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REPORT
100-810

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

REPORT

OF THE

COMMITTEE ON THE JUDICIARY

TO ACCOMPANY

H. Res. 499

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IMPEACHMENT OF ALCEE L. HASTINGS

AUGUST 1, 1988.—Referred to the House Calendar and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary submitted the following

REPORT

[To accompany H. Res. 499]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 499) impeaching Alcee L. Hastings, Judge of the United States District Court for the Southern District of Florida, for high crimes and misdemeanors, having considered the same, report favorably thereon with an amendment and recommend that the resolution as amended be agreed to.

The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That Alcee L. Hastings, a judge of the United States District Court for the Southern District of Florida, be impeached for high crimes and misdemeanors and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Alcee L. Hastings, a judge of the United States District Court for the Southern District of Florida, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

From some time in the first half of 1981 and continuing through October 9, 1981, Judge Hastings and William Borders, then a Washington, D.C. attorney, engaged in a corrupt conspiracy to obtain $150,000 from defendants in United States v. Romano, a case tried before Judge Hastings, in return for the imposition of sentences which would not require incarceration of the defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE II

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and con-

trary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings and William Borders, of Washington, D.C., never made any agreement to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE III

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., to modify the sentences of defendants in United States v. Romano, a case tried before Judge Hastings, from a term in the Federal penitentiary to probation in return for a bribe from those defendants.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE IV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell t[illegible]ruth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings never agreed with William Borders, of Washington, D.C., in connection with a payment on a bribe, to enter an order returning a substantial amount of property to the defendants in United States v. Romano, a case tried before Judge Hastings. Judge Hastings had previously ordered that property forfeited.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE V

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' appearance at the Fontainebleau Hotel in Miami Beach, Florida, on September 16, 1981, was not part of a plan to demonstrate his participation in a bribery scheme with William Borders of Washington, D.C., concerning United States v. Romano, a case tried before Judge Hastings, and that Judge Hastings expected to meet Mr. Borders at that place and on that occasion.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE VI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings did not expect William Borders, of Washington, D.C., to appear [illegible] Judge Hastings' room in the Sheraton Hotel in [illegible]ashington, D.C., on September 12, 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE VII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath, make a false statement which was intended to mislead the trier of fact.

The false statement concerned Judge Hastings' motive for instructing a law clerk, Jeffrey Miller, to prepare an order on October 5, 1981, in United States v. Romano, a case tried before Judge Hastings, returning a substantial portion of property previously ordered forfeited by Judge Hastings. Judge Hastings stated in substance that he so instructed Mr. Miller primarily because Judge Hastings was concerned that the order would not be completed before Mr. Miller's scheduled departure, when in fact the instruction on October 5, 1981, to prepare such order was in furtherance of a bribery scheme concerning that case.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE VIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that Judge Hastings' October 5, 1981, telephone conversation with William Borders, of Washington, D.C., was in fact about writing letters to solicit assistance for Hemphill Pride of Columbia, South Carolina, when in fact it was a coded conversation in furtherance of a conspiracy with Mr. Borders to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Wherefore, Judge Alcee L. Hastings, is guilty of an impeachable offense warranting removal from office.

ARTICLE IX

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to his oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that three documents that purported to be drafts of letters to assist Hemphill Pride, of Columbia, South Carolina, had been written by Judge Hastings on October 5, 1981, and were the letters referred to by Judge Hastings in his October 5, 1981, telephone conversation with William Borders, of Washington, D.C.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE X

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath, make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on May 5, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XI

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of

Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on August 2, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803-782-9387 in Columbia, South Carolina.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on September 2, 1981, Judge Hastings talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina,

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XIII

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that 803-777-7716 was a telephone number at a place where Hemphill Pride could be contacted in July 1981.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XIV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact.

The false statement was, in substance, that on the afternoon of October 9, 1981, Judge Hastings called his mother and Patricia Williams from his hotel room at the L'Enfant Plaza Hotel in Washington, D.C.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XV

From January 18, 1983, until February 4, 1983, Judge Hastings was a defendant in a criminal case in the United States District Court for the Southern District of Florida. In the course of the trial of that case, Judge Hastings, while under oath to tell the truth, the whole truth, and nothing but the truth, did knowingly and contrary to that oath make a false statement which was intended to mislead the trier of fact concerning his motives for taking a plane on October 9, 1981, from Baltimore-Washington International Airport rather than from Washington National Airport.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XVI

From July 15, 1985, to September 15, 1985, Judge Hastings was the supervising judge of a wiretap instituted under chapter 119 of title 18, United States Code (added by title III of the Omnibus Crime Control and Safe Streets Act of 1968). The

wiretap was part of certain investigations then being conducted by law enforcement agents of the United States.

As supervising judge, Judge Hastings learned highly confidential information obtained through the wiretap. The documents disclosing this information, presented to Judge Hastings as the supervising judge, were Judge Hastings' sole source of the highly confidential information.

On September 6, 1985, Judge Hastings revealed highly confidential information that he learned as the supervising judge of the wiretap, as follows: On the morning of September 6, 1985, Judge Hastings told Stephen Clark, the Mayor of Dade County, Florida, to stay away from Kevin "Waxy" Gordon, who was "hot" and was using the Mayor's name in Hialeah, Florida.

As a result of this improper disclosure, certain investigations then being conducted by law enforcement agents of the United States were thwarted and ultimately terminated.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

ARTICLE XVII

Judge Hastings, who as a Federal judge is required to enforce and obey the Constitution and laws of the United States, to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to perform the duties of his office impartially, did, through—

(1) a corrupt relationship with William Borders of Washington, D.C.;

(2) repeated false testimony under oath at Judge Hastings' criminal trial;

(3) fabrication of false documents which were submitted as evidence at his criminal trial; and

(4) improper disclosure of confidential information acquired by him as supervisory judge of a wiretap;

undermine confidence in the integrity and impartiality of the judiciary and betray the trust of the people of the United States, thereby bringing disrepute on the Federal courts and the administration of justice by the Federal courts.

Wherefore, Judge Alcee L. Hastings is guilty of an impeachable offense warranting removal from office.

I. Introduction

The Committee on the Judiciary has conducted an extensive inquiry into the conduct of Alcee L. Hastings, United States District Judge for the Southern District of Florida. The inquiry focused on whether (1) he was involved in a bribery conspiracy, (2) he committed perjury at his criminal trial, and (3) he improperly disclosed confidential information that he learned in his official capacity as a United States District Judge.

The Committee finds, based upon a careful study of the evidence, that Judge Hastings was involved in a bribery conspiracy with William Borders of Washington, D.C.; that Judge Hastings perjured himself 14 times at his criminal trial; and that Judge Hastings improperly disclosed confidential information that he obtained while supervising a wiretap. The Committee therefore recommends the impeachment of Judge Hastings.

II. Brief History of Impeachment

The Constitution gives the Congress the ultimate, albeit rarely used, power to remove federal officials from office. The Framers of the Constitution adopted the remedy of impeachment as an essential component of the system of checks and balances underpinning our Government. Alexander Hamilton, in *The Federalist* No. 65, characterized impeachment "as a method of National Inquest into the conduct of public men." The Framers sought to protect the in-

stitutions of government by providing for the removal of persons who are unfit to hold positions of public trust.

The model for the impeachment process adopted by the Framers was English precedent. Hamilton in *The Federalist* No. 65 specifically referred to the practice in Great Britain as the model from which the institution of impeachment had been borrowed. Indeed, the notorious impeachment trial of Warren Hastings was in progress in England even as the Framers sought to put together a plan of government in Philadelphia.

The phrase "high Crimes and Misdemeanors," the constitutional standard, was imported by the Framers directly from English practice, having first been employed in England as early as 1386 in the impeachment of the Earl of Suffolk and appearing thereafter in impeachments instituted over the next 400 years. The rich body of precedent incorporated with the adoption of the phrase "high Crimes and Misdemeanors" makes clear that the phrase refers to misconduct that damages the state and the operations of governmental institutions, and is not limited to criminal misconduct. Indeed, the phrase itself had no roots in the ordinary criminal law, but was limited to parliamentary impeachments. In the United States ten of the impeachments voted by the House of Representatives have involved one or more charges that did not allege a violation of the criminal law.

The Framers, however, did not adopt the English model wholesale. A critical difference between the two systems is that impeachment in England was a criminal proceeding intended to punish individuals as well as remove them from office. Impeachment under our Constitution has never imposed criminal penalties such as imprisonment or a fine. The non-criminal nature of the American impeachment process is a watershed distinction from the English practice.

At the time the impeachment process was included in the Constitution, the Framers were concerned primarily with providing a check on the President. They intended impeachment to be one of the central elements of assuring the integrity of the Executive Branch. Federal judges were added to the impeachment provision at the end of the drafting process by making "all civil officers of the United States" subject to impeachment, in addition to the President and Vice President.

As with other aspects of the checks and balances of our system of government, the Framers deliberately rejected a system of pure efficiency in favor of a more complex one that would maximize the integrity and independence of the judiciary. In so doing, the Founding Fathers anticipated that impeachment would be a cumbersome affair, generating controversy and divisiveness and demanding much exertion by Members of Congress. Yet, they believed that no other branch of Government was as qualified to undertake this duty or would safeguard the process as scrupulously from vindictive or frivolous accusations. While the power of impeachment has been exercised infrequently, history attests to the care with which Congress has discharged its prescribed responsibility.

Since 1787, fourteen federal officers have been impeached by the House of Representatives: one President, one cabinet officer, one Senator and eleven federal judges. Twelve of the fourteen officers

were tried in the Senate; two resigned prior to Senate proceedings. Five of the fourteen impeachments resulted in conviction in the Senate and removal from office. Each of the five convictions was of a federal judge.

The most recent impeachment proceeding involved Judge Harry E. Claiborne, who was impeached by the House of Representatives in 1986 and convicted and removed from office by the Senate the same year. Perhaps the most noteworthy aspect of the Claiborne impeachment, other than the fact that it was the first impeachment trial in 50 years, was the third article exhibited by the House. That article alleged that Judge Claiborne had been convicted in a United States district court for filing fraudulent tax returns. The House sought to have the Senate recognize that the conviction in and of itself, without proof of the commission of the underlying offense, was an adequate basis for impeachment. Judge Claiborne was ultimately acquitted on this article by the Senate, although he was convicted on the remaining three articles.

Prior to Judge Claiborne, the most recent impeachment trial was in 1936 when Judge Halsted Ritter was found guilty by exactly the required two-thirds vote of the Senate. More recently, in 1974, this Committee investigated and ultimately recommended articles of impeachment against Richard M. Nixon. President Nixon, however, resigned from office prior to the consideration of the articles by the House.

The historical antecedents of the impeachment process are rooted in hundreds of years of English and American experience. Impeachment is the ultimate means of preserving our constitutional form of government from the depredations of those in high office who abuse or violate the public trust.

III. Background of Inquiry Into the Conduct of Judge Alcee L. Hastings

On March 17, 1987, Chief Justice Rehnquist, acting on behalf of the Judicial Conference of the United States, transmitted to the Speaker of the House of Representatives a certification that, in language taken from 28 U.S.C. 372(c), the Judicial Conference had determined that United States District Judge Alcee L. Hastings had "engaged in conduct which might constitute one or more grounds for impeachment." [1] The certification and the accompanying Report of the Investigating Committee to the Judicial Council of the Eleventh Circuit ["Investigating Committee Report"] were referred to this Committee. Subsequently, this Committee referred the inquiry into the conduct of Judge Hastings to the Subcommittee on Criminal Justice ["Subcommittee"].

On December 29, 1981, Grand Jury No. 81-1-GJ(MIA), sitting in the Southern District of Florida, returned indictments charging Judge Hastings and William A. Borders, Jr., then a Washington, D.C. attorney, with conspiracy and obstruction of justice.[1a] The in-

[1] A copy of the certification is reprinted in *In the Matter of the Impeachment Inquiry Concerning U.S. District Judge Alcee L. Hastings: Hearings before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary*, 100th Cong., 2d Sess. (1988) ["Subcommittee Hearings"], Appendix V.

[1a] Mr. Borders was also charged with two counts of interstate travel to facilitate the conspiracy

dictment alleged that Judge Hastings and William Borders had engaged in a plan to solicit a bribe from defendants who were tried before Judge Hastings. The judge and Mr. Borders were tried separately. On March 29, 1982, Mr. Borders was convicted by a jury on all counts. Judge Hastings was acquitted by a jury on February 4, 1983.

On March 17, 1983, Wm. Terrell Hodges, Chief Judge of the United States District Court for the Middle District of Florida, and Anthony A. Alaimo, Chief Judge of the United States District Court for the Southern District of Georgia, filed a verified written complaint with the United States Court of Appeals for the Eleventh Circuit alleging misconduct on the part of Judge Hastings. The complaint was initiated under 28 U.S.C. 372(c), which was enacted as part of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. The Chief Judge of the Eleventh Circuit appointed an Investigating Committee consisting of five judges, which spent approximately three years investigating the allegations. The Investigating Committee hired John Doar of New York as its counsel. In the course of its inquiry, the Investigating Committee heard the testimony of over 100 witnesses and gathered approximately 2,800 exhibits.

The Investigating Committee unanimously adopted a report setting forth its findings and conclusions. At the heart of the Investigating Committee Report: are 2 findings.

> I. The evidence, considered in its totality, clearly and convincingly establishes that Judge Hastings was engaged in a plan designed to obtain a payment of money from defendants facing jail sentences in his Court by promising that with the payment they would receive lenient non-jail sentences.[2]
>
> II. There is clear and convincing evidence that Judge Hastings sought to conceal his participation in the bribery scheme and to explain away evidence connecting him with the sale of justice and he pursued these objectives through concocting and presenting fabricated documents and false testimony in a United States District Court. Judge Hastings' conduct was premeditated, deliberate and contrived.[3]

The Judicial Council of the Eleventh Circuit accepted and approved the Investigating Committee Report and concluded that Judge Hastings had engaged in conduct which might constitute grounds for impeachment. On September 2, 1986, a certification to that effect was made to the Judicial Conference of the United States. The Judicial Conference, in turn, concurred that consideration of impeachment of Judge Hastings "may be warranted." The Judicial Conference's determination was followed by the certification by the Chief Justice to the Speaker of the House.[4]

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[2] The Investigating Report is reprinted in Appendix I of the Subcommittee Hearings at 341.
[3] *Id.* at 355–356.
[4] Judge Hastings declined the opportunity to participate in the proceedings before the Investigating Committee. He also declined an opportunity extended to him by the Eleventh Circuit Judicial Council to respond to the Investigating Committee Report. The Judicial Conference of the United States afforded Judge Hastings another opportunity to respond, and he did so by filing a

Continued

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IV. Committee Consideration

A. Scope of Investigation

It is a fundamental principle of the Constitution that impeachment proceedings have two separate and distinct parts. Article I, Section 2 states that the House of Representatives "shall have the sole Power of Impeachment," while Article I, Section 3 provides that "The Senate shall have the sole Power to try all Impeachments." The House of Representatives, therefore, inquires into whether an officer of the United States should be impeached, while the Senate conducts the trial if the House adopts articles of impeachment.

Within this framework, the Committee's role was to conduct an independent investigation into the alleged misconduct by Judge Alcee L. Hastings in order to determine whether to recommend the adoption of articles of impeachment. The Committee undertook an extensive investigation, which sought to assess independently the accuracy and reliability of the facts found by the Eleventh Circuit Investigating Committee, to analyze the record in Judge Hastings' trial which resulted in his acquittal, to pursue new leads and lines of inquiry with respect to the Investigating Committee's findings, and to investigate any new allegations of misconduct unrelated to the alleged bribery conspiracy.

In assessing the facts found by the Investigating Committee, the extensive record of the Investigating Committee proceedings, the thousands of pages constituting the records of the criminal trials of Judge Hastings and William Borders, and the entire record of the proceedings in *United States* v. *Romano*, the case involving the defendants whose sentences were the subject of the alleged bribery conspiracy were all reviewed. In addition, the Provisional Report submitted by Judge Hastings to the Judicial Conference, the records of Grand Jury 81-1, the FBI files pertaining to the bribery conspiracy case, and the working files of the Investigating Committee's counsel, John Doar, were reviewed.

Several forensic experts were consulted. Questioned documents were submitted to forensic experts for examination to determine whether they could be dated. The transcript of a conversation between Judge Hastings and William Borders was submitted to a linguistics expert to determine if it was a coded conversation as contended by the prosecution in Judge Hastings' criminal case and by the Investigating Committee.

During the course of its investigation into the conduct of Judge Hastings, the Committee learned of a wholly independent allegation that, in 1985, Judge Hastings had improperly disclosed confidential information he had received in his role as supervisory judge of a wiretap instituted under 18 U.S.C. 2516, generally referred to as Title III.[5] The records of the United States district court's au-

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document entitled "A Provisional and Preliminary Report on the Proceedings Against United States District Judge Alcee L. Hastings" ["Provisional Report"], which is reprinted in Appendix III of the Subcommittee Hearings.

[5] 18 U.S.C. 2516 was enacted by Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

thorization and supervision of the wiretap, the FBI investigation of the alleged disclosure, and the grand jury proceedings concerning the disclosure were all reviewed.[6]

Over sixty witnesses were interviewed or deposed.

B. LITIGATION

The Committee requested from the United States District Court for the Southern District of Florida the records of the grand jury proceedings in the bribery conspiracy case, and the applications, orders, progress reports and other documents which were under seal in the Title III matter, as well as certain grand jury testimony involving the Title III disclosure.[7] Judge Hastings opposed the Committee's requests and litigation ensued.

The Committee's request for access to the grand jury materials involving the bribery conspiracy was granted by Judge John Butzner, a Senior Judge of the Fourth Circuit, sitting by designation as District Judge in the Southern District of Florida. That decision was affirmed by the Eleventh Circuit Court of Appeals.[8]

Judge Butzner also granted the Committee's request for the grand jury and other materials relevant to the Title III inquiry. Judge Hastings again appealed, and again the Eleventh Circuit affirmed Judge Butzner's ruling.[9] Judge Hastings applied to the United States Supreme Court to continue the stay of the mandate of the Eleventh Circuit. The Court denied his application.[10]

C. COMMITTEE AND SUBCOMMITTEE CONSIDERATION

The Subcommittee held 7 days of hearings, during which 12 witnesses testified.[11] The majority of the witnesses testified to the facts surrounding Judge Hastings' alleged participation with William Borders in the bribery conspiracy, Judge Hastings' alleged false testimony at his criminal trial, and the alleged disclosure by Judge Hastings of confidential wiretap information. The Subcommittee also heard the testimony of a linguistics expert with respect to a recorded conversation between Judge Hastings and William Borders. The United States district judges who filed the complaint which gave rise to the appointment of the Eleventh Circuit Investigating Committee also testified.

The Subcommittee allowed Judge Hastings to give a 10 minute opening statement under oath. Judge Hastings' counsel was given the opportunity to question all witnesses called by the Subcommittee, following the conclusion of the Subcommittee's questioning.

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[6] The disclosure of confidential wiretap information by Judge Hastings was the subject of an investigation by a second Eleventh Circuit Investigating Committee. That second Investigating Committee is referred to herein as the "1987 Investigating Committee."

[7] The Committee could have subpoenaed these materials, but as a matter of comity the Committee proceeded by way of letter requests from Committee Chairman Peter W. Rodino to the United States District Court for the Southern District of Florida. The letters are reprinted in Appendix V of the Subcommittee Hearings.

[8] *In re Request for Access to Grand Jury Materials*, 669 F. Supp. 1072 (S.D. Fla.), *aff'd*, 833 F.2d 1438 (11th Cir. 1987) (special panel). *See* Appendix V of the Subcommittee Hearings.

[9] *In re Grand Jury 86-3 (Miami)*, 673 F. Supp. 1569 (S.D. Fla. 1987), *aff'd*, 841 F.2d 1048 (11th Cir. 1988) (special panel). *See* Appendix V of the Subcommittee Hearings.

[10] *Alcee L. Hastings, Judge, USDC S.D. Florida* v. *Committee on the Judiciary of the United States House of Representatives, et al.*, No. A-788 (April 18, 1988). The decision is reprinted in Appendix V of the Subcommittee Hearings.

[11] May 18, 19, 24, 25 and 26, and June 1 and 9, 1988.

Judge Hastings' counsel questioned the witnesses for an initial 10 minutes and was granted additional 10 minute periods as needed. Judge Hastings' counsel was afforded the opportunity to submit names of potential witnesses accompanied by a proffer as to the necessity and significance of the witnesses' testimony.[12] The Subcommittee, after reviewing the proposed witness lists and proffer, called and took testimony from those witnesses who had knowledge of facts relevant to the subject of the inquiry. Finally, Judge Hastings' counsel was afforded the opportunity to give a closing statement at the conclusion of all the testimony.

Judge Hastings was invited to testify before the Subcommittee on his own behalf. On June 9, 1988, Judge Hastings stated on the record that he declined the invitation on the advice of counsel.[13]

The Subcommittee subpoenaed William Borders to testify at the hearings. When he appeared, Mr. Borders refused to testify and asserted various constitutional rights.[14] The Subcommittee ultimately determined not to take the extraordinary step of seeking immunity for several reasons, and the Committee reached the same determination.

