101ST CONGRESS
1st Session

SENATE

REPORT
101-156

REPORT

OF THE

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

OCTOBER 2 (legislative day, SEPTEMBER 18), 1989.—Ordered to be Printed

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IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

(101st Congress)

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Mr. BINGAMAN, from the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, submitted the following

REPORT

PURPOSE

Pursuant to Senate Resolution 38, which the Senate adopted on March 16, 1989, and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, this Committee has received evidence and taken testimony on the articles of impeachment against United States District Judge Alcee L. Hastings. Those articles, which were exhibited by the House of Representatives to the Senate on August 9, 1988,[1] charge:

[1] By Senate Resolution 480 of the 100th Congress, the Senate continued to the 101st Congress the proceedings in Judge Hastings' impeachment. 134 Cong. Rec. S13749-50 (daily ed. Sept. 30, 1988). The resolution was adopted on the recommendation of the Committee on Rules and Administration which, after receiving written submissions from the parties and considering English and American precedents, determined "that the Senate has clear authority to continue in the next Congress proceedings on the impeachment." S. Rep. No. 542, 100th Cong., 2d Sess. 2 (1988). The Rules Committee concluded that "[b]ecause the instant case was presented to the Senate at such a late date [in the 100th Congress], it is convenient to the Senate and fair to the parties for the case to be continued before any testimony has been taken." *Id.* at 35.

that in 1981 Judge Hastings engaged in a corrupt conspiracy with attorney William A. Borders, Jr., to obtain $150,000 from two brothers, Tom and Frank Romano, in return for eliminating jail sentences that Judge Hastings had imposed after the Romanos were convicted of racketeering offenses (Article I); [2]

that in securing his acquittal by a jury on the bribery conspiracy charge in 1983, Judge Hastings lied repeatedly under oath and submitted false evidence (Articles II to XV);

that in 1985 Judge Hastings compromised several federal undercover investigations by revealing to Dade County Mayor Stephen Clark confidential information that Judge Hastings had learned while supervising a court-approved wiretap (Article XVI); and

that, by virtue of all of the foregoing, Judge Hastings had "undermine[d] confidence in the integrity and impartiality of the judiciary and betray[ed] the trust of the people of the United States. . . ." (Article XVII).

The full text of the articles, Judge Hastings' answer, and the replication of the House of Representatives are reprinted in Senate Document 101–3, 101st Cong., 1st Sess. (1989).[3]

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[2] Judge Hastings and William Borders were indicted together in 1981 for the conspiracy that is alleged in Article I, but were tried separately. In a 1982 trial in the Northern District of Georgia, Borders was found guilty and sentenced to a term of imprisonment of five years. His conviction was affirmed. *United States* v. *Borders,* 693 F.2d 1318 (11th Cir. 1982), *cert. denied,* 461 U.S. 905 (1983). Borders was incarcerated for approximately thirty-three months (including time in a halfway house) and was on parole for approximately twenty-seven months. He has been disbarred. Judge Hastings was acquitted in a 1983 trial in the Southern District of Florida.

[3] For the convenience of Senators, the articles of impeachment are also reprinted as addendum A to this report. The text of Senate Resolution 38, as amended, and Impeachment Rule XI, are reprint-

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The Committee has been given two responsibilities in reporting the evidence that it has received. First, the Committee is directed by Impeachment Rule XI to "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee. . . ." The Committee will fulfill that responsibility in part one of this report. Second, under Senate Resolution 38, "the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact." The Committee will undertake that responsibility in part two of this report. The Committee has no authority to recommend whether the Senate should vote to convict or to acquit on the articles of impeachment.

PART ONE—CERTIFICATION TO THE SENATE OF THE COMMITTEE'S PROCEEDINGS

The Committee's proceedings are printed in *Report of the Senate Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings: Hearings Before the Senate Impeachment Trial Committee,* S. Hrg. 101–194, 101st Cong., 1st Sess. (1989), which is comprised of three parts. As required by Rule XI, the Committee hereby certifies the hearing report to be a copy of the transcript of the proceedings and testimony had and given before it.

