Congressional Policies, Practices and Procedures

Laws, Nominations and Legal Issues

Howard D. Stern
Thomas W. O'Grady
Editors

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CONGRESSIONAL POLICIES, PRACTICES AND PROCEDURES

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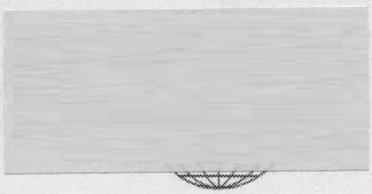

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PREFACE

This book presents and discusses the procedures involved in putting laws and nominations in effect, as well as a variety of legal issues and practices. Topics discussed include criminalizing unlawful presence; federal sentencing guidelines; the Armed Career Criminal Act (ACCA); Supreme Court nominations; the Whistleblower Protection Act; enforcing the immigration law; the Fairness Doctrines and U.N. conventions.

Chapter 1 - Almost all assessments of the attacks of September 11, 2001, have concluded that U.S. intelligence and law enforcement agencies had failed to share information that might have provided advance warning of the plot. This realization led Congress to approve provisions in the USA PATRIOT Act (P.L. 107-56) and subsequent legislation that removed barriers to information sharing between intelligence and law enforcement agencies, and mandated exchanges of information relating to terrorist threats. Most experts agreed that statutory changes, albeit difficult to enact, were essential to change the approaches taken by executive branch agencies.

The barriers that existed prior to September 2001 had a long history based on a determination to prevent government spying on U.S. persons. This had led to the establishment of high statutory barriers to the sharing of law enforcement and intelligence information. The statutes laid the foundation of the so-called "wall" between intelligence and law enforcement that was buttressed by regulations, Justice Department policies, and guidance from the judicial branch.

Despite the widespread acceptance of a barrier between law enforcement and intelligence, by the early 1990s it had become apparent to some that the two communities could mutually support efforts to combat international criminal activities including narcotics smuggling. Later in the decade dangerous threats to the U.S. posed by international terrorists came into sharper focus. Nevertheless, efforts to adjust laws, regulations, and practices did not succeed, drawing strong opposition from civil libertarians. Only the tragedy of the 9/11 attacks overcame earlier concerns and led Congress and the executive branch to remove most statutory barriers to information sharing.

Laws and regulations have changed significantly since September 2001 and an Information Sharing Executive (ISE) has been established within the Office of the Director of National Intelligence to design and implement information sharing procedures. It is clear, however, that sustaining the exchange of law enforcement and intelligence information remains a challenge. In particular, there is continued concern about sharing of information that might in some way jeopardize the rights of free speech or association of U.S. persons.

This opposition has contributed to the difficulty Congress has had in addressing legislation in this area and can be expected to continue. Some argue that, given the extent of legislation enacted in recent years, extensive oversight of information sharing efforts may be an appropriate way to ensure that the balance between ensuring domestic security and protecting civil liberties can be maintained.

Chapter 2 - Several bills introduced in the 109th Congress would make the unauthorized presence of aliens in the U.S. a criminal offense, including H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, introduced by Representative James Sensenbrenner on December 6, 2005 and passed by the House as amended on December 16, 2005, and S. 2454, the Securing America's Borders Act, introduced by Senator Bill Frist on March 16, 2006. The version of Chairman Arlen Specter's mark reported out of the Senate Judiciary Committee on March 27, 2006 does not contain a provision criminalizing unlawful presence, though the bill had initially contained such a provision. Although unlawful entry into the United States is both a criminal offense and a ground for removal, unlawful presence is only a ground for deportation and is not subject to criminal penalty, except when an alien is present in the United States after having been removed. This chapter briefly discusses some of the issues raised by criminalizing unlawful presence.

