

# THE BATTLES OF HASTINGS: FOUR STORIES IN SEARCH OF A MEANING<sup>1</sup>

Terence J. Anderson

Professor, University of Miami School of Law

## Introduction

I want to tell four stories this afternoon. The first is the story of a remarkable man -- Alcee Lamar Hastings. His is a contemporary and continuing story; he was born in the 1930s and is at a peak in one of his careers today. The second is an older story. It is the story of the establishment and development of a remarkable institution -- the American federal courts. As I mark the beginning and end of that story, it spans almost 150 years, from 1787 until the 1930s. The third story is about that institution also. Between 1930 and 1980, the United States experienced the Great Depression and the New Deal; World War II, the Korean War, the Cold War, and the Vietnam War; Watergate and the forced resignation of a President, and the Iran hostage crisis that ultimately brought down another President; and the social, political, and economic upheavals that flowed from all of these. It would be surprising if any institution had gone through this fifty-year period unaffected, and surely the American federal courts did not. The account in my third story describes some of the ways in which the institution grew and evolved during that period. It also describes some of the pressures to which the institution was subject and some of the institutional adjustments that those pressures produced. That story ends in 1980. The last story that I would like to share with you this afternoon began the following year and continued for more than a decade, until 1993. It is a story about a series of confrontations involving the remarkable man and the remarkable institution -- what I have styled as the "Battles of Hastings."

I have labeled these stories, "four stories in search of a meaning." They are "history stories" and, like all historical tales, they can be told in different ways for different purposes. Indeed, my colleagues at the NIAS this year should recognize two of these stories as more confident versions of stories that I told last fall in a different way for a different purpose. The variants I presented then were intended to illustrate problems of evaluating historical evidence in different contexts, problems that must concern the professional historian. Those accounts emphasized the ambiguities inherent in any analysis of sparse data to illustrate some of the difficulties and dangers that must attend any attempt to marshal the available historical evidence to construct coherent stories that are also "true" stories. Today, I will present more positive and coherent versions, versions that emphasize the internal consistencies and leave less room for ambiguity or doubt *within* each story. Today, I want to recreate these stories in a way that emphasizes the essential ambiguity that attends the effort to determine the *external* significance of an historical event -- how one story relates to others and what significance stories may have, individually or in combination, for those to whom they are told. In short, today, I want to lay a foundation for exploring a problem that those who *use* history, as opposed to those who *construct* it, must confront: Assuming that the story or stories told are true, so what?

---

<sup>1</sup> This is the text of Uhlenbeck Lecture 13 delivered on June 16, 1995, at the Netherlands Institute for Advanced Study, Wassenaar, The Netherlands, and published by NIAS in 1996.

I am confident that the versions that I recount today represent fair reconstructions and accounts of the available evidence, more reliable perhaps than the versions I presented last fall may have suggested was possible. My accounts today are intended to illustrate the nature of the issues that bear upon an exploration of the problems of use. But consistent with the festive nature of the occasion, I am going to tell the stories first, without attempting to speculate about the relationships and meanings for which they might be combined. When the stories have been told, I shall offer some speculations about issues they raise, the meanings they might be assigned, and the uses to which they might be put.

### **Alcee Lamar Hastings**

Alcee Lamar Hastings is a truly a remarkable man. His career is noteworthy. He is one of the 435 members of the United States House of Representatives, the lower house of the American Congress. In the 1992 general election, he was elected, as a Democrat, as the Representative from South Florida's newly established Twenty-Third Congressional District. By that election, he and three other newly elected members became the first African-Americans from Florida to be elected to Congress in more than a century. Following his election, the Democratic leadership in the House gave him a seat on the House Foreign Affairs Committee. The forty African-American members of the House elected him as one of the two vice-chairpersons of the Congressional Black Caucus. He quickly emerged as a leader in the Florida delegation. He was instrumental in persuading members of that delegation to support the North American Free Trade Agreement. When President Clinton flew to Miami to corral support for his policies and to raise money for his party, he invited Hastings to accompany him on the presidential plane, Air Force One. Last year, when the Democratic Party was in disarray and losing the majority in the House that it had held for forty years, Hastings ran without substantial opposition and was re-elected by an overwhelming margin.

Hastings's election to Congress merely marked a new phase in an already remarkable life. Before he was elected to Congress, Hastings had served as a federal judge for a decade. In 1978, he became the first African-American to be appointed by a President to serve as a judge on the United States District Court for the Southern District of Florida. Prior to that appointment, he was a state-court judge in Fort Lauderdale, Florida. Through his work in that position, he had become known throughout the country as a judge deeply committed to improving the American juvenile-justice system. For the twenty years preceding his appointment to the bench, he had used his law practice as a base for his work as a civil rights advocate, a political activist, and a candidate for public office.

Hastings's achievements are made more remarkable by his origins. He was born in the 1930s. He grew up in Altamonte Springs, a small, segregated community in central Florida, near Orlando, before Orlando became the home of Disney World. He is a fifth-generation Floridian. He was reared by his grandmother because his parents worked throughout the Depression and thereafter as domestic servants in homes outside the state. He was educated in the racially segregated, "separate-but-equal" school system that the South insisted upon maintaining during his youth and preserved for a considerable period thereafter. He studied law at the "separate-but-equal" law school that Florida maintained for African-Americans well into the 1960s. His graduating class consisted of only six students. He became a gifted and charismatic orator. He learned public speaking in the only political forum open to African-Americans at that time -- at the pulpit in black church

congregations. He attributes his extraordinary vocabulary to his grandmother -- she made him master five new words every day.

That Hastings was not going to be just another lawyer was clear from the outset of his career. The first law suit that he filed was against the restaurant in Fort Lauderdale that refused to serve him lunch the day he arrived in the city to begin his career as a lawyer. That lawsuit eventually resulted in the end of the *de facto* racial segregation that had persisted in Fort Lauderdale's hotels and restaurants. But even as his reputation as a lawyer grew, he declined to capitalize on the opportunities to increase his income or acquire wealth. He continued instead to devote significant parts of his time and energy to political and civil rights activities. He was the first African-American to run for a variety of local and state offices in Florida. He lost them all, but he was a charismatic orator who attracted a substantial following, among whites as well as among blacks. His reputation was such by the 1970s that Andrew Chisolm, the Director of Minority Affairs for the campaign to elect Jimmy Carter President, later recalled being told not to worry about the African-American vote in Florida because that was "Hastings Territory." The local school board that Hastings had sued to force it to go forward with integration later retained him as special counsel to advise and aid it in implementing its policies generally.

Hastings is almost sixty now. His children are grown. He lives modestly with his aged and somewhat infirm mother when he is in Miami. He enjoys the public stage. He cares about the issues he perceives to be important. He has thrived in Congress. His life is an American success story that would merit a biography in any event. It is, however, the battles he fought while he was a federal judge that make his story relevant today. But in order to make the story of those battles comprehensible, I must first tell two stories about how the American federal courts came to be and how they evolved.