Part 1 of the hearing report contains the record of the Committee's pretrial proceedings from the appointment of the Committee on March 16, 1989, to the beginning of its evidentiary hearings on July 10, 1989. The Committee heard eighteen days of testimony between July 10, 1989, and August 3, 1989. Parts 2A and 2B of the hear-

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ed as addenda B and C. Addendum D contains a description of the Committee's pretrial proceedings, from its March 16, 1989 appointment until the beginning of its evidentiary hearings on July 10, 1989. Addendum E provides a brief description of the individuals whose names appear in this report.

ing report contain the opening and closing statements for the House and Judge Hastings, and the testimony of the House's 26 witnesses and Judge Hastings' 29 witnesses. The testimony of witnesses is also available to Senators on videotape. All witnesses were subject to examination and cross-examination by the Managers or by their counsel, and by Judge Hastings' counsel or by Judge Hastings himself. Members of the Committee also examined witnesses. Parts 2A and 2B of the hearing report also contain the testimony of 26 other witnesses, taken in prior proceedings, such as Judge Hastings' criminal trial, and 158 stipulations of fact. Part 2C contains miscellaneous material related to the evidentiary hearings. Parts 3A and 3B of the hearing report reproduce exhibits that were admitted into the record during the evidentiary hearings.[4]

Upon the Senate's receipt of this report, Rule XI provides that "the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate. . . ." The rule makes clear, however, that "nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate." The full Senate remains the master of the record before it; it may reassess the admissibility of the evidence received

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[4] All citations to the Committee's hearing record will identify the exhibit, stipulated fact, or name of the witness whose testimony is relied upon, and the volume, part and page of the hearing record where the source may be found. For example, the citation to the first page of Judge Hastings' testimony, which is found at page 2209 of part B of Volume 2, will be as follows: Hastings, 2B at 2209. House exhibits will be referred to as "House Ex." The exhibits of Judge Hastings, who is the respondent in this proceeding, will be referred to as "Resp. Ex." Stipulations will be referred to as "Stip. No.".

by the Committee and summon witnesses to testify in the well of the Senate.

Before deliberating on the articles of impeachment in closed session, the Senate will receive the argument of the parties in two forms. The House and Judge Hastings will submit written briefs which will be distributed to Senators in advance of floor consideration of the articles of impeachment. Each side will also have the opportunity to present a summation to the Senate.

In addition to other issues which the parties may wish to present to the Senate in their briefs, the Committee has asked the parties to address two matters. The first question, present in any impeachment, is whether individual Senators, in the absence of an established standard for the Senate as a whole, should be guided by a particular standard of proof in weighing the evidence. In 1986, Judge Harry E. Claiborne moved that the Senate designate "beyond a reasonable doubt" as the standard of proof for the impeachment trial. The House responded that, as an impeachment trial is not a criminal proceeding, it should be sufficient to establish guilt by "a preponderance of the evidence." 132 Cong. Rec. S15490 (daily ed. Oct. 7, 1986). The Presiding Officer ruled "that the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment." *Id.* at S15506. Upon request of a Senator, Judge Claiborne's motion was submitted to the Senate, which defeated it by a vote of 75–17, *id.* at S15507, thereby refusing to establish an obligatory standard.

The second question which the Committee has asked the parties to address is what weight, if any, individual Senators should give to the fact that Judge Hastings was acquitted of conspiring with William Borders to solicit a bribe from the Romano brothers. By a vote of 92–1, the Senate denied Judge Hastings' motion to dismiss the first fifteen articles against him, thereby rejecting his claim that his acquittal in the criminal conspiracy

trial barred his trial on impeachment for similar accusations. Further, the United States District Court for the District of Columbia, dismissing a lawsuit by Judge Hastings to enjoin the Senate from trying the first fifteen articles, held that Judge Hastings' attempt to apply double jeopardy principles to this impeachment was "premised on a fundamental misapprehension," because "impeachment is not a criminal proceeding." [5] Nevertheless, just as the question of the standard of proof is for each Senator to decide, any Senator remains free to vote to acquit Judge Hastings for any reason, including agreement with his position either that double jeopardy is a legal bar to this impeachment or that the jury's verdict should be given great deference.

Although the Committee has completed the taking of testimony and the receipt of evidence offered by the parties, and hereby transmits its record of those proceedings to the Senate, it has held its record open to receive the testimony of William A. Borders, Jr. Borders is the former Washington, D.C. attorney who was convicted in a separate trial in 1982 of conspiring with Judge Hastings to solicit a bribe from the Romano brothers. Even though he was granted testimonial immunity, Borders refused to answer the Committee's questions on July 24 and 27, 1989. (Borders, 2A at 1156–68, 2B at 1777–83).[6] On August 3, 1989, the Senate

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[5] *Hastings* v. *United States Senate,* 716 F. Supp. 38, 41 (D.D.C. 1989), *appeal pending,* No. 89-5188 (D.C. Cir.). The district court also rejected Judge Hastings' challenges to the use by the Senate of an impeachment trial committee and the Committee's unfavorable action on his application that the Senate pay the costs of his defense. Judge Hastings' appeal is scheduled to be argued in the District of Columbia Circuit on October 17, 1989.