First, Mr. Borders has a history of refusing to testify with respect to the alleged bribery conspiracy. Mr. Borders served more than 30 days in prison for contempt rather than testify before a grand jury investigating the bribery conspiracy matter.[15]

Second, the legal process available to the Subcommittee to compel Mr. Borders' testimony is fraught with delay. A decision to seek use immunity must first be approved by two-thirds of the Committee. The Committee then must apply to a federal district court for an order directing Mr. Borders to testify or provide the sought after information. At least ten days prior to applying for that order, the Committee must notify the Attorney General of its intent to seek the order, and the court will delay issuance of the order for as much as twenty additional days if the Attorney General so requests.[16]

If Mr. Borders were to continue to refuse to testify, despite being granted use immunity, the House of Representatives' only means of compelling his testimony (aside from the process available under its inherent contempt power, which has not been used in modern times) is to seek criminal prosecution. To do so, a contempt citation must be approved by the Subcommittee, the Committee and the House (or by the presiding officer if Congress is not in session). After a contempt citation has been certified by the Speaker of the House, it is the "duty" of the United States Attorney "to bring the

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[12] Judge Hastings' witness lists and proffer are reprinted in Appendix III of the Subcommittee Hearings.

[13] For Judge Hastings' written explanation of his decision, *see* Appendix III of the Subcommittee Hearings.

[14] Prior to the hearings, Mr. Borders had asserted, on two occasions, that the terms and conditions of his parole precluded him from testifying before the Subcommittee. Although the Parole Commission and the Subcommittee took issue with this interpretation, the Subcommittee delayed further appearances by Mr. Borders until after his parole had expired. At that time, Mr. Borders refused to testify based on rights asserted under the First, Fourth, Fifth and Eighth Amendments to the Constitution. The transcripts of the Borders depositions are reprinted in Appendix V of the Subcommittee Hearings.

[15] Mr. Borders also did not testify at his trial or at Judge Hastings' criminal trial.

[16] 18 U.S.C. 6005.

matter before the grand jury for its action." [17] These procedures are an additional likely source of delay.

Third, unlike civil contempt (which is available to the Senate and its committees by statute, but not to the House), criminal contempt is punitive rather than coercive, for generally the witness will not be able to purge himself of the contempt by testifying. Consequently, even if Mr. Borders were prosecuted for refusing to testify, he would lack incentive to cooperate with the Subcommittee.

The fourth reason why the Committee and the Subcommittee decided not to seek immunity for Mr. Borders is that since Mr. Borders was convicted of serious felonies, going to the heart of his integrity and credibility, the Subcommittee had serious doubts as to whether his testimony, if finally presented, would be reliable.

The Committee and the Subcommittee recognize that important interests—particularly that of deterrence of others from engaging in contumacious conduct—would be served by pursuing Mr. Borders' testimony. The Committee and the Subcommittee reject Mr. Borders' position that he has satisfied his obligations by having been found guilty and imprisoned for the bribery conspiracy. However, given the history of Mr. Borders' recalcitrance, the significant delay which would likely result from pursuing his testimony, and the question of Mr. Borders' own credibility, the Committee determined not to take the unusual step of seeking immunity for Mr. Borders' testimony.

D. COMMITTEE AND SUBCOMMITTEE ACTION

On July 7, 1988, the Subcommittee unanimously adopted, on the motion of Subcommittee Chairman John Conyers, Jr., 17 articles of impeachment. Those articles were introduced as H. Res. 499. Article I alleges that Judge Hastings engaged in a corrupt conspiracy with William Borders to obtain $150,000 from defendants in a criminal cased tried before Judge Hastings. Articles II through XV allege that Judge Hastings testified falsely at his criminal trial. Article XVI alleges that Judge Hastings improperly disclosed confidential information which he had learned in his capacity as supervisory judge of a Title III wiretap. Article XVII alleges that the pattern of conduct described in Articles I through XVI undermines confidence in the integrity and impartiality of the federal judiciary and betrays the trust of the people of the United States, thereby bringing disrepute on the federal courts and the administration of justice by the federal courts.

On July 26, 1988, this Committee took up H. Res. 499. Representative Fish offered a technical and clarifying amendment which was adopted by voice vote. The Chair then divided the question, and separate votes were taken on Articles I and XVI. Article I was adopted by voice vote. Mr. Smith later announced that he had voted no on Article I. Mr. Crockett later announced that he had voted aye on Article I. Article XVI was adopted by voice vote. Mr Crockett later announced that he voted no on Article XVI. With a reporting quorum being present, the Committee adopted the re

[17] 2 U.S.C. 194.

mainder of H. Res. 499, as amended, excluding Articles I and XVI. It was adopted by a roll call vote of 32–1.

V. Statement of Facts

The Committee, based on its independent inquiry into the conduct of Judge Hastings, finds the following facts.

A. BRIBERY CONSPIRACY

1. Background

On October 22, 1979, Alcee L. Hastings was sworn in as a United States District judge for the Southern District of Florida. Both William A. Borders, Jr., then a Washington, D.C. attorney, and Hemphill Pride, a mutual friend of Mr. Borders and Judge Hastings, attended Judge Hastings' investiture ceremony. At the time of the swearing in, Mr. Borders and Judge Hastings had known each other for approximately 16 years. They were political allies and social friends. Hemphill Pride was a friend of both men, but he was particularly close to Judge Hastings. Mr. Pride had known Judge Hastings since the early 1960s when they were in law school together in Florida. After graduation, Mr. Pride had returned to South Carolina to practice law.

In 1977, Mr. Pride was convicted in South Carolina of misusing funds in a federally subsidized housing project. As a result of his conviction, Mr. Pride was suspended from the practice of law. His conviction was upheld on appeal in December 1979, not long after Judge Hastings became a federal district judge. During the time Mr. Pride's case was on appeal, Mr. Borders permitted Mr. Pride to live rent-free in an apartment in Washington, D.C. In March 1980, Mr. Pride began serving his sentence at the federal correctional facility at Maxwell Field in Montgomery, Alabama.

On October 16, 1980, Mr. Pride's mother wrote to Judge Hastings and asked his help in arranging an early release for her son. There is no evidence of a reply from Judge Hastings. Mr. Pride testified that while he was in prison he asked Judge Hastings to raise money for him to hire counsel to pursue certain post-conviction relief. According to Mr. Pride, Judge Hastings refused on the grounds that his position as a judge precluded him from doing so.

Mr. Pride was paroled on March 15, 1981 and he immediately began to work at two jobs in Columbia, South Carolina. He could not be employed as a lawyer, however, because he was indefinitely suspended from the practice of law by the Supreme Court of South Carolina. Under South Carolina rules he could not apply for readmission for two years, until May 1983. He also had to take and pass the South Carolina bar examination.

2. The Romano Case

Thomas and Frank Romano were indicted in November 1978 on 21 counts of racketeering, mail and wire fraud, embezzlement and false tax filings. The indictment alleged violations of the Racketeer Influenced Corrupt Organization statute ["RICO"] which, under certain circumstances, could result in the forfeiture of property connected with illegal racketeering activity. The case was assigned to Judge Hastings within the first week he was on the bench.

In December 1980 the Romano brothers were tried before a jury. The prosecution charged that they had looted a construction project of over a million dollars through various fraudulent means. During the trial, the prosecution made a proffer to Judge Hastings, out of the presence of the jury, that the Romanos had a history of making payoffs.

On December 23, 1980, the jury found the Romanos guilty on all counts. The parties agreed to try the forfeiture issues before Judge Hastings without a jury. Under applicable procedural rules, the court was required to make findings of fact and return a special verdict as to the extent of the property to be forfeited. Judge Hastings heard part of the prosecution's proof on the forfeiture issues on December 30, 1980. He then continued the matter until February 20, 1981 for an evidentiary hearing. He announced that he would proceed to final disposition of the case during the week following the evidentiary hearing.

On December 30, 1980, Marshall Curran, Jr., the lawyer who had represented the Romanos at trial, filed an appeal on their behalf. The Romanos retained a new attorney, Neal Sonnett, to handle their sentencing and appeal.

On February 20, 1981, Judge Hastings concluded the evidentiary hearing on the forfeiture matter. The judge reserved ruling and asked the parties to submit memoranda. Judge Hastings stated that sentencing would not be scheduled in light of the fact that there were to be additional submissions by the parties and the court had not yet received the presentence reports.

On March 13, 1981, the prosecution filed its proposed findings of fact and conclusions of law on the forfeiture issue. On April 6, 1981, the Romanos filed their memorandum of fact and law in opposition to forfeiture. On April 7, 1981, the Romanos filed objections to the Government's proposed findings of fact. The next day, April 8, 1981, the Government filed a lengthy memorandum in support of the forfeiture which sought forfeiture of property totaling $1,162,016 in value consisting of four components: (a) the net cash proceeds of certain checks ($305,939); (b) total cash proceeds of certain other checks ($540,000); (c) an investment in the Sea Inn restaurant ($234,061); and (d) a part of the gain realized upon the sale of the restaurant ($82,016).

On April 23, 1981, Judge Hastings' law clerk advised the parties that sentencing in *Romano* would take place on May 11, 1981. The official Notice of Sentencing was filed on April 28, 1981, setting the sentencing for May 11 at 1:00 p.m.

On May 4, 1981, Judge Hastings entered an order forfeiting property owned by the Romanos worth $1,162,016.

3. William Dredge and Further Events in Romano

William Dredge operated an antique store in north Miami, Florida. He was also a fence, a burglar, and a drug dealer. Mr. Dredge was a friend of Joseph Nesline, a Washington, D.C. gambler, who apparently introduced Mr. Dredge to Mr. Borders in late March or early April of 1981. In March 1981, Mr. Dredge was the subject of a narcotics investigation in Maryland. He was in touch with Mr. Borders in connection with this problem.

Mr. Dredge testified before the Eleventh Circuit Investigating Committee that around the end of March or in early April 1981, Mr. Borders asked Mr. Dredge if he knew the Romano brothers since Mr. Dredge was from the south Florida area. When Mr. Dredge responded that he did not know them, Mr. Borders asked him to check them out. Mr. Dredge made some inquiries and reported to Mr. Borders that the Romanos were "good stand up people," which in underworld parlance meant they would live up to their commitments and not disclose matters to the authorities. Mr. Borders then asked Mr. Dredge to contact the Romanos and tell them Mr. Borders might be able to help them in their criminal case. Mr. Dredge passed word to the Romanos that he knew an attorney in Washington, D.C. who could help them with their case.

Hotel and telephone records establish that the Romanos were in California on April 7, 1981 and during their stay they learned through an intermediary of Mr. Dredge's message about a Washington lawyer who could help them. In response, the Romanos contacted their counsel, Neal Sonnett, who documented the call in a memorandum dated April 16, 1981. The Romanos decided to ignore Mr. Dredge's offer.

Mr. Dredge reported to Mr. Borders about his attempted contact with the Romanos. Mr. Dredge testified before the Eleventh Circuit Investigating Committee that Mr. Borders said the judge handling the Romanos' case was a good friend of his and, for $150,000, he could deliver the judge. Mr. Dredge testified he did not really believe Mr. Borders could control a federal judge.

Over the next few months Mr. Borders repeatedly asked Mr. Dredge about the situation and Mr. Dredge reported that he had talked to the Romanos, but they did not have any money. According to Mr. Dredge, he was simply stringing Mr. Borders along. Mr. Dredge never had any contact with the Romanos or their intermediary after meeting with the intermediary in early April. Mr. Borders continued to importune Mr. Dredge about the Romanos and Mr. Dredge kept telling Mr. Borders that the Romanos did not have the money. According to Mr. Dredge, Mr. Borders said the judge could not believe the Romanos could not come up with money to keep them out of jail.

Mr. Dredge testified that when he suggested to Mr. Borders that the Romanos were trying to get to Judge Hastings through another contact, Mr. Borders challenged anyone else to produce the judge at a given time and place. Mr. Borders said he would produce Judge Hastings at a given time and place to prove that he controlled him.

On April 29, 1981, a sealed indictment was returned in Baltimore, Maryland charging William Dredge with narcotics offenses. Mr. Dredge was arrested in Florida on May 10, 1981, and Mr. Borders arranged for Jesse McCrary, a Miami lawyer, to represent Mr. Dredge at his bail hearing on May 11, 1981. Also, on May 11, 1981, the Romanos were scheduled to be sentenced by Judge Hastings.

Mr. Dredge testified before the Investigating Committee that he had a conversation with William Borders the day before the Romanos were supposed to be sentenced, in which Mr. Borders told him the sentencing would be continued by Judge Hastings in order

to give the Romanos a chance to come up with the money, because the judge could not believe they would not do so.

At the May 11, 1981 sentencing hearing, the Romanos' attorney, Neal Sonnett, requested a continuance in order to present additional arguments to the court regarding a pending motion for new trial that was scheduled to be heard that day. The Government opposed the continuance on the ground that everything had been thoroughly briefed and there had already been a delay of five months since the conviction. Judge Hastings granted the continuance and asked for briefs on RICO issues. He then set a briefing schedule and indicated that sentencing would not take place until late June 1981, but that the next time it was scheduled, sentencing would proceed.

Mr. Dredge testified before the Investigating Committee that Mr. Borders called him the day after the sentencing had been postponed to say that the hearing had been continued and the Romanos had better come up with the money. Mr. Dredge was convinced William Borders was serious about the bribe after the continuance of the hearing. It was Mr. Dredge's understanding, based on what Mr. Borders told him, that Judge Hastings had postponed the sentencing on his own motion. In fact, the May 11, 1981 sentencing was postponed on the basis of Mr. Sonnett's eleventh hour request. The fact that Mr. Borders knew in advance that the sentencing hearing would be continued, however, convinced Mr. Dredge that the bribery scheme was for real.

On Friday, June 19, 1981, a panel of the Fifth Circuit handed down a decision in *United States* v. *Martino.*[18] At issue in the case was an interpretation of the RICO statute's forfeiture provisions pertaining to the definition of an interest that was subject to forfeiture. The court held that the term "interest" did not include income, receipts or profits from racketeering activity. Government attorneys and defense counsel in *Romano* recognized that this opinion had important implications for the order previously entered by Judge Hastings on May 4, 1981, forfeiting property owned by the Romanos worth $1,160,000. Accordingly, all parties briefed the issue in papers filed with the court in advance of a hearing scheduled for July 8, 1981.

At the July 8, 1981 hearing, Judge Hastings was scheduled to sentence the Romanos and hear argument on all outstanding motions, including a motion for him to reconsider his May 4, 1981 order requiring forfeiture. At the hearing, after extensive argument concerning the impact of *Martino,* Judge Hastings stated to counsel he was familiar with *Martino* and had read the briefs. He had also received a memorandum on the issue from his law clerk shortly before going on the bench to conduct the hearing. At the conclusion of the argument, Judge Hastings reaffirmed his forfeiture order of May 4, 1981. He stated that he would file a brief written order explaining the basis for his decision.

Judge Hastings then sentenced each of the Romanos to a prison term of three years. The prison terms were consistent with the recommendation of the probation office.

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[18] 648 F.2d 367 (5th Cir. 1981).

4. The Undercover Investigation

On June 3, 1981, the case of *United States* v. *Accardo* was brought in the Southern District of Florida. This was a multi-defendant racketeering case in which Santo Trafficante, reputed to be the organized crime boss of southern Florida, was named as a defendant. The case was assigned to Judge Hastings. A month later, William Dredge flew to Washington, D.C. and stayed with Joseph Nesline from July 7-9, 1981. Mr. Dredge told the Investigating Committee that during his stay, Mr. Nesline had another guest at the apartment—Santo Trafficante. While at the apartment, Mr. Dredge observed Mr. Trafficante trying to contact Mr. Borders and heard bits and pieces of conversation which led him to believe that Mr. Borders and Judge Hastings were involved in a bribery scheme to obtain money from Mr. Trafficante.

On July 20, 1981, Mr. Dredge advised the United States Attorney's Office in Miami that he had information concerning a bribery scheme involving Judge Hastings, Santo Trafficante and a Washington, D.C. lawyer who was coming to Miami the next day to meet with Mr. Trafficante. In return for his information, Mr. Dredge wanted the drug charges pending against him in Maryland dismissed. In the course of ensuing discussions with Government prosecutors, Mr. Dredge also revealed the proposal to solicit a bribe from the Romanos—the essence of which was that for $150,000 their sentences would be reduced to probation.

Mr. Dredge did not initially identify Mr. Borders as the Washington lawyer who was arriving the next day to meet with Mr. Trafficante. However, a strike force attorney who had worked in Washington recognized Mr. Borders' name on a passenger list and visually identified Mr. Borders at the airport. The FBI followed Mr. Borders, who took a cab to Mr. Dredge's house and was later driven by Mr. Dredge to a shopping center. From there Mr. Borders took a cab to the Fontainebleau Hotel, where the FBI observed him meeting with Santo Trafficante for 5 to 10 minutes in a secluded area. Thereafter, Mr. Trafficante drove Mr. Borders to the airport.

Mr. Dredge continued to be debriefed by the Government concerning his knowledge of any bribery schemes. On August 18, 1981, Mr. Dredge told law enforcement agents that Mr. Borders was coming to Miami again to meet with Mr. Trafficante to iron out their bribery deal. FBI surveillance teams observed that on August 21, 1981, Mr. Borders flew to Miami, took a taxi to the Fontainebleau Hotel, got out of the cab, and got into a car driven by Mr. Trafficante, who thereupon drove him back to the airport. They spoke for four minutes at the terminal and Mr. Trafficante left.

Having twice corroborated Mr. Dredge's statements, the Government attempted to enlist Mr. Dredge's cooperation. Mr. Dredge refused to testify or wear a recording device because he feared for his life. He was willing, however, to introduce an undercover agent to Mr. Borders as one of the Romano brothers. Mr. Dredge advised the FBI that Mr. Borders was anxious to do the Romano deal, but that he would only deal with one or both of the Romanos.

On August 27, 1981, the Fifth Circuit handed down the case of *United States* v. *Peacock*,[19] which grudgingly followed the *Martino* rationale, while noting that a petition for rehearing en banc was pending in *Martino*. Jeffrey Miller, one of Judge Hastings' law clerks, testified that he brought this case to Judge Hastings' attention in early September, in all likelihood before September 10, 1981. According to Mr. Miller, Judge Hastings then told him to "give the money back" to the Romanos.

On September 10, 1981, Mr. Dredge, in the presence of an FBI agent, telephoned Mr. Borders and advised him that the Romanos were "ready to deal." Arrangements were made for Mr. Dredge to meet Mr. Borders at the Miami airport on Saturday, September 12 at 8:00 a.m. and introduce him to "Frank Romano," who was to be impersonated by retired FBI agent, H. Paul Rico.

On Friday, September 11, 1981, Judge Hastings was scheduled to fly from Miami to Washington, D.C. Judge Hastings was scheduled to leave Miami at 3:48 p.m., but his flight was delayed. He called Mr. Borders' office twice to advise him of the delay. He did not arrive at Washington National Airport ["National"] until about 8:00 p.m., two hours after his original scheduled arrival time.

On the same day, Mr. Borders was scheduled to leave National for Miami at 7:30 p.m. in order to make his meeting at 8:00 a.m. the next morning with Mr. Dredge and "Frank Romano." However, he changed his flight to leave at 9:25 p.m., thereby arriving in Miami at 1:30 a.m. on September 12. This schedule change created a clear opportunity—a period of over an hour—when Judge Hastings and Mr. Borders could have met at National, although no one actually observed such a meeting. Judge Hastings did not check into the Sheraton Hotel until 10:14 p.m., over two hours after he arrived in Washington, D.C.

The next morning, September 12, 1981, Mr. Borders met Mr. Dredge and the man who he thought was Frank Romano at the Miami airport. The undercover agent, Mr. Rico, was wearing a body recorder and recorded the conversation with Mr. Borders. At the meeting, Mr. Borders stated that he understood that the Romanos had "lost some property." He advised Mr. Rico that 10 days after receiving a payment of $150,000, an order would be signed returning a "substantial amount" of the property and thereafter, they were to withdraw their appeal and something would be done about their jail sentences. When Mr. Rico raised the issue of "how do I know," Mr. Borders responded, "checks and balances." Mr. Borders said, "I don't get nothin, until the first part is done . . . that will be a signal showing you that I'm, I know what I'm talking about, right?"

Mr. Borders proposed that the money be placed in escrow with Mr. Dredge and that Mr. Borders would only receive the money after the order came down. Mr. Rico said he preferred not to use Mr. Dredge and, aware that previously Mr. Borders had suggested to Mr. Dredge that Mr. Borders could prove his influence with Judge Hastings by having him show up at a given time and place, Mr. Rico proposed verification in that manner. Mr. Rico asked if

[19] 654 F.2d 339 (5th Cir. 1981).

Mr. Borders wanted to get back to him with the time and place. Mr. Borders said that was unnecessary and immediately selected Wednesday, September 16, 1981, as the date for Judge Hastings' appearance. Mr. Rico selected the main dining room in the Fontainebleau Hotel in Miami Beach at 8:00 p.m.

