

Sec. 4—Impeachment

being labeled “civil officers.”⁸³⁸ The records in the Convention make this a plausible though not necessary interpretation.⁸³⁹ And, in fact, eleven of the fifteen impeachments reaching trial in the Senate have been directed at federal judges, and all seven of those convicted in impeachment trials have been judges.⁸⁴⁰ So settled apparently is

⁸³⁸ See NATIONAL COMM’N ON JUDICIAL DISCIPLINE & REMOVAL, REPORT OF THE NATIONAL COMM’N ON JUDICIAL DISCIPLINE & REMOVAL 9–11 (1993). The Commission was charged by Congress with investigating and studying problems and issues relating to discipline and removal of federal judges, to evaluate the advisability of developing alternatives to impeachment, and to report to the three Government Branches. Pub. L. 101–650, 104 Stat. 5124. The report and the research papers produced for it contain a wealth of information on the subject.

⁸³⁹ For practically the entire Convention, the plans presented and adopted provided that the Supreme Court was to try impeachments. 1 M. Farrand, *supra*, at 22, 244, 223–24, 231; 2 *id.* at 186. On August 27, it was successfully moved that the provision in the draft of the Committee on Detail giving the Supreme Court jurisdiction of trials of impeachment be postponed, *id.* at 430, 431, which was one of the issues committed to the Committee of Eleven. *Id.* at 481. That Committee reported the provision giving the Senate power to try all impeachments, *id.* at 497, which the Convention thereafter approved. *Id.* at 551. It may be assumed that so long as trial was in the Supreme Court, the Framers did not intend that the Justices, at least, were to be subject to the process.

The Committee of Five on August 20 was directed to report “a mode for trying the supreme Judges in cases of impeachment,” *id.* at 337, and it returned a provision making Supreme Court Justices triable by the Senate on impeachment by the House. *Id.* at 367. Consideration of this report was postponed. On August 27, it was proposed that all federal judges should be removable by the executive upon the application of both houses of Congress, but the motion was rejected. *Id.* at 428–29. The matter was not resolved by the report of the Committee on Style, which left in the “good behavior” tenure but contained nothing about removal. *Id.* at 575. Therefore, unless judges were included in the term “civil officers,” which had been added without comment on September 8 to the impeachment clause, *id.* at 552, they were not made removable.

⁸⁴⁰ The following judges faced impeachment trials in the Senate: John Pickering, District Judge, 1803 (convicted), 3 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES §§ 2319–2341 (1907); Justice Samuel Chase, 1804 (acquitted), *id.* at §§ 2342–2363; James H. Peck, District Judge, 1830 (acquitted), *id.* at 2364–2384; West H. Humphreys, District Judge, 1862 (convicted), *id.* at §§ 2385–2397; Charles Swayne, District Judge, 1904 (acquitted), *id.* at §§ 2469–2485; Robert W. Archbald, Judge of Commerce Court, 1912 (convicted), 6 CANNON’S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES §§ 498–512 (1936); Harold Louderback, District Judge, 1932 (acquitted), *id.* at §§ 513–524; Halsted L. Ritter, District Judge, 1936 (convicted), *Proceedings of the United States Senate in the Trial of Impeachment of Halsted L. Ritter*, S. Doc. No. 200, 74th Congress, 2d Sess. (1936); Harry Claiborne, District Judge, 1986 (convicted), *Proceedings of the United States Senate in the Impeachment Trial of Harry E. Claiborne*, S. Doc. 99–48, 99th Cong., 2d Sess. (1986); Alcee Hastings, District Judge, 1989 (convicted), *Proceedings of the United States Senate in the Impeachment Trial of Alcee L. Hastings*, S. Doc. 101–18, 101st Cong., 1st Sess. (1989); Walter Nixon, District Judge, 1989 (convicted), *Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr.*, S. Doc. 101–22, 101st Cong., 1st Sess. (1989). In addition, impeachment proceedings against district judge George W. English were dismissed in 1926 following his resignation six days prior to the scheduled start of his Senate trial. 68 CONG. REC. 344, 348 (1926). See also ten Broek, *Partisan Politics and Federal Judgeship Impeachments Since 1903*, 23 MINN. L. REV. 185, 194–96 (1939). The others who have faced impeachment trials in the Senate are Senator William Blount (acquitted); Secretary of War Wil-