### **The Creation of an Independent Federal Judiciary: 1787 - 1930**

The Constitution of the United States was the product of debates and deliberations and negotiations and compromises by forty-two delegates appointed by twelve of the original states. These "framers of the Constitution," as they came to be known, began their deliberations in Philadelphia on May 25, 1787. They brought with them differences not unlike the differences that have handicapped the development of the European Union -- the differences between small states and large states, between commercial states and agricultural states, between relatively developed states and frontier states. But they also brought a set of shared concerns and a common framework. It seems likely that the shared concerns and common framework were what made it possible for the framers to complete their work in less than four months. Why they succeeded so quickly where others have failed or deferred is a story for another day, but four aspects of the shared concerns and the common framework are important to my stories today.

First, the framers of the American Constitution recognized that the initial government established by the Articles of Confederation that had been adopted in 1778 was too weak to continue. Indeed, the Continental Congress established by those Articles had reluctantly approved holding a convention to revise the Articles because even its members recognized that change was necessary to make effective government possible. Second, notwithstanding their differences, the framers shared a common revolutionary experience and shared the concerns that had brought about that revolution -- concerns that included

those articulated in the Declaration of Independence adopted by the First Continental Congress a decade earlier, on the Fourth of July 1776. Third, they shared common sources of knowledge. They were familiar with the English constitutional history through which the "rights of Englishmen" had been established. They accepted Blackstone's COMMENTARIES ON THE LAWS OF ENGLAND as an authoritative description of those rights and of English legal institutions generally. They also accepted the separation-of-powers political theory expressed in Montesquieu's THE SPIRIT OF LAWS as having something approaching the status of a "political religion." Finally, they similarly accepted Montesquieu's maxim that individuals "entrusted with power tend to abuse it."

Before I tell my second story, I need to clarify the claim that framers had "shared concerns" and "accepted" a "common framework" in order to maintain credibility with those of my NIAS colleagues who are concerned with "history of concepts" and those who joined in this year's interdisciplinary "Evidence and Inference" group and others who may recall our discussions of the stories that I told last fall. I do not know, and I recognize that no one can know with any certainty, what the individual delegates to a convention held in 1787 knew or believed or what motivated them to make the precise compromises and agreements that they did. The evidence seems clear, however, that both the proponents and the opponents of the proposed constitution had a shared understanding of what "counted" as legitimate concerns and what "counted" as authoritative sources and arguments in the debates over whether that proposed constitution should be ratified. The list of grievances in the American Declaration of Independence, for example, may not have reflected concerns shared by all those who voted to adopt it or even by Jefferson, its principal author; it did, however, represent their clear and shared judgment about what would constitute a persuasive articulation of widely-shared, perceivedly legitimate grievances calculated to induce the peoples of the several colonies to join and persist financing and fighting a war for independence. After that war had been won, the framers knew that arguments over whether those concerns had been adequately addressed by their proposed constitution would be significant in the debates over whether it should be ratified; they knew what arguments would "count."

The principal arguments in support of the Constitution were developed in a series of eighty-five essays written by three of the Framers -- Alexander Hamilton, James Madison, and John Jay -- and later published in a single volume, THE FEDERALIST. The principal arguments against ratification are fairly represented in a volume titled THE ANTI-FEDERALIST. The arguments made in the essays collected in those volumes make it clear that the advocates on both sides shared the view that Montesquieu had laid down the authoritative criteria by which those reviewing the proposed constitution would judge it. And the arguments developed there (and elsewhere) make it clear that both sides understood that the central issue was whether the proposed plan to allocate the powers of government among three branches of government included sufficient "separations" and "checks" to adequately limit the potential for abuse of the powers granted the new government, not whether the limitations were too strong to permit effective exercise of those powers. Indeed, the proponents' reluctant agreement that, after ratification, a bill of rights should be added to the proposed constitution to provide further "checks" against possible abuses of those powers represented a necessary concession to satisfy concerns raised by those who opposed ratification. The framers had affirmatively rejected as unnecessary and unwise

proposals to include provisions specifically enumerating individual rights in the proposed constitution. Those who opposed ratification had, however, significantly undermined the prospect for ratification by their arguments that, without a bill of rights, the proposed constitution did not sufficiently check those who would be entrusted with the powers it established. The framers' concession was necessary to generate and consolidate support needed for ratification. In any event, the fact that the framers largely agreed upon the "concerns" and the "framework" that "counted" in the debates that lead to ratification is the basis for my claim that it is possible to identify a "shared" set of concerns and a "common" framework, at least insofar as they bear upon the meaning of the constitutional provisions designed to establish and protect a judicial branch.

I also think that a further preliminary point of emphasis may assist a European audience to understand the American constitutional experience of which my second story is a part. The *right to distrust* public officials is central to the American Constitution. The separation of powers and the system of checks and balances incorporated into the Constitution were intended to give constitutional status to Montesquieu's maxim that individual's entrusted with power tend to abuse it and to constitutionalize the *generic* distrust inherent in that perception in order to limit the possibilities for abuse by those entrusted with the powers of government. The Bill of Rights submitted by the First Congress and promptly ratified by the states constitutionalized the *right* of the individual citizen to distrust public officials. For example, the right of the individual to insist that she be tried by a jury of her peers is, in reality, a right to distrust the judge to whom her case is assigned. In my view, an awareness of the importance of the "right to distrust" is central to understanding the American constitutional experience. I emphasize the point here because my experiences with the judicial system in the Netherlands over the past year suggest that it operates largely upon a culture of trust. With that clarification and that point of emphasis in mind, let me return to my second story.

The structure and basic plan for the American federal government produced by the framers are well known. The powers of the new government were to be divided and distributed among three separate and co-equal branches of government: to the Congress, the legislative power, the power to make the laws; to the President and his subordinate officers, the executive power, the power to see that the laws are faithfully executed; to the Supreme Court and such inferior courts as Congress might establish, the federal judicial power, the power to resolve cases arising under the Constitution and laws of the United States and controversies to which the United States is a party. Although Montesquieu's separation of powers theory required that the judicial power be kept separate from the executive and the legislative power, there was no constitutional precedent for the framers' decision that the judicial power should be allocated to a third, separate, co-equal branch of government. But the reasons why the independence of the holders of that power must be guaranteed and the English precedents for creating mechanisms by which that objective might be obtained were well-understood and well-known.

The battle for judicial independence in England had been a part of the struggle to limit the powers of the King. Prior to 1700, the King had the power to hire and fire judges; they held office *durante bene placito*, during the King's pleasure. The House of Commons could impeach a judge, just as it could impeach other ministers of the state, by presenting to the

House of Lords articles of impeachment that allege that that judge had committed high crimes or misdemeanors. As with other ministers of state, a judge was automatically removed from office upon conviction by the House of Lords of the high crimes and misdemeanors for which he had been impeached. But nothing could prevent the King from venting his displeasure with a judge's decisions by firing the judge. The English Act of Settlement of 1701 was designed, in part, to change that. Judges of the higher courts were granted tenure *quamdiu bene se gesserit*, during good behavior. From 1701 to the present, those judges have been subject to removal in two, and only two, ways -- by joint address, a petition adopted by each of the two houses of Parliament addressed to the Crown, or by impeachment, trial, and conviction. The King retained the authority to appoint judges, but he could no longer remove them.