Mr. Borders and Mr. Rico agreed to meet the following Saturday, September 19, 1981, at the Miami airport at which time Mr. Rico would make an "upfront" payment on the bribery deal. At the conclusion of their meeting Mr. Borders assured Mr. Rico, saying "that's 100 percent, 100 percent, 100 percent."

At the time of his conversation with Mr. Rico about the status of the *Romano* case, Mr. Borders had no official connection with the case. He was a Washington, D.C. lawyer, and was not a member of the Florida bar. According to Judge Hastings' trial testimony, he never spoke to Mr. Borders about the facts, proceedings, or issues in the case.

When Mr. Borders finished his meeting with the undercover agent, he flew from Miami to West Palm Beach and drove to a long-planned family reunion. He stayed there only briefly, however, and made a complex series of reservations and cancellations of airplane flights back to Washington, D.C. Ultimately, Mr. Borders flew from Orlando, Florida to Baltimore-Washington International Airport ["BWI"], arriving at 8:58 p.m.[20]

Judge Hastings was spending that weekend of September 11-13, 1981 in Washington, D.C. at the Sheraton Hotel. Jesse McCrary, a mutual friend of Judge Hastings and Mr. Borders, registered at the Sheraton Hotel on the 12th in the room next to Judge Hastings.

Around 9:00 p.m. on Saturday, September 12, 1981, Mr. Borders landed at BWI. From there he immediately went to the Sheraton Hotel in Washington, arriving at Judge Hastings' room at 10:00 p.m. When Mr. Borders arrived, Judge Hastings, Jesse McCrary, and three women—two sisters, Pearl and Margaret Dabreau, and Donna Myrill—were in the judge's room. The group had not yet had dinner. According to Mr. McCrary, it was Judge Hastings' idea to delay dinner. Ms. Pearl Dabreau testified before the Investigating Committee that the group was "waiting for someone." Ms. Myrill testified before the Investigating Committee that they were specifically waiting for Mr. Borders. After Mr. Borders arrived, they all went to dinner. At trial, Judge Hastings testified under oath that Mr. Borders' appearance at the Sheraton Hotel that night was a surprise and not prearranged.

There is no evidence in the record to explain how Mr. Borders knew Judge Hastings would be in his room at the Sheraton Hotel at 10:00 p.m. on a Saturday night, although Mr. Borders clearly went to great lengths to get there from Florida, including foregoing his family reunion.

On Tuesday, September 15, 1981, Mr. Borders and a friend, Madeline Petty, flew from Washington, D.C. to Las Vegas, Nevada to attend the Sugar Ray Leonard-Tommy Hearns championship fight scheduled for Wednesday, September 16. This trip had been planned as a birthday present for Ms. Petty; the plane tickets had

[20] The day before setting up his initial meeting with Mr. Rico, Mr. Borders told both Judge Hastings and their friend Jesse McCrary that he intended to be in Florida for the weekend.

been purchased two weeks earlier on September 1, 1981. According to Dudley Williams, a close friend and former law partner of Mr. Borders, Mr. Borders' friends knew that he never missed an important championship fight.

September 16, 1981 was also the date Mr. Borders and Mr. Rico had agreed that Judge Hastings would appear at the main dining room of the Fontainebleau Hotel at 8:00 p.m. in order to prove that the judge was in on the bribery scheme. FBI agents had the hotel under surveillance. Shortly before 8:00 p.m., Judge Hastings and a woman named Essie Thompson were observed entering the Fontainebleau Hotel and walking into the dining room.

Judge Hastings had invited Ms. Thompson to dinner the day before. He did not mention Mr. Borders to her nor did he indicate that they were meeting anyone. The maitre d' seated them at a table for four and removed two place settings. Judge Hastings did not protest. After about 15 minutes, Judge Hastings left the table and returned a few minutes later. At Judge Hastings' trial in January 1983, Ms. Thompson testified that when Judge Hastings returned to the table he said he was "looking for some friends from D.C." According to the FBI interview report dated October 10, 1981, however, Ms. Thompson told FBI agents that when Judge Hastings returned to the table he said he was "looking for someone, but did not see them." Judge Hastings acknowledged at trial that he did not have Mr. Borders paged. At trial, he testified that Mr. Borders had promised to meet him at the Fontainebleau that night but had not shown up.

Mr. Borders was in Las Vegas at the championship fight. He and Ms. Petty returned to Washington, D.C. two days later, on Friday, September 18, 1981, between 8:00 and 9:00 p.m. At the airport, Mr. Borders and Ms. Petty parted company. Mr. Borders took a 9:20 p.m. flight to Miami, in order to make his arranged meeting with Mr. Rico the next morning for the "upfront" payment.

Mr. Rico had not told Mr. Borders that Judge Hastings had appeared at the Fontainebleau Hotel on September 16th as promised. Mr. Borders nevertheless proceeded directly from National to Miami for his rendezvous with Mr. Rico as if he knew that the signal confirming Judge Hastings' involvement had been given.

On Saturday morning, September 19, 1981, at 10:00 a.m., Mr. Borders and Mr. Rico again met at the Miami airport. Mr. Rico was wearing a body recorder. After an exchange about the Leonard-Hearns fight, the undercover agent said: "You did what you said you'd do." Mr. Borders acknowledged this and Mr. Rico continued. "Your man arrived and in fact, he arrived a little early and, ah, you said you could do that, and that's ah, your end of the situation." Mr. Borders then asked, "What is it in?" and Mr. Rico replied that it was just in an envelope. Mr. Rico said he would put it inside a newspaper and give it to Mr. Borders. The undercover agent then said "[B]efore we go any further, the last time we talked my understanding was that, ah, some property was going to be released." Mr. Borders said the property would be released within 10 days. He told Mr. Rico, "Once you do that then file a motion for mitigation of sentence." Mr. Borders said, "Just tell him [the attorney] you're tired of the appeal, just see if the man will reduce the sentence."

The two men then separated and Mr. Rico went to get $25,000 in cash which had been placed in a locker. The undercover agent returned and placed the newspaper containing the envelope with the money on the arm of a sofa. Mr. Borders picked up the newspaper. There was further conversation, and Mr. Borders told Mr. Rico that the money would cover a reduction in sentence for both Romanos. They then discussed when the balance of the bribe would be paid. Mr. Borders suggested it be paid as soon as the order was entered returning the forfeited money. Mr. Rico proposed another installment payment, then full payment "on the culmination," i.e., when the sentences were reduced. Mr. Borders objected that this was not the deal. He again proposed that the money be put in escrow with Mr. Dredge. Mr. Rico rejected that idea. They finally agreed that on October 3, 1981 after Judge Hastings issued the order, the remaining $125,000 would be paid.

There was no further contact between Mr. Borders and the undercover agent between September 19 and October 2, 1981. The order returning a portion of the forfeited property was not issued within 10 days of September 19 as Mr. Borders had promised.

On October 1, 1981, a lawfully authorized wiretap was placed on Mr. Borders' business phone, and on October 2, 1981, a similar tap was placed on his residential phone. Mr. Rico placed four calls on Friday, October 2, to Mr. Borders' office. Mr. Borders was out, but he arranged to have a call patched through to him. At 3:11 p.m. Mr. Rico spoke to Mr. Borders and told him nothing had happened regarding the order. Mr. Borders replied "I think it has . . . I'll check into it," and then suggested they cancel the scheduled October 3, 1981 meeting for the final payment. Mr. Borders said he was not sure he would be able to call Mr. Rico back Friday night; he explained he did not know if he could find out "because of the time." They agreed that Mr. Rico would call Mr. Borders at home two days later, Sunday, October 4, 1981.

By 4:50 that Friday afternoon, Mr. Borders was back in his office. In a call recorded by the FBI, Mr. Border's secretary called Judge Hastings' chambers and was told that Judge Hastings had left for the day.

On Sunday morning, October 4, Mr. Rico called Mr. Borders as agreed to find out the status of the order. Mr. Borders explained "I have not, ah, gotten an answer, cause I haven't been able to talk to anybody." Judge Hastings testified at trial that William Borders called him the afternoon of October 4 and left a message for him to return the call.

On Monday morning October 5, 1981, Judge Hastings told his law clerk, Jeffrey Miller, to do the order returning a substantial amount of the Romanos' property that day. This was an "unusual" request according to Mr. Miller, although he also observed it was unusual for an order to sit around that length of time. Another law clerk, Daniel Simons, stated that Judge Hastings seemed disturbed that Mr. Miller had not finished the order.

At 4:22 p.m. on October 5, 1981, Mr. Rico again called William Borders. He said he was anxious. Mr. Borders said he understood, that he had checked on the matter, that the order had not gone out yet, but "that's been taken care of." Mr. Borders said it probably

went out that day, the 5th, or would go out first thing in the morning, on the 6th.

Less than one hour later, at 5:12 p.m., Judge Hastings called Mr. Borders and the following conversation occurred:

> MR. BORDERS: Yes, my brother.
> JUDGE HASTINGS: Yeh, my man.
> MR. BORDERS: Um hum.
> JUDGE HASTINGS: I've drafted all those, ah, ah, letters, ah, for Hemp . . .
> MR. BORDERS: Um hum.
> JUDGE HASTINGS: . . . and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?
> MR. BORDERS: Yea.
> JUDGE HASTINGS: Oh. Okay.
> MR. BORDERS: Uh huh.
> JUDGE HASTINGS: Alright, then.
> MR. BORDERS: See, I had, I talked to him and he, he wrote some things down for me.
> JUDGE HASTINGS: I understand.
> MR. BORDERS: And then I was supposed to go back and get some more things.
> JUDGE HASTINGS: Alright. I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning.
> MR. BORDERS: Okay.
> JUDGE HASTINGS: Okay.
> MR. BORDERS: Right.
> JUDGE HASTINGS: Bye bye.
> MR. BORDERS: Bye.

The Government argued at Judge Hastings' trial that this was a coded conversation intended to convey information concerning the bribery scheme. Judge Hastings testified at trial that it was not a coded conversation, but rather a discussion about some letters he was drafting to help Hemphill Pride. The Subcommittee submitted the tape recording and the transcript of this conversation to a recognized expert in the field of linguistics, Professor Roger Shuy of Georgetown University, who analyzed the conversation and concluded that Judge Hastings and Mr. Borders were engaging in a coded conversation.

On October 6, Judge Hastings issued an order which vacated judgments against the Romanos for over $845,000 of the total original forfeiture of $1,200,000. This order reversed in large measure Judge Hastings' prior order of May 4, 1981 and was inconsistent with his oral ruling on July 8, 1981. There had been no further filings or proceedings before Judge Hastings since the hearing on July 8, 1981.

Mr. Rico called Mr. Borders at mid-day on October 7 inquiring again about the status of the order. This time Mr. Borders said "it went out yesterday morning." This assertion corresponds to Mr. Borders' October 5 conversation with Judge Hastings in which the judge said he would send out "the letters in the morning." In fact,

the order had gone out by special delivery the evening of October 6. Mr. Rico called Mr. Borders the night of the 7th to tell him he had received word that the order had been issued. They discussed arrangements for the final payoff. Mr. Rico offered to travel to Washington, D.C. on Thursday or Friday, October 8 or 9. Mr. Borders agreed and told Mr. Rico to call him when he got to town.

The National Bar Association had scheduled a testimonial dinner in honor of Mr. Borders, a past president of the organization, for October 9, 1981, in Washington, D.C. Judge Hastings was one of the sponsors of the dinner. On the morning of October 8, 1981, Mr. Borders received a call from Judge Hastings who stated that he would be arriving in Washington the next day at 10:40 a.m. Judge Hastings told Mr. Borders he was staying at the Washington Hilton, although he would prefer to be at the L'Enfant Plaza Hotel. Mr. Borders said he could always get Judge Hastings in there.

Mr. Borders picked up Judge Hastings at National on the morning of October 9. They drove from the airport to the L'Enfant Plaza where a suite and an adjoining room were assigned to them. They stopped briefly to see Hemphill Pride, who was also staying at the L'Enfant Plaza Hotel for the National Bar Association event. Judge Hastings and Mr. Borders then left the hotel and after a couple of intermediate stops arrived at Mr. Borders' office where Mr. Borders had a message to call "Frank" [Mr. Rico] at the Twin Bridges Marriott Hotel. Mr. Borders called and Mr. Rico told Mr. Borders he had "brought all the necessary papers." Mr. Rico and Mr. Borders agreed to meet at the Marriott in about an hour.

When Mr. Borders arrived at the Marriott, he told Mr. Rico, who was wearing a recording device, to "get it" because he wanted to take a ride. Mr. Borders and the undercover agent got into Mr. Borders' car, with a bag containing $125,000 in 100 dollar bills on the floor between them. As they started to leave the parking lot, the FBI pulled them over and arrested Mr. Borders.[21]

Mr. Borders was arrested just before 1:00 p.m. on October 9, 1981. At 1:18 p.m. Mr. Borders requested and received permission to telephone his attorney, John Shorter. Mr. Shorter arrived at the Marriott at 1:31 p.m. according to FBI logs. At 1:55 p.m., Special Agents Bird, Skiles and Murphy left for Mr. Borders' law office to locate and interview Judge Hastings. They entered the office at 2:40 p.m. and presented subpoenas for certain of Mr. Borders' records to Mr. Border's secretary, who was uncertain how to deal with the situation. She contacted Mr. Shorter and Agent Murphy explained to Mr. Shorter that they had subpoenas for records. Mr. Shorter told the secretary to accept the subpoenas.

In addition, Agent Murphy told Mr. Shorter that they were trying to locate Judge Hastings in order to interview him, and asked Mr. Shorter to give the judge Mr. Murphy's name, Mr. Bird's name and the number of the FBI Washington field office if he located the judge.

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[21] The FBI's decision to arrest Mr. Borders immediately rather than let the money go was based in part on a belief that the money would not go directly to Judge Hastings, but instead would first be "laundered." The $25,000 that was paid to Mr. Borders on September 12, 1981 was never found. The Government eventually recovered $25,000 from Mr. Borders in a civil suit.

After leaving Mr. Borders' office and making a few stops, Judge Hastings returned to his room at the L'Enfant Plaza Hotel and ordered lunch from room service around 1:00 p.m. Shortly thereafter, Mr. Pride dropped by and joined him for lunch. Afterwards, they went downstairs for drinks in the hotel's cocktail lounge.

When Mr. Pride returned to his room, he immediately received a phone call from John Shorter who told him that Mr. Borders had been arrested on charges involving bribery that had taken place in Judge Hastings' court. Mr. Shorter also told Mr. Pride that the FBI was looking for Judge Hastings to interview him. Mr. Shorter gave Mr. Pride the names of two FBI agents and the FBI telephone number. He asked Mr. Pride to give the message to Judge Hastings and to tell him to contact the agents. Mr. Shorter thought that Judge Hastings should have a lawyer present and suggested the name of a Washington attorney. Mr. Pride immediately called Judge Hastings and told him he had an important message and that he should come to Mr. Pride's room.

Mr. Pride took his two-year-old son and met Judge Hastings outside the elevator on Mr. Pride's floor of the hotel. Mr. Pride related Mr. Shorter's information. Mr. Pride testified at Mr. Borders' trial that Judge Hastings' reaction was one of shock, as if "he didn't know which way to move or what to do." Judge Hastings repeatedly asked where Mr. Borders was. Mr. Pride told the judge he knew nothing more than what he had learned from the phone call. The judge asked for Mr. Shorter's number, but Mr. Pride stated that Mr. Shorter was with Mr. Borders.

Mr. Pride testified that he and Judge Hastings then left Mr. Pride's child at Mr. Pride's room and went together to Judge Hastings' room. Mr. Pride testified at Judge Hastings' criminal trial that he suggested to Judge Hastings that if he had a problem he could best handle this matter in Florida, rather than in Washington and that he should get Florida counsel. Mr. Pride watched while Judge Hastings packed his clothes. When Mr. Pride offered to give Judge Hastings a ride to the airport, Judge Hastings declined, saying that Mr. Pride should not get involved because Mr. Pride was still on parole and that he would take a cab. They then went downstairs to the lobby where Judge Hastings and Mr. Pride parted. Mr. Pride testified that Judge Hastings made no phone calls in his presence.

At his trial, Judge Hastings testified that before leaving the L'Enfant Plaza Hotel, he gave Mr. Pride a 100 dollar bill and asked him to pay the room service charge and to pick up a suit Judge Hastings had left with the valet service. Mr. Pride, in his testimony, denied that Judge Hastings gave him any money or asked him to take care of the charges or the suit. The room service charge was not paid and the suit was left behind.

Judge Hastings also testified at trial that after speaking with Mr. Pride outside the elevators, he returned alone to his room and telephoned his mother and his fiancee, Patricia Williams, in Florida, while Mr. Pride went to his own room. According to Judge Hastings, when he called his mother long distance from his hotel room, she said she had learned about William Borders' arrest and that reporters were at her apartment complex. She allegedly was hysterical and told him to "come home." Judge Hastings also testi-

fied that he called Ms. Williams who told him that she had been interviewed by the FBI and that she had called his chambers and learned the FBI was interviewing his staff. According to Judge Hastings, Mr. Pride joined him after these calls.

The computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 does not reflect the calls Judge Hastings claims he made to his mother and Ms. Williams. The Chesapeake and Potomac Telephone Company routinely maintains a computer record of all telephone calls from the guest rooms at the L'Enfant Plaza Hotel. The computer runs for October 9 and 10, 1981, reflect only one call made from the hotel to area code 305—the area code for south Florida. That call was made at "22:00" (10:00 p.m.), long after Judge Hastings had left for Florida. Moreover, that call was placed from a room other than the one assigned to Judge Hastings. The records show no long distance calls made from Judge Hastings' room until the morning of October 10, 1981 at 1:56 a.m., again long after the judge had departed the hotel and the District of Columbia. That call was made to New York City.

On the afternoon of October 9, 1981, the FBI office in Washington, D.C. advised FBI personnel in Miami to begin interviews at Judge Hastings' chambers. The agents arrived at about 2:50 p.m. and were there until approximately 5:15 p.m. The Miami office of the FBI also received instructions to interview Ms. Williams, Judge Hastings' fiancee. FBI agents arrived at her office at about 2:50 p.m. and began the interview at approximately 3:00 p.m. Ms. Williams was interviewed by FBI agents for approximately 45 minutes. She was interrupted once by a phone call during the interview and stated to the agents upon her return that the call was from a client.

On Friday, October 9, 1981, at 2:50 p.m., FBI agents left Mr. Borders' office to go to the L'Enfant Plaza Hotel. They arrived at about 3:10 p.m., and were advised by the front desk that Judge Hastings had not checked out. Special Agent Murphy then called Judge Hastings' room and there was no answer. The agent called several times over the next few minutes and then went to the room and knocked. Each time there was no answer. At 3:30 p.m., Special Agent Murphy again called Judge Hastings' room. There was no answer.

The evidence indicates that Judge Hastings departed for the airport within 30 to 40 minutes of the time he first learned of Mr. Borders' arrest. By around 3:00 p.m., he was aware the FBI in Washington, D.C. wanted to interview him. Judge Hastings testified that he left the hotel at approximately 3:35 or 3:40 p.m. By 4:37 p.m., according to telephone records, he was at BWI calling his mother from a pay phone.

Airline records establish that Judge Hastings could have taken a direct flight that afternoon from Washington, D.C. to Miami, where his car was parked. There were 14 seats available on a flight, which left National at 4:35 p.m. However, instead of traveling to National, which is located four miles from the L'Enfant Plaza Hotel, Judge Hastings went by taxi—at a cost of $50—to BWI, which is 32 miles northeast of the hotel and approximately an hour away in Friday afternoon traffic.

At 4:37 p.m., Judge Hastings called his mother from a pay phone at BWI and spoke for four minutes, charging the call to his home telephone. This is the first documented contact between the judge and his mother that day. At 5:06 p.m., he called Ms. Williams from a BWI pay phone, also charging the call to his home telephone. This is the first documented call from Judge Hastings to Ms. Williams that day. He spoke to her for one minute and told her to call him back at a different pay phone. She called back at 5:07 from her home, and again at 5:22 p.m. from a pay phone. He then took her number, moved to a third pay phone and called her again. Judge Hastings admitted at his trial that he had engaged in this series of pay phone calls. He testified to several explanations for this conduct—a baby was crying; he suspected government surveillance near the pay phone; he was afraid Ms. Williams' phone had been tapped. He denied, however, that he went to BWI because he was trying to avoid any FBI agents who might be waiting for him at National.

Delta Airline records show that at 5:31 p.m. Judge Hastings made a reservation on flight 237 departing BWI at 6:30 p.m. for Miami with an intermediate stop in Fort Lauderdale. There is a handwritten notation on Judge Hastings' ticket crossing out Fort Lauderdale as his destination and substituting Miami. However, Judge Hastings got off the plane when it stopped in Fort Lauderdale. At the Fort Lauderdale airport, Judge Hastings rented a car because he had parked his car at the Miami airport when he had left Florida.

