

HOUSE RECORD

**Second Year of the 156th Session of the General
Court**

Calendar and Journal of the 2000 Session

Vol. 22

Concord N.H.

Wednesday, July 12, 2000

No. 56

HOUSE JOURNAL No. 19 (cont.)

Tuesday, June 27, 2000

Rep. Lozeau moved that the House adjourn.

Adopted.

HOUSE JOURNAL No. 20

Wednesday, July 12, 2000

The House assembled at 10:00 a.m., the hour to which it stood adjourned, and was called to order by the Speaker.

Prayer was offered by Guest Chaplain, Reverend Lynn Johnson, Pastor of the West Rumney Community Church.

God of Enlightenment and Truth, In a day of grave decision and conflicting emotions, we pause to acknowledge Your presence, Your power and Your authority. We remember You as the author of justice, the creator of human abilities and the judge of human limits and wrongdoing. We confess that we know ourselves to be human, created with joyful abilities and wondrous potential, but also limited by boundaries of time and history and by our own mistakes and failings. We come with a sense of calling, to make decisions of lasting import; we come with humility, acknowledging that we make those decisions with limited insight and fallible understanding. We come in faith, remembering that You have promised that You are in our midst and therefore daring to believe that

peace, compassion and justice are real possibilities. Let insight and integrity lead to inspiration; may new life emerge from these difficult times and may this body work to forge a future that is better than the past. Living and Righteous God, may our deliberations be infused with Your wisdom, may our divisions be healed with Your understanding and may our decisions reflect the light of Your compassionate justice. Amen.

Rep. Kenney led the Pledge of Allegiance.

LEAVES OF ABSENCE

Representatives Patricia Cote, Perkins, Searles and Turgeon, the day, illness.

Representatives Boriso, Daniels, Frances Davis, Densmore, Domingo, Feuerstein, French, Glines, Konys, LaMott, Rubin, Spang, Nancy Wall and Donald White, the day, important business.

INTRODUCTION OF GUESTS

Charlene Kane, daughter of Rep. Cecelia Kane. Anna Leszczuk and Anja Zschau, guests of Rep. Owen. Heidi and Kristie Tillotson and Charleston and Chelsea Hoadley, granddaughters of Rep. Hoadley. Rebecca, Joshua and Sara Brothers, wife, son and daughter of Rep. Brothers. Walter Gazda, guest of Rep. Lionel Johnson. Alicia Trider and Dr. Robert Seidman, granddaughter and guest of Rep. Gile. Regine and Sani Piteri, daughters of Rep. Nolan-Piteri. Barbara Brewster, Jean Gove and Audry Sheaffer, wife, sister and guest of Rep. Brewster. Helen Holbrook, wife of Rep. Holbrook. Judy Pilliod, wife of Rep. Pilliod. Barbara Ryan and Lisa Sears, guests of Rep. Bouchard.

special guests

Mercedes Sabio Director of Content, Communications and Broadcast for New Hampshire Public Television and Mark Handley, President and General Manager of New Hampshire Public Radio, guests of the House.

The House of Representatives offered the following:

house resolution no. 26

Honoring New Hampshire Public Radio and New Hampshire Public Television

WHEREAS, the stated missions of New Hampshire Public Radio and New Hampshire Public Television are respectively to help create a more informed public, one challenged and enriched by a deeper understanding and appreciation of state, national and worldwide events, ideas and culture, and to serve the public interest through education, culture and citizenship, and

WHEREAS, New Hampshire Public Radio and New Hampshire Public Television each did recognize the great significance and historic precedent of House Resolution 50 when it was adopted

on April 13, 2000, authorizing and directing the House Judiciary Committee to investigate whether cause did exist for the impeachment of any State Supreme Court Justices, and

WHEREAS, New Hampshire Public Radio and New Hampshire Public Television each did decide to perform a valuable public service and each did interrupt regular broadcast schedules to provide citizens of the state with live gavel-to-gavel coverage of the House Judiciary Committee's impeachment hearings, and

WHEREAS, New Hampshire Public Radio and New Hampshire Public Television did provide the people of New Hampshire with the opportunity to listen to, to view and to learn all of the details while the House Judiciary Committee did deal with this most critical issue, and

WHEREAS, New Hampshire Public Radio's and New Hampshire Public Television's exemplary staffs of journalists, producers, directors and engineers did broadcast and telecast more than two hundred and fifty hours of live, day-and-night coverage of the proceedings, now therefore be it

RESOLVED, by the House of Representatives in Regular Session convened, that New Hampshire Public Radio and New Hampshire Public Television each receive the highest of plaudits and accolades for the valuable public service each did provide to the citizens of New Hampshire with live coverage of the impeachment hearings, and be it further

RESOLVED, that the House of Representatives acknowledge and commend New Hampshire Public Radio and New Hampshire Public Television for their outstanding achievements, and that suitable copies of this Resolution be prepared for presentation to New Hampshire Public Radio and New Hampshire Public Television.

Unanimously adopted.

JUDICIARY COMMITTEE REPORT PURSUANT TO HR 50

MAJORITY COMMITTEE REPORT

Background

Reps. Henry P. Mock and Janet G. Wall for the Majority of Judiciary: House Resolution 50 was passed by the House of Representatives on April 9, 2000 on a vote of 343 to 7. The language of the resolution authorizes and directs the House Judiciary Committee "to investigate whether cause exists for the impeachment of David A. Brock, chief justice, and/or any other justice of the New Hampshire Supreme Court" and to report to the House "such resolutions, articles of impeachment, or other recommendations that it deems proper." The language of the resolution also clearly defines the scope of the investigation to the "report of the attorney general, and any information arising out of the judiciary committee investigation."

HR 50 gave the Committee the power to conduct a thorough investigation, including the power to issue subpoenas for testimony and documents and the power to take depositions. The Committee undertook this exercise of constitutional power with the realization that it was going to set historic precedent as the first impeachment inquiry in New Hampshire in 210 years. Under the New Hampshire Constitution, Part II, Articles 17 and 38, the House of Representatives is the "grand

inquest of the state; and all impeachments made by them, shall be heard and tried by the senate." The House is directed by the Constitution to determine whether certain conduct may be "bribery, corruption, malpractice or maladministration" constituting impeachable charges which shall be sent over to the Senate for a full trial.

This impeachment investigation was the result of a report issued by the Attorney General on March 31, 2000 which raised questions about the conduct of justices of the Supreme Court. That report followed the resignation of W. Stephen Thayer as an Associate Justice on March 29, 2000.

Special Counsel Joseph D. Steinfield was engaged to represent the Judiciary Committee. The Committee began by adopting its own rules and procedures for the conduct of the investigation. The Committee determined to begin by taking depositions (attended only by committee members, special counsel and deponent's counsel) and by issuing subpoenas for documents. Although there was some criticism, the initial stage of the investigation was conducted in private. The members of the Committee believed this was necessary in order to protect the strategy and integrity of the investigation. This decision was challenged by the counsel for the Committee on Judicial Conduct ("JCC") who asserted that he should be able to attend the depositions of the justices and other court employees in order to protect confidentiality of the JCC under Supreme Court Rule 40. Hearings were held in both Merrimack County Superior Court and the Supreme Court (before a specially appointed panel of superior court judges). Both court orders protected the integrity of the Judiciary Committee investigation and barred the JCC's counsel from attending the depositions. Despite the untimely interference with the progress of its inquiry, the Committee took 19 depositions and issued many subpoenas during this first part of its inquiry.

On May 30, 2000, at the conclusion of the initial stage of the investigation, Special Counsel issued an Interim Report to the Committee. The Interim Report included legal and historical research about impeachment and a summary of the evidence gathered up to that date. The Committee next adopted procedures for the second stage of its investigation, the taking of public testimony. With the information already gathered, the committee determined the witness list and identified the important issues arising from the first stage of the inquiry. This was a difficult task as the deposition testimony revealed varying and conflicting recollections of events, including some events that the Committee deemed of particular significance. Also as background to the issues to be addressed, the Committee considered the following constitutional provisions, statutes and Supreme Court Rules:

NH Constitution, Pt. I, Art. 35. The Judiciary; Tenure of Office, etc.

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well; subject, however, to such limitations, on account of age, as may be provided by the constitution of the state; and that they should have honorable salaries, ascertained and established by standing laws.

Supreme Court. RSA 490:3, I and II. Disqualification; Temporary Justices (emphasis added).

*I. The provisions as to the disqualification of justices of the superior court apply to justices of the supreme court. Whenever a justice of the supreme court shall be **disqualified or otherwise unable to sit** in any cause or matter pending before such court, the **chief or senior associate justice of the supreme court may assign** another justice to sit according to the provisions of paragraph II of this section.*

*II. Upon the retirement, **disqualification, or inability to sit** of any justice of the supreme court, the **chief justice or senior associate justice of the supreme court may assign** a justice of the supreme court who has retired from regular active service to sit during supreme court sessions while the vacancy continues, or he may notify the chief justice or senior associate justice of the superior court of such vacancy. Upon such notification, the chief justice or senior associate justice of the superior court shall provide the supreme court for each day of sitting during a session while the vacancy shall continue with the names of 2 or more superior court justices in regular active service or who are retired and are not otherwise disqualified. **The chief justice or senior associate justice of the supreme court** may then assign a justice to sit temporarily on the court from among those superior court justices whose names have been provided.*

III. A justice assigned to sit temporarily on the supreme court pursuant to paragraph II of this section shall have all the authority of a supreme court justice to hear arguments, render decisions, and file opinions. No justice shall be assigned to sit on the supreme court in the determination of any cause or matter upon which he has previously sat or for which he is otherwise disqualified nor without his consent.

Statements Out of Court. RSA 495:1. Statements to Judges.

No judge, justice, magistrate, county commissioner or commissioners in whose court or before whom any suit at law or in equity, petition or other proceeding is pending or to be heard or tried shall listen to any statements in regard thereto, except in open court or in the presence of all parties thereto.

Criminal Code. RSA 640:3 Improper Influence

I. A person is guilty of a class B felony if he:

(a) Threatens any harm to a public servant, party official or voter with the purpose of influencing his action, decision, opinion, recommendation, nomination, vote or other exercise of discretion; or

(b) Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the purpose of influencing that discretion on the basis of considerations other than those authorized by law; or

(c) Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of subparagraph (a) or (b) hereof.

II. "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested.

NH SUPREME COURT RULE 38. CODE OF JUDICIAL CONDUCT

(adopted by the Supreme Court in 1973)

Canon 2A. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3A(1)-(4). A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law. He should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) If a judge shall become aware of unprofessional conduct by a judge or a lawyer

(a) he shall in the instance of a judge report his knowledge to the committee on judicial conduct, and

(b) he shall in the instance of a lawyer, report his knowledge to the committee on professional conduct.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the funds;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification.

A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing

that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

After considering the evidence presented in the first stage of the investigation, the committee determined that the following events or transactions should be the focus of the public phase of the inquiry. Some of the issues were not adopted by the Committee as part of its final determinations, but are included in this report because they played a major role in the deliberative process.

1. Feld's Case Conduct. This transaction began with the underlying case of Bussiere v. Roberge. Justice Johnson drafted the opinion and expedited it at the request of Justice Thayer. The Court affirmed the lower court ruling in favor of Bussiere whom then filed a professional conduct complaint against Attorney Feld (attorney for the Roberge family). The Professional Conduct Committee recommended that Feld be disbarred and the Judicial Referee appointed by the Supreme Court recommended public censure. When the recommendations came before the Supreme Court, Justices Thayer, Horton and Broderick were all recused. Justice Johnson again drew the job of drafting the opinion and it was distributed to all the justices. The case conference was scheduled for April 23, 1999 and all justices, including those recused, were present. The recollections of the witnesses as to what happened at the conference differ. The draft opinion is in evidence and includes various comments by the justices written on its face by Justice Johnson and with apparent input from recused justices, including Justice Thayer who was a long-standing friend of Attorney Bussiere (social and financial relationship) and who commented about the ultimate sanction. The after-conference reaction of the justices to the comments made by Justice Thayer also differs. Justice Johnson and others testified that he was very upset and shared his anger with Justice Brock. Chief Justice Brock doesn't remember anything inappropriate happening at the conference and advised Justice Johnson later that judicial confidentiality (the confidentiality of the conference) outweighed any duty to report inappropriate conduct. (Other justices, both current and former, testified that they did not agree with Justice Brock's view of the confidentiality of the conference when presented with an ethical or other violation). Ultimately, a revised draft opinion and the final published opinion included the changes suggested at the April case conference.

2. February 4, 2000 Conference. All the justices had disqualified themselves from serving on any of the Thayer v. Thayer panels, so it was necessary to appoint either retired Supreme Court justices or Superior Court judges to sit on a temporary basis (see RSA 490:3). Prior to the February 4th conference, Justice Thayer had asked Justice Brock in chambers whether he would appoint three justices instead of five to his appeal panel. On February 4th a Counsel's Agenda was scheduled and was attended by Court Counsel Eileen Fox and the four sitting justices. At that meeting, Chief Justice Brock announced that he was appointing Judges Mangones and Pappagianis to the Thayer divorce panel. Everyone in the room testified that they felt that Justice Brock was inviting comment on his appointment choices. Justice Brock, however, says that was not his intention. Everyone agrees that Justice Horton (recused) and Justice Thayer (recused and a party to the case) responded to the statement by expressing opposition to the Pappagianis appointment. All the witnesses also agree that Justice Brock then left the room and that he went to talk to Clerk Howard Zibel about the appointments to the Thayer panel. Justice Brock testified he went to delay the phone call to Judge Pappagianis. Was Justice Brock influenced by the Thayer statements? It is not clear whether they talked about Judge Mangone's conflict at that point or at some later time that day. When Justice Brock returned to the conference room, he asked Justice Thayer to step outside the room. He then asked Justice Horton (also recused) to explain his opposition to Judge Pappagianis whereupon it became clear that Horton thought it was an appointment to the JCC panel. The communications by Justice Brock to Justice Thayer and Horton are prohibited ex parte communications under RSA 495:1.

3. The Alleged Hallway Conference on Feb. 4th. The determination of whether a hallway conversation happened during the time of the Feb. 4th conference is crucial to the Committee's determinations because if it did, it would be a prohibited ex-parte communication. Justice Thayer says it happened; Justice Brock says it did not. Therefore, the question of how Justice Thayer got back into the room is key. However, the testimony about this transaction is in conflict. Eileen Fox states that Justice Brock left the room to get Justice Thayer and that she did not leave the room. Justice Broderick states that Justice Brock asked Fox to get Justice Thayer. Justice Brock states that either he asked Fox to get Justice Thayer or that he may have stepped out of the conference room to ask a court employee to find Justice Thayer. Additionally, there is a court employee (discovered through interrogatories to the Court) who testified that she saw Justice Thayer in the hallway outside the conference room at that time. Justice Thayer states that Justice Brock came out to get him and they had a hallway conversation about the appointment of Judge Pappagianis to his divorce panel. Thayer says that Brock also asked him whether he had a problem with Judge Mangones and whether Judge O'Neill was okay and then they went back into the conference room. Justice Brock denies that the hallway conversation took place and says he did have a conversation with Justice Thayer later in the law clerk's wing. After Justice Thayer returned to the room the Counsel's Agenda continued. Testimony differs on what was and wasn't said about the Pappagianis appointment after the meeting resumed.

4. The Weeks after the Feb. 4th Incident – Reports to JCC and Attorney General. During the days and weeks that followed, there were many conversations and discussions about whether comments made on February 4th were inappropriate, whether there was a duty to report to the JCC or to law enforcement for Justice Thayer's attempts to influence; and whether anyone was actually going to report. The Zibel memorandum was drafted and discussed by members of the Court and various court employees. There are also questions about the conversations between Justice Thayer and Justices Brock and Broderick and whether any reportable threats were made by Justice Thayer. Again, there are many differing recollections.

Howard Zibel concluded by February 14th that he had a duty to report the conduct. Justice Broderick testified that he initially believed there had been "unintended ethical lapses" by Justice Brock, but that reporting would damage the judicial system more than any damage that had occurred and so he decided not to report but rather to discuss the matter with all the justices individually. Justice Horton had not realized the inappropriateness of the conduct until Justice Broderick informed him. On February 14th, Justices Brock and Broderick and Court Counsel Fox decided to retain both counsel for the Court and counsel individually. On February 17th Justices Brock, Broderick and Horton filed a report with the JCC about the February 4th comments by Justices Thayer and Horton and about the comments made by Justice Thayer at the Feld's Case conference in 1999. On February 22nd, Howard Zibel filed a report with the JCC. On February 25th, Attorney Michael Ramsdell, on behalf of Chief Justice Brock, delivered a copy of the Zibel memorandum to the Attorney General. Also, Justice Brock testified that he assumed another letter reporting criminal threats by Justice Thayer under RSA 640:3(c) had been filed with the Attorney General by his attorney. Later he testified that he had known that the letter had not been sent.

5. Court Recusal Policies. The court has had a long-standing policy of allowing disqualified or recused (used by the committee to mean the same thing) to participate in cases by receiving draft opinions, attending the confidential case conferences, and commenting on grammar or style. Opinions differ on the extent to which comments beyond style were made or whether recused justices ever influenced outcomes. It is possible that, at least in Feld's Case, the comments by recused justices changed the scope of the opinion. Since the release of the Attorney General's Report, the Court has adopted and instituted a new policy prohibiting participation by recused justices.

6. Home Gas Matter. This matter came to the attention of the committee through testimony about an "old JCC matter regarding Justice Brock" by Howard Zibel and by documents provided by former

Justice William Johnson at his deposition which included a memorandum concerning whether Justice Thayer should have been afforded an opportunity to appear before the justices as in "past practice." Further investigation revealed that in 1987, former Sen. Edward Dupont was a defendant in a case pending in Rockingham County (Home Gas v. Strafford Fuels, Inc and its President, Edward C. Dupont). An order had been issued in the superior court against Dupont and then after various motions a petition for writ of certiorari had been filed for review by the Supreme Court. The petition was granted and the Supreme Court reversed a portion of Judge McHugh's order and remanded the case for trial (before Judge Gray). There is testimony that Sen. Bartlett (Senate President at the time) communicated to Justice Brock about the pending case, perhaps at the time of conversations about pending judicial legislation. Judge Gray stated that Justice Brock called him asking about the status of the case and told him who Dupont was. Justice Brock denies this phone call and instead states that he did call the Rockingham County Clerk, Ray Taylor, about the status of the case. Justice Brock says it was Judge Gray who called him. There is further testimony from Judge McHugh and a court stenographer that in March 1987 Judge Gray came into the chambers and stated that he had just been called by Chief Justice Brock.

In August, 1987 there was a hearing on a motion in the Home Gas case in Judge Gray's chambers. Judge Douglas Gray made comments in front of the attorneys for the parties about Sen. Dupont's opposition to judicial pay raises. Russell Hilliard, attorney for Edward Dupont, said that he told his client about the comments and his concerns after the hearing. In November 1987, Justice Brock wrote to Sen. Bartlett about Judge Gray's remarks suggesting that a recusal motion or a complaint to the JCC could be filed, otherwise he would have the comments "fully investigated" at the end of the case. In January 1988 Justice Brock wrote a letter to Sen. Dupont apparently responding to Dupont's comments about Judge Gray and again suggested a motion to recuse or a complaint to the JCC. No motion to recuse was filed nor was a complaint filed with the JCC. Justice Brock testified that suddenly in March, 1989, a "light bulb went off" and he remembered that he had not followed up on the matter. He discussed the matter with the other justices and they suddenly realized that there was a one-year statute of limitations for filing complaints to the JCC so nothing further could be done.

The Court then undertook to investigate the matter and report to the JCC even though the JCC no longer had any jurisdiction over the complaint. Justice Brock called Judge DiClerico who was the acting Chief Justice of the Superior Court and asked him to conduct an investigation relative to Judge Gray's remarks. Judge DiClerico stated that he had no idea what kind of investigation was being conducted but wrote letters to Judge Gray and to Attorneys Hilliard, Cassavechia and Hearn for a response to the comments of Judge Gray. Judge Gray had not been aware of the allegations before this time and was angry that he was being informed so long after the fact. Also, he had never heard of this type of investigation. Thereafter a meeting was held at the Court with Judges Gray and DiClerico and the Supreme Court justices. It was at that meeting that the conflict about the phone calls became apparent when Judge Gray said that Justice Brock had called him. The other justices (with Justice Brock not participating according to a letter from Justice Batchelder to Judge Gray) followed up on the discrepancy and determined that Justice Brock had made a phone call to Judge Gray. Justice Brock first testified in his deposition that this investigation had not taken place. Later he testified that in fact a "discreet inquiry" had been conducted about the phone call.

In October 1989, more than 2 years after the comments by Judge Gray, Justice Brock and the four other justices filed a letter with the JCC having found evidence that Judge Gray had made inappropriate remarks and that Justice Brock had made a phone call to Judge Gray. They also reported, however, that the phone call was not unethical, but that it could have made an inappropriate impression. The justices further stated that they had not filed within the statute of limitations (created by Supreme Court Rule) because they had decided it was better not to interfere with a pending case. The docket indicates, however, that the case continued to the end of 1989. The JCC responded that the letter was placed "on file."

The House Judiciary Committee took public testimony from 19 witnesses over a two week period. This provided an opportunity for the members and the public to judge the credibility of the witnesses and their recollection of the events in question. It was an opportunity for the members to question the witnesses more closely with the deposition testimony of all witnesses and all the collected documents in hand. At the same time the justices and their attorneys were permitted to make either an opening or a closing statement to the Committee.