The delegates who met in Philadelphia not only were aware of this history, but also had a perception of its importance that had been reinforced by their colonial experience. When they met, the principle that judges should hold secure tenure and that the removal power must be separated from the executive had been established in England for eighty-seven years. Both the system and its importance had been explained and emphasized by Blackstone. The King's refusal to accord comparable guarantees to colonial judges had provided the basis for two of the principal "injuries and usurptions" with which the King was charged in the Declaration of Independence:

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

The framers' debates in 1787 also evidenced a concern that federal judges might need protection from legislative as well as executive interference in the discussions of the mechanisms that would be necessary to guarantee what Hamilton was later to characterize as "the necessary independence of a judicial character." All the proposals submitted to the constitutional convention called for federal judges to hold office during good behavior. The debates focused upon three issues. Should the power to select judges be allocated to the legislative or to the executive branch, to Congress or to the President? (There is no indication in the records of that convention that the idea that the judiciary itself should have any role in the selection or removal of federal judges was even considered.) All proposals assigned the power to initiate removal proceedings to the legislative branch. The only other issues that gave rise to debate were whether joint address, as well as impeachment, should be adopted as a mechanism for removal and whether impeachments should be tried before the Senate, before the Supreme Court, or before some hybrid body.

The text of the proposed constitution resolved these issues with seeming clarity and considerable specificity. [The relevant provisions are reproduced in an addendum to the text of this lecture.] The power to nominate and appoint judges was assigned to the President, subject to a legislative check: the Senate must give its consent before an appointment could be made. Judges so appointed were to hold office during good behavior, and they were to receive a compensation that could not be diminished while they remained in office. Joint address was specifically rejected as a method of removal because

the framers feared it would entrust the legislative branch with a power that could too easily be abused to interfere with a judge's independence. The acknowledgedly cumbersome mechanism of impeachment was the only method of removal authorized. Judges could be impeached by the House of Representatives for "Treason, Bribery, or other high Crimes and Misdemeanors." If impeached, they were to be tried by the Senate. If two-thirds of the Senators present voted to convict, the accused was removed from office.

The proposed constitution addressed and resolved another issue, one for which there was no precedent. Impeachments in England were criminal in nature. The jurisdiction of the House of Lords, the highest judicial authority in England, was not limited to office holders, and that body had, and had exercised, the power to impose criminal punishments beyond mere removal from office. This was a power that had been and could be abused. The framers proposed that the Senate's power be limited to removal and, if the Senate thought it appropriate, to ordering that the party convicted be disqualified from holding federal office in the future. But the framers also wanted to assure that this limitation on the Senate's power could not be construed to make public officials persons who were "above the law." To that end, they included language to make it clear that, if the conduct for which a judge (or other party) had been convicted at an impeachment trial also constituted a criminal offense under the laws of the United States, the prohibition against being twice prosecuted for the same offense, the bar against double jeopardy, would not apply:

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

The manner in which the framers had resolved these issues in the constitution they proposed became significant topics in the ratification debates. In *THE FEDERALIST*, Hamilton was the principal expositor and defender of the meaning and importance of the provisions designed to establish a separate judicial branch and to protect the independence of the judges who would exercise its powers. He argued that impeachment was the only "precaution" for a judge's responsibility that was "consistent with the necessary independence of a judicial character." To those who claimed that the assignment of the power to try impeachments, a judicial power, to the Senate, a legislative body, was inconsistent with Montesquieu's separation of powers theory, he argued necessity. Given the nature of the charges and the political passions the charges brought by the House of Representatives might raise, he argued that a body more numerous than the Supreme Court and one with sufficient stature and confidence in itself was necessary to assure impartial justice to an accused confronted with accusations made by the immediate representatives of the people. Only the Senate, he argued, satisfied both conditions. Moreover, the fact that an accused convicted in an impeachment trial might be prosecuted a second time before the courts for the same offenses required that the two trials be conducted in separate branches. As Hamilton explained it:

Those, who know anything of human nature, ... will be at no loss to perceive, that by making the same persons Judges in both cases, those

who might happen to be the objects of *prosecution* would in great measure be deprived of the double security, intended them by a double trial.

The provisions establishing a separate judicial branch and guaranteeing the independence of its judges were only a part of the ratification debates and only a part of the ratification story. The debates were heated, and the votes were often close. The 168-member Virginia convention called to consider the proposed constitution approved it by a margin of only ten votes; in the New York convention, the yeas carried the day by a vote of thirty to twenty-seven. But the Constitution was ratified, and it became effective. The government was established. And that government included a unique judicial branch with judges whose independence was uniquely guaranteed.

Officials in all three branches accepted and construed those unique guarantees in the same way, albeit some times reluctantly, for almost 150 years. Of course, framers who vigorously advocated the need for particular "limitations" and specific "checks" on the powers of office holders often changed their views when they became the holders of the office so limited and checked. President Jefferson, for example, was outraged at the federalist judges that his predecessor, President Adams, another of the framers, had appointed before he left office. In an effort to give effect to his outrage, Jefferson suggested that one of those federalist judges, Supreme Court Justice Samuel Chase, be impeached and removed. Chase was impeached. He was then tried and acquitted by the Senate. The charges framed against Justice Chase could, however, have been framed as obstruction of justice charges under then-existing criminal laws, If Jefferson had thought that, under the Constitution, criminal charges against a sitting federal judge could be prosecuted by the executive and tried by the courts, he could have sought Chase's removal in a far less cumbersome manner; he could have directed his Attorney General to prosecute Chase (and other disfavored federalist judges) and, where possible, to prosecute them in the courts. He did not, and I have found no evidence suggesting that possibility was seriously considered.

The conduct of public officers in all three branches of government remained consistent with the shared understanding until the 1930s. Jefferson's successors never attempted to use the executive power to prosecute a judge; they referred all serious complaints against federal judges to the House of Representatives. The House and the Senate, notwithstanding the cumbersome burdens about which each house increasingly complained, executed the respective roles that the Constitution had assigned them. The House of Representatives initiated impeachment inquiries into the conduct of forty-four judges. During this period, it impeached seven. The full Senate sat for the resulting trials. Four were convicted; three were acquitted. Under the system established, neither the executive branch nor the judicial branch had any role in the investigation or removal of federal judges.