Judge Hastings testified at trial that upon arrival in Fort Lauderdale, he went to his mother's house and then proceeded to the home of Ms. Williams. In his FBI interview on October 9, 1981, however, he stated that he called his mother from the airport and drove directly to the home of Ms. Williams, without first seeing his mother. Judge Hastings testified that he arrived at Ms. Williams' home between 9:30 and 10:00 p.m. and told her to expect a visit from FBI agents. At about midnight, two FBI agents showed up and interviewed Judge Hastings for two hours. They testified that they had gone to Ms. Williams' home on the chance that Judge Hastings might be there.

FBI Agent John Simmons testified that when Mrs. Hastings was interviewed by the FBI on the night of October 9, at about 11:00 or 11:30 p.m., she stated that she had not heard from her son. Judge Hastings testified at trial that he had gone home and that if his mother had told the FBI that she had not heard from him, it was because she had had too much to drink. Both Judge Hastings and his mother denied that she had been instructed to tell the FBI that she had not heard from him. Mrs. Hastings testified at trial that Judge Hastings came to the apartment and she gave the FBI Mrs. Williams' telephone number when an agent called later that night.

When Judge Hastings was interviewed by the FBI at Ms. Williams' home, he denied any involvement with Mr. Borders in a bribery conspiracy. He stated that he did not believe he had ever discussed the *Romano* case with Mr. Borders. With respect to his abrupt departure from Washington, D.C., Judge Hastings said he went home because he believed he could better defend himself against allegations while on "his own turf." He later testified at

trial that he departed immediately because of the telephone calls he made from the hotel to his mother and Ms. Williams. When interviewed by the FBI on October 9, 1981, Judge Hastings did not mention any telephone calls.

On Monday, October 12, 1981, three days after Mr. Borders' arrest, at 6:38 a.m., a person placed a telephone call from Judge Hastings' home telephone number (305–731–8176) to William Borders' home telephone number (202–398–6321). The call lasted two minutes. No recording of the conversation was made because the wiretap was no longer in effect.

On October 14, 1981, Ms. Williams wrote to Judge Hastings and told him that she felt "pride and joy as well as horror" as a result of their telephone conversation on Friday, October 9th, when Judge Hastings called her "from Baltimore" and indicated that he wanted her legal assistance in confronting allegations of bribery which Judge Hastings had just learned were being directed against him.

5. Contacts Between Judge Hastings and William Borders

As the *Romano* case proceeded, there was a series of telephone calls between Judge Hastings and Mr. Borders, which are documented through toll records. Judge Hastings also testified to two additional calls from Mr. Borders. While the content of these calls is not always known, there is a synchronization of contacts between Mr. Borders and Judge Hastings relative to significant documented events in the *Romano* case. As the Eleventh Circuit Investigating Committee observed, the telephone contacts between Judge Hastings and Mr. Borders were often of brief duration, sometimes at odd hours and on at least one occasion from and to a pay phone.

Analysis of these contacts reveals that most of the known calls occurred on or close to days on which (a) Judge Hastings had motions in the *Romano* case under active consideration, (b) Judge Hastings held hearings relating to the Romanos' forfeiture or sentencing matters, or (c) William Borders was negotiating about the payment of a bribe. The available telephone records for Judge Hastings and Mr. Borders, and Mr. Borders' office message logs reflect only eight other telephone contacts from January through October 1981. Specifically:

1. On February 20, 1981, the day of the forfeiture hearing, Judge Hastings called Mr. Borders early in the morning. The call lasted three minutes.

2. On April 9, 1981, the day after the last memoranda relating to the forfeiture issue were filed, Judge Hastings called Mr. Borders' office. He left a message for Mr. Borders to call and said he would be "at his office between 12 and 1." At 12:15 p.m. a call was placed from a pay phone in the corridor of the third floor of the federal courthouse in Miami, Florida near Judge Hastings' chambers to a pay phone in the lobby of the federal courthouse in Washington, D.C. The call lasted one minute or less and was charged to Judge Hastings' residence. At about the same time, Mr. Borders' secretary made a reservation for Mr. Borders to fly to Miami the following weekend. This call was made within a day or two of when the intermediary relayed Mr. Dredge's message to the Romanos that there

was a Washington, D.C. lawyer who might be able to help them with their case.

3. Judge Hastings called William Borders three times within a few days of April 23, 1981, the date the parties were advised the Romano sentencing was scheduled for May 11, 1981.

4. On May 4, 1981, the day Judge Hastings entered his order compelling forfeiture, he called Mr. Borders during a morning recess and left a message that he would be awaiting Mr. Borders' call between 12:00 and 1:00 p.m.

5. Judge Hastings called Mr. Borders four times between the call on May 4 and the scheduled time of sentencing on May 11, 1981 at 1:00 p.m.: once after midnight on May 6 from Madison, New Jersey; once on May 7 at 4:30 p.m. when Judge Hastings left a message for Mr. Borders to call him at 7:00 a.m. the next morning; and twice before 7:00 a.m. on May 11. Two of the calls (on May 6 and May 11) were to the home of Mr. Borders' girlfriend. On May 11, Judge Hastings postponed sentencing. One of the three documented calls lasted less than two minutes; the two others less than one minute each.

6. Judge Hastings sentenced the Romanos on July 8, 1981. On July 5, 7 and 9, Judge Hastings called Mr. Borders. The July 5 and 7 calls each lasted less than one minute. On July 9, Judge Hastings left a message for Mr. Borders. The following weekend Mr. Borders met Judge Hastings in Miami.

7. On September 10, 1981, the same day that Mr. Borders arranged a September 12 meeting with Mr. Rico, there were calls back and forth between Judge Hastings and Mr. Borders. The calls occurred both before and after the Borders-Rico meeting had been arranged.

8. On September 11, 1981, the day before Mr. Borders was to meet Mr. Rico, Judge Hastings called Mr. Borders twice.

9. On September 20 or 21, 1981, Mr. Borders called Judge Hastings, which was during the 10 day period before the order was to issue.[22]

10. On October 2, 1981, after telling Mr. Rico that he would check on the promised order vacating the forfeiture order, Mr. Borders called Judge Hastings' chambers and asked to speak with Judge Hastings.

11. On October 4, 1981, Mr. Borders called Judge Hastings' residence and left a message for the judge to call.[23]

12. On October 5, 1981, Judge Hastings told his law clerk to get the *Romano* order out that day. At 5:12 p.m. that day, Judge Hastings called Mr. Borders.

13. On October 8, 1981, Judge Hastings called Mr. Borders and arranged to stay at the same hotel when he came to Washington, D.C. on October 9, 1981.[24]

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[22] This call is not documented by phone records; however, Judge Hastings testified to the call at trial.

[23] This call is also not documented in the phone records; however , Judge Hastings testified to it at trial.

[24] *See* Appendix I to the Subcommittee Hearings at p. 199 n. 47.

6. Pre-trial Proceedings

Following William Borders' arrest on October 9, 1981, a subpoena was served on the chambers of Judge Hastings, seeking appointment calendars, telephone logs, and other records. The requested documents were turned over to the FBI at the time of the service of the subpoena.

William Borders was released from jail on Saturday, October 10, 1981. The items subpoenaed from Mr. Borders' office on October 9, 1981, were turned over on October 13, 1981. At least two items from Mr. Borders' office were missing: a telephone message slip from September 9, 1981 and the secretary's desk calendar for September 1981.

On October 13, 1981, a grand jury began hearing evidence, a process it concluded on October 21, 1981. On December 29, 1981, an indictment was returned against Mr. Borders and Judge Hastings, charging both with conspiracy and obstruction of justice.[25]

On January 4, 1982, the case was assigned to Judge Edward T. Gignoux, then Chief Judge of the United States District Court for the District of Maine, sitting by designation. He ordered reciprocal discovery, which called for each of the parties to produce for the other side those documents it intended to rely upon at trial. The prosecution produced its documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and Mr. Borders. The defense produced its materials on February 12, 1982. Judge Hastings did not at that time produce any letters or drafts of letters about or to "Hemp" as referred to in the critical October 5, 1981 conversation.

On February 1, 1982 Judge Hastings filed suit to enjoin his prosecution on the ground that a sitting federal judge had to be impeached before a prosecution could proceed. Although this position was eventually rejected,[26] his criminal case was stayed pending the outcome of the litigation, thereby prompting Judge Gignoux to sever Judge Hastings' trial from that of Mr. Borders.

Mr. Borders was tried in Atlanta, Georgia from March 22 until March 29, 1982. Neither Mr. Borders nor Judge Hastings testified. The theory of Mr. Borders' defense was that there was insufficient evidence of a conspiracy with Judge Hastings. Mr. Borders argued that although the evidence may have been compelling that he solicited and took a bribe on behalf of the judge, there was insufficient evidence that he had acted in concert with Judge Hastings.[27] The jury convicted Mr. Borders on all counts on March 30, 1982. Mr. Borders appealed contesting the introduction of certain evidence supporting a finding that there was a conspiracy, specifically the evidence tending to show that Judge Hastings had fled Washington, D.C. after he had learned of Mr. Borders' arrest. The United States Court of Appeals for the Eleventh Circuit concluded that the evidence of flight was sufficient to support a finding that Judge Hastings had conspired with William Borders and affirmed the conviction.[28]

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[25] Mr. Borders was also charged with two counts of interstate travel to carry out the bribery scheme.

[26] *United States* v. *Hastings*, 681 F.2d 706 (11th Cir. 1982).

[27] *United States* v. *Borders*, 693 F.2d 1318, 1319 (11th Cir. 1982).

[28] *Id.*

Judge Hastings and his attorneys undertook to prepare his defense. In addition to having one of the defense attorneys attend Mr. Borders' trial as an observer, thereby enabling the judge to gain a preview of the Government's evidence against him, the defense team immediately reviewed the taped conversations.

On January 25, 1982, Hemphill Pride was interviewed by Judge Hastings in Columbia, South Carolina. Judge Hastings' principal attorney at that time, Joel Hirschhorn, was concerned about his client meeting alone with Mr. Pride and therefore arranged for a local attorney, Jack Swerling, to attend the session. When the conference concluded, however, Mr. Pride insisted on driving Judge Hastings to the airport. During that trip, Judge Hastings told Mr. Pride it was important for Mr. Pride to recall that the judge was trying to draft support letters for him. When Mr. Pride told the judge that he knew of no such attempts and, if he had, he would have stopped any such efforts, Judge Hastings replied that Mr. Pride would not have had to know about it. Mr. Pride refused to endorse Judge Hastings' suggestion and disavowed any connection with the letters.

Following the Court of Appeals' rejection of his challenge to the prosecution, Judge Hastings' case was set for trial. Approximately one month before trial, on December 13, 1982, Judge Hastings (now represented only by himself and Patricia Williams) for the first time disclosed to the prosecution the "Hemp letters," which consisted of three yellow legal pad sheets, comprising three handwritten letters, one addressed to Hemphill Pride, and the other two addressed generally to friends and supporters from whom Judge Hastings was requesting either financial assistance for Mr. Pride or letters of support to be sent to the South Carolina Supreme Court, to be used to assist Mr. Pride in gaining readmission to the South Carolina bar.

The prosecution submitted the letters to forensic experts in an attempt to date the creation of the letters. The Committee did so as well. None of the forensic experts, however, could date the papers. The paper and ink employed were such that it was impossible to conclude when the letters were written. Likewise, tests to reveal impressions on the paper other than the visible writing revealed nothing that could date the papers.

B. JUDGE HASTINGS' FALSE TESTIMONY AT TRIAL

Judge Hastings' criminal trial, conducted in Miami, Florida, began on January 19, 1983 and continued for 12 days. Judge Hastings took the stand as the final witness in his defense. During his testimony, Judge Hastings testified falsely in 14 different instances. Three instances of false statements pertain directly to Judge Hastings' testimony that he did not participate in a conspiracy with William Borders: (1) Judge Hastings' assertion that he and Mr. Borders did not agree to solicit a bribe from the Romanos; (2) Judge Hastings' assertion that he and Mr. Borders did not agree that Judge Hastings would modify the Romanos' sentences from a prison term to probation in exchange for the bribe; and (3) Judge Hastings' assertion that he and Mr. Borders had never agreed that

Judge Hastings would set aside the May 4, 1981 forfeiture order after a payment on the bribe.

The 11 other instances of false testimony pertain to Judge Hastings' attempt to explain away specific incriminating evidence. Judge Hastings knowingly testified that:

1. He expected to meet William Borders at the Fontainebleau Hotel on September 16, 1981.
2. He was surprised by Mr. Borders' arrival at his room at the Sheraton Hotel on September 12, 1981.
3. On October 5, 1981, he told his law clerk to prepare the order in the *Romano* case primarily because the law clerk would be leaving his employment shortly.
4. His October 5, 1981 telephone conversation with William Borders was about writing letters for Hemphill Pride rather than about the conspiracy to solicit a bribe in the *Romano* case.
5. The "Hemp letters" were written on October 5, 1981, when, in fact, they were fabricated by Judge Hastings after that date in an effort to conceal his participation in the bribery scheme.
6. On May 5, 1981 he talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.
7. On August 2, 1981 he talked to Hemphill Pride by placing a telephone call to 803-782-9387 in Columbia, South Carolina.
8. On September 2, 1981 he talked to Hemphill Pride by placing a telephone call to 803-758-8825 in Columbia, South Carolina.
9. The telephone number 803-777-7716 was the number at a place where Hemphill Pride could be contacted in July 1981.
10. On the afternoon of October 9, 1981, he called his mother and Patricia Williams from his room at the L'Enfant Plaza Hotel.
11. He took a plane from BWI rather than National because he did not think there were direct flights to Miami from National at that time.

C. DISCLOSURE OF WIRETAP INFORMATION

In the fall of 1984, the Federal Bureau of Investigation began an investigation of Local 1922 of the International Longshoremen's Association ["ILA"] in Miami, Florida. In early 1985, the FBI decided to penetrate the local with an undercover person. At that point the Public Corruption Section of the United States Attorney's Office in Miami joined in the investigation of public and union corruption in connection with the Port of Miami. By July 1985, a confidential source,[29] Johnny Rivero, was in place and had reported a broad variety of illegal activities—including labor racketeering, extortion, narcotics offenses, and bribery—involving union officials, public employees, police officers, and organized crime figures. Efforts were made to get Mr. Rivero admitted to Local 1922. It was

[29] A confidential source is a private cooperating individual, under the supervision of the FBI, but not a special agent. Mr. Rivero, the confidential source, has authorized the disclosure of his name.

decided that a wiretap would be necessary to identify in advance the time and place for the payoff of corrupt union officials.

On July 15, 1985, the United States Attorney's Office in Miami applied for authorization to institute a wiretap under 18 U.S.C. 2516, generally referred to as Title III. Federal law requires that interceptions of wire communications be authorized by a federal judge and, in July of 1985, Judge Hastings was the judge assigned responsibility for reviewing such applications that month.

The expressed need for the wiretap was the failure of other investigative techniques. Local 1922 had been the subject of an earlier, very successful and well publicized investigation which had culminated in 1978 with the arrest and conviction of several union officials. As a result, the union was very suspicious of newcomers. Recorded conversations had revealed that Mr. Rivero had been patted down on more than one occasion by persons connected with the union who were searching for recording equipment. Similarly, Mr. Rivero was accused of being a "cop" by one union member and warned by another person that since he was coming from the west he would be treated as if he were an FBI agent.

These facts were set out in great detail in the Application and Affidavit in Support of Application for the wiretap submitted to Judge Hastings on or before July 15, 1985.[30] In stating the necessity for the interception, an FBI agent, Geoffrey Santini, emphasized the suspicions of the union officials and the potentially violent nature of some of the subjects of the investigation. The backgrounds of the persons listed as subjects of the wiretap supported Special Agent Santini's conclusions: one was identified as the son of a leading organized crime figure in Cleveland, Ohio and the union member controlling "bookmaking, shylocking and fencing" operations at the Port of Miami; a second was the secretary-treasurer of Local 1922 and son of the former office manager of Local 1922 who had been convicted of racketeering, racketeering conspiracy, extortion, and Taft-Hartley Act violations; another described himself as a member of "La Cosa Nostra;" and one was Kevin "Waxy" Gordon, zoning code enforcer for the City of Surfside, Florida, who had stated to Mr. Rivero that he had political connections that could exercise control over officers of the local.

The Application and Affidavit in Support of Application, and other supporting papers were presented to Judge Hastings by Assistant United States Attorneys Mark Schnapp and Roberto Martinez and Special Agent Geoffrey Santini. Judge Hastings expressed concern about the minimization of interceptions of communications at the Surfside City Hall, and Mr. Martinez assured him that all efforts would be made to insure proper minimization on these phones. Judge Hastings then signed the necessary orders, one of which placed under seal all of the pleadings filed in support of the wiretap, rendering the information contained in those pleadings confidential. In addition, each time Judge Hastings received subsequent documents concerning the wiretap, he signed an order placing under seal all the information set forth in the documents.

[30] The Affidavit and Application are reprinted in Appendix IV of the Subcommittee Hearings.

1. July 22–August 12, 1985

On July 22 and 29, and August 5 and 12, 1985, Judge Hastings was presented weekly progress reports describing information obtained by the wiretap and by other investigative techniques.[31] The judge quickly reviewed and signed each report. The First Progress Report was presented to Judge Hastings by Assistant United States Attorney Martinez on July 22, 1985. At that time Mr. Martinez pointed out that there were interceptions concerning other crimes (bribery and extortionate credit transactions),[32] but there was no further conversation between Mr. Martinez and the judge. The Second Progress Report was presented on July 29, 1985. Mr. Martinez again pointed out the interceptions, reflecting new criminal activity. On this occasion, however, Mr. Martinez pointed out the page that discussed those interceptions, and Judge Hastings turned back to the page and reviewed it. One of the other crimes described on that page was the possibility of obtaining zoning changes and licenses for an amusement operation which Mr. Rivero had raised with Kevin "Waxy" Gordon. During a discussion of favorable locations for such an operation, Mr. Gordon had mentioned the location of a particular novelty store. The report quotes Mr. Gordon as saying "We cheated a little to get him in there to begin with, he's a friend of the Mayor's."

In the first three progress reports there are continuing references by the subjects of the wiretap, including Mr. Gordon, that they do not trust the phones and are suspicious that certain persons are agents and that cars spotted near their homes belong to agents.

The Third, Fourth, and Fifth Progress Reports, as well as the application for an extension of the wiretap, were presented to Judge Hastings by Assistant United States Attorney Jon May. These reports reveal that Mr. Gordon was working through several sources (some of them targets of the investigation) to get Mr. Rivero into the union. He had also suggested various drug deals and methods of enlisting the aid of the North Bay Village Police to bring in drugs. Mr. Gordan was also attempting to find an appropriate location for the amusement operation.

In the Fourth Progress Report, presented to Judge Hastings on August 12, 1985, a conversation between Mr. Gordon and Johnny Rivero is reported in which Mr. Gordon stated that he had Mayor Stephen Clark of Dade County "in his pocket." Mr. Gordon explains that he had raised over $40,000 for the mayor during his last election campaign. Later in the same conversation Mr. Gordon stated that his buddy was the mayor's campaign manager. When Mr. Gordon first started working on the problem of getting Mr. Rivero onto the docks, he had placed a call in Mr. Rivero's presence to a person whom Mr. Gordon had identified as the campaign manager for the Mayor of Dade County. In that conversation, as reported in the affidavit in support of the July 15 application, Mr. Gordon stated to the campaign manager that Mr. Rivero had

[31] The progress reports are reprinted in Appendix IV of the Subcommittee Hearings.

[32] 18 USC 2517(5) requires judicial approval of the investigation of criminal activity discovered as a result of the wiretap if that criminal activity was not included in the original application.

"money to pay his way," that he just needed some inside help. At the conclusion of the conversation Mr. Gordon told Mr. Rivero not to worry because they were going to get him onto the docks.

2. August 15, 1985

On August 15, 1985, both the Fifth Progress Report and the application for a 30 day extension of the July 15 wiretap authorization were presented to Judge Hastings by Mr. May and FBI Agent. Santini.[33] The affidavit in support of the application repeated almost verbatim the events reported in the first four progress reports which had been submitted to Judge Hastings between July 22 and August 12, 1985, including all of the comments about Mayor Clark. Judge Hastings reviewed the application and then commented that when he had first begun reading the application he had thought that "Waxy" was the radio station.[34] According to Special Agent Santini, the judge went on to say that "Waxy is like the radio station. If he doesn't keep his mouth shut he will get everyone into trouble, including the Mayor." The rest of the conversation concerned the minimization of interceptions at the Surfside City Hall.

3. August 22–September 5, 1985

The First Progress Report after the extension of the wiretap was submitted by Mr. Martinez and signed by Judge Hastings on August 22, 1985. However, it was not picked up by Mr. Martinez until August 29, 1985, the date of the submission of the Second Progress Report. Both progress reports had references to Mayor Steve Clark.[35]

At this point in the investigation, Gino, an undercover FBI agent posing as a Houston-based entrepreneur who wanted to set up the amusement center, had been introduced to Kevin "Waxy" Gordon by Johnny Rivero. Mr. Gordon drove Gino around to look at possible sites and when Gino expressed an interest in the Hialeah area, Mr. Gordon stated the mayor of Hialeah was a friend of Mayor Clark's. Mr. Gordon went on to state that help from the mayor of Hialeah might cost as much as $10,000. This conversation is reported in the First Progress Report after the extension.