At the close of the public testimony, the Committee conducted two full days of deliberations in public. Each member had a chance to express his or her feelings and opinions and to ask questions of the other members and of Special Counsel. The Committee decided on a 12 to 9 vote to adopt a standard of clear and convincing evidence to measure whether the conduct rises to a level of an impeachable offense sufficient to send to the Senate for a full trial. It was expressed by many members, however, that each member would ultimately use his or her own individual threshold to determine if the burden of proof is met in each instance. The committee members are not bound by the Constitution to select or use a particular burden of proof. The Committee then decided it could recommend impeachment or certain other sanctions such as reprimand or censure. The Committee additionally determined that it would make recommendations for future judicial reform legislation in the Final Committee Report.

COMMITTEE VOTE – JULY 5, 2000

The Committee decided to approach the vote justice-by-justice and to evaluate each one's role in the major transactions. The Committee also discussed and adopted a burden of proof after considering whether the appropriate burden would be 1) a preponderance of the evidence (slightly more than half) ; 2) clear and convincing evidence (middle ground); or 3) beyond a reasonable doubt (more than 95%). Some members did not believe that a burden should be adopted at all. However, although the Constitution doesn't require a particular burden for impeachment, the Committee voted 12 to 9 to adopt the clear and convincing standard thereby setting a high bar for cases of impeachment. The Committee also discussed alternatives to the constitutionally authorized impeachment and address actions and considered admonishment, reprimand and censure. The Committee formally adopted definitions of the three sanctions in order to consider them, even though there are members who do not believe the House has the authority to discipline judges beyond impeachment or address. The definitions are:

Admonishment: to express warning or disapproval in an earnest or solicitous manner.

Reprimand: in professional responsibility, a form of disciplinary action imposed after trial or formal legal proceedings that declares a judge or lawyer's conduct as improper but does not limit the person's right to practice.

Censure: to pronounce adverse judgment on, express disapproval of, criticize unfavorably; to find fault with, blame, condemn.

Justice Sherman D. Horton

The Committee found that Justice Horton participated in the Feld's Case conference, even though he was recused (disqualified). He received a draft opinion and he commented on the draft opinion during the conference. There is a clear concern about the participation of recused or disqualified justices, but the Committee did not believe that this transgression by Justice Horton rose to a level warranting disciplinary action.

Although the Committee regarded this conduct as inappropriate, no agreement could be reached because some members did not believe that the House has the power to discipline beyond impeachment or address and because some members did not believe the conduct rose to an impeachable level. For this reason Justice Horton was also excused for his conduct during the February 4th incident.

The Committee voted in favor of a resolution stating that the conduct of Justice Horton is not impeachable. (see HR 52)

Justice John T. Broderick

In accordance with the culture of the Supreme Court, Justice Broderick, along with other justices, participated in cases from which he was recused, a long-standing practice, recently discontinued and replaced with a new recusal policy.

The Committee scrutinized Justice Broderick's uncertainty about reporting the conduct in the February 4th conference where it is alleged that Chief Justice Brock solicited comments from the recused justices. (see HR 51, Article III) Justice Broderick testified that initially he had considered not reporting the incident as required by the Canons but would handle the matter internally. This possibility was troubling to the Committee.

As in Justice Horton's case, the Committee questioned its authority to discipline beyond impeachment and address. So, although the Committee concluded that Justice Broderick's actions were also inappropriate, the members did not believe his conduct to be impeachable. Therefore, the Committee voted in favor of a resolution stating that the conduct of Justice Broderick is not impeachable. (see HR 53)

Chief Justice David A Brock

The Judiciary Committee found by clear and convincing evidence that Chief Justice David A. Brock did engage in conduct that constitutes the impeachable offenses of maladministration or malpractice and voted three Articles of Impeachment. (see HR 51)

Article I

The Committee voted 14 to 8 that clear and convincing evidence exists to prove that in 1987, Chief Justice Brock engaged in conduct that constitutes impeachable offenses in that he placed a telephone call to Superior Court Judge Douglas Gray about the status of the Home Gas case and that in addition, he failed to report the telephone call to his colleagues at the time the Supreme Court had the appeal of the case under consideration.

Article II

The Committee voted 16 to 6 that clear and convincing evidence exists to prove that on or about February 4, 2000, Chief Justice Brock engaged in conduct that constitutes impeachable offenses in connection with the divorce case of Justice W. Stephen Thayer by engaging in ex parte communications with Justice Thayer (a party) and with the other justices, all recused from the case, in which he solicited their comments regarding judges to be appointed to the Supreme Court panel that would hear the appeal. Additionally, Chief Justice Brock participated in an ex parte communication with Justice Thayer in the hallway outside the Court's conference room in which he discussed possible appointments to the Thayer divorce appeal panel.

Article III

The Committee voted 17 to 5 that clear and convincing evidence exists to prove that Chief Justice Brock did knowingly testify falsely under oath to the House Judiciary Committee with the intention of hindering the HR 50 investigation with respect to 4 material matters.

By voting in favor of the three Articles of Impeachment the Committee concludes that Chief Justice Brock has committed impeachable offenses warranting a trial by the Senate.

Proposed Legislation

The Committee voted to recommend passage by the House of HB 1500. This is special legislation which would allow Chief Justice Brock to resign his office between the time of an impeachment by the House and the beginning of a trial by the Senate and to receive the retirement compensation and benefits beginning on the date he would have begun receiving such compensation and benefits as if he had served until the age of 65.

Judicial Reform

Throughout this process the Committee discovered many areas concerning the judicial branch of government which may fall within the purview of the legislative branch. These areas of concern may be considered for judicial reform. The issues include, but are not limited, to the following *:

- Independent Office of the Courts
- Appointment process for substitute judges (RSA 490:3)
- Terms for all judges
- Contributory judicial retirement system
- Mandatory continuing ethics education for judges
- Independent Judicial Conduct Committee and Professional Conduct Committee
- Issues concerning mandatory NH Bar Association membership for attorneys

*These are listed in no particular order and may require statutory or constitutional revisions.

Conclusion

The Committee concludes that the culture of confidentiality which prevailed in the New Hampshire Supreme Court led to a callousness in the management of our Judiciary, engendering maladministration and malpractice, consequently culminating in these historic impeachment proceedings.

It is our goal, as it should be, that it is in the best interest of all New Hampshire citizens not to tear down, but to build up the confidence of our citizens in all three branches of government. As Thomas Jefferson said to George Hammond in 1792, "It is reasonable that every one who asks justice should do justice." We concur.

MINORITY COMMITTEE REPORT

Reps. Cynthia J. Dokmo and Martha S. Solow for the Minority of Judiciary: The extraordinary step of impeachment has been taken only when it seemed that the very workings of government itself have been endangered. As Special Counsel Joseph Steinfield stated, impeachment is so grave, so

serious, and so potentially threatening to the very independence of the separate branches of government that legislators throughout history have wisely chosen to follow the impeachment path only in the most heinous of circumstances. That was amply proved by the materials and tables submitted by Special Counsel. Even a casual review of the matters deemed sufficient to warrant consideration of impeachment shows that they are offenses so serious as to jeopardize the very workings of government itself. Historical context, the language in our own New Hampshire Constitution, and the penalties for impeachment make it abundantly clear that impeachable offenses under the New Hampshire Constitution can only be offenses of the most serious nature - not errors of judgment, not mistakes, not human error.

The New Hampshire Constitution contains four grounds for impeachment of state officials: "bribery, corruption, malpractice or maladministration." N.H. CONST., part 2nd, art. 35. Because none of the conduct before the committee implicates bribery, this report focuses on the three remaining grounds : corruption, malpractice and maladministration. The articles presented by the majority charge the Chief Justice with maladministration and malpractice. Though these terms are not well defined in case law, the research provided by special counsel states that statutory construction requires it to be interpreted in harmony with the words "bribery" and "corruption". Maladministration is not simple negligence or poor judgment. It involves intentional or at least reckless misconduct while serving a position of public trust.

It is essential to the preservation of liberty and our system of government that the court system be strong. As the only branch which is not subject to the political process, the court stands alone as the guardian of individual and minority rights. Therefore the remedy of impeachment should be used sparingly and only to address conduct which constitutes gross, intentional and outrageous behavior. To impeach for less would erode the separation of powers and impair the independence of the judiciary--both of which would weaken the court and upset the delicate balance of power between the three branches of government.

The charge to this Committee arose out of a flawed and incomplete investigation by the Office of the Attorney General of the State of New Hampshire. The three justices of the New Hampshire Supreme Court, who ultimately became the focus of the Judiciary Committee investigation, were not only not warned that they and their practices were being investigated but they were specifically told that they were not being investigated. Because of those misrepresentations the justices were denied the opportunity to explain the practices which caused the Attorney General to publish a report condemning practices which his office did not understand.

One must only read the majority report and articles of impeachment to see the deficiencies in the Attorney General's investigation. Each of the three articles is flawed and the majority recommendations should be rejected by the House.

Article I reaches back 13 years to a matter that was thoroughly investigated by the then Associate Justices of the New Hampshire Supreme Court. It was their unanimous conclusion that the conduct of Chief Justice Brock, which had been fully investigated by them, would not warrant any finding that he had acted unethically or that there was any impropriety in his actions. Now, 13 years after the events and 11 years after that investigation, the majority suggests that the full House, and ultimately the Senate, should second guess that investigation and find not only impropriety in that conduct, but also that it constitutes an impeachable offense.

This matter was clearly beyond the scope of HR 50. But even if it were not, there is nothing in the matters presented to the Judiciary Committee that would permit it to find, by clear and convincing evidence (the standard adopted by the committee), that it ought to recommend that the full House

impeach Chief Justice Brock for conduct which by any standard does not rise to the level of an impeachable offense.

Article II deals with the events of February 4, 2000. Contrary to the statements of the only witness with immunity, none of the other Justices in the room expected Justice Thayer to comment and were totally shocked when his outburst occurred. Article II also ignores the testimony of Chief Justice Brock which emphatically contradicts the statements of Justice Thayer, a discredited, vengeful witness who had been granted immunity and who had threatened to bring down the court. There is no proof that an ex parte conversation took place in the hallway. In fact, answers to seven separate questions by Howard Zibel confirm the impossibility of the so-called hallway conversation. This is further confirmed by an affidavit by a disinterested law clerk of the discredited witness which corroborates the Chief Justice's version of the events of that afternoon.

Article III accuses Chief Justice Brock of "knowingly" testifying falsely under oath to the HJC "with the intention of hindering the HR 50 investigation". There is not one single shred of evidence that Chief Justice Brock intended to "hinder the HR 50 investigation". The record is full of representations by his lawyers that they were doing everything in their power to obtain documents from the JCC. Those representations were acknowledged by Special Counsel. Allegations of false testimony should not be taken lightly. They should be asserted only after a very careful review of all of the evidence. That sort of review makes abundantly clear that the article misstates the facts and fails to recognize the fact that differing memories do not automatically equate to false testimony.

In his final report, Special Counsel quoted Justice Batchelder:

[J]udicial independence implies freedom from constraints which inhibit the free exercise of the judicial function as its myriad tasks are met in interpreting the Constitution and putting the law into play in the resolution of disputes arising within society.

He also noted that "[t]he Founding Fathers recognized the dangers of a weak judiciary" Final Report of Special Counsel, p. 21.

Every time a legislative body determines - or attempts to determine - that conduct which, viewed in the least favorable light, is, at worst, a mistake or an error of judgment should somehow be transformed into an impeachable event, it undermines the office and the institution it affects. The judicial branch is co-equal with the executive and legislative branches under the New Hampshire Constitution. When one branch attempts to reach out and charge an offense which is not defined by law such as malpractice or maladministration, it should be satisfied by clear and convincing evidence, that the offense rises to meet the high bar of impeachment. Otherwise, the risk is great that the impeaching branch will destroy the respect it is trying to protect and make its coordinate branch susceptible to weaker and weaker attacks. That is exactly what these articles of impeachment would do.

All of the evidence presented to the Judicial Committee lacks willfulness, lacks evil intent, or any of the basic underpinnings that could support a charge of impeachment.

For all of the foregoing reasons, the minority respectfully suggests that the House find that no grounds exist to impeach Chief Justice David A. Brock or any other Justice of the New Hampshire Supreme Court.

RESOLUTION

Reps. Chandler and Nordgren offered the following: RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill numbered 1500 and House Resolutions numbered 51, 52 and 53 shall be by this resolution read a first and second time by the therein listed titles.

Adopted.

INTRODUCTION OF HOUSE BILL and HRs

First and second reading

HB 1500-FN, relative to judicial retirement compensation and benefits for supreme court chief justice Brock.

HR 51, recommending impeachment of supreme court chief justice David A. Brock.

HR 52, recommending that no article of impeachment be brought against supreme court justice Sherman d. Horton, Jr.

HR 53, recommending that no article of impeachment be brought against supreme court justice John T. Broderick, Jr.

HOUSE RESOLUTION NO. 51

recommending impeachment of supreme court chief justice David A. Brock.

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the house adopt the following resolution relative to chief justice David A. Brock; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found, by clear and convincing evidence, that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether David A. Brock, chief justice of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the articles of impeachment below, each of which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

ARTICLE I

During the period beginning on or about March 1, 1987 and ending on or about November 5, 1987, chief justice Brock engaged in conduct that constituted the impeachable offenses of maladministration or malpractice in connection with the case of Home Gas Corp. v. Strafford Fuels, Inc. and Edward C. Dupont ("Home Gas"). Specifically, chief justice Brock engaged in the following improper conduct:

1. Chief justice Brock placed a telephone call to superior court judge Douglas Gray, who was presiding over the case. During that conversation the chief justice inquired about the status of the case and informed judge Gray that Mr. Dupont was a state senator.

2. Chief justice Brock failed to report said telephone call to his colleagues on the supreme court at the time the court had the appeal of "Home Gas" under consideration.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

ARTICLE II

On or about February 4, 2000, chief justice Brock engaged in conduct that constituted the impeachable offenses of maladministration or malpractice in connection with the case of Thayer v. Thayer, a divorce case in which W. Stephen Thayer, III, then a justice of the supreme court, was a party. Specifically, chief justice Brock engaged in the following improper conduct:

1. On February 4, 2000, chief justice Brock engaged in ex parte communications with justice Thayer and with the other justices, all of whom had been recused, in which he solicited their comments regarding superior court judges to be appointed to the supreme court panel that would hear the appeal of the trial court's judgment.

2. On February 4, 2000, chief justice Brock participated in an ex parte communication with justice Thayer in the hallway outside the court's conference room in which the chief justice discussed possible appointments to the supreme court panel that would hear the appeal of the trial court's judgment.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

ARTICLE III

Chief justice David A. Brock did knowingly testify falsely under oath to the house judiciary committee, with the intention of hindering the HR 50 investigation, with respect to the following material matters:

1. On May 19, 2000, he testified that he did not know whether or not a March 3, 2000 letter from his attorney had been sent to the attorney general's office.

2. On May 19, 2000, he testified that he did not have certain documents relating to the "Home Gas" investigation when in fact he did have those documents and had reviewed them within a few days before giving testimony.

3. On May 19, 2000, and on June 23, 2000, he testified that on February 4 he did not have a conversation in the hallway outside the supreme court conference room with justice Thayer.

4. On May 19, 2000, and on June 23, 2000, he testified that he did not make a telephone call to superior court judge Douglas Gray concerning the Home Gas case.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

motion to print debate

Rep. Chandler moved that the debate relative to House Resolution No. 51, House Bill 1500, House Resolution No. 52 and House Resolution No. 53 be printed in the Journal.

Adopted.

debate

Rep. Mock: Madam Speaker and members of the House. I rise today in support of the majority of the Judiciary Committee recommending the impeachment of David A. Brock. None of us are here with happy hearts. Madam Speaker, I can barely hear myself, if we are going to impeach someone, I think we ought to be listening. We are here today to carry out an awesome responsibility. Not because we asked for it, but because it was assigned to us. Assigned by our forefathers and our Constitution. This is the first impeachment ever to take place in this building. This building was constructed in 1819 as you all know and there has never been a more somber day. Article 17, Part II of our Constitution declares this body to be the grand inquest of the state. The courts have recently confirmed that. That is why you and that is why I am here today. You hold in your hands and in your very being the power to impeach. Remember, to impeach is not to convict, not to throw out of office, but to declare the charges of misconduct serious enough to go to trial in the Senate. Neither are we here today to punish, because as my father told we three boys, only God does the punishing, not you. The New Hampshire Constitution was modeled after the Massachusetts Constitution constructed four years earlier. New Hampshire, being rather independent, as we all can be, didn't copy Massachusetts exactly. We settled on four reasons why a person could be removed from office or could be impeached: bribery, corruption, malpractice and maladministration. Today we concentrate on the latter two terms, malpractice and maladministration. You may not know exactly what those words mean, but you, like I and the remainder of our committee, will know it when you hear it and when you see it. You will hear today that there are no articles or conduct that rises to the level of impeachment, but I remind the House that the first and the very last impeachment to occur in this state in 1790 was to impeach a judge for failure to come to work. Later today this House will debate the recusal practice of the court. I will not get into that here but I will speak to it later. Also later, you will hear the opponents to impeachment belittle and degrade the Attorney General's investigation which was the very impetus for this investigation. Be aware that we were not assigned the task to investigate the Supreme Court but rather the very narrow area of the allegations outlined in the Attorney General's report and to any subject to which it may lead us. I bring that up because you know one of the strong defenses and one of the most common defenses used every day is to shoot the messenger and you will hear people say that justices of the court, when interviewed by Attorney General investigators, would have answered differently if they known and it was clear that they were targets of the investigation. I reject that proposition. When you are asked a question by anyone, you answer it and there is only one answer. It is to be thorough and it is to be truthful. What makes the difference? And every justice that came before us, in unison, after two or three it became almost predictable what they would say, "The Attorney General didn't tell me that I was a target, I would have framed my answers differently." Are they suggesting they didn't quite tell it all the first time? That bothered me. I guess I was in law enforcement too long, maybe. The best defense, of course, is to poke holes in the investigation and you'll hear it later today. But let me tell you, in Washington a couple of years ago they trained a dog to do this work when they went after Ken Starr. We can't let that dog hunt here. A compelling reason to vote for impeachment articles is this: ask yourself this question. If the Clerk of the Court had not mustered the intestinal fortitude to report

the poor behavior by Judge Thayer and others occurring on April 23, 1999 at the Feld's Case conference and the similar participation of recused justices at the conference at which the selection of the justices to sit on the Thayer v. Thayer divorce panel, if he had not revealed that, do you really believe that you would be sitting here today? Would it ever have been reported? I say not. The Feld Case went from April 23, 1999 to February, 2000 when it got reported finally by Howard Zibel and then finally by the Court itself. Why not report? Because they broke their own laws and you and I are familiar with Article 73-a where it says the rules of the court, their canons, shall have full force and effect of law. Remember that this winter? We sent that constitutional question to the Senate where it died. One justice in the Feld Case did complain. Justice Johnson went to the Chief Justice about reporting the terrible outburst by Judge Thayer and the answer came back from the Chief Justice, "The confidentiality of the conference is more important than reporting the violation of the canon." Did they live by their own code? No. Did they foster their own code on others? Ask the lawyers who have been disciplined by the court. In the Snow Case, Judge Snow was suspended for six months without pay and later resigned for calling a police officer who had issued his brother a ticket and the court said in that ruling, "A judge's duty to obey the canons, especially to avoid the appearance of impropriety, cannot be taken lightly." So what got them into trouble? Secrecy, secrecy of the court, confidentiality of the court, independence of the court which I support to some degree. This investigation, if it accomplishes nothing else, has the lifted the skirt of Lady Justice and taken a peek. Did we see anything there that was really, really naughty? Not too bad. But we have seen things that were absolutely wrong. Not only that, but her blindfold, justice is blind, slipped and she took a peek and she wasn't supposed to. What we saw with that examination of the Supreme Court, that little tiny bit of investigation, you will find in Articles I, II and III. This whole shroud of secrecy in the Court began 40 to 50 years ago under the disguise of judicial independence. Funny things started happening to our Constitution, like little amendments that the people didn't see when they voted. Remember, 73-a again, and then there is Article 4, Part II that got a little parenthesis in there, the voters never saw it. Then there is the sentence to 73-a which I just mentioned, slowly the court has become so independent that it has gotten itself in trouble. You didn't do it. I didn't do it. The Judiciary Committee didn't do it. They did it to themselves. Secrecy and confidentiality breeds malpractice and it breeds maladministration. When no one is watching, we all get careless, sloppy and sometimes we become unethical. Bookkeeping and housekeeping becomes messy when the boss isn't watching and who was the boss? I brought up bookkeeping for a reason. Our committee subpoenaed draft opinions where recused justices may have made comments. We received less than half a dozen and then last Friday, after our committee had voted, we received some more. I do not hold the clerk who presented these, who found these, responsible. I hold her boss responsible. The buck stops there. At the Supreme Court, according to this clerk's testimony, there are six feet of files in a closet and those are the draft opinions. Those are the ones we would have liked to have taken a look at but you can't see them and we can't see them because that is the court's domain. Last Friday, or I think it was July 6th, she found on a shelf, upside down, under the court's long-range planning manual, three more of these draft opinions where a recused justice had participated. She didn't know what to do with them until the court counsel returned from vacation. Soon as that became known to Eileen Fox, we received them. The two justices sitting over there at the present time absolutely insisted that our committee receive these documents and we have. I'm happy to say there is nothing on those that would change the opinion or change, I'm sure, our committee's opinion of what we have already done. But just to give you an idea of what the bookkeeping is like, here is a sworn affidavit from the Clerk. "After the booklets were removed, I decided to straighten out the closet by organizing the contents and discarding outdated materials that no longer were needed. In the process of doing so, I found an approximately three-inch stack of draft opinions that were lying face down on a shelf under copies of a court long-range planning report. I was surprised to find the draft opinions on the shelf because I believed all draft opinions had been stored in a box on the floor or on the floor." You mean to tell me that your court case, your constituents court cases, that have gone over there to the tune of costing your constituents \$20, \$30 thousand bucks to get heard are treated in such a cavalier way? Interestingly the same clerk, "What happens when the six-foot file gets full? Do you file the most recent ones in the front or the back?"

