Surely, Hastings could have ordered his law clerk to finish the memorandum so that the schedule would have been met. The simple explanation, which is not wholly satisfactory, is that Borders and Hastings were careless and simply made an error.

This explanation is hard to accept when one considers that \$125,000 was at risk. On the other hand, it may well be that Hastings had no economic expectations arising from the deal. Senator Slade Gorton of Washington State issued a statement after the Senate vote suggesting that perhaps Hastings was helping Borders out without intending to take any money himself. Hastings may have been obligated to Borders for Hastings' appointment to the federal bench. Borders had substantial influence in such matters within the Carter administration. If Hastings had no personal economic stake in the scheme, it may explain his nonchalance in failing to issue the order by a certain date. The fact remains, however, that Hastings' failure to issue the order on time is the single most persuasive fact in support of his innocence.

<i>Mr. Robb?</i>	<i>Guilty</i>
<i>Mr. Rockefeller?</i>	<i>Guilty</i>

<i>Mr. Roth?</i>	<i>Guilty</i>
<i>Mr. Rudman?</i>	<i>Guilty</i>
<i>Mr. Sanford?</i>	<i>Not Guilty</i>

Also puzzling are certain tactical decisions on the part of Hastings and his counsel. Hastings took the stand and testified at his criminal trial. The jury acquitted. He declined to testify at the proceedings before the Judicial Investigating Committee, claiming the proceedings were unconstitutional.

Hastings' next opportunity to testify was before the Subcommittee on Criminal Justice which was investigating the matter. John Conyers, the black Congressman from Detroit who had openly expressed concern that Hastings was being pursued for racial reasons, chaired the hearings. In an effort to avoid even the appearance of unfairness, Conyers afforded Hastings extraordinary courtesies during the hearings. At times Conyers extended these courtesies over the strong opposition of fellow subcommittee members. On the first day of the hearings, for example, Conyers allowed Hastings to make an opening statement without being subject to any questioning. Hastings used it as an opportunity to attack the proceedings and grab a headline that he was "Not guilty but not free." After all the witnesses had been heard, Hastings was given an opportunity to testify on his own behalf. This time he would have been subject to cross-examination. Everyone expected Hastings to take the stand. Instead, Hastings announced that on the advice of counsel, he declined to testify.

It is hard to see this as anything other than a major tactical blunder. This opportunity to testify was Hastings' best chance to stop the impeachment process in its tracks. He had a sympathetic black Chairman in charge of the proceedings. At least one other member of the Subcommittee, Don Edwards of California, would be likely to support Conyers if he voted against impeachment. One thing was clear to anyone in touch with the political reality of the proceedings—unless Conyers supported the impeachment and, indeed, unless there was unanimity on the articles of impeachment, the matter was dead. Had Hastings testified, it does not follow that he would have avoided impeachment, but his failure to testify left the charges unanswered. It was a self-inflicted wound which left observers baffled.

This failure to recognize the value of using Hastings as a witness also occurred in the Senate. The Senate Rules Committee held a hearing in advance of the trial to consider various procedural matters, including Hastings' plea that he needed funds for his defense. The Rules Committee includes some of the most influential members of the Senate. Nearly every Committee member attended the hearing. The hearing room and the halls

outside were packed with hundreds of Hastings' supporters. Because the proceedings did not deal with the facts of his case, it was a perfect opportunity for Hastings, at no risk to himself, to make a favorable impression on men who would serve as jurors at his trial.

Incredibly, Hastings never opened his mouth. Hastings and his counsel elected instead to show an inane video tape of a local Miami talk show, recorded several months earlier, in which a juror from Hastings' criminal trial gave her thoughts on the trial and the impeachment. Hastings' counsel then launched into a long speech which had a series of paragraphs each beginning with the rhetorical refrain, "my children, your children, our fellow citizens, you and I . . ." which preached to the Senators about their constitutional obligations. Hastings' failure to speak directly to the Senators, particularly about a subject as appealing as his need for funds to defend himself, deprived him of a chance to create some rapport and gain the sympathy of an important segment of the jury. His counsel simultaneously managed to alienate Senators who did not take kindly to being lectured before a large audience about constitutional obligations of which they were well aware. Veteran trial lawyers who observed the proceedings simply shook their heads in disbelief. It is impossible to say what effect that strategy had on the final Senate vote, but clearly Hastings missed an opportunity which could only have helped him. Perhaps it is mere coincidence, but of the sixteen members of the Senate Rules Committee, thirteen voted to convict.