The Second Progress Report, dated August 29, 1985, describes a meeting between Mr. Gordon and Johnny Rivero at which Mr. Rivero is introduced to Mayor Clark, Peter Ferguson and several other people. The meeting occurred at the Miami Outboard Club a favorite meeting place of the participants. The report states that Mayor Clark walked in, went over to Mr. Gordon and hugged him. At that point Mr. Gordon introduced him to Mr. Rivero as "Steve Clark, the mayor." After some general conversation and a game of pool, Mr. Gordon said to Mr. Rivero that "Steve is going to take care of this Hialeah thing for us, since that's where Gino wants to be." Mayor Clark then stated, "If you have any problems with that thing in Hialeah get in touch with me." Mr. Gordon asked again for the name of the contact in Hialeah, and Mayor Clark gave him

[33] The progress report is reprinted in Appendix IV of the Subcommittee Hearings.
[34] WAXY are the call letters of a Miami radio station.
[35] The progress report is reprinted in Appendix IV of the Subcommittee Hearings.

the name of a Hialeah councilman and added, "If you have any problems with him, get back in touch with me."

Mr. Martinez presented this Second Progress Report to Judge Hastings in the courtroom. The judge reviewed it while on the bench and then asked Mr. Martinez to see him in chambers. Once in chambers, Judge Hastings remarked, "Pretty heavy stuff." Mr. Martinez asked if he was referring to Mayor Clark, and the judge responded "Uh hum." Mr. Martinez explained that Mayor Clark was not a target of the investigation. He explained the history of the Hialeah investigation and stated that Mayor Clark had simply walked into the picture when Kevin "Waxy" Gordon had introduced him to Johnny Rivero. Judge Hastings commented that "Clark better be careful because he could get in trouble hanging around Waxy."

A week later, on September 5, 1985, Mr. Martinez presented the Third Progress Report to Judge Hastings in his courtroom. Judge Hastings read the report while on the bench and then called Mr. Martinez to the bench. The judge asked if Mr. Martinez had anything to tell him, and Mr. Martinez replied that everything was in the report. Mr. Martinez added that the wiretap was expiring in ten days and that they would not apply to renew it.

Three times in this report Mr. Gordon is quoted as saying that the zoning matters in Hialeah will be handled by Mayor Clark's contact. First he tells Gino that he has made a connection with the Hialeah Zoning Commission through Mayor Clark. Then Mr. Gordon reports to Johnny Rivero that he has told Gino all about Hialeah and the mayor. Finally, when Mr. Gordon, Mr. Rivero and Gino meet to drive around and look at potential sites, Mr. Gordon is reported to have described a Hialeah councilman who was generally reputed as being corrupt as "Steve Clark's man in Hialeah."

Throughout these progress reports there are additional indications that the subjects of the wiretap are sensitive to the possibility of their phones being tapped and of the presence of undercover agents. In addition to questions about whether a person's "phone is good" and the pat downs, there were specific concerns expressed about both Mr. Rivero and Gino. After Mr. Gordon introduced Mr. Rivero to one of the union officials, the official called back and said he needed a "resumé" on Mr. Rivero—some background information—"where he comes from and who he knows." The official stated that before they talk to anybody "they got to know for damn sure who they talking about." After Mr. Rivero provided the information, the official stated that there were no positions available.

During the same time period, Mr. Gordon made contact with another union official to get Mr. Rivero on the docks. Mr. Gordon was told that the official had contacted someone in the ILA local in New Orleans, and he had never heard of Johnny Rivero. As a result, the Miami official said that Local 1922 was very suspicious of Mr. Rivero. Finally, the day after Mr. Gordon met with Gino and Mr. Rivero, Mr. Gordon called Gino and said that he had better go back to Houston. He explained that the Hialeah councilman would be out of town for a week and then added that he did not know how the councilman would feel about giving someone he does not know "guarantees about zoning matters, it usually isn't done that way . . . It's an illegal act you know." These events were

reported in the progress reports submitted to Judge Hastings on August 22 and 29, and September 5, 1985.[36]

There are also clear indications in these progress reports that the undercover operations were dealing with dangerous people in a potentially violent situation. Both Kevin "Waxy" Gordon and another target of the investigation had talked to Mr. Rivero about enlisting the aid of corrupt police officers to bring in a shipment of cocaine. Mr. Rivero had introduced one of the targets to an undercover agent posing as a cocaine smuggler interested in obtaining police protection from the North Bay Police Department. The three of them had met and set the final terms ($3,000 to each officer, Mr. Rivero, and the target) and on the next day the target had introduced Mr. Rivero to one of the policemen. In addition, Mr. Gordon had introduced Mr. Rivero to a boat captain who was available to bring in the cocaine. One of the targets of the investigation had threatened to "blow away" a drug dealer who was later found dead on the beach. The person who had made that threat was staying at Mr. Rivero's apartment. This information was set out in the progress reports submitted to Judge Hastings on August 29 and September 5, 1985.

4. The Hastings/Clark Meeting

On September 6, 1985, Stephen Clark, mayor of Dade County, Florida attended a meeting of the Metro Miami Action Plan ["MMAP"], a community service organization which promotes black-white community relations in the Miami area. Judge Hastings was the guest speaker at the breakfast meeting. Some time that morning Judge Hastings disclosed confidential information learned while supervising the wiretap. He told Mayor Clark to "stay away from Kevin Gordon, he's hot, he's been using your name in Hialeah."

Mayor Clark called Mr. Ferguson and asked him to get in touch with Kevin "Waxy" Gordon. Mr. Ferguson was to tell Mr. Gordon that the mayor would be at the Miami Outboard Club at 11:30 a.m. that day and that he wanted to see Mr. Gordon there. At 8:58 a.m., the FBI monitored an incoming phone call to Mr. Gordon from Mr. Ferguson in which Mr. Ferguson said that Mayor Clark wanted to meet Mr. Gordon at "11:30 a.m today at the Miami Outboard." That morning Mr. Gordon told two persons, an attorney and Mr. Rivero, that he would be meeting the mayor that day. Although he did not know what the meeting was about, he told Mr. Rivero that it was not about the Hialeah zoning matter. Mr. Gordon and Mr. Rivero agreed that Mr. Rivero would also come to the Miami Outboard Club that day.

When Mr. Rivero arrived at the Miami Outboard Club, Mayor Clark and Mr. Gordon were talking. Mr. Rivero joined Mr. Ferguson at another part of the bar and they were eventually joined by Mayor Clark and Mr. Gordon. At that time Mr. Rivero overheard the mayor tell Mr. Gordon, "I need it done, and we're both going to come out OK." Mr. Gordon responded, "It's done and don't worry about it."

[36] *See* Appendix IV of the Subcommittee Hearings.

At the Miami Outboard Club, Mayor Clark advised Mr. Gordon that he had learned from an authoritative source that Mr. Gordon was using his name in Hialeah. According to the mayor, Mr. Gordon denied that he was using the mayor's name and denied that he was doing anything wrong. Mr. Gordon then pressed Mayor Clark to identify his source, and the mayor eventually stated that the source was Judge Hastings.[37]

On September 9, 1985, the FBI became aware that confidential information had been leaked, when Mr. Gordon told an acquaintance about his meeting with Mayor Clark in a conversation that was monitored. Representatives of the FBI, the Public Integrity Section of the Criminal Division of the United States Department of Justice, and the United States Attorney's Office met to determine whether the undercover investigations could continue. It was decided that both the investigation into union corruption and the zoning investigation would have to be terminated because of Mr. Gordon's involvement. The union investigation had become too risky for the undercover source, Johnny Rivero. The zoning investigation was no longer viable because Mr. Gordon had immediately suspected Gino, and had asked Mr. Rivero to check out Gino. He also launched his own investigation of Gino. The cocaine deal involving corrupt police officers was considered to be sufficiently isolated from Mr. Gordon to be safe, and, in fact, that operation was successfully completed and resulted in arrests and convictions.

5. Investigation of the Disclosure

In an effort to determine whether Judge Hastings had in fact disclosed confidential information to Mayor Clark, the Department of Justice focused its investigation on Kevin "Waxy" Gordon. Mr. Gordon had on several occasions offered to obtain drugs for Mr. Rivero, an offer which Mr. Rivero had been instructed to avoid in the past in order to keep the investigation from being sidetracked. Now Mr. Rivero was instructed to accept Mr. Gordon's offer, and in October 1985 two undercover buys were arranged. Mr. Gordon was arrested and on November 20, 1985 he executed a plea agreement in which he agreed to cooperate with authorities.

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[37] There are numerous accounts of the conversation between Mayor Clark and Mr. Gordon on that day. On September 9, 1985, three days later, Mr. Gordon recounted the meeting to an attorney in a conversation that was monitored by the FBI. On September 10, 1985, Mr. Gordon met Mr. Rivero and told him about the meeting with Mayor Clark, and on September 11, 1985, Mr. Gordon and Mr. Rivero discussed it again in a monitored telephone conversation. Mayor Clark described the meeting in a conversation with Mr. Gordon on January 17, 1986, which was recorded without his knowledge in his statement to the FBI on March 13, 1986 and in his testimony before the grand jury on March 20, 1986. All of the accounts are generally consistent.

On several occasions, Mr. Gordon stated that Mayor Clark said that the judge had warned the mayor that Mr. Gordon was using both Mayor Clark's name and Mr. Ferguson's name while putting together a deal with a councilman in Hialeah. Mayor Clark does not say that the judge mentioned either Mr. Ferguson or a councilman from Hialeah.

When Mr. Gordon recounted the meeting to Mr. Rivero, he stated that Mayor Clark had told him that Judge Hastings said the phones at the Surfside City Hall and at Mr. Gordon's home were wired and there was an investigation going on in Hialeah. In that account the judge is reported to have said, "If Kevin is a friend of yours, tell him not to do anything in Hialeah."

Mayor Clark denied that Judge Hastings had said anything specifically about the wiretap or about the FBI investigation. According to Special Agent Santini, when Mr. Gordon was arrested and debriefed he stated that Mayor Clark did not say anything about the wiretap or the FBI investigation. Similarly, in a September 1985 conversation with Mr. Rivero, Mr. Gordon stated that it was Mayor Clark, not the judge, who had said that if Mr. Gordon was doing anything in Hialeah, he should "back off."

A plan was developed whereby Mr. Gordon would wear a body recorder and attempt to engage Mayor Clark in a conversation in which Judge Hastings' disclosure would be discussed. Mr. Gordon was successful in obtaining body recordings of two of the participants in the September 6, 1985 conversation at the Miami Outboard Club. On December 18, 1985 he recorded a conversation with Mr. Ferguson in which Mr. Ferguson suggested that Johnny Rivero was an undercover narcotics agent. On January 17, 1986, Mr. Gordon spoke with Mayor Clark, who again recounted Judge Hastings' statement to him at the MMAP annual meeting.

Mr. Gordon died in February 1986. The FBI then approached Mayor Clark directly. The mayor admitted that Judge Hastings had spoken to him at the MMAP meeting and had warned him to stay away from Mr. Gordon because Mr. Gordon was "hot" and was using the mayor's name in Hialeah. Mayor Clark passed a polygraph test in which he was asked whether Judge Hastings had disclosed the information.[38]

In March 1986, both Mayor Clark and Special Agent Christopher Mazzella [39] testified before the grand jury about Judge Hastings' disclosure. Shortly after their testimony, a Miami Herald reporter learned of the fact of the testimony and the subject of the inquiry. The reporter confronted Mayor Clark and Judge Hastings, both of whom initially said that they had no comment. Judge Hastings called the reporter back the following day and stated that he had "searched his mind" the night before and his only recollection of seeing Mayor Clark was at occasional speaking engagements and that he was sure that he had not revealed any confidential information to the mayor. Judge Hastings did not contact either the FBI or the United States Attorney's Office about the leak.

In May of 1986, the Department of Justice decided to attempt to interview Judge Hastings. Special Agent Mazzella spoke with Judge Hastings on May 19, 1986. After obtaining Agent Mazzella's permission to have a court reporter make a record of their conversations, Judge Hastings did not think it was appropriate for him to discuss a Title III wiretap with Agent Mazzella. Judge Hastings stated that he would be willing to talk with representatives of the Public Integrity Section of the Department of Justice. On May 20, 1986, Eric Holder of the Public Integrity Section spoke with Judge Hastings. At that time the judge declined to be interviewed, stating that Mr. Holder would have to do whatever he planned to do without Judge Hastings' assistance and that he knew how the Department of Justice worked. Judge Hastings also asked Mr. Holder if he knew who Judge Hastings was.

Ultimately the Department of Justice decided not to prosecute Judge Hastings, in spite of its conclusion that Judge Hastings had disclosed the confidential information and had violated the law in

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[38] The Committee is aware of the controversy surrounding the use of polygraphs and recognizes their limited utility. The Committee is not suggesting that it condones their use as a substitute for traditional investigative techniques particularly in wide ranging, unfocused investigations. They have been shown to have some utility in answering specific questions once an investigation is already underway and clearly focused. In this case, the evidence as a whole is sufficiently persuasive that the Committee is confident in the conclusion it has reached.

[39] Mr. Mazzella was the FBI supervisor of the investigation of the disclosure of confidential information.

doing so. According to a Department of Justice memorandum, the ultimate decision not to prosecute "was not easy to reach" and was reached only after changing their minds "numerous times." [40] The Department of Justice perceived certain factual weaknesses in the case as a criminal prosecution, primarily because the encounter with Mayor Clark was one-on-one, albeit bolstered by circumstantial evidence corroborating Mayor Clark. Another difficulty was the lack of an obvious motive for Judge Hastings' disclosure to Mayor Clark. A significant factor in the decision not to pursue the matter as a criminal prosecution was the fact that any such prosecution in light of the acquittal of Judge Hastings on the bribery conspiracy charge would be "vastly complicated by charges of a prosecution motivated by race, politics and institutional vindictiveness." [41] The Department of Justice chose instead to initiate a complaint with the Eleventh Circuit under 28 U.S.C. 372(c).

Two additional issues which the Committee investigated, were the precise timing of the disclosure and the possibility of an alternative source of the information to Mayor Clark. Mayor Clark testified before the grand jury (and subsequently before the 1987 Investigating Committee and the Subcommittee) that at the MMAP meeting on September 6, 1985, at the conclusion of his speech, Judge Hastings approached him. While shaking his hand, Judge Hastings took him aside and before Mayor Clark could even say "Good morning," the judge warned him to stay away from Kevin "Waxy" Gordon. Mayor Clark testified that he then left the meeting, returned to his office and called Mr. Ferguson to arrange a meeting with Mr. Gordon. The FBI monitored a call from Mr. Ferguson to Mr. Gordon at 8:58 a.m. that day which set up such a meeting. Judge Hastings, however, was not scheduled to speak until 9:05 a.m. By all accounts the program was running late and the speech was not concluded until after 10:00 a.m. Therefore, Judge Hastings could not have made the disclosure to Mayor Clark after the speech.

The Subcommittee heard evidence, however, that before the speech Judge Hastings spoke with Mayor Clark in the company of a third person, Monsignor Bryan Walsh. Testifying before the 1987 Investigating Committee Judge Hastings admitted such a meeting but denied that he had had a private conversation with the mayor before the program began or that he had made any improper disclosure. Monsignor Walsh testified before the Subcommittee that he, Mayor Clark, and Judge Hastings had exchanged greetings on the morning of September 6, 1985 before the speeches, but he did not know whether Mayor Clark and Judge Hastings had had a private conversation after the three of them separated. There are no witnesses to such a private conversation, and Mayor Clark testified that he had no recollection of meeting Judge Hastings and the monsignor before the speech.

A second issue investigated by the Committee was the possibility of an alternative source for Mayor Clark's information. This issue arose because of a telephone conversation on July 23, 1985 between

[40] The Department of Justice memorandum is reprinted in Appendix IV of the Subcommittee Hearings.
[41] *Id.*

FBI Special Agent Tom Dowd of Miami and Glen Whittle, an aide of Mayor Clark. Mr. Whittle asked Special Agent Dowd to verify that the FBI had an investigation into the activities of "the man who married you" and Mr. Ferguson. Mr. Whittle said he had gotten this information from Special Agent Dowd's wife's boss. The man who married Special Agent Dowd was Mayor Clark, and his wife's boss was H. Paul Rico, the retired FBI agent who had posed as Frank Romano in the bribery conspiracy investigation. In addition, Special Agent Dowd was a friend of both Mr. Ferguson and Mr. Whittle.

Special Agent Dowd checked with his supervisors and was told to return the call and state that the requested information was confidential and that he "took exception" with the fact that Mr. Whittle would ask him for such information. Special Agent Dowd then called Mr. Whittle back, at which time Mr. Whittle said, "your wife's boss is a great kidder." Mr. Whittle was advised that he could interpret the call however he wanted but the call was not to be construed as a confirmation or denial of his suspicions.

In addition to whatever contacts Mayor Clark had with the FBI through Mr. Rico and Special Agent Dowd, the mayor also testified before the Subcommittee that he played golf with two FBI agents, Anthony Amoroso (who had been involved in the bribery conspiracy investigation) and Jerry Forrester.

The FBI and the United States Attorney's Office concluded that the inquiry by Mr. Whittle was of no significance because it did not affect the actions of the various participants in the ILA or the zoning schemes. Mr. Whittle called Special Agent Dowd approximately one week after the wiretap was instituted. At that date, there was no basis for concluding that Mayor Clark had anything to do with the investigation. Moreover, there were no conversations intercepted thereafter in which concerns about an FBI investigation were expressed. In fact, both Mr. Ferguson and Mayor Clark talked to Kevin "Waxy" Gordon about ILA and zoning matters subsequent to the July 23, 1985, inquiry by Mr. Whittle.

In comparison, the disclosure by Judge Hastings resulted in a dramatic change in conduct by Mr. Gordon after September 6, 1985. He immediately started questioning numerous friends about who might be the source of the "leaked" information. He devoted time to investigating Gino for himself—including visiting the office address Gino had given to him, asking someone at AT&T to find out if the telephone number for Gino's office actually rang at the office address, giving Gino's card to a banker friend to check, and reassessing the economics of Gino's business proposition to try to determine if it was an FBI operation.

The Committee concludes that no plausible basis exists for finding that someone other than Judge Hastings tipped off Mayor Clark.

6. Impact of the Disclosure

In early September 1985, the investigation into Local 1922 was stalled because various members of the ILA local were suspicious of the informant, Mr. Rivero. Prior to Judge Hastings' disclosure, however, representatives of the FBI and United States Attorney's Office had taken steps to enlist the aid of an ILA official who was

coming to Miami to vouch for Mr. Rivero. Assistant United States Attorney Martinez and Special Agent Santini believed that person to be of such stature that his word would be sufficient to persuade Local 1922 to admit Mr. Rivero. When Mr. Martinez and Special Agent Santini learned about the disclosure, they immediately called off the official for fear of compromising him. At the time of the disclosure, the FBI and United States Attorney's Office believed they were very close to actually getting Mr. Rivero on the docks.

When Judge Hastings' disclosure was confirmed, two of three very important undercover operations had to be terminated. The waterfront investigation of Local 1922 was terminated because Kevin "Waxy" Gordon was in the center of the attempts to get Mr. Rivero into the union. Because Mr. Gordon had connections with a number of the union officials, as well as with Mr. Ferguson, who was not only Mayor Clark's campaign manager but also the marketing director for Fiscal Operations at the Port of Miami. This operation was now too risky to pursue. The investigation of the waterfront was approximately a year old, and it had to be abandoned before sufficient information was obtained to make any arrests.

The Hialeah zoning operation was also terminated. Mr. Gordon had immediately suspected Gino, the undercover agent who was posing as the businessman who wanted to set up the amusement center. Although that investigation had only begun in July 1985, the FBI had the cooperation of an amusement company to set up an amusement franchise, and extensive resources and personnel had been invested in the operation. In the opinion of law enforcement officials, the undercover operation was very promising until the leak. To the extent that any further operations dependent on Mr. Gordon were contemplated, they also had to be abandoned.

Because the United States Attorney's Office and law enforcement agencies feel they can no longer trust Judge Hastings, authorization for wiretaps is not sought during the months when he is the duty judge.

VI. Analysis of Articles of Impeachment

Article I

The Committee determined, based on an independent and thorough review of the evidence, that Judge Hastings participated in the 1981 bribery conspiracy with William Borders. Judge Hastings put the administration of justice up for sale, thereby undermining the integrity of the federal judiciary and the public's faith in the federal courts. For this reason alone, impeachment is warranted.

There is abundant evidence supporting the Committee's conclusion. As a threshold matter, the chronology of events (set forth in Part A of the Statement of Facts) presents in detail the correlation of events in the *Romano* case with the implementation of the bribery conspiracy. The chronology reveals a pattern of contact between Judge Hastings and William Borders that strongly suggests Judge Hastings' involvement. The evidence is circumstantial; however, one event after another points to Judge Hastings' participation in the bribery scheme.

1. As detailed in the Statement of Facts,[42] between January and October 1981, the vast majority of documented phone contacts between Judge Hastings and William Borders occur around significant events in the *Romano* case. There are very few documented contacts on other occasions. The contacts between the two men demonstrate Judge Hastings' participation in the bribery conspiracy.