This shared understanding that impeachment was the sole mechanism by which a judge's tenure could be attacked kept the issue from coming before the federal courts for a considerable period of time. It was not until 1869 that the Supreme Court was presented with a case, *Randall v. Brigham*, in which its views on the exclusivity of impeachment as the remedy for misconduct by federal judges were germane. The views it emphatically

expressed on that occasion nicely summarized the then prevailing view:

In the United States, the judicial power is vested exclusively in the courts. The judges administer justice therein for the people, and are responsible to the people alone for the manner in which they perform their duties. If faithless, if corrupt, if dishonest, if partial, if oppressive or arbitrary, they may be called to account by impeachment, and removed from office.

Functionally, the shared understanding continued to be operative for another century but three events that mark the beginning of the process that would, in time, radically alter the established order occurred in the 1930s, and those events mark the beginning of my third story.

### **The Development of the Federal Courts -- 1930 - 1980: "Slight Encroachments"**

The first event that significantly challenged the prevailing view came in 1930. By 1930, the United States, the institutions of its government and the demands upon those institutions had grown. A court system that had started with twenty judges had grown to include more than 200. The Senate and its business had grown also, and many had expressed the view that trying allegations that some little-known district court judge had misdemeaned himself in office did not merit suspending the other business of the Senate for the period required for a proper trial. Moreover, impeachment inquiries into the conduct of inferior court judges had never been popular in the House of Representatives. They presented little opportunity for political advantage. Into the breach stepped Professor Burke Shartel. In 1930, Professor Shartel published a three-part article in the *University of Michigan Law Review*, *Federal Judges -- Appointment, Supervision, and Removal -- Some Possibilities Under the Constitution*. In that article, he reported that he had discovered the "gap." Shartel argued that there was a "gap" between the "good Behaviour" standard for judicial tenure and the "high Crimes and Misdemeanors" standard for impeachment. From this discovery, he argued that Congress might constitutionally delegate disciplinary authority and perhaps even removal authority to the judiciary to enable it to deal with breaches of good behavior that might not amount to high crimes and misdemeanors. Shartel's scholarly article initiated a debate that was renewed sporadically over the succeeding fifty years. It was not until 1980, however, that the advocates of a new system were able to persuade the United States Congress to act.

The second event occurred in 1934. The Senate Judiciary Committee proposed that the Senate adopt a rule to make the trials of an impeachment less burdensome on the Senate. Under the proposed rule, the Senate would be permitted to authorize a committee of twelve Senators to hear and receive the evidence in an impeachment trial and to report it to the Senate. The debates at the time made it clear that the Senate itself had doubts about the constitutionality of such a rule, and one of its sponsors argued that it should never be used unless both the House and the accused official agreed. The rule, Rule XI, was adopted. The rule was discussed, but not used, when a United States District Judge named Halstead Ritter was impeached in 1936. But the rule remained a part of the Senate's rules for the almost fifty years that were to elapse before another judge was

impeached.

The third event occurred in 1936. Marvin Manton was a prominent judge on the United States Court of Appeals for the Second Circuit in New York. An ambitious young politician named Thomas Dewey was a district attorney, a state prosecutor, in New York. He called a news conference to announce that he had evidence that Judge Manton had accepted bribes in financial cases. Dewey threw down a gauntlet: if the federal authorities did not initiate criminal proceedings against Manton, Dewey would prosecute him in the New York courts. The federal authorities decided that they had to respond and announced that Judge Manton would be investigated by a federal grand jury. Manton resigned from office before the resulting indictment was issued. He was not a judge at the time of his indictment or trial, but the claim that the federal executive had the power to investigate and prosecute a sitting federal judge had been asserted. It was not until 1974, however, that a federal court had occasion to consider the constitutionality of this claimed power.

By the 1970s, the judiciary had evolved considerably. There were more than 600 federal judges. In the 1940s, Congress had recognized the need for the federal courts to have a separate administrative structure. An Administrative Office of the United States Courts had been established. Congress had also established the Judicial Conference of United States and a judicial council for each of the federal circuits, the regions into which the federal courts were divided. Congress had specified that the Chief Justice of the United States should serve as chair and each of the chief judges of the circuit courts of appeal should serve as a member of the Judicial Conference. Similarly, under the statutes, the circuit chief judges chaired and the judges of the court of appeals served as members of the judicial councils for their respective circuits. Each of the almost 100 district courts had a chief judge also, and these chief judges were called upon to assume increasing responsibilities for managing the affairs of the district courts on which they served. Function seemingly followed form: The Chief Justice and the Judicial Conference and, within the several circuits, the chief judges and circuit councils began assuming executive and administrative authority over the affairs of the federal courts, notwithstanding concerns that in so doing they might undermine the guarantees intended to assure the independence of the individual federal judge. By 1970, those who urged that the courts should have a greater role in monitoring the behavior of their judges could point to an established administrative structure that was available for use and a few precedents suggesting ways in which that structure might be used. The development and evolution of a corporate judiciary in America was well under way.

The early 1970s also produced a precedent suggesting that it was also permissible for the executive branch to claim a role. At that time, Otto Kerner was a federal court of appeals judge in Illinois. He had served as governor of the State of Illinois prior to his appointment to the federal bench. In 1972, he was indicted by a federal grand jury on charges that he had accepted bribes while he was governor. He elected to remain in office as a judge while the case was pending. He was tried by a jury. After his conviction, he argued on appeal for the first time that the Constitution required that a federal judge be impeached and removed by Congress before he could be prosecuted by the executive and tried by the courts. In 1974 a two-judge majority of a specially designated court of appeals panel rejected the claim, and the Supreme Court declined to review the case.

Watergate and the renewed "shared concern" for public accountability generated the conditions and the pressures that set the stage for the actions that followed. The concern for accountability led to the establishment of a Public Integrity Section, as a permanent, separate section of the Criminal Division of the United States Department of Justice. That section was assigned responsibility for the supervision of any criminal investigations involving allegations against senior federal officials, including federal judges, and for the prosecution of any charges that might result from those investigations. Those same concerns finally generated a momentum that enabled the Congress to adopt a compromise statute with an awesome title -- The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. With the adoption of that act, the conditions necessary for the Battles of Hastings had been satisfied. Ironically, perhaps, that act became effective on October 1, 1981 -- eight days before the event that initiated the Battles of Hastings occurred.

### **The Battles of Hastings -- 1981 - 1993**

On December 29, 1981, attorneys from the Public Integrity Section of the United States Department of Justice filed an indictment in the United States District Court for the Southern District of Florida. The indictment alleged that one of the judges of that court, Alcee L. Hastings, had conspired with a Washington, D.C., lawyer named William Borders to solicit and accept a \$150,000 bribe from the Romano brothers, the defendants in a case that Judge Hastings had tried. The evidence against Borders was overwhelming. There were three meetings between Borders and an FBI undercover agent posing as one of the Romanos. Each was recorded. At the first meeting, Borders and the agent had agreed upon the terms of the proposed deal. A week later, Borders had returned to the agreed location to collect a down payment on the supposed bribe, and the two men had again discussed the deal. At the last meeting, on October 9, 1981, Borders had come to the designated place at the designated time to collect the balance of the amount upon which the two men had agreed. He was arrested there.