<i>Mr. Sarbanes?</i>	<i>Guilty</i>
<i>Mr. Sasser?</i>	<i>Not Guilty</i>
<i>Mr. Shelby?</i>	<i>Not Guilty</i>
<i>Mr. Simon?</i>	<i>Guilty</i>

From the outset, the central legal issue in the Hastings case was whether an impeachment trial after an acquittal by a jury constituted double jeopardy under the Constitution. When the House began its inquiry, the first order of business was to resolve this issue. The House concluded that principles of double jeopardy simply do not apply to impeachment. The issue turned on whether an impeachment trial is a criminal proceeding. The legal and historic precedent was overwhelmingly in favor of the proposition that impeachment in this country is remedial, rather than criminal, in nature. Its purpose is not to punish for misbehavior, but rather to remove someone from office who is deemed unfit to hold a position of public trust. If one were to accept the argument that an impeachment trial was a criminal proceeding, it would be unconstitutional to impeach a public official even

had he been convicted in a prior criminal trial. The prohibition against double jeopardy prevents a second criminal proceeding, without regard to the outcome of the first trial. This result is simply untenable.

It is true that some of the constitutional language relating to impeachment, such as "conviction" and "high crimes and misdemeanors," smacks of the criminal process. This inference stems from the fact that to some extent the Framers relied on the English impeachment model which was truly a criminal proceeding. The House was satisfied that by limiting the persons subject to impeachment to certain officeholders, and by limiting the sanction to removal from office, the Framers had changed the very nature of the process.

Hastings brought the issue before the Senate through a motion to dismiss those articles of impeachment which were related to the facts presented at his criminal trial on double jeopardy grounds. The full Senate heard arguments from both sides for two hours. The vote was against Hastings' position ninety-two to one, with Senator Howard Metzenbaum of Ohio being the lone holdout.

That vote did not entirely resolve the issue. Even if technical principles of double jeopardy were inapplicable, it is clear that the acquittal had a substantial impact on the vote. Several Senators who filed statements explaining their vote stated that while they rejected the idea that double jeopardy applied to an impeachment trial and believed that the Senate had to make an independent determination, they felt that the acquittal had to be given weight. Senator Arlen Specter of Pennsylvania, for example, concluded that the jury verdict required the House to prove its case in the Senate "beyond a reasonable doubt," the standard normally applied in criminal cases. For Senator Lieberman, on the other hand, the jury acquittal had no impact on what he regarded as the appropriate standard of proof—"clear and convincing evidence"—a middle ground between the criminal law standard and the civil standard of "preponderance of the evidence." Lieberman essentially discounted the jury verdict. It was not a finding that Hastings was innocent; it merely established that the jury had a reasonable doubt as to Hastings' complicity. Lieberman was probably the exception. It is likely that many Senators felt that the jury acquittal weighed heavily in the balance.

With the tally sixty-three guilty, twenty-four not guilty, it was now Senator Simpson's turn to cast his vote. Simpson voted guilty, and Alcee Hastings was convicted under the first article of impeachment. Hastings reached over and patted his counsel on the arm. Then he quietly wept. The final tally of sixty-nine guilty, twenty-six not guilty was enough to convict even had all one hundred Senators voted.

<i>Mr. Simpson?</i>	<i>Guilty</i>
<i>Mr. Specter?</i>	<i>Not Guilty</i>
<i>Mr. Stevens?</i>	<i>Guilty</i>
<i>Mr. Symms?</i>	<i>Guilty</i>
<i>Mr. Thurmond?</i>	<i>Guilty</i>
<i>Mr. Wallop?</i>	<i>Guilty</i>
<i>Mr. Warner?</i>	<i>Guilty</i>
<i>Mr. Wirth?</i>	<i>Not Guilty</i>

Senator Byrd announced the guilty verdict on Article One and began the process of voting on Article Two, which charged that Hastings had lied when he testified that he did not conspire with Borders to take a bribe. In light of the vote on Article One, the result of the second vote was inevitable. After Hastings had been found guilty a second time, Majority Leader George Mitchell, moved by compassion for Hastings, asked for the unanimous consent of the Senate to permit Hastings and his counsel to be excused for the remainder of the votes. Accompanied by counsel, Hastings immediately left the Senate chamber. Hastings was ultimately convicted on eight of the articles and found not guilty on three articles. The Senate did not vote on articles ten through fifteen.