Chapter 3 - In *United States* v. *Booker (Booker)*, an unusual two-part opinion transformed federal criminal sentencing by restoring to judges much of the discretion that Congress took away when it put mandatory sentencing guidelines in place. In the first opinion, the Court held that the current mandatory sentencing guidelines violated defendants' Sixth Amendment right to trial by jury by giving judges the power to make factual findings that increased sentences beyond the maximum that the jury's finding alone would support. In the second part, a different majority concluded that the constitutional deficiency could be remedied if the guidelines were treated as discretionary or advisory rather than mandatory. As a result of the decisions, the Court struck down a provision in law that made the federal sentencing guidelines mandatory as well as a provision that permitted appellate review of departures from the guidelines. In essence, the high Court's ruling gives federal judges discretion in sentencing offenders by not requiring them to adhere to the guidelines; rather, the guidelines can be used by judges on an advisory basis.

Historically, the way in which convicted offenders are sentenced falls under one of two penal policies — indeterminate and determinate sentences. Indeterminate sentencing practices were predominant for several decades, leading up to the major reform efforts undertaken by many states and the federal government in the mid-to late 1970s and early 1980s. The perceived failure of the indeterminate system to "cure" the criminal, coupled with renewed concern about the rising crime rate throughout the nation in the mid-1970s, resulted in wide experimentation with sentencing systems by many states and the creation of sentencing guidelines at the federal level. Congress passed a sentencing reform measure, which abolished indeterminate sentencing at the federal level and created a determinate sentencing structure through the federal sentencing guidelines. The Sentencing Reform Act reformed the federal sentencing system by (1) dropping rehabilitation as one of the goals of punishment; (2) creating the U.S. Sentencing Commission and charging it with establishing sentencing guidelines; (3) making all federal sentences determinate; and (4) authorizing appellate review of sentences.

In light of the Court ruling in *Booker*, the issue for Congress is whether or not to amend current law to require federal judges to follow guided sentences, or permit federal judges to

use their discretion in sentencing under certain circumstances. Congressional options include (1) maintain the sentencing guidelines by placing limits on a judge's ability to depart from the guidelines, by establishing escalating mandatory minimums and increasing the top of each guideline range to the statutory maximum for the offense; (2) require jury trial or defendant waiver for any enhancement factor that would increase the sentence for which the defendant did not waive his rights; or (3) take no action, thus permitting judicial discretion in sentencing in cases where Congress has not specified mandatory sentences.

Chapter 4 - With recent U.S. Supreme Court decisions regarding the role of judges and juries in making factual determinations upon which sentences are made, there has been increased congressional interest in federal sentencing. One aspect of federal sentencing includes recidivism statutes that provide longer sentences for repeat offenders. One such statute, the Armed Career Criminal Act (ACCA), requires imposition of a 15-year prison sentence for an individual with prior serious drug or violent felony convictions. Under the ACCA, non-jury juvenile adjudications qualify as prior convictions. The use of these non-jury juvenile adjudications raises several constitutional due process questions and continues to spark debate among courts at the federal and state levels. Opinions vary, in part, because of conflicting interpretations of the U.S. Supreme Court's jury trial jurisprudence stressing the constitutional requirement of juries, rather than judges, making factual determinations upon which sentences are based. This chapter summarizes the competing views on the constitutionality of the use of non-jury juvenile adjudications in subsequent criminal proceedings.

Chapter 5 - The speed with which appointments to the Supreme Court move through various stages in the nomination-and-confirmation process is often of great interest not only to all parties directly involved, but, as well, to the nation as a whole. On May 1, 2009, President Barack Obama announced that Justice David H. Souter intended to retire at the end of the Court's current term. During his brief appearance at a White House press briefing, the President expressed the "hope that we can swear in our new Supreme Court Justice in time for him or her to be seated by the first Monday in October when the Court's new term begins." On May 26, 2009, the President announced his intention to nominate Sonia Sotomayor, currently a judge on the U.S. Court of Appeals for the Second Circuit.