The investigation, "Operation Apple Eye" as the FBI named it, had been authorized two months earlier, when an informant had reported that Borders was soliciting bribes, claiming he could fix cases before various federal judges, including Judge Hastings. Before the investigation had been authorized, the FBI's files contained information indicating that Borders had falsely held himself out as having the power to fix cases before other judges, judges whose integrity the government had never questioned. The extensive files that the government had only recently compiled on Hastings yielded no grounds for suspicion about his integrity either. The rigorous investigation that had preceded his appointment to the federal bench had confirmed that he was a man who had lived modestly within his means and whose income had, in fact, risen when he left private practice to become a judge and had risen again when he had been elevated to the federal bench. The issue from the outset was whether Borders was engaged in a scam for his own benefit or whether the judge was an active participant in Borders's corrupt scheme.

Against that background, Hastings's detractors, as well as his supporters, have consistently condemned the Justice Department's decision to arrest Borders at the scene of

the final payment. At the time that decision was made, no portion of the down payment had been traced to Hastings, and there was no direct evidence of his involvement. The United States Attorney for the district in which Hastings served and one of his chief assistants objected strenuously when they were informed that the Justice Department's Public Integrity Section had approved a plan that called for Borders to be arrested at the scene of the final payment, notwithstanding the absence of any evidence directly linking Hastings to Borders's scheme. They and others argued that, given stakes involved, the Justice Department should let Borders take the money and watch him to see if any part of it went to Hastings. Those in charge rejected the advice. The case against the judge was circumstantial, and the decision to arrest Borders on October 9 at the scene where the final payment was to be delivered assured that it would forever remain circumstantial. Those who made that decision have never satisfactorily explained why the investigation was planned and executed in a manner that assured that the issue of Hastings's guilt or innocence could never be resolved with any certainty. That decision was also a necessary element in any account of the battles that were to follow.

Last fall I told a part of the story of the evidence and the issues that it raised. That is not a story I can develop in the time allotted today. It is relevant to my stories today to emphasize that all have agreed -- Hastings's detractors as well as his supporters -- that the evidence against the judge was and remained ambiguous at best. It has been rejected as inadequate by those who heard both sides of the case on four occasions in four different contexts. The evidence against the judge was presented and marshalled by experienced prosecutors to a jury early in 1983. The jury unanimously rejected it as inadequate to establish guilt with the degree of certainty required. Twelve senators, selected by the Senate leadership, heard a repackaged version in 1989. If the votes of only the twelve Senators who had heard the evidence had counted, Hastings would have been acquitted again; on none of the charges did the required two-third agree that guilt had been sufficiently proved. Two years later, in 1991, in confidential proceedings, a committee of lawyers and non-lawyers designated by the Florida Bar considered the evidence again to determine whether proceedings should be initiated to disbar Hastings from the practice of law. That committee concluded that the evidence was not even sufficient to justify filing a formal complaint. The evidence had been widely reported and discussed in South Florida for more than a decade when Hastings ran for Congress in 1992. Hastings's integrity was the issue in that election, and he was elected by a substantial margin. The same evidence was, however, considered and found adequate to justify action by four institutions in four different contexts --the grand jury that indicted Hastings in 1981; the Judicial Conference that recommended he be impeached in 1987; the House of Representatives that voted, almost unanimously, to impeach him in 1988; and more than two-thirds of the Senators who voted to convict and remove him in 1989. On each of those occasions, those responsible for the decision had not heard the evidence on both sides.

I report these events to emphasize two points that are central to this afternoon's final story. From the outset of the investigation in 1981 through the conclusion of the proceedings in the Senate on October 29, 1989, the decisions by senior officials in all three branches of government were based upon circumstantial evidence that could not be marshalled effectively to prove guilt, or innocence, with any degree of certainty. Three of the four institutions that concluded that the evidence was adequate conducted extensive

investigations and could and should properly have appraised that evidence in its constitutional and historical contexts, the contexts established by my second and third stories -- the judiciary through an investigating committee and a circuit council and the Judicial Conference; the House of Representatives through its Judiciary Committee and the subcommittee that compiled the record; and the full Senate that had before it the report of its Impeachment Trial Committee and the arguments of the contending sides. On each of the occasions on which the evidence was rejected as insufficient, the underlying evidence had to be appraised with little reference to the constitutional and historical context that I have described this afternoon -- the jury and the Florida Bar, whose only concerns were whether evidence established guilt to the requisite degrees of certainty, and the voters in Florida's Twenty-Third Congressional District, whose concern was to weigh that evidence in the balance in deciding whether to vote for Hastings or his opponent.

Against that background, the final story I want to tell this afternoon is a story about those decisions -- a story about decisions made and about decisions not made by senior officials in all three branches of the American government. The decision to authorize the investigation and the decision to require that Borders be arrested at the scene of the final payment were made, initially, by the Director of the Federal Bureau of Investigations. The latter decision has to have been approved by the Assistant Attorney General of the United States responsible for the Criminal Division of the Justice Department. The decision three months later to prosecute Hastings, as well as Borders, notwithstanding the circumstantial nature of the evidence and its weaknesses, again had to be approved by the Assistant Attorney General. The officials involved in making those decisions knew the constitutional stories I have told. They knew the values that were at stake and the risks involved. They decided to proceed.

Hastings promptly and properly challenged those decisions. [A list identifying and describing the reported decisions and proceedings in the battles of Hastings is also reproduced as an addendum to this text.] Hastings asserted the claim that the Constitution specified a mandatory sequence of remedies when it was alleged that a federal judge had committed high crimes in office -- impeachment by the House and removal by the Senate first, and then, and only then, criminal prosecution by the executive and trial by the courts. The district court judge denied the motion, but acknowledged that the issue was one that had not been, but should be, resolved by the Supreme Court. In the court of appeals, Hastings suggested explicitly that the court should consider what would happen if he were acquitted and resumed the duties of his office. That court rejected his claim without discussing the consequences of an acquittal. Thereafter, the Supreme Court declined to consider the case or the issues it presented. Each of the judges who participated in those decisions was also aware of the constitutional stories I have told today.

Early in 1983, two senior prosecutors from the Justice Department's Public Integrity Section, who had had eighteen months to prepare the case, presented and marshalled the evidence before a jury. Hastings took the stand and testified under oath. He provided innocent explanations for the circumstances that the prosecutors offered as evidence of guilt. He was cross-examined thoroughly. In closing argument, the prosecutor explicitly argued that Hastings's testimony and explanations should be rejected as false. The issue was squarely presented to the jurors. On February 4, 1983, they returned their verdict: "Not

guilty, so say we all." Hastings had been acquitted and promptly resumed the duties of his office. By that verdict Hastings became (and remains) the first federal judge to have been acquitted.