[6] In addition to the objections presented by his counsel, Borders made personal statements to the Committee on July 24 and 27. (Borders, 2A at 1158, 2B at 1777–79). Borders objected that he had already been imprisoned for his 1982 bribery conspiracy conviction and for civil contempt for refusing to testify before a grand jury in 1982. Noting that neither the House nor Judge Hastings had called

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agreed to Senate Resolution 162 which authorizes the Committee to commence a civil enforcement action against Borders to compel him to testify. The resolution authorizes the Committee to continue, until the final disposition of the articles of impeachment against Judge Hastings, its action to enforce its subpoena to Borders.[7]

On August 17, 1989, the United States District Court for the District of Columbia granted the Committee's application to enforce its subpoena and ordered Borders to appear before the Committee and to testify fully about events relevant to the articles of impeachment. Borders appeared before the Committee on August 22, 1989, and again refused to testify. (Borders, 2B at 2536). Later that day, the District Court adjudged Borders to be in civil contempt, and ordered him to be committed to the custody of the United States Marshal until he was prepared to testify or until the Senate takes final action on the articles of impeachment. (2C at 3275). As of the filing of this report, Borders remains incarcerated.

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him as a witness, Borders also objected that: "The committee has decided to call me even though they're allegedly not serving as a prosecutor but, rather, as the chief adjudicatory body. I had always thought that prosecution and judgment are two quite separate functions in the administration of justice. Consequently, the two should not merge.* * * However, this committee has apparently sought to ignore such a natural course of events in favor and embrace of a marriage between prosectuion and judgment." *Id.* at 1778.

[7] 135 Cong. Rec. S10012–13 (daily ed. Aug. 3, 1989). In its report to the Senate recommending civil enforcement of its subpoena, the Committee responded to Borders' objection to the Committee's decision to call him as a witness: "The decision to call Mr. Borders was not intended to favor either the House or Judge Hastings. The Committee has no preconception about whether Mr. Borders' testimony would favor one side or the other. Rather, it has concluded that the effort to find the truth, whoever may be favored by it, would be aided by hearing from the one person other than the respondent who has personal knowledge of it." S. Rep. No. 98, 101st Cong., 1st Sess. 10 (1989).

In the hope that, even at this late date, Borders will comply with his obligation to testify, the Committee has concluded that it should keep the evidentiary record open until the Senate decides that it is prepared to take final action on the articles of impeachment. Borders is the only person other than Judge Hastings who has complete personal knowledge of the truth or falsity of the accusations against Judge Hastings, and the Committee believes that it should not abandon its efforts to secure his testimony.

PART TWO—SUMMARY OF THE EVIDENCE

I. INTRODUCTION

The Senate first utilized an impeachment trial committee to receive and report evidence during the 1986 trial of the articles against Judge Harry E. Claiborne. On the basis of the Senate's experience in that impeachment, the Committee on Rules and Administration concluded that "it would be helpful to Members in their review of the record to have available a neutral summary, and that such summary should be prepared by the impeachment committee." S. Rep. No. 1, 101st Cong., 1st Sess. 74 (1989). Accordingly, Senate Resolution 38 authorizes the Committee "to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact." This portion of the report fulfills that responsibility.

The Committee's Summary of Evidence is divided into two major sections. Section II presents the evidence on the bribery conspiracy and false statement allegations that are set forth in Impeachment Articles I–XV. Section II is divided into seven subsections. After subsection A, in which the Committee will present a synopsis of the parties' positions on the bribery conspiracy and false statement allegations, and subsection B, in which the Committee will provide background information about Judge Hastings and several others who figure

prominently in the evidence, subsections C through F will relate the evidence in essentially chronological terms. Subsection G will discuss, in summary fashion, the evidence that pertains to the individual false statement articles. Section III will present the evidence on the wiretap allegation, which is the subject of Article XVI. Article XVII, which charges that the conduct charged in the other sixteen articles has brought disrepute on the federal courts and the administration of justice, is not treated separately in the report.