One could almost have predicted that, despite his impeachment, Alcee Hastings would land on his feet. After a fiercely fought election, he is now a Congressman from South Florida, a member of the very body which impeached him as a judge. Some have observed that his charm and street smarts probably make him more suited for the political arena than the bench.

Patricia Williams, Hastings' companion and counsel at the criminal trial, has been disbarred for misuse of client funds and lying to a judicial grievance committee in matters unrelated to Hastings.<sup>6</sup> She has since joined Hastings in his Washington office as staff liaison/scheduler.

William Borders was sentenced to four concurrent five-year prison terms as a result of his convictions for conspiracy, corruptly impeding the administration of justice, and two counts of unlawful travel in interstate commerce with intent to commit bribery. He began serving his term on May 25, 1983. He was released to a halfway house on December 10, 1985, and returned to the community in February 1986. Borders was disbarred as a result of his conviction. He has sought reinstatement to the bar of the District of Columbia. To date, readmission has been denied.

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6. Florida Bar v. Williams, 604 So. 2d 447 (Fla. 1992).



## BIBLIOGRAPHY

This is a select bibliography of books, law review articles, and congressional materials on the impeachment process as applied to federal judges.<sup>7</sup>

A. *Books*

RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1973).

CHARLES L. BLACK, JR., *IMPEACHMENT: A HANDBOOK* (1974).

JOHN R. LABOVITZ, *PRESIDENTIAL IMPEACHMENT* (1978).

WILLIAM H. REHNQUIST, *GRAND INQUESTS, THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* (1992).

B. *Law Review and Journal Articles*

Charles-Edward Anderson, *A Tale of Two Judges, Impeachment and the Federal Bench*, A.B.A. J., Jan. 1990, at 86.

Jack Brooks et al., *Justice for Judges, and the 'National Inquest'*, LEGAL TIMES, May 6, 1991, at 28.

Eleanore Bushnell, *Judge Harry E. Claiborne and the Federal Impeachment Process*, 32 NEV. HIST. SOC. Q. 235 (1989).

Committee on Fed. Legis., Ass'n of the Bar of the City of New York, *Precis of Report on the Removal of Federal Judges Other than by Impeachment*, RECORD ASS'N B. CITY N.Y., Jan./Feb. 1977, at 239.

Harry T. Edwards, *Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges*, 87 MICH. L. REV. 765 (1989).

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7. The following bibliography is based upon a memorandum entitled "Selected Recent Articles and Congressional Materials on the Impeachment Process as it Applies to Federal Judges and on Judicial Discipline." See Memorandum of Elizabeth B. Bazan, Legislative Attorney, Congressional Research Service (Jan. 24, 1992) (on file with the author).

Michael J. Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 TEX. L. REV. 1 (1989).

Warren S. Grimes, *Hundred-Ton-Gun Control: Preserving Impeachment as the Exclusive Removal Mechanism for Federal Judges*, 38 UCLA L. REV. 1209 (1991).

*Impeaching Federal Judges: Where Are We and Where Are We Going*, 72 JUDICATURE 359 (1988).

Karen A. Kalmanir, *Trial by Senate: Identifying Evidentiary Principles in Impeachment Proceedings*, 37 FED. B. NEWS & J. 289 (1990).

NATIONAL BAR ASS'N & HOWARD UNIV. LAW SCH. RESEARCH GROUP, IN DEFENSE OF JUDGE ALCEE L. HASTINGS AND IN CONDEMNATION OF THE UNCONSTITUTIONAL PROVISIONS OF THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980 (1986).

*Symposium on Judicial Discipline and Impeachment*, 76 KY. L.J. 633 (1988).