Senior officials in the judicial branch had managed the case throughout. When Hastings's colleagues on the district court had recused themselves from hearing the case of a brother judge, it was the Chief Justice of the United States who designated the judge who would and did preside at the trial. The judge chosen was the chief judge of the District of Maine and a member of the Judicial Conference of the United States. When Hastings challenged the executive's decision to prosecute, he suggested that the judges of the court of appeals for the circuit in which he served should similarly recuse themselves from hearing his appeal because they might be called upon to serve with him following an acquittal and might have to consider proceedings under the 1980 Judicial Conduct Act. Those judges rejected the suggestion.

After Hastings was acquitted, the chief judge of his circuit requested that a complaint be filed that would give him authority to reinvestigate Hastings under the theretofore untested 1980 Judicial Conduct Act. Two judges, neither of them from Hastings's district, complied. On March 17, 1983, six weeks after the verdict, they filed a complaint that alleged that Hastings was guilty of the offense of which he had just been acquitted. The chief judge appointed himself and four other judges from the circuit to investigate the complaint. The investigating committee retained John Doar, the lawyer who had served as chief counsel in the House Judiciary Committee's Watergate Impeachment Inquiry, the inquiry that forced the resignation of President Nixon, as chief counsel for the Hastings investigation. In response Hastings asked two things. First, he asked the chief judge to authorize the release of the complaint and to agree proceedings of the investigating committee should be made public. The chief judge refused. Second, Hastings asserted that the proceedings initiated by the chief judge's appointment of an investigating committees would require him to incur costs and legal expense to properly defend his office and asked that provision be made for payment of these costs so that his compensation in office would not be diminished. The Director of the Administrative Office declined to authorize payments. Hastings thereafter advised all concerned that he would challenge the constitutionality of the 1980 Act and that he would not participate in any proceedings before the investigating committee until those challenges had been resolved. As a result of those decisions, Hastings became the second judge to be burdened with an extensive investigation under the 1980 Judicial Conduct Act.

Three times Hastings challenged the constitutionality of the 1980 Act. Three times the lower courts rejected his claims, albeit twice in the face of the dissenting views expressed by one of the judges on the three-judge panels that heard the appeals. Three times the Supreme Court refused to consider the issue, without reported dissent. Three-and-a-half years later, the investigating committee submitted its report. The committee reported that the evidence was clear and convincing that Hastings was guilty, notwithstanding his acquittal, and that the explanations he had given at his trial were false, as the prosecutors had argued to the jury. Three years of investigation had produced no new charges and no evidence that had not been available to the prosecutors before the trial. Nonetheless, in March 1987, four years after the trial and almost six years after the events that gave rise to

the allegations, the Judicial Conference of the United States decided that the report and record that Doar and the investigating committee had compiled should be sent to the House of Representatives with the Conference's recommendation that Hastings be impeached. The judges who had participated in the investigations and the decision to recommend that Judge Hastings be impeached knew the constitutional stories I have told today.

The House Judiciary Committee promptly retained four additional lawyers to assist it in the resulting impeachment inquiry. The chair of that committee decided that Hastings and his counsel should have no role in any further investigations it might conduct. Its investigations produced nothing new. A year and a half later, the House accepted the Judiciary Committee's recommendation and adopted articles of impeachment alleging that Hastings had been a participant in Borders's corrupt scheme and that the testimony he had given at his trial had been false. On August 9, 1988, the House managers presented those articles of impeachment in the Senate of the United States. Those who guided and controlled the House's actions were also aware of the constitutional stories.

Hastings challenged those articles in the Senate. He invoked again the separation-of-powers principles and judicial independence concerns and argued that the constitutional prohibition against double jeopardy and principles of fundamental fairness also precluded retrying him eight years after the event on charges that a jury had rejected six years before. The Senate rejected those claims. Hastings claimed that the Senate could not constitutionally (or morally) delegate responsibility for hearing the testimony and receiving evidence to a committee in a case in which the jurors who had heard the testimony and considered the other evidence as it was presented had unanimously voted to acquit. The Senate rejected that claim. Hastings filed affidavits showing that he had no funds for his defense and that his lawyers had already devoted time worth more than 2.5 million dollars in representing him. He asked that the Senate provide time and funds for his defense there. The Senate declined.

The hearings before the Senate Impeachment Trial Committee took more than a month. The record compiled was more than 7500 pages. The committee submitted a 181-page summary that accompanied the record. The record and summary were delivered to the Senate on October 2, 1989. The parties' briefs were submitted thereafter, the last on October 16th. The Senate heard oral argument on October 18th. On October 19th, the Republican vice chair of the Impeachment Trial Committee issued a seventy-five page statement explaining why, in his view, the evidence was insufficient to justify a conviction on any charge. On October 20th the Senate voted. The Senators who had served as the Democratic chair and as the Republican vice chair voted to acquit. Indeed, there was no article on which two thirds of the Senators who had heard the evidence voted to convict. The Senate, however, decided that Hastings should be convicted and removed, but the votes necessary to that decision came from the eighty-five senators who had neither heard nor had meaningful opportunity to consider the evidence. All were aware of the constitutional stories I have told today.

Hastings challenged the procedures by which the Senate had convicted him. He asked the courts to review them. The district court judge who heard the case initially agreed that the procedures adopted by the Senate did not satisfy the requirements mandated by the

Constitution. The Supreme Court thereafter decided, in a case involving a different judge, that the constitutional assignment of the sole power to try impeachments to the Senate deprived the courts of jurisdiction to review the manner in which the Senate exercised that power. The district court's initial decision in the Hastings case was set aside, and the district judge concluded that he was compelled to dismiss all of Hastings claims, the views that he expressed in dismissing those claims provide an appropriate coda to my last story:

This Court believes that the events surrounding . . . [Hastings's] impeachment and conviction are an unfortunate chapter in the history of this country. A jury of . . . [his] peers voted unanimously to acquit him of all criminal charges in a trial presided over by one of the nation's ablest jurists. Despite his acquittal, Judge Hastings was convicted on articles of impeachment by a vote of the full Senate, although eighty-eight out of the one hundred senators did not hear the evidence against him. It is clear that the guilt or innocence of Hastings was treated simply as another piece of legislation. In no sense of the word was Judge Hastings "tried" by the full Senate ....

Even though this court is powerless to afford Judge Hastings any relief, his case will have considerable historical significance and perhaps some day, after a dispassionate and non-political review of the case, this nation will reconsider the error perpetrated and provide Judge Hastings with the vindication he deserves, a small part of which he has received by his recent election to Congress.

*United States v. Hastings* (D.D.C. 1993)

### **Why?: The Search for a Meaning**

It is clear, I hope, that I have told these stories from the standpoint of a participant-observer. I served as Judge Hastings's principal counsel in all the battles that concerned his rights as a federal judge. A part of my goal at NIAS has been to organize and reconstruct the records of those battles and my observations for a book, perhaps two books. It is also clear, I hope, that the concerns that animate that project do not stem from a desire to re-argue the issue of guilt or innocence. Hastings is now secure in a constitutional office that he finds more satisfying than he did the judicial office, and his reputation is secure among those whose views might affect his future. The university of which I am a part recognized my work in those battles as a legitimate and valuable form of scholarly activity and has supported that work in my current efforts fully.