The data presented in this chapter suggest that completing the process of considering Sotomayor's nomination by the start of the October term would be well within historical norms. In fact, if Sotomayor's nomination follows median periods established since 1981, the process of considering the appointment could be completed by August. Like all Supreme Court nominations, however, that process could be affected by a variety of factors that could either quicken or slow the pace of consideration.

This chapter provides information on the amount of time taken to act on all Supreme Court nominations occurring between 1900 and the present. It focuses on the actual amounts of time that Presidents and the Senate have taken to act (as opposed to the elapsed time between official points in the process). For example, rather than starting the nomination clock with the official notification of the President of a forthcoming vacancy (e.g., via receipt of a formal retirement letter), this chapter focuses on when the President first learned of a Justice's intention to leave the Court (e.g., via a private conversation with the outgoing Justice), or received word that a sitting Justice had died. Likewise, rather than starting the confirmation clock with the transmission of the official nomination to the Senate, this chapter focuses on

when the Senate became aware of the President's selection (e.g., via a public announcement by the President).

The data indicate that the entire nomination-and-confirmation process (from when the President first learned of a vacancy to final Senate action) has generally taken almost twice as long for nominees after 1980 than for nominees in the previous 80 years. From 1900 to 1980, the entire process took a median of 59 days; from 1981 through 2006 (when the most recent Supreme Court appointment was completed), the process took a median of 113 days. Although Presidents after 1980 have moved more quickly than their predecessors in announcing nominees after learning of vacancies (a median of 12 days compared with 34 days before 1980), the Senate portion of the process (i.e., from the nomination announcement to final Senate action) now appears to take much longer than before (a median of 84 days from 1981 through 2006, compared with 17 days from 1900 through 1980). Most notably, the amount of time between the nomination announcement and first Judiciary Committee hearing has more than tripled—from a median of 12.5 days (1900-1980) to 52 days.

Chapter 6 - The process of appointing Supreme Court Justices has undergone changes over two centuries, but its most basic feature, the sharing of power between the President and Senate, has remained unchanged. To receive a lifetime appointment to the Court, a candidate must first be nominated by the President and then confirmed by the Senate. A key role also has come to be played midway in the process by the Senate Judiciary Committee.

Table 1 of this chapter lists and describes actions taken by the Senate, the Senate Judiciary Committee, and the President on all Supreme Court nominations, from 1789 to the present. The table provides the name of each person nominated to the Court and the name of the President making the nomination. It also tracks the dates of formal actions taken, and time elapsing between these actions, by the Senate or Senate Judiciary Committee on each nomination, starting with the date that the Senate received the nomination from the President.

Of the 42 Presidents of the United States who preceded Barack Obama, 39 made nominations to the Supreme Court. They made a total of 158 nominations, of which 122 (more than three- quarters) received Senate confirmation. Also, on 12 occasions in the nation's history, Presidents have made temporary recess appointments to the Court, without submitting nominations to the Senate. Of the 36 unsuccessful Supreme Court nominations, 11 were rejected in Senate roll-call votes, 11 were withdrawn by the President, and 14 lapsed at the end of a session of Congress. Six individuals whose initial nominations were not confirmed were later re-nominated and confirmed to positions on the Court.

A total of 115 of the 158 nominations were referred to a Senate committee, with 114 of them to the Judiciary Committee (including almost all nominations since 1868). Prior to 1916, the Judiciary Committee considered these nominations behind closed doors. Since 1946, however, almost all nominees have received public confirmation hearings. Most recent hearings have lasted four or more days.

In recent decades, from the late 1960s to the present, the Judiciary Committee has tended to take more time before starting hearings and casting final votes on Supreme Court nominations than it did previously. The median time taken for the full Senate to take final action on Supreme Court nominations also has increased in recent decades, dwarfing the median time taken on earlier nominations.