William H. Rehnquist, *The Impeachment Clause: A Wild Card in the Constitution*, 85 NW. U. L. REV. 903 (1991).

William G. Ross, *The Hazards of Proposals to Limit the Tenure of Federal Judges and to Permit Judicial Removal Without Impeachment*, 35 VILL. L. REV. 1063 (1990).

Daniel Luchsinger, Note, *Committee Impeachment Trials: The Best Solution*, 80 GEO. L.J. 163 (1991).

Melissa M. Maxman, Note, *In Defense of the Constitution's Judicial Impeachment Standard*, 86 MICH. L. REV. 420 (1987).

### C. Congressional Hearings, Reports, and Documents

*Impeachment of Article III Judges: Hearing Before the Subcomm. on the Constitution of the Comm. on the Judiciary of the United States Senate on Joint Resolutions Proposing Amendments to the Constitution of the United States with Respect to the Impeachment of Article III Judges*, 101st Cong., 2d Sess. (1990).

*In the Matter of the Impeachment Inquiry Concerning U.S. District Judge Alcee L. Hastings: Hearings Before the Subcomm. on Criminal Justice of the Comm. on the Judiciary of the House of Representatives, 100th Cong., 1st & 2d Sess. (1987-1989).*

*Judicial Independence: Discipline and Conduct: Hearings Before Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the Comm. on the Judiciary of the House of Representatives on H.R. 1620, H.R. 1930, and H.R. 2181, 101st Cong., 1st Sess. (1989).*

*Judge Walter L. Nixon, Jr., Impeachment Inquiry: Hearing on H. Res. 87, Before the Subcomm. on Civil and Constitutional Rights, Impeaching Walter L. Nixon, Jr., of the United States District Court for the Southern District of Mississippi, for High Crimes and Misdemeanors, 101st Cong., 1st Sess. (1989).*

*Judge Walter L. Nixon, Jr., Impeachment Inquiry: Hearings on H. Res. 407 Before the Subcomm. on Civil and Constitutional Rights, Impeaching Walter L. Nixon, Jr., Judge of the United States District Court for the Southern District of Mississippi, for High Crimes and Misdemeanors, 100th Cong., 2d Sess. (1989).*

*Report of the Senate Impeachment Trial Comm. on the Articles Against Judge Walter L. Nixon, Jr.: Hearings before the Senate Impeachment Trial Comm. of the United States Senate, 101st Cong., 1st Sess. (1989).*

*Report of the Senate Impeachment Trial Comm. on the Articles Against Judge Alcee L. Hastings: Hearings Before the Senate Impeachment Trial Comm. of the United States Senate, 101st Cong., 1st Sess. (1989).*

IMPEACHMENT OF WALTER L. NIXON, JR., REPORT TO ACCOMPANY H. RES. 87, H. REP. NO. 36, 101st Cong., 1st Sess. (1989).

PROCEDURE FOR THE IMPEACHMENT TRIAL OF U.S. DISTRICT JUDGE ALCEE L. HASTINGS IN THE UNITED STATES SENATE, REPORT TO ACCOMPANY S. RES. 38 AND S. RES. 39, S. REP. NO. 1, 101st Cong., 1st Sess. (1989).

PROVIDING AMOUNTS FROM THE CONTINGENT FUND OF THE HOUSE FOR FURTHER EXPENSES OF INVESTIGATIONS AND STUDIES BY THE COMM. ON THE JUDICIARY IN THE FIRST SESSION OF THE ONE HUNDRED FIRST

CONGRESS, REPORT TO ACCOMPANY H. RES. 201, H. REP. NO. 184, 101st Cong., 1st Sess. (1989).

REFUSAL OF WILLIAM A. BORDERS, JR., TO TESTIFY BEFORE THE IMPEACHMENT TRIAL COMM. ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS, REPORT TO ACCOMPANY S. RES. 162, S. REP. NO. 98, 101st Cong., 1st Sess. (1989).

REPORT OF THE IMPEACHMENT TRIAL COMM. ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS, S. REP. NO. 156, 101st Cong., 1st Sess. (1989).