The organization of the report reflects several judgments by the Committee about how best to prepare a summary that will assist the Members of the Senate in understanding the case. First, in order to tell as coherent a story as possible, uncontested facts are integrated with the evidence of the parties on contested issues of fact. That evidence has been gathered into a series of "Statement of Evidence" sections which appear in parts II(C)–(G) and III of this report. In so doing, the Committee has sought to state clearly when there is conflicting evidence on any factual matter. Also in the interest of clarity, the Committee has not attempted to present every fact to which the parties might attribute some significance. A yet more detailed statement of evidence in the case can be found in the parties' statements of contested and uncontested evidence, which they were asked to submit to the Committee to aid in the preparation of this report. Those statements are reprinted in part 2C of the hearing report at pages 3001–3271.

Second, this is a case in which much of the controversy is over the proper inferences to be drawn from facts, rather than over what the facts themselves are. For example, the events of the *Romano* case are of record and undisputed. Office diaries, hotel, travel and telephone billing records, and recorded conversations further establish a host of undisputed facts regarding the physical presence, actions, and words of Judge Hastings and others. The inferences to be drawn from particular

series of events are, however, in regular and marked dispute. For that reason, the Committee has concluded that it cannot simply recount facts in evidence without also providing some understanding of the lens through which each party sees that evidence. Accordingly, the Committee will, throughout Sections II(C)–(G) and III, introduce each of its Statements of Evidence with an "Overview" that presents the Committee's understanding of the relationship of that portion of the material to the case as a whole, as well as what it understands to be the key issues raised by that evidence. The Committee will then conclude each of its recitations of the evidence with a discussion of "The House Perspective" and "Judge Hastings' Perspective" on that particular portion of the case.

It is important, however, to emphasize that the parties will argue their own cases, both in written briefs that will be filed in the weeks ahead and in summation before the Senate. The Committee's statements about the views of the parties are intended only to help in the presentation of the evidence, and not to substitute for the parties' own marshaling of facts and arguments in support of their positions. Indeed, Judge Hastings questions the validity of the very process of trying to report a comprehensive statement of the evidence in the case. He asserts that that process may suggest that the evidence is complete, or that it is possible to reach a fair conclusion based only on evidence that is in the record. As the Senate will see in Judge Hastings' presentation of his defense, he believes that much of the important evidence in this case has been irretrievably lost through the passage of time.

The Committee, too, is mindful of the perils inherent in this task. The Committee's report is meant to be a neutral statement that neither explicitly nor implicitly urges a particular result in the case, or on any aspect of it. The format of its presentation, which seeks to set the views of the parties side by side, should not be read as a

statement by the Committee that the evidence is, in the end, equally weighted. A judgment about the weight of the evidence is clearly a decision for each Senator, to be made after studying the record and considering the arguments of the parties.

In accordance with its limited mandate, the Committee as a whole takes no view of the evidence, and the views of its members will be expressed individually in due course. The effort by members to withhold judgment during the hearings did not preclude, however, expressions of their concerns during the questioning of witnesses. The frank expressions of those concerns permitted witnesses to respond on the record. Thus, questions from members gave Judge Hastings the opportunity to describe to the Committee his attitude toward William Borders in light of the injury that Judge Hastings contends Borders inflicted upon him (Hastings, 2B at 2401–02); to explain how he could have been unaware of Borders' corrupt side (*id.* at 2414–15); to explain why, in his opinion, Borders has refused to provide the testimony which Judge Hastings contends, if given truthfully, would exonerate him (*id. at* 2424–25); and to comment on Borders' explanation of his refusal to testify (*id.* at 2435).

Finally, the Committee wishes to voice a cautionary note at the outset to avoid the possibility of unfair prejudice to Judge Hastings. The evidence before the Committee, as will be reflected in the following summary, describes a possible second bribery conspiracy, between William Borders and the now deceased Santo Trafficante who, in 1981, also had a criminal case pending in Judge Hastings' court. That evidence was received in the context of testimony describing the origin of the undercover operation that ultimately led to Borders' arrest on October 9, 1981, and the subsequent indictment of Judge Hastings and Borders for conspiracy to solicit a bribe from the Romano brothers. It should be clear that neither the United States in any criminal in-

dictment, nor the House of Representatives in this impeachment, has charged Judge Hastings with any offense relating to Trafficante.