For another perspective on Supreme Court nominations, focusing, among other things, on when the Senate first became aware of each President's nominee selections (e.g., via public announcements of the President), see CRS Report RL33 118, Speed of Presidential and

Senate Actions on Supreme Court Nominations, 1900-2009, by R. Sam Garrett and Denis Steven Rutkus. For an examination of floor procedures used by the full Senate in considering Supreme Court nominations, see CRS Report RL33247, *Supreme Court Nominations: Senate Floor Procedure and Practice,* 1 789-2006, by Richard S. Beth and Betsy Palmer.

Chapter 7 - From 1789 through 2006, the President submitted to the Senate 158 nominations for positions on the Supreme Court. Of these nominations, 146 received action on the floor of the Senate, and 122 were confirmed. On June 1, 2009, the Senate received the nomination of federal judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. The data presented in this chapter do not include this nomination.

The forms of proceeding by which the Senate considered the 146 nominees to reach the floor break down relatively naturally into five patterns over time. First, from 1789 through about 1834, the Senate considered the nominations on the floor a day after they were received from the President. The second period (1835-1867) was distinguished by the beginning of referral of nominations to the Committee on the Judiciary. The third period (1868-1921) was marked by rule changes that brought about more formalization of the process. During the fourth period (1922- 1967), the Senate began using the Calendar Call to manage the consideration of Supreme Court nominations, and the final time period, 1968 to the present, is marked by routine roll call votes on confirmation and the use of unanimous consent agreements to structure debate.

Of the 122 votes by which the Senate confirmed nominees, 73 took place by voice vote and 49 by roll call, but on only 24 of the roll calls did 10 or more Senators vote against. Of the 36 nominations not confirmed, the Senate rejected 11 outright, and 12 others never received floor consideration (some because of opposition; others were withdrawn). The remaining 13 nominations reached the floor but never received a final vote, usually because some procedural action terminated consideration before a vote could occur (and the President later withdrew some of these). Including those that received incomplete consideration, were rejected, or drew more than 10 negative votes, just 48 of the 158 total nominations experienced opposition that might be called "significant."

Of the 146 nominations that reached the floor, 100 received one day of consideration, while 25 received more than two days, including four on which floor action took seven days or more. Of these 146 nominations, optional procedural actions that could have been used to delay or block a confirmation vote occurred on 58, of which 26 involved procedural roll calls. Among a wide variety of procedural actions used, the more common ones have included motions to postpone, recommit, and table; motions to proceed to consider or other complications in calling up; live quorum calls, and unanimous consent agreements.

Neither extended consideration, the presence of extra procedural actions, nor the appearance of "significant" opposition affords definitive evidence, by itself, that proceedings were contentious. For example, some nominations considered for one day still faced procedural roll calls, some considered for three days or more faced no optional procedures, and some opposed by more than 10 Senators were still considered only briefly and without optional procedures. Of the 146 nominations to reach the floor, however, 76 were confirmed in a single day of action with neither optional procedural actions nor more than scattered opposition.

Chapter 8 - This chapter tracks nominations made by President George W. Bush to judgeships on the U.S. courts of appeals, the U.S. district courts, and the U.S. Court of International Trade — the lower courts on which, pursuant to Article III of the Constitution,

judges serve "during good Behaviour." It lists and keeps count of all nominations made to these courts during the 110th Congress, including pertinent actions taken by the Senate Judiciary Committee and the full Senate. It also tracks the number of judicial vacancies on the courts (including vacancies classified by the federal judiciary as "judicial emergencies"), the number of nominations pending to fill the vacancies, and the names of the pending nominees. Last, the report presents the total number of persons nominated by President Bush to each category of lower Article III court during his entire presidency (breaking down each total to show the number confirmed, pending, returned and not re-nominated, and withdrawn).