At trial, Judge Hastings did not specifically recall the phone contacts. In his submissions to the Subcommittee, however, Judge Hastings provided a list of independent events that occurred during the relevant time period. For example, in February and July of 1981, there were meetings of the National Bar Association, in which both Mr. Borders and Judge Hastings were active participants. Similarly, Mr. Borders was engaged in a lawsuit against President Reagan in the late spring of 1981 which was decided on July 7, 1981. Although these events are within the general time frame of the 1981 telephone contacts, they do not explain the phone calls with nearly the same degree of persuasiveness and specificity as do key events in the *Romano* case. Indeed, the telephone contacts between Judge Hastings and Mr. Borders are often on the very day Judge Hastings held a hearing or issued an order in *Romano*.

2. Mr. Borders' detailed knowledge of the *Romano* case when he met Mr. Rico for the first time on September 12, 1981 points to Judge Hastings' participation.[43] William Borders was not a member of the Florida bar, he did not practice in Miami, and the *Romano* case was not publicized in the Washington, D.C. area. Nonetheless, when he met Mr. Rico to set up the bribery scheme, Mr. Borders knew that Judge Hastings had forfeited a significant amount of the Romanos' property; that an order would issue returning a "substantial amount" of that property; that the Romanos had received jail sentences; and that they had filed an appeal. This information could have been gleaned from the *Romano* pleadings, which were public records. The public file, however, was kept in Judge Hastings' chambers throughout the relevant time period. Moreover, there is no evidence to suggest that Mr. Borders had access to this file personally or that he was in contact with anyone who could inform him of the file's contents, other than Judge Hastings.

In addition, during his first meeting with Mr. Rico, Mr. Borders immediately selected a date for Judge Hastings' dinner at the Fontainebleau Hotel without consulting the judge, despite Judge Hast-

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[42] Section A-5.

[43] On June 10, 1988, the Supreme Court of Rhode Island issued a decision in *Lerner* v. *Moran*, reversing an 18 year old murder conviction on the ground that an FBI agent named Paul Rico had suborned perjury and had testified falsely himself at the defendant's trial. The FBI has confirmed that the Paul Rico named in that case is the same person who played the role of Frank Romano in the bribery conspiracy case.

In reviewing the evidence the Committee determined that all known interactions and conversations between Mr. Rico and Mr. Borders were recorded, and therefore do not depend on the credibility of Mr. Rico. No one has ever questioned the accuracy or genuineness of the tape recordings. The Committee has no basis for believing that there were any unrecorded contacts between Mr. Rico and Mr. Borders. The Committee relies upon Mr. Rico for the fact that Mr. Borders did not verify in advance of his trip to Miami on September 18, 1981 that Judge Hastings had appeared at the Fontainebleau Hotel as promised. That fact alone, however, is hardly determinative of Judge Hastings' participation in the bribery scheme. Therefore the Committee concludes that the issue of Mr. Rico's credibility is of marginal relevance.

ings' busy travel schedule. This is further evidence of Judge Hastings' direct participation in the bribery scheme.

3. The decision in *United States* v. *Martino,* which was controlling Fifth Circuit law, required Judge Hastings to reverse the *Romano* forfeiture order in June 1981 and return a substantial amount of the forfeited property. Judge Hastings, however, failed to reverse the order in July, August, or September 1981. In fact, in early July he specifically affirmed his earlier order, despite his knowledge of *Martino.* Judge Hastings did not issue the order returning a substantial amount of the Romanos' property until (a) William Borders' scheme with Mr. Rico had commenced, (b) a $25,000 down payment had been made, (c) Mr. Rico had repeatedly questioned Mr. Borders about the fact that the order had not yet been issued, (d) Mr. Borders had attempted to contact Judge Hastings and, (e) on October 5, 1981, the coded conversation between Judge Hastings and Mr. Borders had occurred. While there is evidence that Judge Hastings told his law clerk to prepare the reversal order in early September before Mr. Borders was told the Romanos were "ready to deal," the judge took no steps until October 5, 1981 to see that the order was completed.

4. Mr. Borders and Judge Hastings had an opportunity on the day before William Borders' meeting with Mr. Rico (on September 12, 1981) to meet and discuss the bribery scheme. Indeed, Mr. Borders and Judge Hastings took steps to coordinate their schedules to bring about that opportunity. Judge Hastings was scheduled to fly to Washington, D.C. on September 11th. When his flight from Miami to National was delayed, he repeatedly notified Mr. Borders. Judge Hastings testified that he notified Mr. Borders of the delay because Mr. Borders was supposed to pick him up at National. That testimony is incredible, however, because Mr. Borders was to leave from National one and one half hours after Judge Hastings' originally scheduled arrival time. After Judge Hastings' flight was delayed, Mr. Borders—who was scheduled to fly from National to Miami in order to meet Mr. Rico the next morning—delayed his departure. Ultimately there was a one and one half hour period when both Judge Hastings and William Borders were in Washington, D.C., and could have conveniently met at the airport.[44]

5. Mr. Borders went to great lengths to see Judge Hastings in Washington, D.C. on September 12, 1981, presumably to discuss with him the meeting with Mr. Rico which had taken place that morning, and to tell Judge Hastings to "show" at the Fontainebleau Hotel at 8:00 p.m. four days later. Immediately after setting up the bribery deal in Miami, Mr. Borders flew to West Palm Beach and drove to his family reunion in Fort Pierce, Florida. Shortly after arriving he made reservations to leave West Palm Beach that afternoon at 4:12 p.m. At 3:30 p.m. Mr. Borders canceled that reservation and made one leaving from Melbourne, Flor-

[44] Judge Hastings did not check into the Sheraton Hotel, where he was staying in Washington, D.C., until two and a quarter hours after he arrived at National, a delay which Judge Hastings attributed at trial to a lengthy wait for his luggage and a cab ride to pick up his date in upper Northwest Washington in which the driver had a great deal of difficulty locating the street. At trial, Judge Hastings denied meeting Mr. Borders at the airport. Meanwhile Mr. Borders took a flight through Atlanta and did not arrive in Miami until 1:30 a.m. on September 12, 1981

ida, at 4:35 p.m. He drove to Melbourne and missed his flight. Immediately thereafter he drove to Orlando, Florida where he caught a flight to BWI scheduled to arrive at 8:35 p.m. Two days earlier, Mr. Borders had told Jesse McCrary (who was with Judge Hastings in Washington) that he would be in Florida for the weekend. Mr. Borders' complicated effort to return to Washington is specifically documented in the record.

The evidence also establishes that Judge Hastings was waiting for William Borders on the evening of September 12, 1981, bolstering the already strong inference that they had planned to meet. At 10:00 p.m. on that Saturday evening, Judge Hastings, Mr. McCrary, and three women were in the judge's room at the Sheraton Hotel. They had not yet had dinner. One of the women testified before the Investigating Committee that they were waiting for William Borders, while another testified they were waiting for someone. Jesse McCrary testified that it was Judge Hastings' idea to delay dinner. Only when William Borders arrived did the group go to dinner.

6. As agreed by Mr. Borders and Mr. Rico, on September 16, 1981, Judge Hastings dined at 8:00 p.m. at the Fontainebleau Hotel. As discussed in detail below in support of Article V, Judge Hastings did not intend to meet William Borders for an innocent social encounter. Rather, as a participant in the bribery conspiracy, he dined at the Fontainebleau Hotel on the specified day and at the assigned time as a sign of his involvement in the scheme.

7. A series of lawfully intercepted phone calls, between October 2-7, 1981, convincingly demonstrates Judge Hastings' participation in the bribery conspiracy. Mr. Rico called William Borders on October 2, 1981 inquiring after the order, which had not yet been issued. Mr. Borders replied "I'll check into it." Less than two hours later, Mr. Borders attempted to call Judge Hastings. When he was unable to reach the judge, Mr. Borders reported to Mr. Rico on the morning of October 4th "I haven't been able to talk to anybody." Mr. Borders called Judge Hastings' residence on the afternoon of October 4th and left a message for the judge to call him. On the morning of October 5, 1981, Judge Hastings instructed his law clerk to complete the order in *Romano* that day. Also, on October 5, 1981, Mr. Borders told Mr. Rico that everything was taken care of and the order would go out either that day or "first thing in the morning." Forty minutes later, Mr. Borders had the coded conversation with Judge Hastings, in which the judge said "I'll send the stuff off to Columbia in the morning." Finally, two days later, October 7, 1981, Mr. Borders told Mr. Rico that the order "went out yesterday morning."

Although the failure to issue the order within the promised time period arguably suggests that Judge Hastings was not a knowing participant in the bribery conspiracy, the Committee finds that the series of phone calls immediately before and after the issuance of the order, between Mr. Borders, Mr. Rico and Judge Hastings, is compelling evidence of Judge Hastings' complicity.

8. The coded conversation of October 5, 1981 itself demonstrates Judge Hastings' knowing participation in the scheme. Judge Hastings contends that the conversation was about letters for Hemphill Pride rather than the conspiracy. The taped conversation, however, undermines Judge Hastings' claim. On its face, the conversation

does not make sense. Moreover, Mr. Pride testified convincingly that he never "wrote some things down" for William Borders as stated in the conversation. In addition, a linguistic expert concluded after detailed analysis of the conversation that the conversation was coded.

Further, Hemphill Pride has repeatedly testified that he did not know of any letters of support, nor desire any. Mr. Pride, in fact, was not even eligible for reinstatement to the South Carolina bar until 18 months after the letters were allegedly written. He testified before the Subcommittee that he refused to endorse Judge Hastings' explanation of the letters, when suggested by the judge after the indictment issued.

9. Judge Hastings' guilty flight from Washington, D.C. after learning of William Borders' arrest belies Judge Hastings' innocence. First, Judge Hastings did not contact the FBI after Mr. Pride gave him the names of the agents and the telephone number to call but instead immediately left for Florida. Second, there is no documentary evidence of the phone calls which allegedly motivated Judge Hastings to return to Florida. The documentary evidence of the timing of the FBI interviews in Florida and testimony about the entries in the visitor logs of Mrs. Hastings' apartment complex establish that the events allegedly discussed in the phone conversations had not yet occurred.

Third, Judge Hastings refused a ride from Mr. Pride to the airport, stating Mr. Pride should not get involved because he was on parole. Instead, Judge Hastings took a $50 cab ride to BWI, even though he knew that National was only a ten minute ride away. Fourth, as recently as July 1981, Judge Hastings had taken a 5:30 p.m. nonstop flight from National to Miami and, therefore, contrary to his trial testimony, he knew that direct flights were available from that airport.[45] Fifth, when at BWI, Judge Hastings engaged in a series of pay phone calls from different booths with Patricia Williams. He admitted making the calls at trial and offered several inconsistent explanations for his conduct. Sixth, Judge Hastings flew to Ft. Lauderdale and rented a car, despite the fact that the plane went on to Miami, where his car was parked. Finally, Judge Hastings' account of his actions once he arrived in Ft. Lauderdale is contradictory at best.[46]

It is clear that Judge Hastings' purpose in leaving Washington was to avoid immediate interrogation by the FBI. The Committee concludes that the fact that Judge Hastings consented to being interviewed when he was later located by the FBI in Fort Lauderdale, and that he may have been more comfortable facing the FBI on "his own turf" are insufficient to outweigh the inference that Judge Hastings' initial avoidance of the agents and his false testimony offered to explain his decision was evidence of his consciousness of guilt.

10. Phone records reflect an early morning phone call, on October 12, 1981, three days after William Borders' arrest, from Judge Hastings' residence to Mr. Borders' residence. By this time, Judge

[45] In fact, on October 9, 1981, at 4:35 p.m. there was an Eastern flight departing National for Miami with seats available.

[46] See Statement of Facts at A-4.

Hastings had already asserted that he was an innocent victim of Mr. Borders' corrupt bribery scheme.

The totality of the evidence clearly and convincingly establishes Judge Hastings' knowing and willing participation in the bribery conspiracy with William Borders. In contrast to this abundant evidence of Judge Hastings' involvement, there is very little exculpatory evidence.

At both the criminal trial and the Subcommittee hearings, Judge Hastings offered evidence of his good reputation and standing in the community.[47] The Committee has taken that evidence into account; however, it is not sufficient to counter the extensive evidence of Judge Hastings' participation in the bribery scheme. Likewise the Committee took into account evidence that Judge Hastings was not facing financial pressure. For example, at his trial, witnesses testified to the relatively modest life style of the judge and his history of pro bono work. Yet Judge Hastings did not appear to have a comfortable financial cushion and he also testified to his desire to put together a downpayment for a house.

In addition, at his criminal trial, Judge Hastings presented the defense that Mr. Borders had been acting alone—that he had been "rainmaking", that is, saying that he could influence the judge's decisions when he had no such power. In support of this argument Judge Hastings proffered, at his criminal trial, testimony by members of the legal community describing rainmaking schemes. He also pointed to the statements of William Dredge that Mr. Borders had claimed to be able to influence other judges.

The Committee rejects this defense for several reasons. First, there was no evidence in the record that Mr. Borders engaged in "rainmaking." Second, Mr. Borders exhibited a confidence in his ability to produce the promised favors which would be foolhardy if he were merely "rainmaking." On two occasions Mr. Borders offered to have Mr. Dredge hold the entire $150,000 payment in escrow, until Judge Hastings had signed the order returning the Romanos' property. Moreover, the reputation of Mr. Trafficante suggests that Mr. Borders' life may well have been in danger had he not produced on his promises. Finally, the Committee rejected the "rainmaking" defense because the evidence establishes that Mr. Borders was not acting alone.

The Committee concludes that, when viewed in its totality the evidence of Judge Hastings' involvement in the corrupt bribery scheme is overwhelming. Judge Hastings schemed to sell the trust placed in him as a federal judge. His conduct warrants impeachment.

Articles II, III and IV

Articles II, III and IV charge Judge Hastings with knowingly making false statements under oath at his criminal trial. These three articles address Judge Hastings' general denials that he participated in the bribery conspiracy. Specifically, Judge Hastings testified under oath as follows:

[47] At the Subcommittee's request, Judge Hastings submitted letters regarding his reputation and good standing rather than presenting live testimony at the hearings. The letters are reprinted in Appendix III of the Subcommittee Hearings.

Question: Did you agree with and conspire with William Borders to influence, in any way, the performance of your judicial duties?

Answer: No, I did not.

Question: Did you agree with Bill Borders and intend knowingly and voluntarily to participate in any kind of illegal undertaking?

Answer: None whatsoever. I did not do that, nor would I have done so, nor would I now.[48]

* * * * * * *

Question: Let me say it this way: Is not the gist of what Mr. Borders said to the man he thought was Romano was that he could eliminate their jail sentences for $125,000.[49] As a show of proof, A, he'd produce you at any restaurant they wanted, and B, a substantial portion of property would be returned to them?

Answer: I believe that is the gist of the conversation.

Question: Of course, you had no idea that was going on?

Answer: No, I didn't.[50]

The evidence in support of Articles II, III and IV is set forth in the analysis of Article I. Judge Hastings knowingly participated in the bribery conspiracy and violated his oath to tell the truth by denying that involvement. Judge Hastings' false testimony at his criminal trial warrants impeachment.

Article V

Article V charges Judge Hastings with falsely testifying at his criminal trial with respect to his reason for appearing at the Fontainebleau Hotel on September 16, 1981 at 8:00 p.m. Judge Hastings testified under oath as follows:

Question: Judge, would you tell the jury why you went to the Fontainebleau Hotel on September 16th?

Answer: As I indicated, William Borders had indicated to me that he would be at the Fontainebleau Hotel during the dinner hour and for purely social purposes he and I were going to meet expressly for the purpose of socializing . . . I know for a fact that . . . William Borders indicated to me that he would be in Miami at the Fontainebleau Hotel September 16th.

And that is the primary reason I went there.[51]

* * * * * * *

Question: Judge did you dine at the Fontainebleau Hotel on September 16, 1981, to show your participation in a bribery scheme?

Answer: Absolutely not.[52]

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[48] Transcript of *United States* v. *Hastings* at 2058.

[49] The prosecutor apparently misspoke here, for the bribery scheme actually involved a payment of $150,000.

[50] Transcript of *United States* v. *Hastings* at 2107–2108.

[51] *Id.* at 2009.

[52] *Id.* at 2057.

For several reasons, this testimony is false. There is no question that Judge Hastings appeared at the time and place set by Mr. Borders and Mr. Rico to establish the judge's participation in the scheme. Judge Hastings invited a date for dinner and only made reservations for two. The judge neither told his date they were meeting William Borders, nor objected when the waiter removed two place settings after they were seated at a table for four. Furthermore, 15 minutes after being seated in the dining room, Judge Hastings got up from the table and walked through the hotel lounge allegedly to look for Mr. Borders. That walk, however, enabled him to be seen by any interested observers.

There was no way William Borders could have met Judge Hastings for dinner, nor is there any indication that Mr. Borders even intended to do so. Mr. Borders was in Las Vegas, Nevada at the Leonard-Hearns championship fight on September 16, 1981. He had planned the trip well before promising Mr. Rico that the judge would appear at the Fontainebleau Hotel. When Mr. Rico suggested a meeting with Mr. Borders on September 17, 1981, Mr. Borders declined because he would be at the fight. Moreover, William Borders was well known as an avid boxing fan who never missed an important championship fight.

In addition, upon returning from Las Vegas on September 18, 1981, Mr. Borders immediately changed planes at National in order to fly to Miami to make his scheduled meeting the next morning with Mr. Rico. At that meeting, Mr. Borders received the $25,000 down payment based on Judge Hastings' appearance at the Fontainebleau Hotel. There is no evidence that Mr. Borders verified that Judge Hastings had appeared as agreed. He was certain the judge had dined as planned because Judge Hastings was a knowing participant in the bribery conspiracy.

Article VI

Article VI charges Judge Hastings with testifying falsely at his criminal trial that he was surprised by William Borders' appearance at his Sheraton Hotel room at 10 p.m. on September 12, 1981. Specifically, Judge Hastings testified under oath that:

> *Answer:* He [Mr. Borders] knocked on the door. I answered it . . . and I said words to the effect, "Some kind of surprise," without trying to remember exactly what I said, but I was surprised to see Bill . . .[53]
>
> * * * * * * *
>
> *Question:* And you weren't waiting for Mr. Borders?
> *Answer:* Oh, absolutely not.[54]

Judge Hastings violated his oath to tell the truth by testifying that he was surprised to see Mr. Borders. His testimony flatly contradicts the testimony of other people in the room. Moreover, Mr. Borders' complicated and purposeful maneuvers to reach Washington, D.C. undermine Judge Hastings' testimony. For a more detailed discussion of the facts establishing Judge Hastings' false tes-

[53] *Id.* at 1841.
[54] *Id.* at 2111.

timony in this regard, *see* Statement of Facts, part A–5, and paragraph 5 in support of Article I.

Article VII

Article VII charges Judge Hastings with lying under oath at his criminal trial with respect to why, on October 5, 1981, he told his law clerk, Jeffrey Miller, to prepare the order returning a substantial amount of the Romanos' property. Judge Hastings testified under oath that:

> *Answer:* . . . But the most pressing consideration was the complexity of the forfeiture aspect and his leaving the possibility of his not being there when I returned from the long trip with the exception of one day that I was going to come back to try a juvenile that was in jail.
>
> And it is for that reason that I made the statement to him that I wanted the order done.[55]
>
> * * * * * * *
>
> *Question:* What was the urgency to issuing the order on October the 6th?
>
> *Answer:* Because Jeffrey was going to be leaving and I was going to be away for the month of October.[56]

While it is true that Mr. Miller was scheduled to leave Judge Hastings' chambers at the end of October, the real reason that Judge Hastings told his law clerk to get out the *Romano* order that day was to implement a part of the bribery conspiracy.

The governing law required Judge Hastings to reverse the *Romano* forfeiture order much earlier than October 1981, and Judge Hastings was well aware of the law.[57] Nonetheless, the judge did not effectively follow through on his instruction to reverse his earlier order until the bribery scheme was in place, the down payment had been made, and the series of phone calls between Mr. Rico, Mr. Borders and Judge Hastings had occurred. In addition, Mr. Miller testified before the Investigating Committee that Judge Hastings' instruction to get out the order "that day" was unusual. The totality of the evidence establishes that Judge Hastings' explanation under oath as to why he wanted the order out on October 5, 1981 was knowingly false and stated with the intention of misleading the trier of fact.

Articles VIII and IX

Article VIII charges Judge Hastings with knowingly testifying falsely at his criminal trial with respect to the meaning and purpose of his October 5, 1981 conversation with William Borders. Article IX charges Judge Hastings with violating his oath by testifying that three documents were drafts of the "Hemp letters," which were referred to in the October 5th conversation and were allegedly written by the judge on October 5, 1981.

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[55] *Id.* at 1969.
[56] *Id.* at 2139.
[57] See paragraph 2 in support of Article I.