REPORT OF THE IMPEACHMENT TRIAL COMM. ON THE ARTICLES AGAINST JUDGE WALTER L. NIXON, JR., S. REP. NO. 164, 101st Cong., 1st Sess. (1989).

AMENDING THE RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS; REPORT TO ACCOMPANY S. RES. 479, S. REP. NO. 401, 99th Cong., 2d Sess. (1986).

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS, REPORT TO ACCOMPANY H. RES. 499, H. REP. NO. 810, 100th Cong., 2d Sess. (1988).

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS, MOTIONS OF JUDGE ALCEE L. HASTINGS TO DISMISS ARTICLES I-XV AND XVII OF THE ARTICLES AGAINST HIM AND SUPPORTING AND OPPOSING MEMORANDA, S. DOC. NO. 4, 101st Cong., 1st Sess. (1989).

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS, CONSTITUTIONAL AND STATUTORY PROVISIONS; RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS; ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS; JUDGE HASTINGS' ANSWER, AND REPLICATION OF THE HOUSE OF REPRESENTATIVES, S. DOC. NO. 3, 101st Cong., 1st Sess. (1989).

IMPEACHMENT OF JUDGE WALTER L. NIXON, JR., CONSTITUTIONAL PROVISIONS; RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS; ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR. AS AMENDED; JUDGE NIXON'S ANSWER AND REPLICATION OF THE HOUSE OF REPRESENTATIVES, S. DOC. NO. 8, 101st Cong., 1st Sess. (1989).

PROCEEDINGS OF THE UNITED STATES SENATE IN THE IMPEACHMENT TRIAL OF WALTER L. NIXON, JR., A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, S. DOC. NO. 22, 101st Cong., 1st Sess. (1989).

PROCEEDINGS OF THE UNITED STATES SENATE IN THE IMPEACHMENT TRIAL OF ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, S. DOC. NO. 18, 101st Cong., 1st Sess. (1989).

IMPEACHMENT OF JUDGE WALTER L. NIXON, JR., CONSTITUTIONAL PROVISIONS; RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS; ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR., AS AMENDED; JUDGE NIXON'S ANSWER TO THE AMENDED ARTICLES AND REPLICATION OF THE HOUSE OF REPRESENTATIVES, S. DOC. NO. 17, 101st Cong., 1st Sess. (1989).

REPORT, HEARINGS, AND RESEARCH PAPERS OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL (Aug. 1993).

Robert Byrd, *Impeachment, in 2 THE SENATE 1789-1989: ADDRESSES ON THE HISTORY OF THE UNITED STATES SENATE*, S. DOC. NO. 100-20 (1991).

#### *D. Congressional Research Service Reports for Congress*

ELIZABETH BAZAN ET AL., CONGRESSIONAL RESEARCH SERV., REP. NO. 89-413A, COMPENDIUM OF PRECEDENTS INVOLVING EVIDENTIARY RULINGS AND APPLICATIONS OF EVIDENTIARY PRINCIPLES FROM SELECTED IMPEACHMENT TRIALS (July 3, 1989).

ELIZABETH BAZAN, CONGRESSIONAL RESEARCH SERV., REP. NO. 89-112A, THE POSSIBLE INTERACTION BETWEEN THE IMPEACHMENT PROCESS AND THE DOUBLE JEOPARDY CLAUSE (Feb. 15, 1989).

ELIZABETH BAZAN, CONGRESSIONAL RESEARCH SERV., REP. NO. 89-395A, WHAT EVIDENTIARY RULES AND PRINCIPLES ARE APPLICABLE IN IMPEACHMENT TRIALS? (June 28, 1989).

ELIZABETH BAZAN, CONGRESSIONAL RESEARCH SERV., REP. NO. 88-637A, IMPEACHMENT: AN OVERVIEW OF CONSTITUTIONAL PROVISIONS, PROCEDURE AND PRACTICE (Sept. 19, 1988).

ELIZABETH BAZAN, CONGRESSIONAL RESEARCH SERV., REP. NO. 87-764A,  
AN ANALYSIS OF S.J. RES. 113, A PROPOSED CONSTITUTIONAL AMEND-  
MENT RELATING TO THE REMOVAL OF FEDERAL JUDGES (Sept. 14, 1987).