As of April 9, 2007:

- President Bush had nominated eight individuals to judgeships on the U.S. courts of appeals during the 110th Congress, with the Senate having confirmed two of them.
- President Bush had nominated 36 individuals to U.S. district court judgeships during the 110th Congress, with the Senate having confirmed 13 of them.
- There were 14 judicial vacancies on the U.S. courts of appeals, with six nominations pending to fill these vacancies.
- There were 33 U.S. district court vacancies, with 21 nominations pending to fill these judgeships, and an additional two nominations pending to fill future district court vacancies.
- No vacancies had occurred on the U.S. Court of International Trade during the 110th Congress (and thus no nominations have been made to the court during the Congress).
- During his entire presidency (from January 20, 2001 to the present), President Bush had made 315 nominations to Article III lower court judgeships. Of the 315 total, 271 had received Senate confirmation, 29 were pending in the 110th Congress, nine had been returned to the President in a previous Congress and not resubmitted, and six had been withdrawn by the President.

For corresponding information about President Bush's appeals and district court nominations during earlier Congresses, see CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden.

Chapter 9 - This chapter discusses the federal statutory protections contained within the Whistleblower Protection Act (WPA) for federal employees who engage in "whistleblowing," that is, making a disclosure evidencing illegal or improper government activities. The protections of the WPA apply to most federal executive branch employees and become applicable where a "personnel action" is taken "because of" a "protected disclosure" made by a "covered employee." Generally, whistleblower protections may be raised within four forums or proceedings: (1) employee appeals to the Merit Systems Protection Board of an agency's adverse action against an employee, known as "Chapter 77" appeals; (2) actions instituted by the Office of Special Counsel; (3) individually maintained rights of action before the Merit Systems Protection Board (known as an individual right of action, or IRA); and (4) grievances brought by the employee under negotiated grievance procedures.

On March 9, 2007, the House Committee on Oversight and Government Reform reported H.R. 985 (110th Cong.) H.Rept. 110-42, the Whistleblower Protection Enhancement Act of 2007, which would amend the WPA by providing protections for certain national security,

government contractor, and science-based agency whistleblowers, and by enhancing the existing whistleblower protections for all federal employees.

Chapter 10 - Since the September 11, 2001, terrorist attacks, the enforcement of our nation's immigration laws has received a significant amount of attention. Some observers contend that the federal government does not have adequate resources to enforce immigration law and that state and local law enforcement entities should be utilized. Others, however, question what role state and local law enforcement agencies should have in light of limited state and local resources and immigration expertise.

Congress defined our nation's immigration laws in the Immigration and Nationality Act (INA), which contains both criminal and civil enforcement measures. Historically, the authority for state and local law enforcement officials to enforce immigration law has been construed to be limited to certain criminal provisions of the INA that also fall under state and local jurisdictions; by contrast, the enforcement of the civil provisions, which includes apprehension and removal of deportable aliens, has strictly been viewed as a federal responsibility, with states playing an incidental supporting role. In previous Congresses, several proposals had been set forth that would appear to expand the role of state and local law enforcement agencies in the civil enforcement aspects of the INA.

Congress, through various amendments to the INA, has gradually broadened the authority for state and local law enforcement officials to enforce immigration law, and some recent statutes have begun to carve out possible state roles in the enforcement of civil matters. Indeed, several jurisdictions have signed agreements (INA § 287(g)) with the federal government to allow their respective state and local law enforcement agencies to perform new, limited duties relating to immigration law enforcement. Still, the enforcement of immigration laws by state and local officials has sparked debate among many who question what the proper role of state and local law enforcement officials should be in enforcing such laws. For example, many have expressed concern over proper training, finite resources at the local level, possible civil rights violations, and the overall impact on communities. Some communities have taken steps to define or limit the involvement of local authorities in the implementation of immigration law.

This chapter examines some of the policy and legal issues that may accompany an increased role of state and local law officials in the enforcement of immigration law.

Chapter 11 - The Fairness Doctrine was a policy of the Federal Communications Commission (FCC or Commission) that required broadcast licensees to cover issues of public importance and to do so in a fair manner. Issues of public importance were not limited to political campaigns. Nuclear plant construction, workers' rights, and other issues of focus for a particular community could gain the status of an issue that broadcasters were required to cover. Therefore, the Fairness Doctrine was distinct from the so-called "equal time" rule, which requires broadcasters to grant equal time to qualified candidates for public office, because the Fairness Doctrine applied to a much broader range of topics.