The concerns that motivate the current project are three-fold. First, I want to develop the stories I have told today, and those I told last fall, into a coherent and well documented account. They are, in my view, intrinsically interesting and important stories that deserve to be told and preserved in any event. Second, and more important, they are not stories that have been told well or explored widely by others or, perhaps for that reason, publicly confronted by the users of history to whom they should have been and should be relevant. I hope to provide an account that will make the history more accessible and less easy to

ignore for those who participate in or comment upon the cases involving federal judges in the future. Finally, I want to develop my thoughts on the uses and limitations of "history" in events that cause fundamental institutional change. However one views the merits of the process, the Battles of Hastings illustrate and were a critical part of a fundamental change in the allocation of powers under the American Constitution. I want to explore how it was that changes of this magnitude could occur without generating significant, contemporaneous, public debate over the merits of the changes or the legitimacy of the procedures by which they were effected that fairly considered the historical contexts, either in the popular press or in academic forums. I want to develop briefly the bases for the latter two concerns.

Since 1981, the Justice Department has prosecuted five district court judges, including Hastings. The evidence in at least four of those cases was less than overwhelming. Hastings was acquitted on all charges, and none of the other three was convicted on the principal corruption charges framed by the prosecutors. The Supreme Court has continued to decline to consider whether the investigation and prosecution of federal judges is constitutionally permissible, leaving the question still not finally resolved. The first two of those judges to be convicted refused to resign. (Appeals in the other two cases are still pending). They were, as they knew they would be, impeached by the House. The Senate established an impeachment trial committee for each their cases. Notwithstanding the economic and psychological costs and near-certainty that they would be convicted and removed, each sought vindication before the Senate. Neither succeeded, but in each case and on every charge, the proportion of the twelve Senators who had heard the evidence who voted to convict was significantly less than the proportion of the Senators who had not heard the evidence who voted to convict. One of these judges, Walter Nixon, who was tried immediately after Hastings, also challenged in the courts the Senate's use of a trial committee to hear the evidence. In that case, *Nixon v. United States* (1993), the Supreme Court avoided the substantive question by ruling that the constitutional assignment of the sole power to try impeachments to the Senate deprived the courts of any power to review the constitutionality of the procedures by which the Senate exercised that power. During this period, hundreds of complaints, most of them against district court judges, have been filed under the 1980 Judicial Conduct Act. Most of the complaints have been dismissed, but all federal judges now serve with an awareness of the expenses and burdens that were in the proceedings against Judge Hastings. A short time after the Senate removed Hastings from the bench, a National Commission on Judicial Discipline and Removal was established to consider the needs of the system and to report its recommendations. It has done so, finding that little further change is needed, without properly acknowledging the magnitude or significance of the changes that have been effected.

For a European audience, and for many American audiences, the system that has evolved in the United States for disciplining and removing federal judges must seem unremarkable. Most would probably accept the view that, in a complex society, both the number of judges and the complexity of the legislative business make it impracticable for impeachment by the House and trial before the full Senate to remain the *only* mechanism by which a judge's conduct in office can be sanctioned. In that view, the European experience and common sense suggest that primary responsibility for regulating judicial conduct can and should be assigned to institutions within the judicial branch without

impairing the independence of that branch. Moreover, that branch should be capable of discovering and rebuffing any abuses of the executive power involved in an exercise of discretion to prosecute a particular federal judge. So too, it is clear that, under the emerging system, the House and Senate retain sufficient residual authority to adequately assure that the constitutional values that motivated the framers' original decisions are preserved.

In that view, the Battles of Hastings are an interesting aberration, an illustration of the kinds of "growing pains" that often accompany institutional change, and a useful case-study to identify adjustments that should be made, such as making provision to provide public funds necessary to enable judges to mount a defense against those who would attack their conduct in office. Although Hastings may have been innocent and the proceedings may have been unjust burdens upon him, any instance of particular injustice that may have occurred are anachronisms to be avoided and do not merit general concern in the broader institutional and historical contexts involved.

I think that that view is static and ahistorical. For that reason, I do not think that that view responds to the principal issue I like to pose for discussion this afternoon: To what extent is the legitimacy of institutional change and the accountability of those who are responsible for that change undermined by a failure to meaningfully confront the historical context in which their actions are taken and to reconcile or justify those actions with that context? At no time during the Battles of Hastings did the public officials responsible for the decisions to act or to refrain from acting seriously engage the constitutional stories I have told or acknowledge that their decisions and the resulting actions were altering an established constitutional arrangement in a way that was inconsistent with that history. At no time during this period did the press or the academy recognize or acknowledge the fact or magnitude of the constitutional changes that were being wrought or the historical background against which they were occurring. Whatever the merits of the changes, I think that the fact that governmental actors could make changes of the nature and magnitude of those effected during the Battles of Hastings without themselves confronting or being forced by the media or the academy to confront the history that gave rise to the original institutional arrangements raises major concerns that merit serious consideration. Moreover, my experience as a participant observer in the Battles of Hastings and similar roles in other contexts have persuaded me that, at least in the United States, covert, ahistorical changes are being permitted, in the name of expedition, with increasing frequency. If I am correct, the reasons why and the conditions under which such covert changes in important institutional arrangements escape public scrutiny and debate are also subjects that raise additional concerns and merit serious study. These, in any event, are some of the concerns that have led me to embark upon the project to tell the four stories and to persistently search for their meanings. I invite you to join in the quest through our deliberations this afternoon.

## **ADDENDUM A**

### **CONSTITUTION OF THE UNITED STATES** (Selected Provisions)

#### Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2, cl. 5. The House of Representatives ... shall have the sole Power of Impeachment.

Section 3, cl. 6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation.... And no Person shall be convicted without the Concurrence of two thirds of the Members present.

cl. 7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

#### Article II

Section 1, cl. 1. The executive Power shall be vested in a President of the United States of America ....

Section 2, cl. 1. The President ... shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

cl. 2. He ... shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court, and all other officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law: ....

Section 4. The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

#### Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2, cl. 3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; .....

## ADDENDUM B

### The Battles of Hastings: Reported Proceedings and Decisions

*Hastings v. United States*, 837 F. Supp. 3 (D.D.C. 1993) (decision on remand) (affirming conclusion that Senate proceedings were unfair, but dismissing complaint as non-justiciable).

*Waggoner v. Hastings*, 816 F. Supp. 716 (1993) (dismissing citizen's complaint that judgment in impeachment proceedings disqualified Congressman-elect Hastings from taking office as a member of the United States House of Representatives).