Judge Hastings testified extensively about the meaning and purpose of the October 5th conversation and the draft letters for "Hemp." Specifically, he testified under oath as follows:

> *Question:* At about 5:00 in the afternoon, you called Bill Borders on October 5th?
>
> *Answer:* Yes, I——
>
> *Question:* Why did you call him?
>
> *Answer:* I called him, then, because on October 4th, at some time in the afternoon, evidently he left a message for me with my mother . . . something about Hemphill.
>
> And again it had to do with matters that he and I had been in rather ongoing discussions about . . . trying to raise money for him.[58]
>
> * * * * * * *
>
> *Question:* Now when you used the word "letters," were you in fact referring to letters?
>
> *Answer:* I certainly was.[59]
>
> * * * * * * *
>
> *Question:* Mr. Borders goes, "Ah-hah" and then what do you say?
>
> *Answer:* I say "And everything's okay. The only thing I was concerned about was, did you hear if, ah, hear from him after we talked?"
>
> *Question:* And what are you talking about there?
>
> *Answer:* I am referring specifically to the call that I received from Mr. Borders either on September 20th or 21st wherein he indicated to me he expected to see Hemphill again, and he was asking him specifically about his exact financial condition.[60]
>
> * * * * * * *
>
> *Question:* And Mr. Borders, "See I talked to him and he wrote some things down for me." What did you take Mr. Borders to mean there?
>
> *Answer:* The best I can think I took that he meant had to do with Hemphill's financial condition.[61]
>
> * * * * * * *
>
> *Question:* Just so I am perfectly clear on your answer, you thought he was going to get some more information about Mr. Pride?
>
> *Answer:* That is all I could have possibly had in my mind at that time, sir.[62]
>
> * * * * * * *
>
> *Question:* Now, are these the letters to which you refer in your October 5th conversation?

[58] Transcript of *United States* v. *Hastings* at 1846.
[59] *Id.* at 1848.
[60] *Id.* at 2180.
[61] *Id.* at 2182.
[62] *Id.* at 2185.

Answer: Certainly.[63]

* * * * * * *

Question: Judge Hastings, you said you wrote these letters on the Bench. On what date did you write these letters?

Answer: October 5th.[64]

* * * * * * *

Question: All right. So we are 100 percent clear on this, you wrote these letters, Government or Defense Exhibit 29, from the Bench during the Santorelli trial on October 5?

Answer: 100 percent clear.[65]

By this testimony Judge Hastings attempted to explain the incriminating October 5, 1981 taped conversation. Judge Hastings, however, lied under oath and fabricated the letters. A close reading of the October 5 conversation reveals that it corresponds to details of the bribery scheme.[66] The conversation on its face does not make sense, its base and based on expert linguistic analysis, it contains the signifying characteristics of a code.[67] Hemphill Pride testified that he never wrote anything down for Mr. Borders, contrary to Mr. Borders' assertion in the October 5th conversation. It is uncontroverted that Hemphill Pride did not know of the letters, would never have agreed to them, and was not even eligible for reinstatement to the South Carolina bar until May 1983. All of these facts establish the falsity of Judge Hastings' testimony.

Finally, Judge Hastings failed to produce the draft "Hemp letters" until approximately one month before trial. He was under an obligation to turn over the letters as early as February 1981, ten months earlier. However, he did not do so until December 1982. Although there is a reference to such letters in an early memorandum prepared by Judge Hastings' counsel, the judge never actually showed any letters to that lawyer.[68] Moreover, William Borders'

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[63] *Id.* at 1849-1850.

[64] *Id.* at 1854.

[65] *Id.* at 2187-2188.

[66] The Committee analyzed the conversation and concludes that Judge Hasings initiated the October 5 call in order to confirm that the bribery deal with the Romanos was still on. The Committee believes that Judge Hastings and Mr. Borders spoke on the previous day, at which time Mr. Borders indicated that Frank Romano (Mr. Rico) had repeatedly called to inquire about the order which was supposed to have been issued on September 29, 1981. At 4:22 p.m. on October 5, Mr. Rico again called Mr. Borders. During the conversation Mr. Borders assured him that the order had "been taken care of." Mr. Rico then indicated that once the order was issued, the bribe would be paid.

Approximately fifty minutes later, Judge Hastings called Mr. Borders and they had the coded conversation. Judge Hastings began the call by informing Mr. Borders that he had drafted the order,' "those, ah, ah, letters, ah, for Hemp." He then asked whether Mr. Borders had heard from "him" (Mr. Rico) after Judge Hastings and Mr. Borders had talked. Mr. Borders responded "Yea" and went on to confirm the bribery scheme by repeating its terms, "See, I had, I talked to him and he, he wrote some things down for me . . . and then I was supposed to go back and get some more things." Judge Hastings responded "I understand." The judge then confirmed that he would issue the order by stating, "Well then, there's no great big problem at all. I'll, I'll see to it that, ah I communicate with him. I'll send the stuff off to Columbia in the morning." The order issued at the end of the next day, October 6, 1981. *See* Statement of Facts, section A-5 for the transcript of the entire conversation.

[67] *See* the oral and written testimony of Dr. Roger Shuy in the Hearing Record.

[68] Judge Hastings testified that he did not give the letters to his lawyer because he did not trust him and he did not produce the drafts because the case was dormant during his pre-trial appeal.

attorney, John Shorter, refused even to look at the letters, despite the fact that they were potential exculpatory evidence for his client.[69] All of this evidence, in its totality, establishes that the letter writing campaign and the testimony at trial was fabricated in an effort to hide the bribery conspiracy. Judge Hastings lied under oath in this respect.

Articles X, XI, XII and XIII

Articles X through XIII charge Judge Hastings with four additional instances of false testimony. At trial, Judge Hastings testified to three phone calls he made to Hemphill Pride in 1981, identifying the numbers on phone records. He also identified a phone number at which Mr. Pride could allegedly be reached in July 1981. Judge Hastings offered this testimony in support of his assertion that he (and Mr. Borders) frequently spoke to Mr. Pride about his financial condition and desire for reinstatement, which in turn supported Judge Hastings' explanation of the October 5, 1981 conversation.

At the conclusion of his direct examination, Judge Hastings testified as follows:

> *Question:* Judge, would you tell us about the first call that I indicated with a little check on the front page, there?
>
> *Answer:* The first call would be Item 2 under the second full itemization column, and it is a call . . . to Columbia, South Carolina. And the call is a five-minute call, and it is placed on September 2nd, at 11 something in the morning.
>
> *Question:* And to whom was that call placed?
>
> *Answer:* I know for a fact that this particular call was placed to Hemphill Pride.
>
> *Question:* Did you speak with Hemphill Pride?
>
> *Answer:* I certainly did.
>
> *Question:* On that day?
>
> *Answer:* I certainly did.
>
> *Question:* All right. Now, would you seek out the second call that I have indicated on those toll records with a little check?
>
> *Answer:* May 5th.
>
> *Question:* May 5th?
>
> *Answer:* '81. I spoke with Mr. Pride.[70]
>
> * * * * * * *
>
> *Question:* Judge, I direct your attention to the August 2nd call.
>
> *Answer:* Yes.
>
> *Question:* The one for eighteen minutes' duration?
>
> *Answer:* Yes.
>
> *Question:* Would you tell us what time that call was placed?

[69] Mr. Borders' attorney testified before The Investigating Committee such letters were useless to him because he believed Judge Hastings would not testify and therefore would not be available to authenticate them.

[70] Transcript of *United States* v. *Hastings* at 2048–2049.

Answer: 9:20 in the morning, to Columbia, South Carolina, to a place that I know is the number of Hemphill Pride, and it was a eighteen-minute call.

Question: And did you, in fact, speak with Hemphill Pride for eighteen minutes on August 2nd?

Answer: Yes, I did; . . .[71]

* * * * * * *

Question: Judge, I would like to direct your attention to Item No. 11. Is there a phone call dated 7/24?

Answer: The second column, Item No. 11, dated July the 24th, is a phone call to a number in Columbia, South Carolina, being Area Code 803-777-7716, and that call was for five minutes.

Question: Do you recognize that number?

Answer: The number is a number where Hemphill Pride may have been working. I am not certain if he was working there or not, but I have called that number myself.

Question: All right. And that call was made by Bill Borders, to Hemphill Pride on July 24th?

Answer: On July 24th, correct.[72]

Only one of the four phone numbers identified by Judge Hastings belonged to Mr. Pride. The other three numbers belonged respectively to a business contact of William Borders, a social acquaintance of Judge Hastings (who was called twice) and Patricia Williams' ex-mother-in-law. The call to Ms. Williams' ex-mother-in-law was, in fact, made from Patricia Williams' home phone and lasted 18 minutes.[73] The actual subscribers to the identified numbers testified before the Investigating Committee either that they did not know Mr. Pride or it was not possible that Mr. Pride had received a call on their phone. Finally, Hemphill Pride testified before the Subcommittee that, although he spoke to Judge Hastings in the summer of 1981, he has never received a call at any of the three numbers falsely identified by Judge Hastings in his trial testimony. There is no evidence relating to whether Judge Hastings called any of these numbers in the year immediately preceding trial. He testified at trial, however, without reservation, that each of the four calls was to Hemphill Pride.

Article XIV

Article XIV charges Judge Hastings with testifying falsely, with the intention of misleading the trier of fact, about two phone calls he claimed at trial to have made from the L'Enfant Plaza Hotel on October 9, 1981 after learning of Mr. Borders' arrest. The evidence before the Committee establishes that Judge Hastings' testimony was knowingly false and given with intent to mislead. While under oath, Judge Hastings testified as follows:

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[71] *Id.* at 2051-2052.

[72] *Id.* at 2033.

[73] As defense counsel, Ms. Williams asked Judge Hastings whether the identified phone numbers were calls to Hemphill Pride, including the call to her ex-mother-in-law with whom she was in contact.

Question: . . . What did you do when you got down to your room?

Answer: The very first thing I did, walked straight into the room and picked up the telephone and called my mother.

Question: And when you called your mother, what did you learn?

Answer: When I called my mother, she was—I do not wish to exaggerate—I have never known her to be as hysterical as she was. It is just that simple. And I couldn't calm her down. . . .

Question: Did you make any other calls?

Answer: Yes, I did.

Question: Had Hemphill arrived at your room by this time?

Answer: No he had not.

Question: Who did you call?

Answer: I called you [Patricia Williams].

Question: All right. And what happened there?

Answer: I called you at your office at the Economic Opportunities Commission here at the Dupont Plaza Hotel and I learned you had been interviewed by the FBI and the particulars, at least in part, as to what had transpired in your interview with the FBI.

And in addition to that I learned that you had called my office and had learned that the FBI was there for the express purpose, among other things, of interviewing my staff.[74]

* * * * * * *

Question: You are certain that sitting in the hotel room after Mr. Pride gave you the news, that you made two long distance calls to Florida and you charged them to your room?

Answer: Right.[75]. . .

The evidence establishes that not only could Judge Hastings not have learned the specific information he testified to at the time he alleged, but also that no phone calls were made. There is no documentary evidence whatsoever of the phone calls. The hotel phone records contain no record of any calls made to Florida from the L'Enfant Plaza Hotel (let alone from Judge Hastings' room) during the relevant time period. No such calls appear on Judge Hastings' home or business phone records. While it is true that the computer records do not reflect any calls charged to the guest rooms between 2:54 pm and 4:10 pm on the afternoon of October 9, 1981, the Committee does not find that fact to be persuasive evidence that the system was "down". For, although it may be unlikely that there would be no long distance calls by guests during that time, the computer system does not record *all* calls by guests—it records only those calls moreover, witnesses who were thoroughly familiar

[74]Transcript of *United States* v. *Hastings* at 1914–1916.
[75]*Id.* at 2216.

with the operator of the computer record system and who reviewed the relevant hotel phone records did not suggest there was any problem with the system's operation charged to the room, not the calls charged to another number or to a credit card.

Hemphill Pride unequivocally testified before the Subcommittee he was with Judge Hastings from the time the judge learned of Mr. Borders' arrest until the time the judge was in the hotel lobby ready to depart. According to Mr. Pride, during that time, Judge Hastings did not make any phone calls.

FBI agents testified before the Investigating Committee that on October 9, 1981 both Ms. Williams and Judge Hastings' staff were being interviewed by the FBI at the time of Judge Hastings' alleged calls. Thus, contrary to his testimony, Judge Hastings could not have learned from a call to Ms. Williams that she had already been interviewed by the FBI.

An FBI agent testified that the logs for Mrs. Hastings' apartment indicated that no reporters had arrived at the complex at the time of Judge Hastings' alleged call to his mother. Again, Judge Hastings could not have learned from his mother the information to which he testified. The only documented call between Judge Hastings and his mother on October 9 is from BWI.

Finally, in a letter dated October 14, 1981, confirming Judge Hastings' request that she assist in his legal representation, Ms. Williams stated that she was horrified, yet pleased to assist him, as the judge had asked when calling "from Baltimore." The only documented phone calls from Judge Hastings to Ms. Williams on the afternoon of October 9, 1981 are from BWI.

No telephone calls were made by Judge Hastings from the L'Enfant Plaza Hotel to his mother and Ms. Williams. He testified falsely in this regard, intending to mislead the trier of fact, by offering an innocent explanation for his hasty and incriminating flight from Washington, D.C.

Article XV

Article XV charges Judge Hastings with testifying falsely at his trial as to why, on October 9, 1981, he flew from BWI rather than National in an attempt to return to Florida immediately. The evidence before the Committee establishes that Judge Hastings' testimony was knowingly false and given with intent to mislead the trier of fact.

The prosecution argued at trial that Judge Hastings' hasty departure from the L'Enfant Plaza Hotel and return to Florida from BWI was flight and evidence of the judge's guilt. To counter that argument, Judge Hastings testified that he went to BWI because he did not think he could obtain a direct flight from National and denied going to BWI in order to avoid law enforcement officers.

At trial, Judge Hastings testified under oath as follows:

> *Question:* Why did you not go to the airport, the nearer airport?
>
> *Answer:* There was never any question in my mind but that at that time in the evening I thought that all flights that left Washington, D.C. at that particular point in time,

either went through Atlanta en route to Miami, but I was absolutely certain that there were none until 10:00 p.m.[76]

* * * * * * *

Question: Did you consider that there might be FBI agents looking for you at the National Airport?

Answer: It was of no concern to me had there been FBI agents at the National Airport, Dallas [Dulles] or at Baltimore Airport . . . I had no desire or design to not cooperate with any authorities.[77]

* * * * * * *

Question: And your thinking was there would be no flights from National Airport that would fly you non-stop from Washington National Airport——

Question: That was my thinking.

Answer: ——to Miami?

Even though two months ago you had taken one?

Question: Yes, sir. That was my thinking at that particular time. I have traveled that way an awful lot, an awful lot.[78]

All the evidence in the record with respect to Judge Hastings' actions after he learned of Mr. Borders' arrest establishes that the judge was, in fact, attempting to avoid law enforcement officers when he took a $50 cab ride to BWI during rush hour on Friday, October 9, 1981.[79]

Moreover, Judge Hastings knew that he could obtain a direct flight from National, for in July 1981 he took a 5:30 p.m. nonstop Eastern flight from National to Miami.[80] Judge Hastings lied under oath with the intention of misleading the trier of fact in explaining his decision to fly out of BWI.

Article XVI

Article XVI charges that on September 6, 1985, Judge Hastings disclosed to Stephen Clark, the Mayor of Dade County, confidential information Judge Hastings learned in his capacity as supervising judge of a wiretap pursuant to 18 U.S.C. 2516. The evidence before the Committee establishes that on that day Judge Hastings told Mayor Clark to "stay away from Kevin 'Waxy' Gordon" because Mr. Gordon was "hot" and had been using Mayor Clark's name in Hialeah, Florida.

Six witnesses testified before the Subcommittee about this matter: (1) Roberto Martinez, the Assistant United States Attorney in charge of the underlying investigation for which the wiretap was sought; (2) Mayor Clark, to whom the confidential information was disclosed; (3) Geoffrey Santini, the FBI case agent for the underlying investigation; (4) Christopher Mazzella, the FBI special agent assigned to the underlying investigation and the subsequent investigation of the "leak"; (5) Monsignor Bryan Walsh, who was

[76] *Id.* at 1922-1923.
[77] *Id.* at 1923-1924.
[78] *Id.* at 2224.
[79] *See* paragraph 9 in support of Article I.
[80] *Id.*

present at the MMAP meeting where the disclosure took place; and (6) Florreyn Joyette Royals, a staff employee of MMAP. The Committee reviewed the applications for authorization to institute and renew the wiretap, the progress reports and affidavits submitted to Judge Hastings, and the orders signed by Judge Hastings in his capacity as supervising judge of the wiretap investigation. The Committee also reviewed the FBI materials from the investigation of the "leak", the testimony and investigative reports developed by the 1987 Investigating Committee, and materials submitted by Judge Hastings.

Mayor Clark testified before the Subcommittee that on September 6, 1985, he attended the annual meeting of the MMAP at the Hyatt Regency Hotel in downtown Miami. Mayor Clark was receiving an award and Judge Hastings was the featured speaker. The mayor testified that at the conclusion of Judge Hastings' speech, the judge approached him, shook his hand, took him aside and said "Stay away from Kevin Gordon. He is hot. He is using your name in the Hialeah area," and then went out the door. Mayor Clark testified that he left the meeting soon thereafter, went back to his office and called Peter Ferguson, his campaign manager. He asked Mr. Ferguson to get in touch with Kevin "Waxy" Gordon and tell Mr. Gordon that the mayor wanted to see him that day at the Miami Outboard Club. He saw Mr. Gordon that day at the Miami Outboard Club and told him that Judge Hastings had said that Mr. Gordon was using the mayor's name in the Hialeah area.

The Subcommittee also heard testimony that Judge Hastings could not have had such a conversation after the speech. Ms. Royals testified that Judge Hastings was staying at the hotel and that on the morning of the speech she had called his room when it was time for him to come down to speak. She met Judge Hastings at the elevator and guided him through the catering areas to an entrance to the meeting room that was immediately behind the dias. Judge Hastings asked Ms. Royals to have his car waiting for him and to make sure that he finished by 10:15 a.m. so that he could be back in court by 10:30 a.m. Ms. Royals testified that she returned through the rear door, a little before 10:15 a.m., and tugged on the judge's coattail to let him know that it was time for him to finish. According to Ms. Royals, Judge Hastings could not have stepped off the dias to shake hands with any members of the audience because she was holding on to his coat.

In addition, the FBI monitored a call from Mr. Ferguson to Mr. Gordon at 8:58 a.m. informing Mr. Gordon that Mayor Clark wanted to see him that day at the Miami Outboard Club. By all accounts, Judge Hastings could not have finished his speech in time for Mayor Clark to have called Mr. Ferguson before 9:00 a.m. The program was scheduled to begin at 8:30 a.m. The awards presentation was to begin at 8:55 a.m. and Judge Hastings' speech at 9:05 a.m. No one suggests that the program was running early. To the contrary, the program was in all likelihood behind schedule. Therefore, Judge Hastings could not have disclosed the confidential information to Mayor Clark at the time and in the manner that the mayor described in his testimony.

The threshhold issue for the Committee was whether Judge Hastings did in fact make the alleged disclosure to Mayor Clark on

the morning of September 6, 1985. The Committee concludes that he did.

Several factors led the Committee to this conclusion. First, Mayor Clark has repeatedly and consistently stated, both under oath and in conversation, that Judge Hastings disclosed the information. In a January 17, 1985 conversation, which was taped by Mr. Gordon without the mayor's knowledge, the mayor confirmed that Judge Hastings had given him the information. Mayor Clark subsequently told the FBI that Judge Hastings was the source of his information that Mr. Gordon was using the mayor's name in Hialeah, and Mayor Clark so testified at the grand jury, before the 1987 Investigating Committee, and before the Subcommittee. In addition, Mayor Clark passed a polygraph examination administered by the FBI on the question of whether Judge Hastings was the person who had warned him about Mr. Gordon.

Second, Judge Hastings on several occasions prior to September 6, 1985, after reviewing wiretap progress reports, expressed concern to Special Agent Santini and Assistant United States Attorney Martinez that Mr. Gordon was going to get Mayor Clark in trouble. In his testimony before the 1987 Investigating Committee, Judge Hastings admitted to having made such statements. It is therefore undisputed that Judge Hastings was aware of Mayor Clark's potential implication in a corrupt zoning scheme.