In 1987, after a period of study, the FCC repealed the Fairness Doctrine. The FCC found that the doctrine likely violated the free speech rights of broadcasters, led to less speech about issues of public importance over broadcast airwaves, and was no longer required because of the increase in competition among mass media. The repeal of the doctrine did not end the debate among lawmakers, scholars, and others about its constitutionality and impact on the availability of diverse information to the public.

The debate in Congress regarding whether to reinstate the doctrine continues today. In the 109th Congress, bills such as H.R. 3302 were introduced to reinstate the Fairness Doctrine. In the 111th Congress, the proposed legislation related to the Fairness Doctrine would prohibit the FCC from reinstating it.

Any attempt to reinstate the Fairness Doctrine likely would be met with a constitutional challenge. Those opposing the doctrine would argue that it violates their First Amendment rights. In 1969, the Supreme Court upheld the constitutionality of the Fairness Doctrine, but applied a lower standard of scrutiny to the First Amendment rights of broadcasters than it applies to other media. Since that decision, the Supreme Court's reasoning for applying a lower constitutional standard to broadcasters' speech has been questioned. Furthermore, when repealing the doctrine, the FCC found that, as the law stood in 1987, the Fairness Doctrine violated the First Amendment even when applying the lower standard of scrutiny to the doctrine. No reviewing court has examined the validity of the agency's findings on the constitutional issue. Therefore, whether a newly instituted Fairness Doctrine would survive constitutional scrutiny remains an open question.

Chapter 12 - The United Nations Convention on the Law of the Sea (LOS Convention) was agreed to in 1982, but the United States never became a signatory nation. The Senate Committee on Foreign Relations reported the LOS Convention on December 19, 2007. The Senate may choose to address the ambiguities of the LOS Convention with its power to make declarations and statements as provided for in Article 310 of the LOS Convention. Such declarations and statements can be useful in promulgating U.S. policy and putting other nations on notice of U.S. interpretation of the LOS Convention.

In the 111th Congress, Secretary of State Hillary Clinton, at her confirmation hearing before the Senate Committee on Foreign Affairs on January 13, 2009, acknowledged that U.S. accession to the LOS Convention would be an Obama Administration priority. Later in this confirmation hearing, Senator John Kerry, the committee chair, confirmed that the LOS Convention would also be a committee priority.

A possible benefit of U.S. ratification would be the international community's anticipated positive response to such U.S. action. In addition, early U.S. participation in the development of policies and practices of the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf, and the International Seabed Authority could help to forestall future problems related to living marine resources. On the other hand, some U.S. interests view U.S. ratification as potentially complicating enforcement of domestic marine regulations, and remain concerned that the LOS Convention's language concerning arbitrary refusal of access to surplus (unallocated) living resources might be a potential source of conflict (in addition to concerns about other provisions of the Convention). These uncertainties reflect the absence of any comprehensive assessment of the social and economic impacts of LOS implementation by the United States.

This chapter describes provisions of the LOS Convention relating to living marine resources and discusses how these provisions comport with current U.S. marine policy. As presently understood and interpreted, these provisions generally appear to reflect current U.S. policy with respect to living marine resource management, conservation, and exploitation. Based on these interpretations, they are generally not seen as imposing significant new U.S. obligations, commitments, or encumbrances, while providing several new privileges, primarily related to participation in commissions developing international ocean policy. No

new domestic legislation appears to be required to implement the living resources provisions of the LOS Convention.