"Anywhere."

"But wouldn't you put the most recent ones in the back?"

"No."

"Do you put them in the front?"

"No."

"Do you put them in the middle?"

"Anywhere."

"What happens when the six-foot file is full?"

"Well, I just take a bunch, a bundle out."

"Where?"

"Anywhere and put them in the shredder box and they go to the shredder."

Don't your constituents deserve at least that every single document that would be in your appeal would be in a file? And, you ought to be able to go over there and see every single thing that is in that file. The case is over. The case has been published. You should be able to go and see it. You can't and we can't. Enough of that. David A. Brock testified and I quote, "I accept the charge of Harry S. Truman, who while President said, 'The Buck stops here.' I agree as Chief Justice I am responsible for what occurs on my watch." You have a huge responsibility today. Don't get so wrapped up in trying to do right that you forget to do what is good and what is just. Because you have a chance today to do all three. Also remember this is your constitutional responsibility to correct a wrong. If you are not part of a solution, then you may be a part of the problem. It might be more accurate to say, if you see wrong-doing and you take no action, you are also guilty of wrong-doing. I conclude by saying, the committee concludes that the culture of confidentiality which prevailed in the New Hampshire Supreme Court led to a callousness in the management of our judiciary engendering maladministration and malpractice consequently culminating in these historic impeachment proceedings. It is our goal as it should be that it is in the best interests of all New Hampshire citizens not to tear down but to build up the confidence of our citizens in all three branches of government. As Thomas Jefferson said to George Hammond in 1792, "It is reasonable that every man who asks justice should do justice." We concur. Thank you.

Rep. Withee: Thank you, Madam Speaker. Members of the House, I rise today to ask you to reject the committee report on House Resolution 51. This may come as a surprise to a lot of people and a lot of people on the committee considering as a member of that committee, I actually voted for two elements of two of the articles and I was wrong. As you can imagine, I've had a hard week this week because when we cast our votes last week I thought that I would be able to bring some closure and I thought that I would be able to feel good about what I had done. But the longer that this went on and the week went on, I felt worse and worse and worse. I found myself still examining depositions and transcripts and trying to read through this and I came to the conclusion that I was wrong. I am here before you today to tell you that and to tell you why. Madam Speaker, this is not a debate on whether or not something bad happened. I think all of us in the room, anybody that has paid attention to the newspapers or to the proceedings on TV, the majority, the minority and even the

justices themselves agree that there were bad policies in place and policies that would have had the potential to hurt people. On that part the majority and the minority agree. Likewise, Madam Speaker, the majority and the minority agree on what the ultimate goal of this process should be and that is namely to restore public confidence in the three branches of government. Where we disagree, Madam Speaker, is how we go about accomplishing that goal. What is going to be the proper remedy? All throughout the proceedings, if you watched it on TV, you saw that there was a lot of talk about the court's moral authority. What that means is the court's ability to command respect for its actions. The court isn't unique in this. All three branches have the same type of authority and I'd just like to add, Madam Speaker, right here, that in my opinion none of the three branches of government in the state have escaped this unscathed. We've all lost a little bit of our moral authority. The legislature has lost a little bit. I've had more people talk to me about what were those two legislators thinking when they were making phone calls to the Chief Justice to influence a court case that they had an interest in? That is exactly the sort of thing that people distrust politicians about. And sadly, in my opinion, I think that the executive branch has lost a little bit of its moral authority. I'm not going to rail against the Attorney General's office. I have the utmost respect for Attorney General McLaughlin. I even worked there last summer in that office and there are good people in that office, but I do think that there are circumstances surrounding the report and the issuance of it and how the investigation was conducted that leave questions to people and erodes a little bit of that confidence. Also in the executive branch I don't think that the Governor has escaped unscathed. When she has her emissary calling the Chief Justice two days after the Attorney General's report is issued, basically with an offer to resign and get out now before the facts have been heard, before it comes to the legislature, to me that is jumping the gun. That being said, the question still remains, how do we remedy the problem? Madam Speaker, it is the minority's belief that no single act of the legislature will do anything to restore public confidence in the judiciary. Public confidence in the judiciary will only be restored by the members of the judiciary and the members of each branch acting in their own area and acting well. Madam Speaker, in this case, if the House were to vote for impeachment and if the Senate followed through with the next logical step to convict and remove from office that will not remedy the problem. It may make some people feel better. It will feel like we've punished one of the judges. It will feel like we've gotten back somehow at David Brock. But, Madam Speaker, impeachment, and I think that the Chairman agrees with me, impeachment is not a punishment. Impeachment is a remedy for the state to take back an office. It is not designed to be a punishment. I want to give you just the non-lawyers thumbnail sketch on how to evaluate this and maybe it will help you not to make some of the mistakes I made in the past week. When we are looking at the articles of impeachment and we are listening to the elements, and you will have people talking about it all day, there is a two-step process that you have to measure the evidence against. The first one is, is it an impeachable offense, maladministration? That is the one ... (tape change) ... maladministration does not mean bad administration. What it means is something higher. It means, according to the only impeachment proceeding that we have had in New Hampshire, maladministration means willful and corrupt conduct. Willful and corrupt. What that means is intentional. You have to sit there and you have to decide if this conduct was intentional. The second one is whether or not this is clear and convincing evidence. Clear and convincing isn't 100 percent, it is about 75 to 85 percent. So, when you go through the process today, ask yourself how bad, very bad or not very bad; and how certain, very certain or pretty certain? It doesn't have to be beyond a reasonable doubt. The minority believes, Madam Speaker, that the far better result or remedy is for the three branches to come together, to work in cooperation to help solve some of these institutional problems. That, in my opinion, will engender more public confidence and a deeper appreciation from the public at large for their government and that is really what we are after here today. In closing, Madam Speaker, it was very hard for me to come up and admit that I was wrong today and to do so in such a public forum. But I remember how I felt the first time I stepped into this chamber and I actually remember how I felt the very first time I saw this chamber as a school child and the enormous sense of pride I have and I felt for being a member and it has been the biggest single honor of my life to date to serve in this body. But I also felt that it would have been for nothing and for naught if I saw something that I knew was wrong and I didn't stand up here

and point it out. For that reason, Madam Speaker, I will be voting against these articles of impeachment and even if I am the only one, I will do it because it is the right thing to do. Thank you.

Rep. Benjamin Moore: Thank you, Madam Speaker. I have a few comments to make. My wife and I spent probably 80 percent of the 650-plus hours that Channel 11 was on and here are some thoughts about those hearings and one of them that came to me all of a sudden in the middle of one of the days. It says, "Oh what a tangled web we weave when we practice to deceive." And then, following it, was an old dictionary definition of the word "trust", as in, we cannot trust those who have deceived us and comment on that was the feeling of being deceived was prevalent throughout most of the issues cited in the three articles of impeachment and also the recusal issue. There were other matters discussed that generated feelings of confusion and deceit. Whether any of the feelings of being deceived was an intentional effort on the part of all the justices or not cannot be proved, but the feeling was there and consider this, when the first justice testified all the subsequent justices knew the pattern of questioning to be expected as each of the justices testified, those following had a knowledge of all that had been said, and most had ample time to prepare for their turn to be questioned. How easy it would have been to give answers that would confuse, deceive and confound those who were listening. Comments about the Attorney General's investigation, he conducted the investigation in a way that was to reveal Justice Thayer's culpability, not to uncover the Supreme Court's misdeed. Of course, the result is evident by our presence here today. I don't intend to discuss the merits of the charges that have been made, you'll hear plenty of that. However, we cannot trust those who have deceived us. I certainly feel that we have been more than deceived and more than sufficiently deceived by those who are before us today and I think that you cannot place them back in a position where they can continue those practices. Therefore I shall support impeachment because they shouldn't be allowed to give this type of performance in the future. Thank you very much and God bless you.

Rep. Melcher: Thank you, Madam Speaker. I feel somewhat like Eliphaz in the Book of Job of whom it was said, "Who is this that darkeneth council?" I have nothing but praise for the Judiciary Committee, all of them. They have done a wonderful job. However, we are and have been and will be treated to the doubtfulness of the factuality of facts and the vagueness of definitions by which we can interpret those facts. I would like to introduce to you another idea and that is the complication that the role of our own emotional attitude toward justice makes. Justice, justice. Justice can achieve three good things. It can achieve the deterrence of the offense in the subsequent time. It can achieve the correction of the offender and the restitution to the victims. It can also serve one ignoble purpose, revenge. In this case, deterrence as already been made as likely as is ever possible. Correction of the offender, offenders, has already occurred in spades. There are no victims, restitution is moot. All that is left is revenge. The good we can do has been done. There remains only the sadistic pleasure of making an already chastened man suffer unnecessarily on account of our righteous rationalizations. Today we have the legal and moral opportunity to say, "Enough, already." Let's do it. That would be justice. Vote against impeachment. Thank you.

Rep. Hamel: Thank you, Madam Speaker. Ladies and gentlemen of the House, this is the first time I come here. It might be the last, who knows? I did not intend to speak. I am here today because one of the members of the Judiciary Committee asked me to in the sense that yesterday I did express my opinion at the public hearing on the bill that is being proposed. My point yesterday and I will repeat it today is that all of us have to adjust, judge, evaluate or whatever what is going on in the light of our lifestyle, of our life experience. My life experience has been military. If I had done something in my 18th year of service and I was court-martialed, I would be out. I would have no retirement nor would my wife or children. If I were in my 22nd year of military service and I goofed and I was up for court-martial charges, I could probably opt for retirement. I have passed that threshold of 20 years service. This is not the case with Mr. Brock. Very briefly, I am disappointed at the facts that have come out of the wrong-doings of commission and omission. I am disappointed at what might be called cover-up, or in other terms, lack of courage. I am disappointed at the recusal policy, to say that they

did it before me is specious. If this had happened two weeks, two months, six months after taking command of a unit and the Inspector General came by and found my unit deficient, I could say maybe, I inherited that. But, 14 years, that is a long pregnancy. That was his policy. The above three points are very serious. What bothers me even much more is the harm to the institution of the court. How can we mend, restore the moral authority of the court? If these justices remain in position, how would you feel if you were a litigant, an attorney, a judge being brought up on the carpet? Are they going to give you a fair shake? Tough question. I am also disturbed by the way they felt they had to bash the Attorney General's investigation. They were doing a job. Do you mean to say that they didn't understand what was going on? We are not that stupid or naïve, neither are they. There is one hero in this whole situation and that is Mr. Howard Zibel. He had the guts, the intestinal fortitude, the courage to report what he thought had to be reported. I hope we have equal fortitude, guts, courage to do what we have to do in this situation. Thank you, Madam Speaker. Thank you, members of the House.

Rep. Mirski: Thank you, Madam Speaker. Members of the House, I hope you take to heart the presentation by the Chair of the House Judiciary Committee. I don't think anyone in this room could do a better job in presenting the case against the court. The matter of recusals will be taken up in separate amendments later on so what I would just like to do, briefly, is speak to the issue of separation of powers because the question of the independence of the judiciary being harmed by this process has been raised. That is the theme that runs through the minority report in your calendar and I think we need to dispel a couple of myths. First of all, it is important to understand what the intent of the framers was at the time the document we are going to use today in these impeachment proceedings, when that document was drafted. It is important to remember that 225 years ago this summer, patriots in Portsmouth rolled a cannon up to Governor Wentworth's front door and suggested he take the next boat out of town, which he did. He went to Nova Scotia. Just six months earlier a collection of those same individuals showed up at the fort in New Castle and stole a bunch of gun powder which was later used, 225 years ago last month, at the Battle of Bunker Hill. There was a patriotic fervor here in this colony that was probably unexceeded in any other place in the nation, although most of what you will read was concerned with Virginia and Massachusetts. What people were doing here in the interest of self-governance and liberty was probably more dramatic than anywhere else and just as an aside, at Bunker Hill more men from New Hampshire showed up than any other colony. It was really a fight which this state precipitated, not only the height of battle but also the orderly retreat and the salvation of the combatants on the colonial side. One of the reasons that the fervor was so heightened against the crown, of course we have all read about the stamp act, but the judiciary at the time was integrally related to the political system of the day and if you don't believe that it's worth remembering that John Hutchinson in Massachusetts was Lieutenant Governor at the same time he was chief justice of the Massachusetts Supreme Court. The integration between the merchant class, the judiciary and the power elite all served the royal crown's interest. The principal effect on the average individual who lived in New Hampshire and farmed the soil was that the merchant class controlled the economy, the access to gold and silver, hard currency, and so farmers were essentially impoverished and forced to barter and so they hated the judiciary as it was constructed at that time. They hated the idea of an institutional judiciary. So when they got around to writing our constitution they did two things which are really remarkable. One, they created independent judges and they left the judiciary and all its aspects up to this House and the Senate behind us. There is no such thing as an institutional separate co-equal branch of government called the judiciary in New Hampshire. The language in Article 37 that says that the separation of powers ought to be kept apart as a free society will admit is an invitation to legislative oversight. It is not language that separates the judiciary from that oversight. In the appointment of judges, the Constitution says judges shall be appointed subject for good behavior. The Constitution does not say judges are appointed for life, it says they are appointed to good behavior, which further infers the legislative oversight of the judiciary. So what we are doing today does not tread on separation of powers. It is an appropriate oversight function of this institution and today rather than rolling

perhaps a cannon up to the front door of the court, perhaps we just need to send a bus over there and to remove a few people. Thank you, Madam Speaker.

Rep. Kennedy: Thank you, Madam Speaker. Madam Speaker, I rise in opposition to this. I am opposed to it for a couple of very good reasons. There are three major charges that are made. Let's look at the first one, lying under deposition. Dave Brock is an attorney, well educated, has been a judge for a number of years. Do you really honestly think the man is stupid? You have to have the incredulity to understand the man being stupid to knowing, willfully lie? His memory may not be too good, sometimes mine isn't, but I'm incredulous that the man would lie. The reputation that he has in his home town is 180 degrees opposite of that. He is considered one of the finest residents of the town, a nice little man he stays out of all controversy but he is helpful to those who need help. He is involved quietly, very much behind the scenes, but he doesn't make a note of that. They bring up the gas thing, 13 years and he is supposed to remember what went on, how, what, when and where? It seems to me that I believe Souter was the man that pulled that stunt, put it on fast track, so be it. I don't know what in God's name I did last week. How many of you can remember exactly what you did last week and are willingly to swear to it and come out line-by-line, item-by-item? You do the best you can. Last, but not least is the Thayer episode. Let us take a man who is earning almost a quarter of a million dollars a year as a judge and as a teacher in local and in other schools and what happens, his world collapses. He has lost his family, he's lost his house, he's lost his son, he's lost his job, he's lost his teaching job, he's out as a judge. There is a man at the pit of despair. Now, let's look at despair. My stepfather used to tell a story about a young Mexican boy many, many years ago in Texas, a young Mexican boy who was like most of them, worried more about being macho, got in a fight over his girlfriend and killed a boy. He was sentenced to hang, justified, and the boy lived up to it, up to the top of the stairs, up until he saw the rope. At that time he came apart at the seams and the grandfatherly old sheriff took him by the shoulders and said, "Miguel, we aren't going to hurt you or anything, aren't going to hurt you a bit, young fellow, just straighten up; it'll be all over in a minute, don't worry at all." The young fellow was able to straighten up and went the way he wanted to. Now, was the grandfatherly old sheriff guilty of lying, or was it an act of compassion? A number of months ago I came to you people for a little boy for the Make a Wish Foundation. You opened your hearts and your wallets, you were compassionate. That's all that judge Brock did. When he saw this man at the pit of depression said, "Oh God, no." He tried to avoid the issue by walking away. What more? Are we going to hang a man for compassion? If that is the high crime that we are going to hang people for in this place, God help us all. Now, you say about maladministration, I agree. I was the enfant terrible of the Fairbanks investigation. I filed the minority report that blew it sky high. When they wouldn't accept it, I published 50 copies of it and spread them around. There is much wrong with the courts. They have overstepped their bounds. But who is responsible? We are. We and we alone have the control, we are the authority and we have dodged it. Reminds me of a little poem. "I am not as brave as the lion, but I am braver than a hen and he who fights and runs away lives to fight again." That seems to be the motto we've had but it's pretty chicken, so the courts have consistently got a little worse, they've written laws, they re-wrote the constitution as the game warden over here has told you, all of this is there. But, to blame it on one man, to hold him out as a patsy, I think not. If you want to nail all of them for maladministration, that you may have the right to do, but not the rest of them. But while you are thinking of maladministration remember, the executive committee, the executive board of this wonderful state of ours did absolutely nothing. We haven't done much better. Yes, we sent one bill over to the Senate and they chickened out. So nothing has been done to control the judiciary. One man and one man alone has done anything and that man surprisingly enough was Dave Brock. He opened up a little bit, moving slowly, timidly. Anywhere near where he should have? Nope, absolutely not. But he and he alone made the motion, made the move and yet now we are to take him out and hang him as the patsy. Take away his good name, destroy him for life, throw his family into the ash heap, a man whom I have a tremendous amount of respect for. Although I thoroughly disagree with his behavior as a judge, as an administrator, as a court system down through the ages, but I cannot in good conscience chop off his head and that is what an impeachment is. Censure him if you wish, but remember he is the only one

who has even tried to clean up this mess. So, I hope you can see in your heart that small measure of compassion. Thank you.

Speaker: The question is on the adoption of the Resolution. Rep. Bickford notified the Clerk yesterday that he would request to have the question divided. So we will take up Article I at this time. We are on Article I. It is on page 1612.

Rep. John Pratt: Thank you, Madam Speaker. It is with a very heavy heart that I appear here this morning to ask for your support for the articles of impeachment that the Judiciary Committee has brought out. I admit to you, openly, that I admire Chief Justice Brock. I may be in the minority in this House, but I think that the courage that he showed in the Claremont case was exemplary. I think that case, in my judgement, will go down in New Hampshire history as the equivalent of Brown v. Board at the national level. I think he made that decision knowing that he would make enemies and he certainly did make enemies. But since a number of people have raised that issue with me I want to say to the whole House at this point, it is my impression that that case did not influence the members of the Judiciary Committee, pro or con. That the committee took the mandate you gave us, looked at the facts that were collected, wrestled with our consciences individually and did the best we could and you saw in my colleague, Mr. Withee, a few moments ago how wrenching this internal struggle has been. I simply say to him and to you this is an extraordinarily difficult matter for each of us. It is a matter for your conscience and for mine. I appear here today to support the articles because I believe first that the facts that committee gathered were sufficient to bring them before you and to send them on to the Senate for trial. I believe secondly that the bar which the committee has set is high enough that the facts require this chamber to send these articles forward. I do remind you, as our Chairman said earlier, the Constitution does not give this House the right remove the Chief Justice or anyone. It does not give this House the right to try anyone. Those two rights are reserved under Article 38 to the Senate. We are not here to try Chief Justice Brock or to convict him or to remove him. We are here only to determine whether the facts and the level are sufficiently high that we should send this on to the Senate where, if proved, they will take the action that the Constitution requires. I have been asked to speak on the first article which is the article dealing with something called the "Home Gas Case". It was, and you should know this, the most closely voted article by the Committee when we came to discussing articles. It was a 14 to 8 vote. Part of the reason for that is that as the Representative from Hopkinton said earlier, this is a 13-year-old matter. We were conscious that this was something that happened long ago and I would be the first to say to all my colleagues, if this were the only issue facing the House today or facing the Committee, I would not have supported it, in and of itself. But, it is not and others will speak on Articles II and III, but it is as part of an over all pattern and package, in my judgement, an impeachable offense. The Article has two parts to it. It says first that in 1987 the Chief Justice called Judge Douglas Gray at the Rockingham Court and talked about a case which Judge Gray had under advisement at that time. A case in his courtroom. We had probably, in the total of all the justices that came before us, a hundred years of experience on the bench, maybe more, much of it at the trial level, by Justice Gray, by Justice McHugh, all of Justice Batchelder's years as a trial judge, Justice Johnson's years. We asked them all and everyone without exception made the same statement, they had never heard of this being done before. They had never been the recipient of a call from a Supreme Court Justice. They had never, when they became a Justice, made such a call. They all said it was unusual and it certainly was unusual. My colleagues, what the Chief Justice is charged with doing is calling a Superior Court Judge and interjecting his presence, if you will, into that case. Judge Gray said, and you should know this, that the call did not influence him in the decision he made. But it is my judgement, and I think that of the majority of the committee, that the question wasn't whether it influenced Judge Gray. The question was whether such a call, made by the Chief Justice of New Hampshire to a trial judge was in and of itself an improper, unethical action. Was the possibility of changing the course of justice so great that it never, ever should have been made? Was it, in other words, more than a mere mistake? Was it more than an error of judgement? Was it an improper and an unethical action for the Chief Justice to take? Did it potentially compromise the

independence of the Superior Court? Those who voted for this article say, yes it did and that that conduct is so great that if the Senate finds it happened, it is impeachable. The second half of Article I says that the time came when Judge Gray's decision came before the Supreme Court for review. The Chief Justice did not inform his four colleagues at the time this case came before them that he had personally intervened in the "Home Gas Case". The integrity of the appellate process requires, in the judgement of the majority of this committee, requires that all five justices are operating off the same page and that all five are operating with total impartiality. And for one justice to have intervened personally, and not told the other four, destroys the integrity of the appellate process. In the opinion of a majority of the committee, that, too, is an impeachable offense. Now there are those that say that this case is too stale. There are those like the gentleman from Hopkinton who says that it is 13 years old and memories fade. But I want you to know that this decision was not made by us solely on the basis of present testimony, although we had lots of it. We have and we have produced, and if this goes to the Senate, we will produce to the Senate, documents that go back to 1987 and to 1989, the very letters that the Chief Justice wrote to the two Senators that Representative Withee spoke about earlier. Letters from each of the attorneys written in 1989 to Judge DiClerico of the Superior Court which then went on to become part of the record of the Supreme Court. Justice Gray's own recollections of what happened. Justice McHugh's own recollections of what happened, written in 1989. The Chief Justice's own memorandum of what happened, written in 1989. There is more than adequate first hand evidence for the trier of fact to examine. Someone else has said, "Well, what new can be learned? Don't we know everything we need to know?" I want to say two things to that. First, we are not the trier of fact, please remember that. Secondly, one of our colleagues on the Judiciary Committee stated very clearly there is no way, in her opinion, Judge Douglas Gray could not have known who Senator Edward Dupont was in 1987, and yet that is a key element in this whole matter. Judge Gray says he didn't learn who Dupont was until the Chief Justice called him and told him. The Chief Justice says, "I didn't make the call." If indeed the Senate can prove or it is proven in the Senate that Judge Gray knew who Edward Dupont was, it casts doubt on his testimony and casts support in the testimony of the Chief Justice. That's an element that is going to trial if it gets that far, but that is not our decision. The committee thought the evidence was there and the bar was high enough that you should have the right to vote an article on this matter, and I ask you to do so.