Third, although it is unlikely that Judge Hastings talked to Mayor Clark after Judge Hastings' speech, there is undisputed evidence that Judge Hastings saw the mayor *before* the program began. Monsignor Bryan Walsh, who attended the MMAP meeting on September 6, 1985, testified that he arrived at the meeting around 8:15 a.m. and spoke with Judge Hastings and Mayor Clark sometime shortly thereafter. According to the Monsignor, one of the two came up to him and the other joined them a few moments later. He did not remember whether Judge Hastings or Mayor Clark came up first, but he did remember that they did not arrive together and that they seemed to be greeting each other for the first time that morning in his presence. After a brief exchange, the three separated. The Monsignor did not specifically recall the details of their parting, and testified that the mayor and Judge Hastings could have parted together. Although Mayor Clark testified that he had no recollection of seeing Monsignor Walsh and Judge Hastings that morning before the program began, Judge Hastings in his testimony before the 1987 Investigating Committee confirmed that on the morning of September 6 he talked with Mayor Clark and Monsignor Walsh before the speech.[81]

Judge Hastings had the opportunity to make the disclosure to Mayor Clark well before the speech began. Although a disclosure before the speech is inconsistent with some of the details of Mayor Clark's testimony, the Committee believes that Mayor Clark accurately remembered the actual disclosure. He was not inter-

[81] According to Judge Hastings, he left the two others and went to get the continental breakfast which was being provided for the conferees. Ms. Royals testified that she called Judge Hastings in his room a few minutes after 9:00 a.m. and met him at the elevator soon thereafter. Her testimony is consistent with that of Judge Hastings and Monsignor Walsh concerning a pre-speech meeting, if Judge Hastings returned to his room after getting the continental breakfast to await the beginning of the meeting.

viewed about the details surrounding the disclosure until late February 1986, almost six months after the event.[82]

Fourth, Mayor Clark made arrangements to see Kevin "Waxy" Gordon on the same day that he attended the MMAP meeting. Mr. Ferguson called Mr. Gordon and told him that the mayor wanted to see him at the Miami Outboard Club at 11:30 a.m. In subsequent conversations monitored by the FBI that morning, Mr. Gordon told two different people that the mayor wanted to see him that day. One of them was the confidential informant, Mr. Rivero, and it was agreed that Mr. Rivero would also come to the Miami Outboard Club that morning. When Mr. Rivero arrived at 11:45 a.m., the mayor and Mr. Gordon were already talking. Mr. Gordon later reported, in monitored telephone conversations and to Mr. Rivero, that the mayor had told him that Judge Hastings had told Mayor Clark, that Mr. Gordon was involved in some deal in Hialeah. Within a few hours of seeing Judge Hastings, Mayor Clark had conveyed to Mr. Gordon information he had learned from Judge Hastings.

Fifth, Mr. Gordon immediately acted on the information he received from Mayor Clark. He conferred with friends about where the judge could have learned what Mr. Gordon was doing. He became suspicious of Gino, the undercover FBI agent who was posing as a Houston-based entrepreneur interested in setting up an amusement center. Mr. Gordon began his own investigation into Gino's background.

Judge Hastings testified before the 1987 Investigating Committee that he had not disclosed any confidential information to Mayor Clark. His counsel suggested that perhaps Mayor Clark had learned of the investigation from an alternative source in the FBI.

The Committee rejects that contention for two reasons. First, there is no evidence of an alternative source. Mayor Clark testified that he had friends in the FBI, however, there is no evidence that he received any information from those persons.[83] Second, the timing of Mayor Clark's statement to Mr. Gordon and Mr. Gordon's subsequent actions coincided exactly with the day on which Mayor Clark saw Judge Hastings. By the testimony of both the mayor and Judge Hastings, the two of them rarely saw each other, even at public functions. Therefore, if Judge Hastings was not the source of the information, the timing would have had to have been the result either of a coincidence or of a sophisticated plan on the part of Mayor Clark to protect an alternative source. The Committee rejects both of those possibilities as unfounded.

The evidence before the Committee did not establish any obvious motive for Judge Hastings to warn Mayor Clark. Regardless of

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[82] Some of the details of Mayor Clark's testimony are consistent with a disclosure before the meeting, others are not: (a) a disclosure before the speech cannot be reconciled with Judge Hastings stepping off the podium and approaching Mayor Clark; (b) if Judge Hastings and Mayor Clark talked after leaving Monsignor Walsh, the disclosure could have been made as they were shaking hands in parting; (c) the statement that there was no conversation before or after the disclosure is inconsistent with the disclosure being made after they had conversed with each other and with Monsignor Walsh; and (d) Mayor Clark's statement that he immediately went to his office and called Mr. Ferguson is inconsistent with a disclosure before the meeting because it is unlikely that Mayor Clark could have left the meeting, gone to his office, and returned to the meeting in time to receive his award at 8:55 a.m. or sometime shortly thereafter; obviously he could have left the meeting and called Ferguson from a telephone at the hotel.

[83] *See* Statement of Facts at C-5.

Judge Hastings' motive, however, the Committee concludes that the judge knew that the information he disclosed was confidential and very sensitive. Indeed, in answer to a question about the *Romano* order at his criminal trial, Judge Hastings commented on the "super-sensitivity" of Title III wiretap information:

> But if it had been a sensitive order, or let me give you an example of that, on a wire tap, for example, would be something under Title III that would be super-sensitive, and the judge that issues such an order is legally bound, not only ethically bound but legally bound, not to reveal the substance and contents of that matter . . .[84]

Finally the Committee concludes that Judge Hastings should have known that to reveal the name of a target of an undercover investigation to an acquaintance of the target could compromise that investigation and endanger the lives of law enforcement officers. The Committee recognizes Judge Hastings did not mention the wiretap as such, may have disclosed the information spontaneously, and perhaps lacked a corrupt motive. Nonetheless he intentionally made the disclosure, thereby violating his own sealing order and compromising important undercover investigations. Judge Hastings' conduct warrants impeachment.

Article XVII

Article XVII charges that through a corrupt relationship with William Borders, repeated false testimony under oath at his criminal trial, fabrication of false documents submitted as evidence at his criminal trial, and improper disclosure of confidential information acquired as supervisory judge of a lawful wiretap, Judge Hastings undermined confidence in the integrity and impartiality of the federal judiciary and betrayed the public trust, thereby bringing disrepute on the federal courts and the administration of justice in the federal courts. The events described in Articles I through XVI reveal a pattern of misconduct, spanning five years, that is incompatible with the proper function and purpose of the federal judiciary.

Judge Hastings was sworn in as a federal judge on October 22, 1979 and he was assigned the *Romano* case less than a week later. By the end of March 1981, less than a year and a half after Judge Hastings became a federal judge, William Dredge was making inquiries at the behest of William Borders to find out if the Romano brothers were likely candidates from whom to solicit a bribe. The bribery scheme played out over the course of six months in 1981.

Judge Hastings was tried in January and February of 1983. Articles II through XV allege that during the course of that trial Judge Hastings lied under oath about 14 substantive matters. In addition at some point between October 9, 1981 and December 1982 he prepared false documents which he then submitted as evidence at his criminal trial.

Finally, in September of 1985, while the subject of an inquiry by the Eleventh Circuit Investigating Committee concerning the brib-

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[84] *U.S.* v. *Hastings, supra* at p. 1976.

ery conspiracy, perjury, and submission of fabricated evidence, Judge Hastings improperly disclosed confidential information about the target of a wiretap investigation to an acquaintance of the target. His disclosure terminated two undercover investigations and significantly limited a third.

Such conduct seriously undermines public confidence and brings the federal court system into disrepute. The Judicial Branch is an essential institution of our Government. In order to perform its critical functions, it relies in large part upon the trust and confidence of the public. Conduct which substantially undermines that confidence threatens the functioning of the Judicial Branch, which in turn is grounds for impeachment.

VII. Double Jeopardy

There is no constitutional or legal barrier to the impeachment of Judge Hastings for his participation in the bribery conspiracy. Judge Hastings' acquittal by a jury does not bar the House of Representatives from exercising its constitutional authority to adopt articles of impeachment. Indeed, the House of Representatives has a duty to insure the impartiality and integrity of the federal judiciary and the fair administration of justice. Neither the constitutional principle of double jeopardy nor the legal doctrines of res judicata or collateral estoppel bar the House from acting on the entire record of Judge Hastings' misconduct.

A. THE CONSTITUTION PROVIDES TWO SEPARATE AND COMPLEMENTARY PROCESSES: IMPEACHMENT AND INDICTMENT

The express language of the Constitution provides two separate and complementary processes, impeachment and indictment. Article I, Section 2, cl. 7, known as the "impeachment judgment clause," evinces the Framers' intention that a federal official accused of serious misconduct is subject to *both* criminal prosecution and impeachment for the same offense. That clause provides: "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 Framers designed the impeachment judgment clause "to make clear that criminal prosecutions subsequent to removal from office would not constitute double jeopardy of the sort explicitly prohibited by the Fifth Amendment." [85] That clause does more than specify a time sequence. It refers to the criminal process as a distinct proceeding to which an impeached official shall also be liable and reinforces the proposition that impeachment is separate and distinct from a criminal prosecution.

For this reason, Judge Hastings' impeachment is wholly independent of his criminal trial and acquittal. Moreover, there are sound justifications for subjecting Judge Hastings and all federal officers to two independent types of scrutiny.

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[85] L. Tribe, *American Constitutional Law* 223 (1978).

First, the criminal process must be complemented by impeachment where misconduct, although not punishable by the criminal law, is sufficiently serious to warrant a judge's removal from office for the protection of the Nation. In fact, 10 of the 14 impeachments voted by the House of Representatives involved one or more charges that did not allege a violation of the criminal law.

Second, as Justice Story pointed out in his commentaries,[86] the Framers intended that both impeachment and criminal prosecution should be available lest the "extraordinary influence" of "high and potent offenders" enable federal officers to escape punishment in "ordinary tribunals." Alexander Hamilton explained that the Senate was chosen to try impeachments because it was likely to be "unawed and uninfluenced."[87] A local jury, for example, responding to purely local concerns, might render a verdict of acquittal. Such a "local" decision cannot be permitted to take from the Congress the power to remove from office, in the national interest, an official who has committed a high crime or misdemeanor.

Finally the double jeopardy clause of the Constitution does not bar an impeachment following a criminal proceeding of Judge Hastings. Under the Constitution, once jeopardy attaches a defendant may not generally be tried for the "same offense." The Supreme Court, however, has consistently held that the prohibition against double jeopardy does not bar the Government from exacting both criminal and civil penalties from an individual for the same acts or omissions.[88] Because impeachment is not a criminal proceeding, the double jeopardy clause does not prohibit Judge Hastings' impeachment.

The nature of the sanction imposed by a proceeding is determinative of whether double jeopardy applies. As stated by the Supreme Court, an "acquittal on a criminal charge is not a bar to a civil action by the Government, *remedial in its nature,* arising out of the same facts on which the criminal proceeding was based . . ."[89] Therefore, the determination of whether the prohibition against double jeopardy affects impeachment depends on whether impeachment is "a civil action . . . remedial in its nature."

There is overwhelming authority that impeachment is properly viewed as remedial or prophylactic, rather than criminal or punitive. Justice Story, for example, wrote that impeachment is:

> [A] proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his

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[86] Story, *Commentaries on the Constitution of the United States,* Section 688 at 497 (4th ed. 1973).

[87] *The Federalist* No. 65 at 398 (Mentor ed. 1961).

[88] See e.g., *United States* v. *One Assortment of Firearms,* 465 U.S. 354 (1984) (criminal acquittal of gun owner does not prohibit later forfeiture proceeding against firearms involved in criminal case); *One Lot Emerald Cut Stones* v. *United States,* 409 U.S. 232 (1972) (per curiam) (although defendant was acquitted of criminal charge of smuggling the government may still seek forfeiture of the items that the defendant allegedly smuggled out of the country); *Helvering* v. *Mitchell,* 303 U.S. 391 (1938) (Brandeis, J.) (acquittal in tax evasion trial did not bar subsequent civil assessment suit; court noted difference in the standards of proof required in criminal and civil cases); *Lewis* v. *Frick,* 233 U.S. 291 (1914) (acquittal in criminal proceedings of unlawfully importing a woman for prostitution did not bar subsequent civil deportation proceedings for same act).

[89] *Helvering* v. *Mitchell,* 303 U.S. at 397 (emphasis added).

person nor his property, but simply divests him of his political capacity.[90]

A 1974 Staff Report of this Committee correctly described the non-criminal nature of impeachment:

> Impeachment and the criminal law serve fundamentally different purposes. *Impeachment is the first step in a remedial process*—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government. Furthermore, the Constitution itself provides that impeachment is no substitute for the ordinary process of criminal law since its [sic] specifies that impeachment does not immunize the officer from criminal liability for his wrongdoing.[91]

The conclusion that impeachment is remedial, not punitive, is reinforced by the fact that noncriminal activities may constitute impeachable offenses.[92] In such a case, the purpose of impeachment is to provide "a prospective remedy for the benefit of the people, not a retributive sanction against the offending officer." [93]

For the foregoing reasons, Congress' power to impeach Judge Hastings on the basis of the bribery conspiracy is simply not affected by his prior acquittal.

B. THE LEGAL DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL DO NOT APPLY

The legal doctrines of *res judicata* and collateral estoppel do not affect the impeachment of Judge Hastings for his participation in the bribery conspiracy. The doctrine of *res judicata* bars the relitigation, by the same parties, of a "claim" or "cause of action," including all the issues relevant to that claim or cause of action, whether or not raised at trial. Collateral estoppel, on the other hand, bars the relitigation of an issue actually adjudicated and essential to a judgment.[94] Neither of these doctrines affect the impeachment of Judge Hastings for his corrupt involvement in the bribery conspiracy.

Application of these judicially created doctrines to the Congress would impermissibly violate the doctrine of separation of powers. As one commentator has observed:

> [C]ertain congressional powers are simply not delegable—as when it is clear from the language of the Constitution that the purposes underlying certain powers would not be served if Congress delegated its responsibility. . . . Con-

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[90] Story, *Supra*, at section 803.

[91] The Committee on the Judiciary, "Constitutional Grounds for Presidential Impeachment" (February 22, 1974) at 24 (footnotes omitted; emphasis added). *See also* Brown, "The Impeachment of the Federal Judiciary," 26 Harv. L. Rev. 684, 692, n. 12 (1913) quoting 1 Curtis, "Constitutional History of the United States," 481–482.

[92] *Id. See* also Report of the Committee on Federal Legislation, Association of the Bar of the City of New York, *The Law of Presidential Impeachment*, 29 *The Record* 154 (January 21, 1974); Tribe *supra*, at 220.

[93] J. Labowitz, *Presidential Impeachment* 199 (1978).

[94] For a more detailed explanation of the legal doctrines, *see Casper Wireworks, Inc.* v. *Leco Engr'g & Mch., Inc.*, 575 F.2d 530, 535–36 (5th Cir. 1978).

> gress could not set up a Federal Court of Impeachment to try all impeachments: according to article I, section 3, "The Senate shall have the sole Power to try all Impeachments." [95]

Application of *res judicata* or collateral estoppel to the Congress would be an impermissible de facto delegation to the judiciary of the House of Representatives' "sole power to impeach."

Moreover, even if judicial preclusion of impeachment proceedings were not constitutionally prohibited by separation of powers considerations, "[i]t should be remembered also that issue preclusion is appropriate only in certain circumstances and is subject to important exceptions to prevent unfairness." [96] One such exception is when the two actions involve different standards of proof, which is an important distinction between Judge Hastings' criminal trial and the present impeachment proceedings.

Because impeachment does not impose criminal punishment, the criminal standard of proof, "beyond a reasonable doubt", does not apply.[97]

In the impeachment trial of former Judge Harry E. Claiborne, the respondent filed a motion in the Senate to designate, "beyond a reasonable doubt," the criminal standard of proof, as the standard of proof for conviction by the Senate. The Managers on behalf of the House opposed the motion and urged that a "preponderance of the evidence" was the appropriate standard. Manager Kastenmeier stated in opposition to the respondent's motion, "A preponderance of the evidence is all that is necessary for removal from office. You are not sending the Respondent to prison. You are not taking his life." [98] The Senate rejected the Judge Claiborne's motion by a vote of 75 to 17. Senator Mathias stated, "It is the Chair's determination that the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment."[99]

The standard of proof used by the House of Representatives in adopting articles of impeachment is also lower than "beyond a reasonable doubt." Historically, the view that the House, acting analogously to a grand jury, "need only ascertain probable cause to warrant sending the case to trial at the bar of the Senate has generally been followed without debate." [100] In the case of former President Nixon, however, there was general agreement that the appropriate standard of proof in the House was "clear and convincing" evidence.[101] Several commentators have noted that the standard of proof may involve a "sliding scale," depending on the subject of the impeachment and the gravity of the offense.[102]

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[95] Tribe *supra* at 285.

[96] *Otherson* v. *Department of Justice, I. & N.S.*, 711 F.2d, 267, 262 (D.C. Cir. 1983).

[97] *See also* Labowitz, supra at 199 ("If removal of the [officer] was intended to be a remedial step . . . there is little justification for contending that absolute certainty of guilt, or proof beyond a reasonable doubt, should be required to bring it into play. Rather, the test must be whether there is sufficient evidence of past wrongdoing meeting the constitutional criteria for grounds for impeachment to demonstrate the unfitness of the . . . officer to remain in office.").

[98] S. Doc. No. 48, 99th Cong., 2d Sess. 108.

[99] *Id.* at 148.

[100] Firmage & Mangrum, *Removal of the President: Resignation and the Procedural Law of Impeachment*, 1974 Duke L. J. at 1042.

[101] Labowitz *supra* at 192.

[102] *See generally* Labowitz *supra* at 191–200.

C. SUBSTANTIAL EVIDENCE WAS NEVER PRESENTED TO THE JURY

Finally there is substantial evidence before the Committee that was never presented to the jury. The three-year investigation by the Eleventh Circuit Investigating Committee and the Committee's own independent investigation into Judge Hastings' participation in the bribery conspiracy and his false testimony at trial produced abundant new evidence of Judge Hastings' corrupt conduct.

The following items of evidence were not presented to the jury at Judge Hastings' criminal trial:

1. The correlation of the documented telephone contacts between Judge Hastings and William Borders with significant events in the *Romano* case.

2. The evidence of events prior to September 10, 1981 revealing (a) the relationship between William Dredge and William Borders, (b) William Borders' insistence that he could deliver Judge Hastings, and (c) the correlation of events in the *Romano* case with early events in the bribery scheme.

3. William Borders' statement to Jesse McCrary prior to setting up his first meeting with the undercover agent, H. Paul Rico, that he did not expect to return to Washington, D.C. during the weekend of September 11-13, 1981 due to a long-planned family reunion.

4. William Borders' decision to delay his flight from National on September 11, 1981, following Judge Hastings' messages that his flight from Miami to National was delayed, which in turn provided the opportunity for Mr. Borders and the Judge Hastings to meet prior to Mr. Borders' first meeting with Mr. Rico.

5. The testimony of two of the women who were in Judge Hastings' Sheraton Hotel room at 10 p.m. on September 12, 1981, indicating that they were waiting for William Borders or at least for "someone" when Mr. Borders arrived.

6. Dudley Williams' statement that William Borders never missed a championship fight and this fact was well known to Mr. Borders' friends.

7. The determination that the phone records of the L'Enfant Plaza Hotel are sequentially numbered and none are missing for the relevant time period on October 9, 1981.

8. Evidence that four of the five phone calls Judge Hastings testified to at trial, allegedly made to Hemphill Pride to discuss his financial condition and desire for reinstatement, were not made to Mr. Pride, nor to any phone to which Mr. Pride had access.

9. Hemphill Pride's testimony that Judge Hastings asked him to go along with his explanation of the "Hemp letters" when the judge came to Columbia, South Carolina to interview Mr. Pride.

10. The testimony of William Borders' attorney, John Shorter, that prior to Mr. Borders' trial he declined to look at the alleged draft "Hemp letters" because he did not believe Judge Hastings would authenticate them.

11. The conclusions of forensic experts that the alleged drafts of the "Hemp letters" could not be dated.

12. The detailed testimony of a linguistics expert that the October 5, 1981 taped conversation between Judge Hastings and William Borders was a coded conversation.

13. Evidence of events prior to September 10, 1981 suggesting a bribery scheme involving William Borders, Judge Hastings, and Santo Trafficante.

VIII. Conclusion

Impeachment protects our society by insuring that those in the highest positions of public trust are held accountable. This is especially true with respect to members of the federal judiciary who, barring impeachment, enjoy life tenure in office. The appointment of federal judges for life, as required by Article III of the Constitution, serves the very important purpose of insulating the federal judiciary from political pressure. The Constitution, however, does not tolerate abuse of office.

The evidence in the record before the Committee establishes Judge Hastings' misconduct in the three areas addressed in detail above. His corrupt conduct rises to the level of impeachable offenses.

The Committee's role is not to punish Judge Hastings. It is to determine whether articles of impeachment should be brought whereby he may be removed from office. That is a unique constitutional responsibility committed exclusively to the House of Representatives. The American people look to the Congress to protect them from persons who are unfit to hold public office by virtue of serious misconduct constituting a violation of the public trust. Where, as here, the evidence establishes the commission of impeachable offenses by a federal judge, our duty under the Constitution is clear and requires that articles of impeachment be brought.

IX. Oversight Findings

No oversight findings were made by the Committee.

X. Committee Vote

On July 26, 1988, the Committee took up H. Res. 499. Mr. Fish offered a technical and clarifying amendment which was adopted by voice vote. The Chair then divided the question, and separate votes were taken on Articles I and XVI. Article I was adopted by voice vote. Mr. Smith later announced that he had voted no on Article I. Mr. Crockett later announced that he had voted aye on Article I. Article XVI was adopted by voice vote. Mr. Crockett later announced that he voted no on Article XVI. With a reporting quorum being present, the Committee adopted the remainder of H. Res. 499, as amended, excluding Articles I and XVI. It was adopted by a roll call vote of 32–1.