Chapter 13 - On March 15, 2006, the U.N. General Assembly passed a resolution replacing the Commission on Human Rights with a new Human Rights Council (the Council). The U.N. Secretariat and some governments, including the United States, view the establishment of the Council as a key component of comprehensive U.N. reform. The Council was designed to be an improvement over the Commission, which was widely criticized for the composition of its membership when perceived human rights abusers were elected as members. The General Assembly resolution creating the Council, among other things, increased the number of meetings per year and introduced a "universal periodic review" process to assess each member state's fulfillment of its human rights obligations.

One hundred seventy countries voted in favor of the resolution to create the Council. The United States, under the George W. Bush Administration, was one of four countries to vote against the resolution. The Administration maintained that the Council structure was no better than the Commission and that it lacked mechanisms for "maintaining credible membership." It initially stated that it would fund and support the work of the Council. During the Council's first two years, however, the Administration expressed concern with the Council's focus on Israel and lack of attention to other human rights situations. In April 2008, the Bush Administration announced that the United States would withhold a portion of its contributions to the 2008 U.N. regular budget equivalent to the U.S. share of the Human Rights Council budget. In June 2008, it further announced that the United States would engage with the Council "only in matters of deep national interest."

The Barack Obama Administration participated as an observer in the 10th regular session of the Human Rights Council (held from March 2 to 27, 2009). The Administration stated that it furthers the United States' interest "if we are part of the conversation and present at the Council's proceedings." At the same time, however, it called the Council's trajectory "disturbing," particularly its "repeated and unbalanced" criticisms of Israel. In March 2009, the Obama Administration announced that it would run for a seat on the Council. The United States was elected as a Council Member by the U.N. General Assembly on May 12, 2009, and its term will begin on June 19, 2009.

Since its establishment, the Council has held 10 regular sessions and 11 special sessions. The regular sessions addressed a combination of specific human rights abuses and procedural and structural issues. Five of the 10 special sessions addressed the human rights situation in the Occupied Palestinian Territories and in Lebanon. Other special sessions focused on the human rights situations in Burma (Myanmar), Darfur, Sri Lanka, and Democratic Republic of the Congo.

Chapter 14 - For the first time since the judicial impeachments of 1986-1989, the House has impeached a federal judge. On June 19, 2009, the House voted to impeach U.S. District Judge Samuel B. Kent of the U.S. District Court for the Southern District of Texas.

The impeachment process provides a mechanism for removal of the President, Vice President, and other federal civil officers found to have engaged in "treason, bribery, or other high crimes and misdemeanors." The Constitution places the responsibility and authority to determine whether to impeach and to draft articles of impeachment in the hands of the House of Representatives. A number of means have been used to trigger the House's investigation, but the ultimate decision in all instances as to whether impeachment is appropriate rests with

the House. Should the House vote to impeach and vote articles of impeachment specifying the grounds upon which impeachment is based, the matter is then presented to the Senate for trial.

Under the Constitution, the Senate has the unique power to try an impeachment. The decision whether to convict on each of the articles must be made separately. A conviction must be supported by a two-thirds majority of the Senators present. A conviction on any one of the articles of impeachment brought against an individual is sufficient to constitute conviction in the trial of the impeachment. Should a conviction occur, then the Senate must determine what the appropriate judgment is in the case. The Constitution limits the judgment to either removal from office or removal and prohibition against holding any future offices of "honor, Trust or Profit under the United States."

The precedents in impeachment suggest that removal may flow automatically from conviction, but that the Senate must vote to prohibit the individual from holding future offices of public trust, if that judgment is also deemed appropriate. A simple majority vote is required on a judgment. Conviction on impeachment does not foreclose the possibility of criminal prosecution arising out of the same factual situation.

The Constitution does not permit the President to extend executive clemency to anyone in order to preclude his or her impeachment by the House or trial or conviction by the Senate.

Versions of these chapters were also published in *Journal of Current Issues in Crime, Law and Law Enforcement,* Volume 1, Numbers 1-2, and Volume 2, Numbers 1-4, published by Nova Science Publishers, Inc. They were submitted for appropriate modifications in an effort to encourage wider dissemination of research.

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