Speaker Sytek: Would the member yield to a question? Rep. Solow, you may inquire.

Rep. Solow: Thank you, Madam Speaker. Thank you, Representative Pratt. I think, if I heard you correctly, you said if this were the only issue, this would not lead you to vote for impeachment. That is my first question, to be sure I understood you correctly.

Rep. John Pratt: That is correct.

Rep. Solow: Can you definitively say that the facts are, as alleged in this article that the Chief placed the telephone call when in fact, in testimony, time and time again, nothing he said was more certain than that he did not make that call. That he called the Clerk of the Court, but he never, his word, never, called the Justice of the Court, the Judge of the Court, Judge Gray? I guess I'll leave my question there.

Rep. John Pratt: Thank you, Representative Solow. Obviously I cannot say with a hundred percent certainty that the Chief made that phone call. The Chief denies it, the Chief denies it, we need to be understanding about that. Judge Gray said he made the phone call. Judge McHugh says that contemporaneously to the time the phone call was made, Judge Gray came in and said, "Guess who just called me? The Chief Justice." Four judges of the New Hampshire Supreme Court, said they believed Judge Gray and Judge McHugh. This is exactly the kind of triable issue that a court deals with and this is why it needs to go to the Senate for exactly that trial. The American Judicial system which we got from the English and which goes back to 10 something or other, is the way in which

you test the facts in a case is by putting it to examination and cross-examination. That's the judicial form that we have adopted. That's the form that we're asking the House to send on to the Senate.

Rep. Solow: Thank you again, Representative Pratt. Is it not the case that we, as the Grand Inquest, are not the Grand Jury but in fact we are doing an investigation, not an inquest into a likely prosecution, that, in fact, that if we vote to impeach our very vote, if it passes by a majority, will in itself have determined that the actions that are believed to have been taken are so criminal, are so heinous, are so in league with treachery and bribery and corruption, that they rise to the level of an impeachable offense and, thereby won't we in voting to impeach already be passing a judgement and not simply throwing uncertainty to a trial in the Senate?

Rep. John Pratt: The answer to that question, Representative Solow, is a resounding no.

Speaker Sytek: Would the member yield to another question? Rep. Sapareto you may inquire.

Rep. Sapareto: Thank you, Madam Speaker. Representative, if I take my duty of finding clear and convincing evidence in this case, as is my duty, I have to look for something in the level of corruption or bribery or some malintent here. So what I need to know in helping myself to make this decision is what is the clear and convincing evidence that Justice Brock intended to influence Justice Gray's decision?

Rep. John Pratt: I'll take a slight quarrel with the word evil, but leaving that aside, I think you put it in there, but leaving that aside, I think the evidence is that Justice Gray testified that he received a phone call from the Chief Justice. That in the course of that phone call the Chief Justice informed him that one of the defendants in the case before him was a State Senator and I think the further evidence is that he informed him that the State Senate had before it the question of judicial pay raises.

Rep. Sapareto: Thank you. But my question, representative, is where is the clear and convincing evidence of the intent to influence?

Rep. John Pratt: In the phone call itself. I mean the question is – here let me go back – you have a phone call that no other justice has said, no other justice has ever made. No one can recall when a justice of the Supreme Court has called a Superior Court judge while a case ... (tape change) ... this took place. It was extraordinary. And, in the course of that conversation two key pieces of information were revealed to the trial judge. Your defendant is the number two man in the Senate and the Senate has your pay raise before it. I leave that to the House and to the Senate to decide what the intention of the Chief Justice was, but I think a logical inference can be made.

Speaker Sytek: Would the member yield to another question? Rep. Lozeau, you may inquire.

Rep. Lozeau: Thank you, Madam Speaker. Representative Pratt, based on the question by the member from Derry, I want to make sure that something is clarified. My understanding is under the constitution, there is no requirement for us to find anything by clear and convincing evidence, that that requirement is the standard that was adopted by the committee for the process of this, is that correct?

Rep. John Pratt: That is correct.

Speaker Sytek: Would the member yield to another question? Rep. Rosenfield, you may inquire.

Rep. Rosenfield: Part of my question revolves around the definition of Grand Jury versus Grand Inquest. As I understand it in reading the constitution, it is the requirement of the House to prosecute in the Senate and the House is going to bring – and to impeach means that we have a crime which reaches a level that requires the Senate to remove from office on the basis of this impeachment. How can we in the House, if, as you answered a previous question, you wanted to have the opportunity to have the Senate make the decision as to what is going on, how can we go and be the prosecuting attorney when we really don't know what our position is?

Rep. John Pratt: Government is messy. If someone were to rewrite the Constitution, you may try to separate out the Grand Inquest from the prosecutorial and the trial. For whatever reason, our forefathers thought that the House could do two things: it could serve as the Grand Inquest and if it found an impeachable offense, it could then turn around and prosecute that case before the Senate. That is the way in which it has written itself. So we do have a double function, or the House has. The first function which is that before us today is, is there an impeachable offense? If you vote yes to that then I believe it will be up to the Speaker to appoint managers and it will be up to the managers to do the very best job they can to present this case fairly, forthrightly to the Senate for trial.

Rep. Rosenfield: As I see it and as I read the constitution, in order for a case to reach the Senate, we have to be convinced that there was an offense which reaches a level of removal from office. I don't understand how members of the Judiciary Committee can say, well, we couldn't quite make up our minds, let's throw it in the lap of the Senate?

Rep. John Pratt: The first half I think is absolutely correct, the task is ours. The second half, all I can tell you is the committee, on three different articles, made up their mind, voted this was an impeachable offense and should be tried by the Senate. We did do that, we didn't do it lightly. We didn't do it without an awful lot of soul searching. We didn't do it without digging into our own conscience and now the task is yours as well as ours.

Speaker Sytek: Will the member yield to another question? Rep. Carol Moore, you may inquire.

Rep. Carol Moore: Thank you, Madam Speaker. Representative Pratt, I just wanted to be sure I understood what you said when you first began the part of your talk that had to do with this article. I thought I heard you say that had this article stood alone you might not have voted for impeachment based on this article, but because it was paired with two or three other articles, that influenced your decision. Did I hear correctly?

Rep. John Pratt: Yes, you did.

Rep. Carol Moore: I'm wondering since your committee decided to take up each article independently, why you would vote for Article I, knowing that you would have the chance to vote for other articles, when you have just told us that if it stood alone you wouldn't have supported it?

Rep. John Pratt: That is a very good question. The interesting part is that it was not the first article we voted on. The first article we voted on was perjury and the perjury article was the article which is now not called perjury, which is now, I think, Article III, and we debated that and that has both aspects of the Thayer v. Thayer divorce panel and the "Home Gas Case" built into it. That Article was passed and then we went to the "Home Gas Case" and then we went to the Thayer v. Thayer case.

Rep. Carol Moore: Well, I erred in insinuating that it was the first article you voted on, but I would still ask you since each article was voted on by your committee to stand alone, why you would tell us that if it were the only article you would not have supported impeachment for Article I? I don't care

what order you voted in and I may have misspoken, but I am still interested in knowing as an article unto itself, why when you are telling us you don't think it rises to the level of impeachment, are you now standing here supporting that?

Rep. John Pratt: Well, that's not the first time I got myself into trouble, it won't be the last. I do think Article I rises to the level impeachment. I do think it is part of a pattern and practice taken into conjunction with the other two articles which makes it valid. I did say, and I stand by that, and I sure that many members of my committee would disagree with me, if this was the only thing that we had before us, a thirteen-year-old matter, I would be most reluctant, even though I thought it was impeachable, to vote for an article of impeachment, that's what I was trying to say. If that is contradictory, that's me, I apologize.

Speaker Sytek: Will the member yield to another question? Rep. Picconi, you may inquire.

Rep. Picconi: Thank you, Madam Speaker. This is the first time I've been here, so if I sound nervous, I am. Representative Pratt, my question is did we take from 1999 and go back to 1987 to find the "Home Gas" question, or did that occur in our investigation and we didn't have the information from 1987 to 1999?

Rep. John Pratt: Thank you for the question, Representative Picconi, and I apologize to the House for not making that clear and I should have. We did not seek this case out. Mr. Justice Johnson brought a sealed envelope and gave it to Mr. Steinfield during his testimony. Mr. Justice Horton made references to this matter during his testimony. I can tell you that it was only with the greatest reluctance that Mr. Steinfield opened the issue and, indeed, when Mr. Justice Thayer was before us, I may get in trouble again, I do not believe the committee questioned him on "Home Gas". I'm looking for Mr. Steinfield to disabuse me of that, but I believe that's the case. I think "Home Gas" did not come up in our depositions until the Chief Justice was there and it became obvious that it was a matter that we had to go into. He is not throwing things at me so I'll let that stand until somebody corrects me.

Rep. Picconi: One last question. Did we have the authority, as a committee, to investigate any transactions that occurred between 1987 and 1999 and is it plausible that there could have been transactions in that 12-year period that could have also been included in this?

Rep. John Pratt: The mandate which the house gave the committee under HR 50 required us to investigate matters from the Attorney General's report or other matters that come from that investigation. The "Home Gas" case came from that investigation. We did not, as a committee, go over and search the files. First of all, we had no entree into the JCC so we can not tell you what is in their files. Secondly, the only files which we did search, and I think I'm correct on this, were files that related to matters that were before us, such as other instances where judges spoke after they had been recused or other instances where there were writings by judges on draft opinions, etc. But we did not make a general hunt of the 12 or 14 years, or even the 25 years of the Chief Justice's tenure on the Court.

Speaker Sytek: Will the member yield to another question? Rep. Pitts, you may inquire.

Rep. Pitts: Thank you, I'll make it quick. I'm trying to understand the testimony. In the testimony I thought I heard you say that a call was probably made and that Justice Gray testified to that but that when he came out into open chamber he said, "Guess who I just had a call from?" Would that have been his public disclosure of that call and if there were other justices aware that the call had been made since it had been announced, would it have been incumbent upon them if they thought it was a serious offense to do something at that time and not come forward 13 years later?

Rep. John Pratt: That is a very good question, let me take it in two parts. The testimony was that Judge Gray received the call and went across to Judge McHugh's chambers where he was giving dictation to his reporter and said, "Guess who just called me?" or "Guess who I just had a call from?" So it wasn't in open court room that he made the statement, it was to an other judge in his own chambers. I think it probably could have been a closed question if Judge Gray had felt that it was an improper influence at that time that he could have reported it to the JCC. He did not do so.

Speaker Sytek: Will the member yield to another question? Rep. Sabella, you may inquire.

Rep. Sabella: Thank you, Madam Speaker. Thank you, Representative Pratt. Two questions. Who was deposed first, Justice Gray or Justice Brock and if one of them said the phone call was made and one said it wasn't, why did you go with one and not the other?

Rep. John Pratt: Thank you, Representative Sabella. First of all you need to know that both, that in 1989 Justice Gray wrote a letter to Justice DiClerico, the acting Chief Justice of the Superior Court, and stated that the phone call had been made. That was in 1989. In 1989, the Chief Justice stated, first in a conference room, or in his chambers when the judges had all gathered there with Justice Gray, "No, I did not make that phone call." Secondly, he stated it in a memorandum which he wrote in May of 1989, so there is ample evidence that there was a conflict between these two back in 1989. The Supreme Court, the four additional justices, the four other justices, then went back to Justice DiClerico and said, "We want to know more about this," and asked him to conduct a second inquiry and it was at that inquiry that he asked Justice McHugh for his recollections and received the letter from Justice McHugh which went back to the court. All of this became part of the record that the Supreme Court has, it's this big, of the letter that was sent written, we believe, by Justice Souter to the Judicial Conduct Committee in 1989. In terms of the last part of your question, who was deposed first, Justice Gray was deposed before Justice Brock.

Rep. Dokmo: (blank spot on tape) Our constitution has given four reasons to impeach a justice, corruption, bribery, maladministration and malpractice. Chief Justice Brock is being accused of committing maladministration and malpractice. Well, what is maladministration? It sounds like maladministration to me. No, that is not what it is. If you read the interim report of our special counsel, it is very clear what maladministration is not. It is not poor judgement, it is not sloppy administration, it is not human error. It is intentional misconduct that may rise to a criminal offense. It is close to criminal offense. It is an individual doing something intentionally and trying to harm as a result of that action. It is certainly not an inadvertent, ill advised or even stupid action on the part of an individual. Alright, that gets us part way to what maladministration or malpractice might be. We need to look at the constitution and we need to see the words that are listed along with maladministration, that is bribery and corruption, because statutory construction tells us if a word is vague what we must do is interpret it in harmony with its fellow members, its sisters or brothers. Its sisters and brothers are bribery and corruption. Those are not mere errors, those are intentional and criminal wrongdoings. So, maladministration must rise to that type of level, it is a serious act or acts. Again, it is not unintentional mistakes and human error and that is extremely important. The third place we need to look, to determine what maladministration is, is the reasons why other justices and other public officials have been impeached and if you read the interim report carefully, you will see a list of dozens of individuals who have been impeached or who have attempted to be impeached and when you look at what they did, you will see that what Chief Justice Brock did, if he did it, doesn't come close to those things. We are talking extortion, we're talking drug use, we're talking about constant drunkenness on the bench. We're talking about doing things that are intentionally done to enrich the person, doing something that, if not criminal, is almost criminal. Doing something that tells everybody, in clear and convincing language, that this person is not fit to sit on the bench and I suggest to you that when you look over the facts of Article I and hopefully Articles II and III, but I'm concentrating on I because that's what we're voting on, I suggest to you that you will not see maladministration. You will see facts that might indicate that Chief Justice

Brock 13 years ago picked up the phone and called a Superior Court Judge. If you read the facts, it is uncontroverted that nobody thought that Chief Justice Brock was trying to interfere in the outcome of that case, that he made it perfectly clear to Judge Gray that all he wanted to know was the status of the case. He didn't want to know how the judge was going to find, he didn't want to interfere with that. That was also found by our Supreme Court when they investigated the incident two years later. They concluded that he made the call but that there was no intent and no ethical violation because he did not, in fact, interfere with that case. So, where is the intent, where is the maladministration? Perhaps he made a poor judgement in making that call, but he didn't do it for a reason to harm, he didn't do it for a reason to cause criminal activity, he certainly didn't do it for a reason to enrich himself. Now, my good friend from Walpole has indicated the second part of the charge is that the judge failed to tell his fellow justices on the Supreme Court that he had made the call. Well, first of all, Judge Brock, two years after the incident and today, 13 years later, has adamantly denied he made the call. He has insisted that he called Ralph Taylor who was a Clerk of the Court and Ralph Taylor has confirmed that Justice Brock did, indeed, call him and that Justice Brock did, indeed, make it very clear that he was only interested in the status of the case, that he was not interested in interfering and he was not interested in affecting the outcome of that case. That is in the record. When the Supreme Court looked at this matter two years later, they did conclude that Justice Brock made the call. But when they concluded it they only spoke to a Judge McHugh who you have heard about. They didn't bother to call Ralph Taylor and ask him whether or not a call had been made and they didn't bother to call the other witness to this supposed admission by Judge Gray that the call had been made and that was a court reporter. If the Supreme Court had been very concerned about that call they would have continued that investigation but you need to remember the focus of that Supreme Court investigation was two entirely unethical and inappropriate comments made by Judge Gray during the course of that trial and that is what the Supreme Court was concerned about, that is what they reported on. They were not reporting on Chief Justice Brock, that was just in mitigation of their recommendation to the Judicial Council that on two occasions Judge Gray had committed ethical violations and I think that is really important for everyone to understand. Justice Gray had made some utterances during the course of this litigation which severely questioned his impartiality and that is really what the investigation was all about. If the Supreme Court had decided that Chief Justice Brock did something unethical and inappropriate, they would have reported it, too, because you have to remember they didn't need to report any of this, that the time period had passed and if they had not reported it, it would have gone into history and no one would have known. But they felt it was their ethical obligation that they had to report it. And again, I want to stress that this was a court in which sat not only Justice Brock and Justice Thayer but Justice Johnson, Justice Batchelder and Justice David Souter and they were convinced, 11 years ago, that what Chief Justice Brock did was not intended to influence and was not an ethical violation. And the reason why this is so important, that you really take what Justice Brock supposedly did and balance it against the definition of maladministration is, it is extraordinarily and I can not stress this enough, it is extraordinarily important what your actions do today because they will have a long-term impact on our judicial system. They will have an immediate impact on David A. Brock and for that I'm sorry, but my biggest concern and has been all along is the effect that it will have on the judiciary. If we are going to impeach a justice for making a phone call 13 years ago when he was a brand new Chief Justice by the way, and had never gone through a budget process before, he was just kind of learning the ropes of being a Chief Justice, if we are going to impeach a justice for making an ill-advised phone call that everyone says was not intended nor did it effect anything in the court system, then who is next? Today we're going to have two other motions for impeachment for two other justices and I submit to you that if we impeach David Brock for this minor matter, I'm not saying that if he did it he shouldn't have done it, if we impeach a justice for that matter then we are opening up the flood gates for impeachment resolution after impeachment resolution and there are some people that might think that is great because they don't like the court system but let me tell you, the court system is the only system that is not elected. You gentlemen and ladies represent the will of the majority, the governor's office does too because we need to run for re-election every two years, but our system of government and the beauty of our system of government rests upon the notion that

minority rights trump the majority rule. It is the Supreme Court and the courts of this land and in this state that guard your individual and minority rights. It is the Supreme Court that you will go to to declare that you have the right of free speech. It is the Supreme Court that the Manchester Union Leader will go to to preserve the right of freedom of press. It is the Supreme Court that all of you will go to to be allowed to practice your religion whether 99.9% of the people in this state or country think that you shouldn't be able to do it. It is the Supreme Court that you will go to to uphold your right to bear arms. You can not take an action that will automatically send a wound to that branch of government because to do so will impair your ability to defend yourself and to have your rights as individual citizens upheld. I can not stress this enough. The balance of power between the three branches of government is delicate. It can't be upended for a mere phone call 13 years ago which comes nowhere close to meeting the definition of maladministration. I ask you to put aside your dislike of the court if you have it. I ask you to put aside all your frustrations that we've all felt these last several years with some court decisions and I ask you to look at the facts and look at the law and realize the impact of this vote, not on David Brock but on this state and I beg you to vote no on Article I. Thank you.

Speaker Sytek: Would the member yield to questions? Rep. Alger, you may inquire.

Rep. Alger: Thank you, Madam Speaker. Thank you, Representative. At the June 20th meeting of the Judiciary Committee, I noted that I believe that you asked the Attorney General a question and that was, "I find it very odd that you would notify the head of the Bar Association because I quite candidly, don't understand the purpose of that notification and I'm a member of the Bar." And his answer was, "Our Bar, as you are well aware, is a tightly controlled professional association, tightly controlled by the Supreme Court." Now, with that response and with that view, I would think you might agree with me that anyone who is a member of the Bar of New Hampshire who votes on this article favorably and the following articles is taking his career in hand, is taking his courage and is taking a risk, because even though there should be none, I think you are aware of the letter, for example, that Brock wrote to Representative Welch which could even be determined intimidating, his position in regard to the AG's report and other responses and if furthermore would you agree with me that if you are a member of the Bar and you vote against these articles, you could be considered to pander on this issue? Thank you.

Rep. Dokmo I would hope that any member of this body, including members of the Bar, will vote not because of economic, not because of professional and not because of political, i.e. election, consequences. I would hope each and every one of us would vote on the facts and I think that nobody would think of voting because of how it's going to affect their careers. I certainly am not.

Rep. Alger: Thank you for your thoughtful response, although I view it as somewhat naïve. I would only observe that that is the reason why I wrote a letter, would you believe, to the Ethics Committee and that letter plus the response of the Ethics Committee suggesting a conflict of interest form be signed, one way or the other, you can participate or not but at least state the basis for your participation?

Rep. Dokmo: Thank you.

Speaker Sytek: Will the member yield to another question? Rep. Wendelboe, you may inquire.

Rep. Wendelboe: Thank you, Madam Speaker. Representative Dokmo, since you brought up the "Home Gas" situation and the no harm, no foul sentiment, I think perhaps part of that story was left out and I'd like to fill that in and then ask you a question at the end. The issue that the Supreme Court justices looked into with the "Home Gas" was not initially the phone call, it was the comments that Justice Gray made, one of which, after he had ruled against Ed Dupont, was an off-the-cuff

remark about, "Gee, I guess I should have voted the other way, ruled the other way on this and we would have gotten a pay raise." And the other comment that he made was the statement to the council that he thought that the case had been handled specially for political reasons. The complaint was brought because of those two comments, not initially because of the phone calls. The phone calls came out as a result of the complaint when it finally came forward over a year later. Then would you agree that had Justice Gray, when that investigation was held, said that he, indeed, had been influenced by Justice Brock informing him that that case involved a powerful state senator and that there was a pay raise before them, had he said, "Yes, that did impact my decision and so I ruled for Ed Dupont," then would you agree that that would have been impeachable because the end result would have affected the decision? So, it is not necessarily, it is the phone call that would have triggered it and potentially could have changed his mind that is the important thing, the call should never have been made.