*Hastings v. United States*, 802 F. Supp. 490 (D.D.C. 1992) (finding Senate's use of an Impeachment Trial Committee in proceedings against Judge Hastings violated Due Process Clause), *vacated and remanded for reconsideration*, No. 89-5188 (D.C. Cir. Mar. 2, 1993).

*The Impeachment of Alcee L. Hastings, a Judge of the United States District Court for the Southern District of Florida* (proceedings in the 100th and 101st Congress before the Senate of the United States and two of its committees leading to the removal of Judge Hastings on Articles of Impeachment exhibited by the United States House of Representatives on August 8, 1988; prosecuted by its managers before an Impeachment Trial Committee in July 1989; and argued before the full Senate on October 16 and decided on October 19, 1989)].

*Hastings v. United States Senate*, 716 F. Supp. 38 (D.D.C.), *aff'd*, 887 F.2d 332 (D.C. Cir. 1989) (mem. decision) (rejecting as premature various challenges to Senate authority to retry matters decided by jury and to use committee to hear evidence).

*In the Matter of the Impeachment of Alcee L. Hastings, Judge of the United States District Court for the Southern District of Florida* [proceedings before the Subcommittee on Criminal Justice of the Committee on the Judiciary of the United States House of Representatives culminating in the adoption of H. Res. 499 (Aug. 3, 1988)].

*In the Matter of a Complaint Filed by William F. Weld* (proceedings under the Judicial Council Reforms and Judicial Conduct and Disability Act of 1980 before a special committee of the Judicial Council of the Eleventh Circuit; record released to House Subcommittee on Criminal Justice, June 1988.)

*In re Grand Jury 86-3*, 673 F. Supp. 1569 (S.D. Fla. 1987), *aff'd. sub nom., In re Grand Jury Proceedings (Hastings)*, 841 F.2d 1048 (11th Cir.) (special panel), *stay denied*, 485 U.S. 1001 (1988) (granting House Committee on the Judiciary access to sealed records in telephone interception proceedings and to testimony obtained by 1986 grand jury).

*In re Grand Jury Proceedings of Grand Jury No. 81-1*, 669 F. Supp. 1072 (S.D. Fla.), *aff'd. sub nom., In re Request for Access to Grand Jury Materials Grand Jury No. 81-1 (Miami) (Hastings)*, 833 F.2d 1438 (11th Cir. 1987) (special panel) (granting House

Committee on the Judiciary access to records of 1981 grand jury that indicted Judge Hastings).

*Hastings v. Judicial Conference of the United States*, 657 F. Supp. 672 (D.D.C. 1986), *aff'd. in part and rev'd. in part*, 829 F.2d 91 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1014 (1988) [renewed challenge to Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the "Act") and the manner in which it had been applied in proceedings against United States District Judge Alcee L. Hastings; challenge to Act rejected, due process claims remanded].

*In re Certain Complaints Under Investigation by an Investigating Committee of the Judicial Council of the Eleventh Circuit*, 783 F.2d 1488 (11th Cir.) (special panel), *cert. denied*, 477 U.S. 904 (1986) [original proceedings enforcing subpoenas to compel secretary and former law clerks to produce documents and testify concerning matters learned in assisting Judge Hastings in chambers and appellate proceedings affirming *Williams v. Mercer*, 610 F. Supp. 169 (S.D. Fla. 1985) (action brought to quash subpoenas on claims of constitutional invalidity and judicial privilege; complaint dismissed for lack of subject-matter jurisdiction)].

*Hastings v. Judicial Conference of the United States*, 770 F.2d 1093 (D.C. Cir. 1985), *vacating*, 593 F. Supp. 1371 (D.D.C. 1984), *cert. denied*, 477 U.S. 904 (1986) (initial challenge to the constitutionality of the Act and to the manner of its application in proceedings against Judge Hastings; claims ruled not ripe.)

*In re Petition to Inspect and Copy Grand Jury Materials*, 576 F. Supp. 1275 (S.D. Fla. 1983), *aff'd.*, 735 F.2d 1261 (11th Cir.) (special panel), *cert. denied*, 469 U.S. 884 (1984) (upholding right of special committee appointed under the Act to obtain records of grand jury that investigated Judge Hastings without showing particularized need for material and for use in administrative proceeding; denying reciprocal right to accused judge).

*United States v. Hastings*, 681 F.2d 706 (11th Cir. 1982), *cert. denied*, 459 U.S. 1203 (1983) (rejecting claim that Constitution establishes mandatory sequence of remedies requiring that legislative impeachment and removal precede executive prosecution and judicial trial on allegations that federal judge committed high crimes in exercising judicial power).

Battle of Hastings, battle on October 14, 1066, that ended in the defeat of Harold II of England by William, duke of Normandy, and established the Normans as the rulers of England. Learn more about the background and details of the Battle of Hastings in this article. How did the Battle of Hastings change the course of English history? William's victory at the Battle of Hastings brought England into close contact with the Continent, especially France. Meanwhile, the English militia, short of supplies after four months' fruitless waiting, lost morale and were dismissed on September 8. Harold's ships were brought back to the Thames, with many being lost en route. The English Channel was thus left open, and the best chance of destroying William's army was lost. The Battle of Hastings was a bloody, all-day battle fought on October 14, 1066 between English and Norman forces. The Normans, led by William the Conqueror, were victorious, and took over control of Anglo-Saxon England. William, an Old French name composed of Germanic elements (â€œwil,â€ meaning desire, and â€œhelm,â€ meaning protection), was introduced to England by William the Conqueror and quickly became extremely popular. By the 13th century, it was the most common given name among English men. Just over two weeks before the Battle of Hastings in October 1066, William had invaded England, claiming his right to the English throne. In 1051, William is believed to have visited England and met with his cousin Edward the Confessor, the childless English king. The Battle of Hastings was fought on October 14th 1066. In the lead up to the Battle of Hastings, William's men had done considerable damage to the area. The History Learning Site, 5 Mar 2015. 5 Feb 2021. The Battle of Hastings was fought on October 14th 1066. In the lead up to the Battle of Hastings, William's men had done considerable damage to the area around Hastings as the Domesday Book was later to show. William, Duke of Normandy, was a skilled and experienced military leader. We only have the story from the Normans side as the English were eventually slaughtered. Most of our information comes from the Bayeux Tapestry. This was produced to celebrate the victory probably around 1077 â€“ some 11 eleven years after the battle. The Battle of Hastings in south-east England on 14 October 1066 CE saw the defeat of the Anglo-Saxon king Harold II (r. Jan-Oct 1066 CE) by the invading... As if the story of 1066 CE was not complicated enough, there was a third player in the deadly game for who would win the kingdom of England. King Harald Hardrada, aka Harald III of Norway (r. 1046-1066 CE), had just as dubious a claim to Harold Godwinson's crown as William had but, like the Norman duke, he well knew that a strong army would more than make up for the flimsiness of his legal rights. The first of the three major battles of 1066 CE was at Fulford Gate, an uncertain location somewhere near York.