Rep. Dokmo: I think you need to look to the term maladministration and look to the fact that requires an intent to do harm, intentional misconduct, and so I don't agree with that. If Judge Brock did not intend to influence that case, if Judge Brock did not intend to cause any harm, I don't know that I could agree with you. But I also will say that it is still, there is a lot of information out there that suggests that Chief Justice Brock's original statement that he did not make the call might be accurate. I mean, I'm just, my argument really talked about if he did make the call. I mean you have to remember that Judge Gray mentioned that the call was made during a conversation with the Supreme Court and this was two years after the incident and he indicated that not only Judge McHugh was aware of this because Judge McHugh was told about it by Judge Gray, but also there was a clerk reporter there. When the Supreme Court investigated that particular charge, they only talked to Judge McHugh and, by his own testimony, two years later he didn't even know what the letter was about when he got it from Judge DiClerico asking what happened. He called Judge Gray and Judge Gray filled in his story and that supposedly jogged Judge McHugh's memory. So everything on the one side with Judge Gray is all from Judge Gray and we talked to the gentleman who was the transcriber and he placed the information about the call being made two years after the incident. He thought Judge Gray came out all excited about Chief Justice Brock calling him during the investigation of Judge Gray's comment. So, there are a lot of facts that really don't necessarily support the idea that that call was made. But, I'm saying in the worst case, if the call was made, there was no intent to change or alter the outcome of that case.

Speaker Sytek: Would the member yield to another question? Rep. Riley, you may inquire.

Rep. Riley: Thank you, Madam Chairman and thank you, Representative Dokmo. First of all let me say quickly, I want to congratulate every single member of the committee, the time they put in, the guts that they used in trying to get to the bottom of things, I could go on and on like that, the various virtues they have got. Two words we seem to be dealing with over and over and over again, assumption, presumption and I would put it to you that in the case of Judge Gray that here we have the assumptions over and over again. I can make some assumptions too, that would go like, that I assume that because he made a phone call that he said that in passing that he was just simply saying, "Sure, the guy is a state senator." But, I don't know that. My question is do you think then that the people who have said he didn't know, that they knew?

Rep. Dokmo: Excuse me, that he didn't know whose...

Rep. Riley: Let me restate it. Would you agree with me that the people who have said that Judge Gray did know why it was that he was being called by Justice Brock is that not a presumption?

Rep. Dokmo: He has stated that, if the call was made, that Judge Brock said to him that he was calling only to inquire about the status of the case and did not want to interfere in the case at all. That is the testimony that he gave. I can't make an assumption other than that what he said.

Rep. Riley: But, that's an assumption in itself, is it not?

Rep. Dokmo: That's his recollection and his interpretation. He is the one that supposedly received the call. I can't second guess what he thought. He told us what he thought. That's one of the problems, this happened 13 years ago. The best recollection we have is really the letter from the Supreme Court and that states that he had no intentions of interfering with that case and that Judge Gray agreed with that.

Rep. Riley: Do you wish, with me, that there were some factual things in all of this somewhere?

Rep. Dokmo: Well, I think it is a stretch to go back 13 years. Someone else said this, I mean my memory, I don't even remember what I did this morning, let alone what I did last year or 13 years ago and I think that's the problem. I think that what was done doesn't rise to the level of impeachment so the facts are, not that they are immaterial, but I'm assuming the worst, that the call was made and it's my belief that's not impeachable conduct. Thank you.

Speaker Sytek: Would the member yield to another question? Rep. Lynde, you may inquire.

Rep. Lynde: Thank you, Madam Speaker. Thank you, Representative Dokmo. I want to go to your statement that even if the call was made, it was just to inquire. I was reading one of today's papers and they are relating a case where a judge had made a call to inquire about a case involving his brother to the police department and it came to, I guess, the Supreme Court to deal with that and they found, whether or not his intent was to influence or just to get a status, they suspended him six months without pay. I realize we don't have that ability, we can only say impeach or not. I understand there was a question whether the call was made. How do you distinguish between those things because the court said it doesn't matter whether you intended, it is the impression of impropriety?

Rep. Dokmo: Well, first of all I think that, I want to be very clear on this because I don't want the groans from the audience, I think you have to understand when the Judicial Conduct Committee looks at a case, their threshold of finding sanctions is not as high as what it would take to have an impeachable offense because they don't have the right to remove a justice. They have the right to suspend a justice. The constitution says that a justice, to be removed from the bench, must be found to have committed maladministration, which includes intentional. It includes intentional wrongdoing. So we need to focus on was it intentional wrongdoing. The inquiry in the JCC matter, since it was a lower threshold, could say that it wasn't only your intent but what your actions look like. That you might not have had the intent, but it looked like that. It is really a difference between, to me, the level and the threshold that we as a House need to find. I guess that is the only way I can answer that.

Rep. Lynde: I think part of the things we all struggle with is what level do we hold people to and the impression, say, Superior Court level to a higher standard than the Supreme Court. I'm sure that is not the intent but apparently we don't have, it's like a one zero, I'm sorry I'm an engineer, you either impeach or you are not, so I guess that's a struggle we have here.

Rep. Dokmo: The only way I can put it, and again I'm no litigator, I really don't go into court so I'm not really good about these things, but the best analogy I can give you just on the spur of the moment is that it's the difference between the various degrees of homicide. To rise to one level, you

have to do some things and not do others, but to get all the way up to first-degree you've got to have that intent, that present intent and I just think it's the same thing. To get up to maladministration to impeach you have to have intentional acts of wrongdoing. And it's not just my opinion, read the special counsel's report, that's the sparse definitions we have, but that seems to be required.

Rep. Murphy: Thank you, Madam Speaker. I rise this morning in opposition to Article I. Now, I'll be frank with you, it gave me some problems to start with. It was the only one that I found that would come anywhere near reaching an impeachment status. It, as I understand it, and I think it's borne out by the majority report, is based on improper influence and that's all the argument we've received this morning. Now, improper influence, if proven, is a felony under our law which I can understand. You don't have to make any guesses as to what is the intent. It is an offense brought under 640, section 3, entitled "Improper Influence" and is a class B felony. I would propose, as far as I'm concerned, a felony crime is grounds for impeachment, if proven. Now, it has to follow a certain mechanical procedure in order to come to trial. The first one it has got to overcome is the statute of limitations. There is only one crime in New Hampshire that falls outside the statute of limitations and that is murder. All felonies fall within it, and a felony must be brought to trial within six years of its commission or it is ruled out of order by the statute of limitations. This offense, if it is brought today, is 11 years after its commission, so I would submit that under the statute of limitations, it must be tried, I would assume, under the procedures of 640 section 3 and the statute of limitations would apply and it would be subject to dismissal, in my opinion. Now, on the bare possibility that my inference can be overcome, I would point out that there was appointed at the time of this offense or shortly thereafter, a four-judge panel which investigated this procedure and came back with the declaration that Judge Brock had committed no wrong. Therefore, I would submit that this would also fall under Article 16, Part I of the New Hampshire Constitution on double jeopardy and would be subject to dismissal on those grounds. Now, in addition to those two mechanical problems that I've just outlined, there is at least one more serious problem to the prosecution of this case. The principal witness in this case is the only one in position to know exactly what was discussed in the telephone conversation between Justice Brock and Judge Gray. Madam Speaker, with your permission I would like to read one question and answer from Douglas Gray's deposition. I read from page 34 of the deposition. The question posed by Attorney Steinfield, counsel for the Judiciary, and this question was posed during his inquiry into this particular telephone conversation, and he asks this question: "Did you think at the time that Chief Justice Brock was trying to influence your decision in this case?" Justice Gray replied in return the answer to that question, "I didn't get that impression, no." Now this, I would pose, would be a terrific problem for the prosecution of this to overcome and I'm sure the defense will find it and play it up properly. It is our job to put forward to the Senate these motions for impeachment and no prosecutor, I believe, would put forward this particular offense with the amount of problem he would have in trying to convince a trier of the fact that this should be tried. Thank you, Madam Speaker.

Rep. Phinzy: Thank you, Madam Speaker. In law there is a doctrine known as "laches". It requires a resolution of known crime or an alleged crime to be prosecuted and dealt with in a timely manner, lest evidence or recollection go stale and be lost or become so vague with time that it would do damage to the person accused. Now, in the case of "Home Gas" there is confusion and there is contradiction. This article, Article I, pleads invocation of this doctrine and pleads that we basically vote down this Article I and it pleads and argues in favor of laches. While the committee's counsel, and with his permission and the Speaker's permission I'd like to quote him and his final statement. With the committee's counsel, he considers that laches did not apply and I must respectfully disagree as I feel that his parameters are very narrow and they place constraints and limitations on a doctrine that is necessary to protect every person. With his permission I will quote him: "Here the Committee did not wait; it only learned of 'Home Gas' while pursuing its investigation, and thus there is no basis for invoking 'laches'." Now, I state and I feel that, in fact, this statement jeopardizes possibly one of the most important principles and protections within law. I cannot believe, and I mean this sincerely, that not one member of government was unaware of the events surrounding the

"Home Gas" affair prior to three or four weeks ago. My honorable colleague and friend and the man that I admire very much, Representative Pratt, states many things about an alleged phone call and there was much discussion earlier regarding a phone call. I can only submit to you all that it's very important to remember that it's very difficult to prove how one didn't make a phone call. Consistent with that I would like to remember and I would like Attorney Steinfield to remember that the interpretation of the doctrine of laches really is fair play and once again I will finish up the quote that Attorney Steinfield had made: "Nonetheless, whenever a dispute arises over something that may have occurred years earlier, issues of fundamental fairness inevitably arise." Now, some of you may think that I am a lily-livered Democrat and I want you to realize that last year, when evidence was clear and convincing to me, that I had voted to address Justice Brock over an issue that I thought was inappropriate. I feel that in this instance we have entirely too much confusion and we have entirely too much contradiction in order to permit me to accept this Article I as an article for impeachment. I would submit then that I cannot and will not vote in favor of a charge that would change and charge a man and treat any man in a manner less than we would expect ourselves from the courts that we are now criticizing. Thank you very much, Madam Speaker.

Speaker Sytek: Would the member yield to a question? Rep. Almy, you may inquire.

Rep. Almy: Thank you, Madam Speaker and thank you, Representative Phinizy for yielding the podium. Representative Phinizy, until Monday when I got the calendar I was going to vote to impeach and then I read the resolutions and the amendments that are being offered. Isn't it true that even though the constitution says that, does not say that we need clear and convincing evidence to send these articles over to the Senate, that each of these, the resolution and all of the amendments to it do say that we have clear and convincing evidence which I do not believe is true?

Rep. Phinizy: In a word, yes. I would state that that was one of the reasons why I felt that this was a very deficient article for impeachment. I do not find it clear nor do I find it convincing and particularly when we are dealing with a man's life and his livelihood, regardless of the individual, I feel that it is critically important that we even go beyond that level of proof. Thank you, very much.

Rep. Stritch: Thank you, Madam Speaker. Today, July 12th in this year 2000, a day that will live in history, for this noble body has joined today to witness and to judge the unfolding of troubling errors. It is said and shown that the desire, yes even the mandate of our forebearers, requires this of us, that we examine our co-equal third branch of government for trespasses against that code so carefully crafted two centuries ago. It is our task to judge in this first phase and in our task let us bring mercy and compassion as guidelines as to our findings. There have been errors, there have been mistakes, all of the human variety. There need to be corrections, many corrections. They and we need to engage with the common goal of one, recusal corrections; two, a truly independent conduct committee, a truly independent ethics committee... (tape change) ...institutional corrections of 73-a. Centuries will read what we say here today, what we do here today. History will examine over and over our words, our conduct and our compassion. Mercy and forgiveness, you know, fall from the sky like a ray of brilliant sunshine that warms those that say, "I forgive". I forgive until the 11th hour. If there be errors, there are; if there be arrogance, there was; if there be judgement mistakes, there was; as this unfolds I shall so conduct myself that as another 100 years shall pass they'll say that forgiveness was that ray of sunshine in this sorry affair. Thank you, Madam Speaker.

Rep. Mock: Thank you, Madam Speaker. How do you like this roller coaster ride? What you have heard today is exactly what we have been through for almost three months, I believe. You don't know whether you're there or you're not there. But, there is no confusion here. There isn't any confusion. There is no reason to feel confused because the House committee, our committee, the Judiciary Committee, we chose a burden of proof greater than a preponderance of the evidence, you know, a little over half, but less than beyond a reasonable doubt. We are not asking you to find any one guilty here. You're not supposed to be finding anyone guilty. This is not a trial. What we are saying is that

we raised the bar, really brought it up and if any one here is trying to tell me that this telephone call was not intentional, of course it was intentional. He dialed the telephone and made a call, we're alleging, to a Superior Court judge. Now, let's use some common sense. Exactly why do you suppose that call was made? It wasn't to discuss the Sunday golf game. It was a pay raise issue, it was a Senator, there were two Senators, let's use our common sense. Let's give the Senate a chance to make a decision. That's their job. It's not our job to convict and I hope that you will vote with that in mind. Use your head, use your heart and reach way down inside and vote your soul. Thank you.

Rep. Mock requested a roll call; sufficiently seconded.

The question being the adoption of Article I of House Resolution 51.

YEAS 219 NAYS 138

YEAS 219

BELKNAP

Bartlett, Gordon	Boyce, Robert	Czech, Stanley	Johnson, James
Lawton, David	Rice, Thomas	Rosen, Ralph	Russell, David
Salatiello, Thomas	Thomas, John	Turner, Robert	Wendelboe, Francine

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Kenney, Joseph	Lyman, L Randy	Mock, Henry
Patten, Betsey	Philbrick, Donald	Sullivan, P Judith	Torressen, Gary

CHESHIRE

Avery, Stephen	Batchelder, Robert	DePecol, Benjamin	Hunt, John
Lerandeau, Alfred	Manning, Joseph	Mitchell, McKim	Pratt, John
Richardson, Barbara	Roberts, William	Rose, William	Royce, H Charles
Russell, Ronald	Smith, Edwin	Zerba, Roger	

COOS

Davis, Perley	Gallus, John	Mears, Edgar	Pratt, Leighton
Holl, John Jr	Woodward, David		

GRAFTON

Akins, Ralph	Alger, John	Brothers, Richard	Cobb, John
Dudley, Terri	Gilman, G Michael	Hall, David	Harmon, Hobart
Hinman, Harry	MacNeil, Allen	Marshall, Gene	Mirski, Paul
Phinney, William	Picconi, Al	Scanlan, David	Ward, Brien
Weber, Phil			

HILLSBOROUGH

Alukonis, David	Arnold, Thomas Jr	Arthur, Rose	Baroody, Benjamin
Batula, Peter	Beaupre, Roland	Belvin, William	Bergeron, Lucien
Brundige, Robert	Bruno, Pierre	Buckley, Raymond	Calawa, Leon Jr
Chabot, Robert	Christiansen, Lars	Clegg, Robert Jr	Clemons, Jane
Cote, David	Cote, Peter	Coughlin, Pamela	Craig, James
Dawe, Eileen	Desmarais, Vivian	Desrosiers, William	Drabinowicz, A Theresa
Emerton, Lawrence	Fenton, James	Fields, Dennis	Fletcher, Richard
Franks, Suzan	Gagnon, Eugene	Ginsburg, Ruth	Gorman, Mary
Haley, Robert	Herman, Keith	Holley, Sylvia	Hunter, Bruce
Jean, Claudette	Jean, Loren	Keye, Harvey	Kurk, Neal
L'Heureux, Robert	LaPorte, George	LaRose, Richard	Lasky, Bette
Lefebvre, Roland	Leonard, Peter	Lessard, Rudy	Lozeau, Donnalee
Lynde, Harold	MacGillivray, Jeffrey	Martel, Andre	Martin, Mary Ellen
McCarthy, William	McDonald, James Sr	McGough, Tim	McRae, Karen
Mendenhall, Leslie	Mercer, Robert	Milligan, Robert	Moriarty, Mary
Mosher, William	Nolan-Piteri, Dawn	O'Hearn, Jane	Ouellette, Dean
Pepino, Leo	Peterson, Andrew	Reeves, Sandra	Sargent, Maxwell
Simon, Anthony	Tate, Joan	Thulander, O Alan	Vaillancourt, Steve

MERRIMACK

Hess, David	Langer, Ray	Larrabee, David Sr	Lavoie, Gerard
Leber, William	Marple, Richard	Soltani, Tony	Virtue, Carolyn
Whalley, Michael			

ROCKINGHAM

Arndt, Janet	Beaulieu, Jon	Belanger, Ronald	Bishop, Franklin
Bridle, Russell	Christie, Andrew Jr	Clark, Vivian	Cox, Russell

Dalrymple, Janeen	Dearborn, Bruce	Dowling, Patricia	Downing, Michael
Dunham, Vivian	Fesh, Robert	Flanagan, Natalie	Flanders, David
Flanders, John Sr	Francoeur, Sheila	Grant, Kenneth	Griffin, Mary
Hamel, Albert	Henderson, Warren	Hutchinson, Karen	Katsakiores, George
Katsakiores, Phyllis	Kelley, Jane	Kelley, William	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
McKinney, Betsy	Moore, Benjamin	Morse, Charles	Nowe, Mary Lou
Nowe, Ronald	Noyes, Richard	O'Keefe, Patricia	O'Neil, Michael
Packard, Sherman	Pantelakos, Laura	Priestley, Anne	Putnam, Ed II
Rabideau, Marie	Raynowska, Bernard	Reardon, Neil	Ruffner, Walter
Stickney, Nancy	Stone, Joseph	Tufts, J Arthur	Varrell, Thomas
Vaughn, Charles	Verani, Giovanni	Weare, Everett	Welch, David
Weyler, Kenneth	Whittier, John		

STRAFFORD

Cossette, Larry	DeChane, Marlene	Gilmore, Gary	Heon, Richard
Kaen, Naida	Lundborn, Raymond	McKinley, Robert	Rogers, Rose Marie
Rollo, Michael	Smith, Marjorie	Taylor, Kathleen	Wall, Janet
Woods, Phyllis			

SULLIVAN

Jones, Constance	Kibbey, David	Leone, Richard	Robb-Theroux, Amy
Young, David			

NAYS 138

BELKNAP

Holbrook, Robert	Millham, Alida	Pilliod, James	Wood, Jane
------------------	----------------	----------------	------------

CARROLL

None

CHESHIRE

Blaisdell, Michael	Burnham, Daniel	Doucette, Richard	Lynch, Margaret
Lynott, Margaret	Meader, David	Pratt, Irene	Riley, William
Robertson, Timothy			

COOS

Guay, Lawrence	Horton, Lynn	Landers, Dana	Merrill, Gerald
Rodrigue, Robert			

GRAFTON

Almy, Susan	Copenhaver, Marion	Eaton, Stephanie	Guest, Robert
Ham, Bonnie	Johnson, Gary	Nordgren, Sharon	Solow, Martha

HILLSBOROUGH

Ahern, Richard	Andrews, Frederick	Burkush, James	Carlson, Donald
Daigle, Robert	Dokmo, Cynthia	Dwyer, Paul Sr	Dyer, Merton
Flora, Kathleen	Ford, Nancy	Foster, Linda	Garrish, Linda
Goley, Jeffrey	Goulet, Maurice	Haettenschwiller, Alphonse	Hall, Betty
Hansen, Herbert	Herman, Richard	Johnson, Lionel	Leishman, Peter
McCarty, Winston	McColgan, Philip Jr	McDonough-Wallace, Alice	Melcher, Harold
Messier, Irene	Moran, Edward	Murphy, Robert	O'Connell, Timothy
Reidy, Frank	Rowe, Robert	Sarette, John	White, John
Withee, Dennis			

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Brewster, Richard
Chase, George	Crosby, Toni	Daneault, Gabriel	Fortnam, Janet
Fraser, Marilyn	Gile, Mary	Hager, Elizabeth	Hoadley, Elizabeth
Jacobson, Alf	Kennedy, Richard	Lockwood, Priscilla	Marshall, Kenneth
Maxfield, Roy	Moore, Carol	Owen, Derek	Potter, Frances
Poulin, Dave	Reardon, Tara	Rodd, Beth	Rosenfield, Jay
Seldin, Gloria	St Cyr, Gerard	Wallin, Jean	Wallner, Mary Jane
Whittemore, James	Yeaton, Charles		

ROCKINGHAM

Abbott, Dennis	Blanchard, MaryAnn	Case, Margaret	Clark, Martha
Cooney, Richard	DiFruscia, Anthony	Gibbons, Paul	Gleason, John
Hutchinson, Rebecca	Johnson, Robert	Kane, Cecelia	Lovejoy, Marian
Norelli, Terie	Pitts, Jacqueline	Sabella, Norma	Sapareto, Frank
Shelton, Richard	Shultis, Elizabeth	Splaine, James	Stritch, C Donald
Weatherspoon, Jackie	Zolla, William		

STRAFFORD

Berube, Roger	Bickford, David	Brennan, William	Brown, George
Brown, Julie	Callaghan, Frank	Dunlap, Patricia	Estabrook, Iris
Johnson, Nancy	Keans, Sandra	Knowles, William	Lent, Donald
Musler, George	Pelletier, Arthur	Pelletier, Marsha	Snyder, Clair
Torr, Franklin	Twardus, Joseph	Vachon, Dennis	Vincent, Francis

SULLIVAN

Allison, David	Cloutier, John	Donovan, Thomas Jr	Flint, Gordon Sr
Phinizy, James	Tuthill, John	Wiggins, Celestine	

and Article I was adopted.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

Rep. Carson did not vote and wished to be recorded against.

RECESS

(Speaker Sytek in the Chair)

Speaker Sytek: The question before the House now is the adoption of Article II. It is on page 1612.

Rep. Craig: Thank you, Madam Speaker. It's the story of my life. I speak and nobody shows up. Rep. Avery is here, he said, so I guess we can go. Like Representative Pratt this morning, I stand here today in favor of the House Judiciary's vote on impeachment on Article II. I do that very, very reluctantly and before I get into Article II, I'd just like to indicate where I stand on some of the things that went through my thought process. I heard the speeches this morning and the concerns about the court's moral authority and I share those concerns. But, I take the view that this process was put here by our forefathers to allow for problems like this to be worked out. You know, I'm a practicing attorney and I heard Representative Withee this morning speak about changing his mind and when he was speaking I said to myself, "Boy, would I love to do that." I'm a human being and I

want to belong, I want to be part, I want to be one of the guys, but maybe it's my wrestling alligators in court for 20 years and he just getting out of law school, but I can't do that. I can't take that way out. I respect him for his decision but I just can't do that. I said during one of the hearings, and this is true, that a couple of times, a few times in my legal career people have come up to me, clients of mine, and said, "Well, just go in the back and fix it, that's what happens all the times anyways." Every time that's happened, I've said, "That's not what happens. That's not the way it is and I don't play like that. If you want somebody, get another lawyer, if you want somebody to do that for you." I've never had that experience and I never want to have that experience. I remembered that as I was listening to the testimony. As I heard all the testimony throughout this proceeding, I thought about those people. I thought about lawyers who have been disbarred and the standards that they were held to and I just think that out of fairness to them and out of fairness to the attorneys that I work with, I just can't take the easy way out and say that we've got to drop this. I share everyone's compassion here. I spent a miserable last couple of weekends and there is nothing wrong with that. But, I wish he had stolen some money. It would make it nice and easy for everybody, but that's not the case. Like most of life we are dealing with gray areas. One other thing I want to mention, this is an editorial comment on my part. I've taken a lot of grief in newspapers and I've gotten writings from people that say, "Well, you're a lawyer." Somebody told me I looked like a plant for the New Hampshire Bar Association in the hearings. I just want to say here that I resent those remarks. That anyone would say to me that because you're a lawyer you can't do what you think is right, I deeply resent that. I said that in the hearings and I'll say it again today. I serve today with lawyers in this state and judges in this state who I think are the finest people in the world, not all of them but the great majority of them, and I would do a deal with a handshake with most of them. I want to say that and I think most people resent that, I mean we've been hearing lawyer jokes forever, but that's the truth. I want to make sure that, I want to turn that around. I'm sick of lawyer jokes. I'm sick of people saying just because you're something you don't have your own conscience. As we said in the abortion proceeding, the basic thing that I have to do is remember that I took an oath to that flag when I came in here to do what I thought was right in every situation and though I would rather not be here, this is the last place in the world I want to be right now, I guess I have to remember that again. With that as a preface I would like to talk about Article II and before I talk about Article II, which is the Thayer divorce case on February 4th this year, I want to talk a little bit about the "Home Gas" case because to my way of thinking they are intertwined in a sense that I got a sense of the Chief Justice and of the culture of the court from that first case, that "Home Gas" case. What I mean by that is this: I guess the majority of us feel that Judge Brock may have made that phone call. But, just those two articles from "Home Gas" are not the whole story of that "Home Gas" case. It is undisputed that there were two letters sent to the Chief Justice, or from the Chief Justice to Senator Bartlett in 1987 and to Senator Dupont in 1988. That second one in particular was in response to some comments, a conversation that Chief Justice had with Senator Dupont which took place within a week or two before a hearing that Senator Dupont was going to have in Rockingham Superior Court. To my mind, that's interference with a Judge. There is a statute RSA 640, interference with...I forget how it's phrased, but that was a crime. Certainly the argument is there that it was a crime. He called or he talked to the Chief Justice of the Supreme Court about his case and what happened was the Chief Justice talked to the entire court about it and said, "What should we do about this." So they sent him a letter saying, "Ask the judge to be recused or file a JCC complaint." We had a discussion at the hearings about that, "Do you think that was the right thing to do?" And he said, "Well, it's hardball politics, that's the way it's played." Well, maybe that's not an impeachable offense, but I think it's fair for you to get a flavor of maybe what was going on here. I don't think it's fair that he's held responsible entirely for the acts of that case, but we can't put Senator Bartlett up here, we can't put Senator Dupont up here, we can't put the other judges up here, he's the only one here. I agree that's not fair, but it is indicative, I think, of the man, a little bit. Then, as you've heard already, we didn't hear anything for the next ten years because we weren't charged with investigating what happened with Judge Brock and the court in the next ten years. But, the next time something happened, in 1989, I think, no 1999, was the Feld case, I think it was 1999, in the Feld case when Justice Thayer, they were talking about disbarment or whatever, what

kind of sanctions to give a couple of lawyers, Justice Thayer, who was recused, spoke on that matter and that was wrong. And what happened? The Chief Justice, that's when he said, "Confidentiality trumps everything else." And so, I look at the "Home Gas" case, which left a pit in my stomach, and then I look at that. I say, "Gee, what happened in the meantime?" Then, I hear about when Justice Thayer amended his financial disclosure and Howie Zibel was concerned about that and he went to Justice Johnson and Justice Johnson said, "Well, don't go to the Chief because he's going to say confidentiality trumps." I wonder about that and so that's the way I look at, with that background, I look at the Thayer proceedings which happened on February 4th of this year. So, although they are not entirely related, I don't think you can understand the entire process unless you look at the whole thing. So, February 4th, what happened? We've heard a lot about what's impeachable conduct and I would direct everyone to the interim report of Counselor Steinfield, he says that maladministration or malpractice is at least intentional, or reckless misconduct while serving in a position of public trust, intentional or reckless misconduct. It doesn't have to be a trial, it doesn't have to be the intention to commit some heinous act, even reckless misconduct. But, I heard somewhere along the way that, I think Gerald Ford said in one of the impeachment proceedings, federal ones, that it is basically whatever you think it is in your gut and I don't know that that's not true, that's true because we don't have an established definition. But you've also heard testimony this morning that drunkenness can be grounds for impeachment and I don't think you can impute an evil intent on a person for being drunk. As a matter of fact, it is probably a disease but nevertheless it is an impeachable offense. So, February 4th, I'm taking a long way around to February 4th, I guess, but that the committee found by clear and convincing evidence that on February 4th, Chief Justice Brock engaged in ex parte communications with Justice Thayer and other justices, all of whom had been recused, in which he solicited their comments regarding Superior Court judges to be appointed to the Supreme Court panel that would hear the appeal of the trial court's judgement. Now that, the committee has decided, is an impeachable offense and that by clear and convincing evidence it happened. The Chief Justice, the week before this February 4th conference, had been away to Texas to a judicial conference. He got back the night of February 4th at about 2:00 a.m. in the morning and he went to work sometime that morning of February 4th and there was scheduled what is called a screening conference at 1:30 and a council agenda right after that on that day and a council agenda is a meeting with Eileen Fox where they discuss legislative items, etc. While the Chief Justice was away at the conference, he had asked Howie Zibel to get a list of judges who could serve on the Thayer divorce appeal which had been filed with the court in January of that year. So there was the Thayer divorce appeal was up at the Supreme Court as of January and they needed a couple of judges because there was an original panel the year before for the Thayer case, but two of the judges had to get out. Judge Nadeau went to the Supreme Court so he was recused and one of the other judges had a problem so he couldn't. So, Judge Brock had to appoint two judges and he was within his right to do that. And so, he looked at the list sometime that day and then he walked down to go to that 1:30 conference and as he walked down to the conference he walked by Howie Zibel's office and he stuck his head in and this is pretty much undisputed, he stuck his head in and said, "I'm going to go with Judge Mangones and Judge Pappagianis for the Thayer divorce panel." Howie said, "Okay, I'll make the calls." So he walked on and he went to the screening conference. When he went to the screening conference that day there was nothing about the Thayer divorce on the agenda, either on the screening conference or on the council's agenda after. There was no reason for him to mention the Thayer divorce proceeding. Indeed, they went to the screening conference and as far as we know, nothing was mentioned about the Thayer divorce conference. After they finished that conference, they called for Eileen Fox, who is the court's counsel. She came into the deliberation room, the conference room where they have their conferences, and it was Eileen Fox, Judge Horton, Judge Broderick, Judge Thayer and the Chief Justice. Although he had no reason to say anything about the Thayer case, the first thing he said was, "By the way, I'm going with Pappagianis and Mangones with the Thayer divorce panel." Now, in that room were four judges recused from that Thayer case. Included in one of those four judges was a party to that case and he made that statement under those circumstances. The Chief Justice says that by saying that he was not soliciting any reaction. He expected nobody to say anything. We heard testimony about how distraught Justice Thayer was

about his divorce but still his testimony was that he did not expect any reaction. Well, he was wrong. There was conflicting, well not conflicting but everyone had a little recollection, but the Chief Justice himself, said that Justice Thayer, when he heard that jumped out of his seat and said, "No, not Pappagianis, you can't do that." And the Chief Justice said, "Aw come on, Steve, you can't object to that." Then I guess at that point Justice Horton used some now famous nautical language and said words to the effect that Justice Pappagianis was a problem too, because he was, what he said was a tight-ass, on ethical issues. Now, you would think that Justice Brock would say, "That's it, I made a mistake, but that's it. You people don't have any say, it's my decision and I'm doing it." And I guess that's what Justice Broderick said, "It's your call, Chief, do what you want." What he did was he got up and he went down to Howie Zibel's office and when he got there, Howie was on the phone with Judge Pappagianis and he had already called Judge Mangones and he stuck his head in Howie's door and he said, "Have you called Judge Pappagianis?" And he said, "He's on the phone right now." And I don't have the exact language, but he said, "He's on the phone now." It's disputed whether he said, "Could you stop it or can you slow it down, Howie, Sherm has an objection." And so, Howie Zibel said to Judge Pappagianis, "I'll call you back." At that point he goes back to the conference room and he asks Justice Thayer to leave the conference room. He asks Justice Horton what his problem was with Judge Pappagianis and at that point I think they straightened it out that Judge Horton thought he was talking about a JCC panel for Judge Thayer and not the Thayer divorce panel so he said, "Okay, understanding that I don't have a problem." Now, that's in effect Number 1 of Article II. He spoke to a room full of recused Judges without Mrs. Thayer having the benefit, and I don't mean to get into the Thayer divorce, but she did not have the benefit, of being in the room or having her counsel in that room. The other thing was, almost every judge except the Chief Judge said that somehow, either by body language or by words, he elicited comments from everyone. The Chief Judge said that, "I didn't" or "I didn't intend to, but if I did, well;" but everyone else said he did. So he was sitting in a room with recused judges and asking for comments from one of the people who was a party, who was directly affected by that particular case which they all knew was pending at the court. That's the essence of Article 1, and as I said, the Judiciary Committee felt by clear and convincing evidence that that rose to the level of impeachment. Now the story continues into Number 2 of Article II, which states that on February 4, 2000, Chief Justice Brock participated in an ex parte communication with Justice Thayer in the hallway outside the court's conference room in which the Chief Justice discussed possible appointments to the Supreme Court panel that would hear the appeal of the trial court's judgement. As I said, when he got back into the conference room, he asked Justice Thayer to step outside. That is undisputed. There was one court employee who testified that she went to the ladies' room and around that time she did in fact see Justice Thayer out in the hallway standing around which she thought was unusual because they were all supposed to be in the conference room. She exchanged pleasantries, she went to the ladies' room, came out a couple of minutes later, he was still standing there. Now, the import of that is that after they had their discussion inside, Justice Thayer testified that the Chief Justice came out to get him, came out in the hallway to get him. They had a conversation and the conversation, if I can find it, was, I'll read from Justice Thayer's deposition, "Chief Justice came out and said that Pappagianis was going to be on my divorce panel but that he would not appoint him to a panel involved in any Judicial Conduct Committee matters that arose, if any. He then asked me whether Judge Mangones had any problems," and he states that he explained that Judge Mangones was involved in his divorce prior and that he thought he had a conflict. Then the Chief Justice said, "What about Judge O'Neil?" Thayer said, "To my knowledge my wife and I have no conflict with Judge O'Neil." And he said something like, "Okay." and re-entered the conference room. If that's true, you could look at it that he rigged the Judicial Conduct Committee panel that was going to be hearing Thayer's case and he influenced the panel that would hear the Thayer divorce hearing. So, the question is, and I have to be honest with you, this part of the article is not as clear as the first part. Testimony is definitely conflicting in what happened and that's why it is important that you know about the "Home Gas" case, that you know about the Feld matter, because to a certain extent it's a credibility issue. Justice Brock said, when asked who went out to get Judge Thayer in the hallway, he said in his deposition, "We had to get Justice Thayer back in the conference room." How did you do that? "My best memory at this time is that I asked Eileen

Fox to ask somebody to find Justice Thayer and tell him to come back in the conference room. It's possible that I stepped out into the corridor and asked somebody to find him, but I do remember sitting at the conference table for two, possibly three minutes while we were waiting for Justice Thayer to come back in the room." A couple of pages later he was asked again who went out in the conference room to get him and he was asked, "Well did you go out to the corridor to get Justice Thayer yourself?" And he said, "I have no specific, oh, to get Justice Thayer? No, I absolutely never went out to get Justice Thayer." "Did you have any conversation with Justice Thayer in the hallway outside the conference room?" "Not in that hallway. I did have a conference with him later that day in the hallway." In that conversation later, he said he just told him that what you did was wrong, and that Pappagianis will be fair. So Judge Brock said, "Well, I may have gone out to ask somebody to get him," and then he said, "I never went out." Eileen Fox who was sitting there and had nothing to gain one way or the other and who was not ordinarily in those conferences, so I think the committee felt that she was more likely to remember what happened that day because it was not that usual an event for her. She said, from her deposition, page 61, "Now did you go out to get Justice Thayer or did the Chief Justice do so?"

"The Chief Justice did."

"How long was he out of the room?"

"I don't recall exactly, my, I guess my recollection is that there was no further discussion about the incident when they came back into the room, so I assumed that there was some conversation in the hall, but it seemed to me that they were out of the room just a short time."

"Apart from your assumption that there was some discussion outside the room, I assume you mean between the Chief Justice and Justice Thayer."

"Yes."

"And do you have any basis for that belief?"

"No, other than the fact that there was no discussion when they came back in the room."

So, what she was saying was, "I don't know what was said out there but I sure as heck know that I didn't go out that day," and when they came back, you would think if they didn't have a discussion they would have said, "Well, Steve, we're going to have Pappagianis on your panel." But, she was very clear and consistent all the way through that they said nothing, that they just sat down and started talking about the council agenda which would make you think, like she did, that they spoke in the hallway. Justice Horton doesn't remember anything, basically. But, he does say that, "My best recollection is that when the Chief Justice came back in he went right into the council agenda," and they didn't have any more discussion about the Thayer divorce panel. So, he in that sense, backs up Eileen Fox. Justice Broderick backs up the Chief. He says, "I don't exactly remember, but I have an image of Justice Thayer standing in the doorway, peeking his head in and then somebody asking him to come in again." So, there you have it, conflicting evidence. I can't say 100 percent that they had that conversation. But, I can tell you that the committee voted 16 to 6 that there was clear and convincing evidence that they had that conversation. I can't say 100 percent but that is what a trial is for. But I think, and obviously the majority of the committee felt, that the clear and convincing evidence was that number one, he spoke and invited comment in that room that day and number two, that he had a conversation with Justice Thayer about his JCC panel and about his divorce panel, without his wife or his wife's counsel present. Anyone out of law school knows you are not supposed to do that. The committee feels that that is an impeachable offense and there you have it.

Speaker Sytek: Would the member yield to questions? Rep. Solow you may inquire.

Rep. Solow: Thank you, Madam Speaker. Thank you, Representative Craig. Representative Craig, how can we believe anything you have said when, already, in your opening statements here, you said something that was not so and I'm telling you it was not so because it relates to an incident that involved me and I'm talking about your reporting the conversation that the Chief Justice had with Senator Dupont. You said that the response from Senator Dupont was, "That's hardball politics." That phrase was not made by Senator Dupont, it was made to me when I asked Justice Brock whether or not he felt threatened by the remarks that Senator Bartlett had made to him, so don't you agree with me it's clear, a) that there are varying memories of things, even something that happened as recently as when that deposition was taken a week or two ago and, b) that if you have put it out here to these members as something that actually happened, it subjects your credibility to scrutiny?

Rep. Craig: Well, I'm not going to tell you that I'm a hundred percent perfect, you're absolutely right, it was and I thought I said, that it was the Chief Justice who said they were playing hardball politics and that's part of the game. If I said otherwise, I misspoke, but you don't have to believe me, you've all got the material, it's all on the web, it's all in the reports, it's everywhere. You don't have to believe me if you don't want to. I extracted what's in those sources to the best of my ability. I'm a human being. I think I got most of it right, but I'm not going to tell you I got everything right, I'd be lying to you.

Rep. Solow: Madam Speaker, I need ... (tape change) ... and I in no way mean to call him anything other than an honest and forthright person, which he is. I brought this out because I want you to know how important it is that people's memories differ and people can honestly, honestly remember things differently and I happen to remember that particular incident because I happened to have been the person who asked the question. Please forgive me, Jim, if I've done anything or said anything I shouldn't have.

Rep. Craig: I didn't take any offense from anything you said, Representative Solow.

Speaker Sytek: Would the member yield to another question? Rep. Keans, you may inquire.

Rep. Keans: Thank you, Madam Speaker. Representative Craig, I have to take issue with something else you said, and you said Eileen Fox would have a much better memory of what went on in that room because she wasn't used to being there. But isn't the fact really that this was council agenda and this was what her job was, to be there and to present this agenda?

Rep. Craig: That is absolutely right. However, what I meant by that was that the justices have screening conferences and lots of other conferences that she is not privy to and so in that sense, you're right, once a month, I think it's once a month, they have a council agenda, but she is not privy and she does not sit in there on a regular basis like the justices do.

Rep. Keans: Then what you're telling me is, the words you said were accurate, you just have to put them in a new context. Isn't that what this case has been like from day one?

Rep. Craig: Well, except that I'm saying this once. We have it in transcripts several times from these proponents. I guess I did it again.

Rep. Keans: Representative Craig, I'm not talking about the transcripts, I'm talking about the answers and the reports and the information you just gave this body. How you, in effect, if we were to hold it to the letter of the linr, you misspoke. But when we give you further time to answer your

question and to context it, it comes out accurate. I think that is what this case has been like from day one.

Rep. Craig: Well, you know, I can't argue with that. All I can say is, is that is what a trial is for, because you are absolutely right, what I say and what you say when we see the same things, may be two different things. I didn't say that anything I said was a hundred percent correct, anything anybody said was a hundred percent correct because there are memories, but there are tests, cross-examination, etc.

Speaker Sytek: Would the member yield to another question? Rep. Alger, you may inquire.

Rep. Alger: Thank you, Madam Speaker. Thank you, Representative. This morning, a representative asked, said, that the only thing left in this issue was revenge. So, Representative, I might ask you in your conscientious endeavors to discover the truth, is it your opinion that the only thing left is revenge, or are you reaching for a higher level in your decision to vote for this Article? Thank you.

Rep. Craig: Well, if you are asking me personally, and I guess that's all I can answer for, I don't have anything to be revengful about that. I feel I've made a good living as an attorney and people have always treated me with, I guess, the respect that I deserve, that they think I deserve, for the most part I'm a happy guy, including the Chief Justice. I'm nothing but sad about this whole thing and I don't know other people's motives. I suspect that maybe Claremont and past things, maybe Judge Fairbanks, has entered into some people's thinking. I think I would be lying if I said otherwise. But, that is the best answer I can give you with regards to my motives.

Speaker: Would the member yield to a question? Rep. Betty Hall, you may inquire.

Rep. Betty Hall: Thank you, Madam Speaker. Representative, what I really don't understand is why Justice Thayer, ex-Justice Thayer, was given immunity in this case, especially when he stated that he was going to bring the whole court down. Would you explain that to me? Why he was given immunity?

Rep. Craig: I don't think that I can. He was given immunity but we were, the committee, to the best of my recollection, we weren't given much information about that and it wasn't forthcoming. So, you know, that's another thing you should consider, too, when you consider Justice Thayer's testimony, that he was given immunity and that's been described as a license to kill by someone in the proceedings. So, if you want to consider that when you consider his credibility, that's fine. But, why he as given that immunity, I can't say. I'd just be speculating.

Speaker Sytek: Would the member yield to another question? Rep. Phinizy, you may inquire.

Rep. Phinizy: Thank you very much, Madam Speaker. I'd like to ask my honorable colleague a question. This is really a two part question if that would be acceptable. Do you remember specifically when Justice Brock, Mr. Chief Justice, returned from his conference the night before?

Rep. Craig: I'm pretty sure the testimony was 2:00 a.m. or 2:30 a.m., but I think it was 2:00 a.m.

Rep. Phinizy: So assuming that it was 2:00 a.m., then it would be reasonable also to assume that he could be subject to making an honest mistake not having been able to review the docket for the next day. Would that be a safe assumption?

Rep. Craig: Well, I tried to check that and in his deposition he said that he spent the morning preparing for the screening conference and he didn't say what time he went to work. I don't know whether he did that at home. He could have slept till 10:00, I don't know, I couldn't find it in his deposition so I can't answer that.

Rep. Phinizy: Then it would be safe to say that based on the fact that he got in terribly late, and based on the very simple fact that he probably had a sufficient workload and they had a considerable workload that week, that he could have made an honest mistake that morning?

Rep. Craig: I would say that that's an inference that can be drawn by the evidence we have.

Speaker Sytek: Would the member yield to another question? Rep. Sabella. you may inquire.

Rep. Sabella: Thank you, Madam Speaker. Thank you, Representative Craig. I'm very disturbed that I have, I've read the depositions, and I'm very disturbed that I've heard several, I don't want to use the word lies, I'll use the word misstatements, from members of the Judiciary Committee and the Representative who gave the parliamentary inquiry in support of supporting this first charge or whatever it is. Most of us came up here this morning with somewhat a predisposed leaning one way or the other on I, II or III. My question is for the Representatives who have not read the depositions or who are inclined to be less careful, how can we stop or prevent people from saying, this was said by this person when it wasn't? Do we have to have, would it help to have, all the depositions here? I'm very, very upset about this. How can we solve it?

Rep. Craig: Well, Representative Sabella, I guess the only answer I can give you is that I'm, in a sense, subject to cross-examination. Two of my colleagues have come up and told me when I made a misstatement, so I guess that's, if you haven't read anything, then that's your only spell-check here.

Rep. Rowe: Thank you, Madam Speaker and I thank the honorable members. I will be brief today, even though this is a most solemn matter and one of the reasons I'll be brief is pure selfishness. This is a very emotional matter for myself and every single member of the committee. I know all of the members of the committee spent sleeplessness nights. They got up, they couldn't sleep, they studied, they worked very, very hard. It has been troubling to them. They are sincere, hardworking. I do, however, disagree with them on Article II and I would ask that you vote against Article II. I'm not going to repeat the facts that Representative Craig gave because they are basically true. I would like you to understand them in my eyes. But first, let me say that I am a Representative that believes that we have a good judicial system. But, I do emphatically believe in judicial reform. We need more reform so that the public has the best possible judiciary that is possible, in any country in the world and we should work for that. I know, for a fact, as Sherm Horton said on this investigation, "It is good that in any institution, including the court, that sometimes we open up the lid of the pot, peer in and stir it up." That's what we did and we have found out that there is a great number of things that need to be changed and will be changed. There is another good aspect of the impeachment investigation and that is that every single one of you, every member of the public and every lawyer in the State of New Hampshire has finally had an opportunity to see a judge, speak with a judge, have them answer questions and understand how the court works. Do you understand that I think there are very few attorneys that really, but before this, understood how the court worked? But, why am I against this impeachment? I'm against it for philosophical reasons. First of all, we have to be extremely careful in impeachment. It is the last resort. Every single state in this country is looking at us, they are viewing us. We don't want to set the bar of impeachment too low. We in the Judiciary Committee had very little to go on. We had no New Hampshire guide, two hundred and ten years ago they didn't write very swiftly with quill pens, even if the records were available. But there are only 20 or so impeachments of state judges in the history of our country. There is very little standard to go by. What we do here today will set the guideline, the standard for all states to follow and we

should be, therefore, very, very careful. Now, there are four reasons for impeachment: bribery, corruption, malpractice, maladministration. Well, it certainly wasn't bribery or corruption. Malpractice, maladministration? The definition of that is mal, malice from the Latin, which means evil, corrupt, evil intent, to inflict injury. None of that happened. If we could impeach for stupidity, we certainly should, because without a doubt the Supreme Court was run inefficiently and with stupidity but we can't impeach for that. A letter of address? Yes, that is possible. But this does not rise to the level of maladministration or malpractice. That is the reason why I'm asking you to vote against it. Stupidity, yes. Now, understand the Supreme Court. I'd like you to put yourself in the position of being a judge on the Supreme Court. Before you are appointed, you have hundreds of attorneys that call you. You speak to people, you have a dialogue, you meet clients. Once you become a member of the Supreme Court it's like going into a cocoon, Justice Horton mentioned it. Nobody calls you, no one talks to you, your old lawyer friends won't speak to you, they are afraid, you're too high. The judges you are going to judge, they won't speak to you. It's a very, very lonely job. You have five members there. Sooner or later they become like family and you treat them like family. Whether you treat them like a father or a brother, or I should say like a sibling, or a son or daughter, I don't know, but you treat them closely. You had the occurrence of the Thayer case, an outburst, an absolute unusual situation of having a judge being divorced and believe me, I don't think any of us, if we are going to get divorced, want a divorce like that. It was an outburst. Certainly Judge Brock had compassion and understanding for a fellow justice. He had an obligation under the law absolutely not to have an ex parte communication. But, rules of conduct, how many of us have gone speeding, crossed a solid line? We've all done it, but he showed compassion. He was wrong, absolutely wrong in doing it. I can understand how it happened. He was wrong. I don't believe that this is an impeachable offense and I would hope that you would also agree that on this occasion that we want, well, when we go to court, not only do you want the court to make a correct judgement of the facts and the law, don't we want the court to show understanding to each and every one of us, compassion to each and every one of us? I think we do. I think we ought to show that understanding today, the compassion today to Judge Brock. He did wrong but it is not impeachable. Set the impeachment level bar high, not low. Thank you. For the sake of time I will not accept any questions because I'm sure that any question will be answered by fellow speakers.

Rep. Soltani: Thank you, Madam Speaker. Madam Speaker, practical politics consists of disregarding the facts. I didn't make that up, that was written by that great American, Henry Adams in the early 18th century. That is the problem here with this article today. The only way we can vote it down is if we engage in practical politics and ignore the facts. The facts are there and are irrefutable. What are the facts? Well, we have Judge Brock, the Chief Justice of the Supreme Court, presiding over a case conference in which he raises the issue of selecting a panel to hear the appeal of the divorce of Judge Thayer. All of the judges in that court room were recused. By law he could not have raised that issue. He did. And all the testimony, except that of Judge Brock, indicates that he sought input. By law, he could not do that. Subsequently, he had a chat about who should sit on this fellow's appeal. He could not, by law, do that. He had a conference outside of the conference room with Judge Thayer, during which he discussed the names of the judges that would be acceptable to Judge Thayer for his appeal. By law, he could not do that. He did. I'm asking you today not to engage in practical politics because the New Hampshire House is way above that. This requires a principled judgement. This is a political process, not a legal process. I recognize that. But not all politics requires us to disregard the facts. Judith Thayer, the other party in the case, was not in the room, was not there. You see, that dichotomy that emerges from this pattern of behavior is repulsive to me, is repulsive beyond belief. The dichotomy that there are two classes of people that can resort to courts. One, the disadvantaged, the vulnerable, the poor, the peasants. The other one, the powerful, the invulnerable, the wealthy, the princes. This follows the immediately previous article and in this case, Judith Thayer was perceived as powerless. Therefore she was preyed upon. We can't allow that. We can't begin to wander down that road. Another great American said, "It's not that any particular class is incapable of governing." Lord Acton said, "All classes, any class is incapable of governing by themselves. We must include all classes." And in this particular case Judith Thayer's class was

excluded from the deliberation. There was horse-trading going on outside of the conference room while judges names were being bandied about and Judith Thayer was not represented. Judith Thayer did not have anything to say about that. That's wrong. It's against the rules of the court. It's against the law. That's dead wrong and we can't tolerate it. But, I can't leave the podium without addressing a couple of the points that were raised. One was, the standard would be lowered or we would somehow be violative of the constitutional mandate of maladministration, malpractice, corruption and bribery. The truth is we know, and the Judiciary Committee knew well, that when the United States Constitution was being framed, the same phrase was considered and it was James Madison who thought that the New Hampshire version of the verbiage was a lower threshold than the federal version, so the federal version was elevated to only allow impeachment for high crimes, misdemeanors, corruption and bribery. The New Hampshire version, which was passed after the federal constitution, after Madison had made it abundantly clear that it was a lower threshold than the federal constitution, established that lower threshold of maladministration, malpractice and don't let anybody kid you, malpractice and maladministration is exactly what you think it is. You are as knowledgeable about that as any Harvard or Yale graduate. It leaves it entirely to your conscience. Another one is, well we've got to be compassionate. Yes, judges on the bench are compassionate every day and juries are compassionate every day. Compassion does not require absolution. It does not require you to give somebody a pass after having violated the constitution. We can't do that. We can be nice to them, we don't have to humiliate them, but at the same time we need to correct and impeachment is a method of correction. Another bizarre one that I heard was, well, if we impeach for conduct such as this, then talented people won't want to be judges. Well, let me say it here and now, talented people who have this urge of trampling on people's rights, on violating the constitution and breaking the law repeatedly and failing to treat people equally, need not apply as judges in New Hampshire. We don't need talent like that. Madam Speaker, I know the time is late, but my personal beliefs require that I take questions if there are any raised. So, the only way to get rid of me is don't ask me questions.

Speaker Sytek: Representative Dudley, you may inquire.

Rep. Dudley: Thank you, Madam Speaker. Thank you, Representative Soltani for taking my question. It will be very brief. A statement was made by a Justice that no harm was done during the Thayer v. Thayer, February 4th conference. Would you agree? There are two parties involved in any divorce action and there was only one party at the conference, regarding the selection of judges at the Thayer v. Thayer February 4th conference. I'm sorry, this is my first time here and I'm nervous so if you can hear me it is probably just as well.

Rep. Soltani: You're a pro, Terri, don't let anybody kid you. Was there a victim? Of course there was a victim. The primary victim is the law, the rule of law. If we depart from it then it doesn't matter who is violated. In fact, Judge Brock, himself, wrote in the case of Judge Snow who was accused of malpractice or misbehavior that outcome is irrelevant when it comes to judicial misconduct. It doesn't matter if anybody gets killed or not. The truth is you engaged in judicial malpractice, you have to be corrected. Is there a true victim? Yes, Judith Thayer is the true victim. She was left out of the discussion and that is just not something we can tolerate.

Rep. Dudley: Would you further agree that harm was done to at least one person during this conference and in a broader sense to the people of New Hampshire, Judith Thayer represents John Q. Public as well as Jane Q. Public?

Rep. Soltani: To that I can say amen and hallelujah.

Speaker Sytek: Would the member yield to another question? Rep. Vaillancourt, you may inquire.

Rep. Vaillancourt: Thank you, Madam Speaker. On the day of your committee's deliberations I did manage to sit in for a couple of hours and I was so struck by the comment of one of your colleagues on the committee that I wrote it down with the hopes of asking someone for an opinion and since you're an attorney, I'll ask you. This individual said, "Justice Brock has delivered good opinions for 20 years, so we shouldn't impeach him." Does that make sense?

Rep. Soltani: The Representative is correct, my friend from Manchester. Having behaved properly for any duration of time, be it 10 years, 20 years, 30 years or a life time, does not absolve someone from being held responsible for their conduct. If a person said that, I'm sure they did, they didn't mean exactly that Judge Brock should be absolved, they were again asking for mercy. The right place, though, for that during the sentencing phase is in the Senate, not in the House of Representatives.

Speaker Sytek: Will the member yield to another question? Rep. Solow, you may inquire.

Rep. Solow: Thank you, Madam Speaker. Thank you, Representative Soltani. Representative, you know that you and I agree that it is important to get the facts and there is one thing you said that I'm unclear of as to its factual nature. You said all the justices were recused in the Thayer v. Thayer situation and at that conference. But, am I correct in remembering that that does not mean that they necessarily were recused from the ministerial duties which included appointment of substitute judges?

Rep. Soltani: I'm afraid the gentle lady is incorrect about that. The New Hampshire rule does not distinguish between ministerial or scrivener's acts than judicial acts. Nevertheless, even if it did the selection of a substitute judge is not a scrivener's act. It requires discretion on behalf of the actor and elevates it to a quasi judicial conduct. At the same time, the selection of a substitute, by New Hampshire law, is not the work of the judges as a group. It is the work of Chief Justice Brock exclusively. That's by law. Therefore, because he, himself, would have been recused then it would have fallen to the next person down, the Senior Justice, and because all the Senior Justices and in fact all the justices were recused, then by rule of necessity it would revert back to him. The only person who could make that decision under New Hampshire law is Justice Brock and all the others were, by law, excluded.

Rep. Solow: I appreciate being educated on the point. Thank you, very much.

Speaker Sytek: Would the member yield to another question. Rep. Sapareto, you may inquire.

Rep. Sapareto: Thank you, Madam Speaker. Thank you, Representative Soltani. My question, this goes to two areas that we have, this hinging around two ex parte communications, one is whether or not that in the hallway that this did occur. Now, from Representative DePecol's previous discussion with us, he mentioned that there was conflicting testimony on whether or not that conversation occurred. Now, did that, I mean, I'd like to know in your words whether that, what is the evidence that that did occur and number two is we talk about the ex parte communication where he walks back into the conference room and tells the other judges exactly who will be sitting on that case. Is that not public knowledge or if that is in turn an impeachable offense by ex parte, I'd like to know what those two questions, one is that considered an impeachable offense, one just because he said what the judges that sat on the case were? I would even get into whether or not that's a solicitation. And then number two is whether or not that that, is there clear and convincing evidence that that conversation occurred in the hallway?

Rep. Soltani: I'll do my best to answer it, but I've got to say I'm a little bit confused about the question. Is there evidence that the hallway conversation took place? Yes, it did. The evidence given by Justice Thayer confirms it and then we always look at inferences and corroboration. The

testimony given by Eileen Fox corroborates that although not conclusively, but it gives reasonable inferences. You have to realize that in law we always look to other factors. Seldom is the decedent, the murdered person, is around to answer the question, "Who killed you?" So we have to look at the facts that surround it, physical evidence and other testimonial evidence. In this case we look at the testimonial evidence. We have Thayer, we have Eileen Fox, the timing matches it. The only person that denies it is Justice Brock and we also look at, well, other motives to be truthful or are there motives not be truthful. That is one of the jury instructions that we give. Does Judge Brock have motives to forget the hallway conversation? As a human being, yes. I don't mean that in a bad way, you just don't want to remember some things and that is something that you want to erase from your memory banks. The second question, I don't know what it was, but you're right.

Rep. Sapareto: Thank you, Representative Soltani. The question is, whether or not a, just an announcement of who the justices that sit on a particular case, is an impeachable offense?

Rep. Soltani: An announcement by itself in violation of the New Hampshire statutes as well as canons of judicial conduct, in my opinion, yes; but worse than that, an announcement and invitation for input from recused justices definitely, yes, resoundingly yes.

Speaker Sytek: Would the member yield to another question? Rep. Wallin, you may inquire.

Rep. Wallin: Madam Speaker, I promise to be gentle. Madam Speaker, I wonder if I heard the member from Epsom correctly when I thought he said, and that is what a lot of is going on today and actually during the hearings and during the deliberation. I thought I heard him say that the time for charity and the time to be nice to Chief Justice Brock was in the Senate at the so-called sentencing phase of this whole deliberation and so what I heard him say when I heard those words was, we are going to go through a trial costing between \$300,000 to \$500,000 only to have the Senate not find the Chief Justice guilty because the evidence that we are going to bring and the prosecution we are going to carry on is going to be so flimsy.

Rep. Soltani: I'm afraid the gentle lady misunderstood what I said. The Senate is the body that imposes a sentence after conviction and the sentence could be from nothing all the way up to removal from office and deprivation of office of honor. That is entirely up to the Senate. During that phase they can consider the person's good service to the state and they can consider a person's character. Those are generally not the domain of the inquest or of the originating body. At the same time, though, if the Senate were to find not guilty, that is not the objective. We define our success as a government and as a people by the process that we follow, not necessarily by the outcome. Outcome to us as a people is irrelevant. Did we give this person fair process, did we stay loyal to the words of the constitution? If the Senate decides to not to convict, I'll be just as happy.

Rep. Wallin: So, one further question, Madam Speaker. Then the member from Epsom is absolving me from having not deliberated in earnest when I vote against this particular article, is that true?

Rep. Soltani: I don't want any misimpression. Each member of this House is vested with the ultimate power of deciding what an impeachable act is and deciding what burden of evidence is to apply and then deciding whether to vote to impeach or not. It is entirely a question of your conscience, nothing else, guided by your moral compass and you can look to rules in New Hampshire, laws of New Hampshire, statements of public policy to guide that moral compass. But, you are eternally answerable only to your conscience and don't let any lawyer kid you.

Rep. Wallin: Final question, Madam Speaker. The member from Epsom, probably in his second career, which I understand he was a member of the police force before that, probably should be

segueing into the religious area or perhaps the area where you give speeches to make people feel better because I really appreciate the instruction that you've been giving me.

Rep. Soltani: Madam Speaker, the gentle lady from Concord has repeatedly promised to be gentle with me and she has yet to live by it.

Speaker Sytek: Will the member yield to another question? Rep. Phinizy you may inquire.

Rep. Phinizy: Thank you, Madam Speaker. In your dissertation before the questions and during the questions you, my honorable friend from Epsom, you discussed things about input, motive and recusal, did you not? Well, you discussed these were aspects of this dissertation were they not?

Rep. Soltani: Sure.

Rep. Phinizy: Were they then, how do I want to characterize this, were they then sort of part of the entire thread of your argument? When we talk about ethics and all this kind of thing?

Rep. Soltani: Agreed.

Rep. Phinizy: What I would like to ask you then is how did you vote, now you're going say this bears no resemblance on this, but I'd like to ask you how you voted on the reprimand for Justice Horton, Mr. Justice Horton.

Rep. Soltani: I voted against all reprimands for any justice before conviction by the Senate. I don't believe we have the authority to do that.

Rep. Phinizy: That's fine, but including Mr. Justice Horton?

Rep. Soltani: On all of them. I made no distinction, I voted against any measure to reprimand or censure because we do not have the authority to do so.

Rep. Phinizy: Well, then final question, hopefully, Madam Speaker. I would like to ask you and I would be willing to read the statement that you made at those deliberations before the final day, did you not say, "I have to confess about the fact that I like Sherm Horton." And, would that not, as a result, require you to recuse yourself from voting one way or the other?

Rep. Soltani: No, and you need to take the whole thing in context. I was informing the other committee members that what I say may be tainted by my affinity for Judge Horton. I like him as a person. I've never had a drink with him. I've never been to any social gathering with him. I just like him and I needed to tell the other members that what I say may be shaded in favor of Judge Horton and that's all I was doing.

Rep. Phinizy: Then one further question, I apologize, Madam Speaker. Then at the pleasure of this audience and my fellow representatives, I will withdraw my question.

Rep. Soltani: You are a good man.

Rep. Eaton: Thank you, Madam Speaker. Valued colleagues, I'm impressed with the diligence of the Judiciary Committee and I'm impressed with the leadership of the Chairman of the Judiciary Committee. I was also impressed last week or ten days ago when we last met how the members of the Judiciary Committee rallied around the Chairman when he was challenged here. Madam

Speaker, the workings of the Judiciary Committee has been like the workings of a family. As I watched the hearings across the street, because I wanted to be there to watch the demeanor, to get a sense of the dynamics and the vitality and the looks and the whole flow or lack thereof. I was impressed with the Chairman because he let differing perceptions, perspectives, questions, interpretations, feelings and facts be expressed. But, then, when it was appropriate he stepped in and he moved the process forward. I believe there is an analogy, I believe there is a parallel, Madam Chairman, and just as an aside I think we need to remember, my perspective is usually a little bit different and it's back to basics. They say the law came from custom, the law came from what seemed to work with people and then they decided they needed to codify it and so we had written law. However, someone has said a long time ago, before you judge someone you need to walk in their shoes for a period of time, you need to have a sense of how they work, how they think, what their tradition has been. I believe that the workings in the New Hampshire Supreme Court can be likened to a family, where the five members, they can and they do express their perceptions, their perspectives, their interpretations, their feelings as a group. They sit around and they discuss the issues that are embroiled in the particular case that comes before them. And then the Chief Justice steps in and moves the process, that is part of his responsibility. This pattern has continued for decades and specifically, when Justice Thayer, uncharacteristically exclaimed emotionally about his replacement, when the Chief Justice named who that would be, like the head of a family, Chief Justice Brock let things simmer down for a bit and then he said, "My choice is and that is who it is." It didn't alter. One of the five Justices comes, I guess I want it to be because he is from the north country, where I'm from, one of the Justices, Judge Batchelder from Plymouth said about Judge Thayer when he was going through his emotional trauma, he said, "You know he talked a lot and we let him talk. It was like a family, but we let him talk but we didn't really listen." Madam Speaker, a family, be it the Judiciary Committee of 20 to 22 members or be it the five-member New Hampshire Supreme Court, accomplishes something by going through the pulls and tugs, by listening to one another. The boarder understanding we can have the better the product will be ultimately. I think it is important when you weigh the scales of justice and you look at a 25-year career, that's 12 governorships, to the substance, not the emotion, but the substance that we are looking at today and just as a postscript, it is also important to realize that we are at a crossroads. America has been described as being litigious and I can say this because I graduated from Frank's in 1990, ten years ago, Franklin Pierce Law School. We are in America described as being litigious; at the drop of a hat, let's go to court. Whereas Canada, Great Britain, negotiate. They say they are going to take the longer view. They know if they go to court on Friday and pull and tug they may still have to work with the people with whom they wrangled in court the Friday before on Monday morning. So just keep these things in mind, put them together. I know its important to look at the specifics, to look at the rules, but it is also important to put it into context of how we treat one another, that this is not a perfect world and if the ultimate goal is to make it better, I remember when I ran two state agencies here back from 1978 to 1984, they used to say, "Oh it's her fault. It's his fault." I said I don't want to hear that. What I want to hear is how we go from this day forward and to make it better and I think that is part of what we need to consider today. Thank you, Madam Speaker.

Rep. Solow: Thank you, Madam Speaker. Thank you, Representatives, for your patience in letting me appear in front of you so often. I feel so strongly about this that I must be sure that we are judging it on the facts. I brought up the question of memory and the correctness of memory because it is so important as we judge the facts and as we draw inferences here. Jim Craig did a fine job of laying out the facts on the Thayer v. Thayer episode which is what we are referring to in Article II. Let me talk about a couple of things. A large part of believing that there was an ex parte communication out in the hallway, a large part of that relies on your believing that Justice Thayer is a credible witness, and I want you to think about Justice Thayer and think about the fact that he resigned in order to avoid criminal indictment for actions that he had taken with respect to his duties as a Justice. To me that raises a question of creditability. I sat in on every single deposition, I heard almost every word. I wasn't there for the afternoon session of Justice Thayer so maybe he said something that was more convincing than it appeared when I read the transcript, but I think

comparing Chief Justice Brock's credibility and Justice Thayer's credibility, I have to come down on the side of Chief Justice Brock. Now, let me tell you, Chief Justice Brock is no friend of mine. My only exposure to Chief Justice Brock was when he came into the hearing rooms, first last year on some bill or other that I can't even remember, please don't ask me about it because I don't remember, and during the depositions. I looked at my notes taken at those depositions last night and I wrote down these words: evasive, weasely. That's how he impressed me in the deposition. That does not mean that he lied, it does not mean that he is not creditable, it means that he was trying very hard to put forward to the people who were going to make this sincere and serious judgement about him, he was trying very hard to be sure that he said the right thing. He also has a memory that's not always the same as somebody else's memory. Jim Craig and I have memories that aren't always coinciding with each other but that doesn't mean that one of us is not creditable. I firmly believe and I hope you will believe that Chief Justice Brock is telling the truth when he tells us what his memory is. So, here we go. Rep. Craig said that the Chief testified in one place, "I may have asked someone to go out in the hall and get Justice Thayer," and in another place, "I never went out to get Justice Thayer," and cited those as contradictory. I don't see those as contradictory, do you? He may have asked somebody else to go out, he never went out himself, not at all contradictory, I find that quite believable. Eileen Fox, Counsel for the Court has a memory that the Chief went out. We've had very little exposure of Eileen Fox to the committee, but to me she appeared a credible witness. I believe she was saying what she honestly remembered. However, we also have testimony that Ms. Nadeau was out in the corridor and saw Justice Thayer out in the corridor and she passed him twice, once on her way to the ladies' room and once back from the ladies' room. She did not testify, at all, that she ever saw Chief Justice Brock out in the corridor. I'm telling you all this because the details are important in the way you view credibility and credibility is at the core here. If, after hearing all these things, you still don't see it the way I do, you still think that maybe Justice Thayer is the person who is telling the truth, that there was an ex parte conversation in the corridor, although frankly why the Chief would do that when there were certainly other opportunities to talk to Justice Thayer is beyond my understanding, but it is possible, so you have to decide for yourself which really happened. But more than that, you have to decide how to weigh what happened and I wrote down a couple of notes to myself to be sure that I said them to you. Remember, first of all, that what we are doing here is setting a precedent. I very much appreciate the levity that proceeded me here at the podium. I think sometimes I take things too seriously, but I can't imagine anything we've been asked to do in the last year that I have been here, two years, one session, and all the years that so many of you have been here, that is more serious than this decision that we are making today about impeaching a Chief Justice of the highest court of the State of New Hampshire. So, I ask you, don't impeach on doubt. If you have a doubt, that doesn't give you cause to impeach. Lack of evidence is no evidence. If you don't have evidence, you shouldn't conclude that something happened. One of the members of my committee whom I respect very highly, among the others, said it troubled her that she would never know that if Howard Zibel hadn't reported this whether it would ever have been reported. How does that weigh into this decision? It doesn't. It shouldn't. Because we have to judge on what happened and what we know happened and what we believe based on the facts happened. Not on what would have, could have, should have happened. So, please, if you are making inferences, base them on facts. Henry Mock, a man that I respect and disagree with, spoke to you this morning. He said there are bad things that have been happening in the courts. I couldn't agree more. He said the recusal policy is one of the worst things that has happened because it undermines people's trust in the court. I couldn't agree more. There are things that we have discovered that are wrong but impeaching the Chief Justice of the Supreme Court will not correct those problems. What will correct them are the reforms that I hope will come to you in the next session. What will correct them is the investigation that this committee has so laboriously conducted and that, as Representative Rowe said, we've lifted the pot lid, we've seen what's inside. Secrecy is not the same as confidentiality. There has been more secrecy in the court than there should be. Confidentiality is important, not secrecy, and there are some reforms whereby I think we can allow any documents, those red-dot documents that cover six feet on the bench that Henry Mock was talking about this morning, we can allow those to become public after the cases have been resolved. And, also, please remember

compassion. I am not basing my judgement on compassion. I didn't find David Brock a likable person. I found him defensive. I found him combative. I found him arrogant. I found nothing in any of those characteristics that rises to the level of an impeachable offense. I hope you will agree with me.

Speaker Sytek: Would the member yield to a question? Rep. Pitts, you may inquire.

Rep. Pitts: Thank you, very much. There is one statement that I am troubled with and that's in Section 5 of Article II and the sentence reads, "The said David Brock did affirmatively dissuade and discourage Justice William Johnson from reporting the misconduct to the proper authorities." That is troubling to me above all else. Can you explain that statement and is there corroborative evidence for that statement?

Rep. Solow: Thank you, Representative, for the question. Madam Speaker, may I have permission to read a document from William Johnson?

Speaker Sytek: Without objection, the member may read it.

Rep. Solow: Thank you Representatives, for allowing me to do this. Judge Johnson is my neighbor across the street. We are not friendly but we do talk to each other, we have an amicable relationship. He is very troubled about what came out in the testimony and the possible inferences that could be drawn from the testimony and he handed me a document the day before yesterday which I have not shared with the committee because I have not had an opportunity to do so. I would like to read some of it because it is directly in response to the question that the Representative just asked me. He's talking about the Feld case discussion in April, April 23, 1999, the case conference in Feld's case. Let me read you a couple of things. The statements that he is reporting to me in this document came from the testimony so I think it is in order that I read them.

Speaker Sytek: Representative Solow, someone has objected.

Rep. Solow: Thank you. If I may answer the question on my own, I would say that everything in the deposition that Justice Johnson refers to in this memo is there for you to read and it corroborates the testimony that the Chief did not dissuade Johnson, that Johnson talked to all of his colleagues and made his own judgement about whether or not to report the incidence. Thank you.

Speaker Sytek: Would the member yield to another question? Rep. DePecol, you may inquire.

Rep. DePecol: Thank you, Representative Solow, Madam Speaker. I'm so glad you brought up the idea of facts. Is it not a fact that Justice Brock announced to the Supreme Court that he was going to appoint Justices Pappagianis and Mangones to the Thayer divorce panel? And, is it also not a fact that when Justice Thayer and Justice Horton objected to that that he got up and went down to his Clerk and told him to stop everything?

Rep. Solow: The facts we have are based on the testimony we received and the testimony is that he said to the assembled justices, "I'm going with Pappagianis and Mangones." That was a statement of having already made the decision, not inviting comment and, in fact, for those who suggest that comment was invited, it seems to me that if they had been expecting comment they wouldn't have been so surprised at the response of Justice Thayer to the announcement, not invitation but announcement, that he was going with Pappagianis and Mangones. And, Representative DePecol if you'll repeat your second question, I'd appreciate it.

Rep. DePecol: My second question is, even after all that, is it not a fact that when two recused justices objected to his call on who to appoint, that Justice Brock then went down to his Clerk and told him to stop everything, thereby effectively acting on their objections which are illegal?

Rep. Solow: I would agree with the first part of your statement but not the second. He wasn't effectively acting on it, he was responding to the turmoil that had occurred in the room. The first part, you are correct by his own testimony, he went out of the room, excuse me, he asked Thayer to leave the room and then later he had a conversation with him late in the afternoon in the Clerk's corridor, not in the corridor outside the conference room.

Rep. DePecol: Thank you, Madam Speaker, Representative Solow. I want to come back to the point. Is it not a fact that after all that Justice Brock got up, went down to his Clerk and told him to stop all further actions?

Rep. Solow: I'm sorry, Representative DePecol, I thought I had answered that question. The deposition testimony and the testimony in public session indicates that he did declare that, yes.

Rep. Mock: Thank you, Madam Speaker. Like in every one of these articles things seem to get twisted around and get confused. Anything to get you confused. This is not, this is not a complicated article. It is one of the easiest ones. It is the easiest one, as a matter of fact. I'm just afraid that a previous speaker has still not learned the difference between impeachment and going to trial. We do not have to prove conclusively, like she told you, that something happened. Did it likely happen? Is it beyond a preponderance of the evidence? Where is it? Is it between 51 percent and between 99, is it somewhere in there that it probably happened? That's what you need. We don't have to prove it. Justices testified that when the Chief Justice made his announcement, it was sort of like, I'm going to go with Pappagianis and Mangones, you know, how's that? It's how you say it. Thayer reacted, Horton reacted, they were all recused, they broke their laws, exactly what I told you this morning. They broke their own rules, which are laws, when they did that. What did the Chief Justice do? He got up, he left, he went down, just as Representative DePecol told you, tried to stop the phone call, did, as a matter of fact, came back, asked Thayer to leave, go out in the hallway. Testimony was a court clerk saw Justice Thayer in the hallway, pretty good evidence she saw him standing there, right where Justice Thayer said he was. He testified to that. Then Eileen Fox testified, no question in her mind but what the Chief Justice left the room after he came back and then went out in the hallway and got Judge Thayer. Judge Thayer says they had a conversation. Is that absolute proof, 100 percent, no. Is it good enough for impeachment? Is it an ex parte communication, probably, and that's why the committee voted, I've forgotten what the vote was, to make this an article of impeachment and I hope that you will agree. Thank you.

Rep. Mock requested a roll call; sufficiently seconded.

The question being the adoption of Article II of House Resolution No. 51.

YEAS 252 NAYS 104

YEAS 252

BELKNAP

Bartlett, Gordon

Boyce, Robert

Johnson, James

Lawton, David

Rice, Thomas	Rosen, Ralph	Russell, David	Salatiello, Thomas
Thomas, John	Turner, Robert	Wendelboe, Francine	

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Kenney, Joseph	Lyman, L Randy	Mock, Henry
Patten, Betsey	Philbrick, Donald	Sullivan, P Judith	Torressen, Gary

CHESHIRE

Avery, Stephen	Batchelder, Robert	Blaisdell, Michael	DePecol, Benjamin
Hunt, John	Lerandeau, Alfred	Manning, Joseph	McGuirk, Paul
Meador, David	Mitchell, McKim	Pratt, John	Richardson, Barbara
Roberts, William	Robertson, Timothy	Rose, William	Royce, H Charles
Russell, Ronald	Smith, Edwin	Zerba, Roger	

COOS

Davis, Perley	Horton, Lynn	Landers, Dana	Mears, Edgar
Pratt, Leighton	Tholl, John Jr	Woodward, David	

GRAFTON

Akins, Ralph	Alger, John	Brothers, Richard	Cobb, John
Dudley, Terri	Gilman, G Michael	Hall, David	Ham, Bonnie
Harmon, Hobart	Hinman, Harry	MacNeil, Allen	Marshall, Gene
Mirski, Paul	Phinney, William	Picconi, Al	Scanlan, David
Ward, Brien	Weber, Phil		

HILLSBOROUGH

Alukonis, David	Arnold, Thomas Jr	Arthur, Rose	Baroody, Benjamin
Batula, Peter	Beaupre, Roland	Belvin, William	Bergeron, Lucien
Brundige, Robert	Bruno, Pierre	Buckley, Raymond	Burkush, James
Calawa, Leon Jr	Carlson, Donald	Chabot, Robert	Christiansen, Lars
Clegg, Robert Jr	Clemons, Jane	Cote, David	Cote, Peter
Coughlin, Pamela	Craig, James	Dawe, Eileen	Desmarais, Vivian

Desrosiers, William	Drabinowicz, A Theresa	Emerton, Lawrence	Fenton, James
Fields, Dennis	Fletcher, Richard	Flora, Kathleen	Foster, Linda
Franks, Suzan	Gagnon, Eugene	Ginsburg, Ruth	Goley, Jeffrey
Gorman, Mary	Goulet, Maurice	Haley, Robert	Herman, Keith
Herman, Richard	Holley, Sylvia	Hunter, Bruce	Jean, Claudette
Jean, Loren	Keye, Harvey	Kurk, Neal	L'Heureux, Robert
LaPorte, George	LaRose, Richard	Lasky, Bette	Lefebvre, Roland
Leonard, Peter	Lozeau, Donnalee	Lynde, Harold	MacGillivray, Jeffrey
Martel, Andre	Martin, Mary Ellen	McCarthy, William	McCarty, Winston
McDonald, James Sr	McGough, Tim	McRae, Karen	Mendenhall, Leslie
Mercer, Robert	Milligan, Robert	Moran, Edward	Moriarty, Mary
Mosher, William	Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane
Ouellette, Dean	Pepino, Leo	Peterson, Andrew	Reeves, Sandra
Sargent, Maxwell	Simon, Anthony	Tate, Joan	Thulander, O Alan
Vaillancourt, Steve	White, John		

MERRIMACK

Anderson, Eric	Brewster, Richard	Hoadley, Elizabeth	Jacobson, Alf
Langer, Ray	Larrabee, David Sr	Lavoie, Gerard	Leber, William
Lockwood, Priscilla	Marple, Richard	Nichols, Avis	Poulin, Dave
Soltani, Tony	St Cyr, Gerard	Virtue, Carolyn	Whalley, Michael

ROCKINGHAM

Abbott, Dennis	Arndt, Janet	Beaulieu, Jon	Belanger, Ronald
Bishop, Franklin	Bridle, Russell	Christie, Andrew Jr	Clark, Vivian
Cox, Russell	Dalrymple, Janeen	Dearborn, Bruce	DiFruscia, Anthony
Dowling, Patricia	Downing, Michael	Dunham, Vivian	Fesh, Robert
Flanagan, Natalie	Flanders, David	Flanders, John Sr	Francoeur, Sheila
Gleason, John	Grant, Kenneth	Griffin, Mary	Hamel, Albert
Henderson, Warren	Hutchinson, Karen	Hutchinson, Rebecca	Katsakiores, George
Katsakiores, Phyllis	Kelley, Jane	Kelley, William	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
McKinney, Betsy	Moore, Benjamin	Morse, Charles	Nowe, Mary Lou
Nowe, Ronald	Noyes, Richard	O'Keefe, Patricia	O'Neil, Michael

Packard, Sherman	Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne
Putnam, Ed II	Rabideau, Marie	Raynowska, Bernard	Reardon, Neil
Ruffner, Walter	Shelton, Richard	Stickney, Nancy	Stone, Joseph
Tufts, J Arthur	Varrell, Thomas	Vaughn, Charles	Weare, Everett
Welch, David	Weyler, Kenneth	Whittier, John	

STRAFFORD

Bickford, David	Brennan, William	Brown, George	Cossette, Larry
DeChane, Marlene	Gilmore, Gary	Heon, Richard	Kaen, Naida
Knowles, William	Lundborn, Raymond	McKinley, Robert	Rogers, Rose Marie
Rollo, Michael	Smith, Marjorie	Taylor, Kathleen	Wall, Janet
Woods, Phyllis			

SULLIVAN

Cloutier, John	Flint, Gordon Sr	Jones, Constance	Kibbey, David
Leone, Richard	Robb-Theroux, Amy	Young, David	

NAYS 104

BELKNAP

Holbrook, Robert	Millham, Alida	Pilliod, James	Wood, Jane
------------------	----------------	----------------	------------

CARROLL

None

CHESHIRE

Burnham, Daniel	Doucette, Richard	Lynch, Margaret	Lynott, Margaret
Pratt, Irene	Riley, William		

COOS

Guay, Lawrence	Rodrigue, Robert
----------------	------------------

GRAFTON

Almy, Susan
Johnson, Gary

Copenhaver, Marion
Nordgren, Sharon

Eaton, Stephanie
Solow, Martha

Guest, Robert

HILLSBOROUGH

Ahern, Richard
Dwyer, Paul Sr
Haettenschwiller,
Alphonse
Leishman, Peter
Messier, Irene
Sarette, John

Andrews, Frederick
Dyer, Merton
Hall, Betty
McColgan, Philip Jr
Murphy, Robert
Withee, Dennis

Daigle, Robert
Ford, Nancy
Hansen, Herbert
McDonough-Wallace,
Alice
Reidy, Frank

Dokmo, Cynthia
Garrish, Linda
Johnson, Lionel
Melcher, Harold
Rowe, Robert

MERRIMACK

Asplund, Bronwyn
Daneault, Gabriel
Hager, Elizabeth
Maxfield, Roy
Reardon, Tara
Wallin, Jean

Bouchard, Candace
Fortnam, Janet
Hess, David
Moore, Carol
Rodd, Beth
Wallner, Mary Jane

Chase, George
Fraser, Marilyn
Kennedy, Richard
Owen, Derek
Rosenfield, Jay
Whittemore, James

Crosby, Toni
Gile, Mary
Marshall, Kenneth
Potter, Frances
Seldin, Gloria
Yeaton, Charles

ROCKINGHAM

Blanchard, MaryAnn
Cooney, Richard
Lovejoy, Marian
Shultis, Elizabeth
Zolla, William

Carson, Gregory
Gibbons, Paul
Norelli, Terie
Splaine, James

Case, Margaret
Johnson, Robert
Sabella, Norma
Stritch, C Donald

Clark, Martha
Kane, Cecelia
Sapareto, Frank
Weatherspoon, Jackie

STRAFFORD

Berube, Roger
Estabrook, Iris
Lent, Donald
Snyder, Clair
Vincent, Francis

Brown, Julie
Grassie, Anne
Musler, George
Torr, Franklin

Callaghan, Frank
Johnson, Nancy
Pelletier, Arthur
Twardus, Joseph

Dunlap, Patricia
Keans, Sandra
Pelletier, Marsha
Vachon, Dennis

SULLIVAN

Allison, David

Donovan, Thomas Jr

Phinizy, James

Tuthill, John

Wiggins, Celestine

and Article II was adopted.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

Speaker Sytek: Next we'll take up Article III, also on page 1612.

Rep. Phyllis Woods: Thank you, Madam Speaker and thank you, members of the House. I'm going to be talking to you about Article III wherein we state that Judge Brock did give false testimony under oath to the House Judiciary Committee during its investigation. I want to say a word about allegations that have been made about the Attorney General's report. Whether or not you agree that there were problems in that investigation and that the justices were perhaps not apprised of the full scope of the investigation, really does not impact on the decisions that were made by the House Judiciary Committee. In the final analysis, that was only the vehicle that actually brought forth this investigation but we conducted our own investigation. We took our own depositions and the Attorney General's report ultimately played a very small role. We paid very close attention to what happened during those depositions and what happened in the public testimony. On two of the occasions that are cited under the four points in this article, there was conflicting testimony given by Judge Brock himself from one deposition to the next which required no further evidence and no corroborating testimony. Now, even though this was not a part of the original focus of our investigation, the committee felt this was such a serious matter that we ultimately voted, by the greatest majority, that this should become an article of impeachment, 17 to 5. Since number three and number four of this Article have been fairly thoroughly covered by my colleagues from Walpole and Manchester, I'll mention them only briefly and will focus my remarks on number one and number two. What I'm going to do is share with you some of the actual testimony that was given by Judge Brock. I'll lead you through that, this will be the exact testimony that led us to our decision and then I'll respectfully present that to you for your consideration. Number one, on May 19th, Judge Brock testified that he did not know whether a letter of March 3, 2000 from his attorney had been sent to the Attorney General's office reporting threats made to him by former justice Thayer. Now, he had agreed during testimony that those threats imposed a duty on him to report, so this was a very important letter. During the testimony, Judge Brock's attorney provided Attorney Steinfield with a copy of the letter. Then began the following dialogue: Question by Attorney Steinfield, "You've given me what appears to be a draft letter, dated March 3rd, 2000 from Michael D. Ramsdell or bearing his name, not his signature, to Charles T. Putnam, Assistant Attorney General. Do you know whether this letter was ever sent?" Answer: "Of my personal knowledge, no." Later on in questioning, Attorney Steinfield asked, "Now, you don't know as I understand it, whatever became of that letter." Answer: "My assumption is it was filed with the Attorney General." Question: "Well, I'm asking what you know." Answer: "Well, I know I was told that it was going to be filed with the Attorney General." On the next day that we deposed Judge Brock, May 24th, when this same item was brought up, Attorney Steinfield asked, "So you knew last time, last time you were here, you knew that this letter had not been sent to the Attorney General." Answer: "Yes, counsel had told me that, yes." Later during the same testimony Attorney Steinfield again asked, "You knew before you last came here because your lawyer found out that Mr. Ramsdell didn't send that notice into the Attorney General early in March, have I got it right?" Answer: "Yes, you, yup." Attorney Steinfield then referred to his previous testimony. Question: "And then I asked you, question, 'Now you don't know, as I understand it, whatever became of that letter, and your answer was, 'My assumption is it was filed with the

Attorney General.' Have I read that correctly?" Answer: "Yes you have." "That wasn't true was it?" Answer: "Well, no, my assumption..." Question: "Well, it wasn't true?" Answer: "No, not if you read 'is', that's right." Now, when confronted with the fact that his testimony was incorrect and untrue, he said that he had said "was" rather than "is" and that the stenographer had transcribed it incorrectly. However, the committee noted that the question was posed in the present tense. "Now, you don't know" and if it had been answered in the past tense, "My assumption was it was filed...", Attorney Steinfield would have certainly asked what his present knowledge was. At any rate, Attorney Steinfield followed up with what I credit him as having the best question of the depositions, a very clear and unambiguous question. He said, "Well, I'm asking what you know." Which did ask for Judge Brock's present knowledge of the letter. Now I'm going to go to number 2. On May 19th, while testifying about the Home Gas v. Strafford Fuel matter, Judge Brock testified that he didn't have copies of certain documents and had not seen those documents since their inclusion in the Judicial Conduct Committee reports some 13 years ago. Attorney Steinfield, in questioning Judge Brock about this matter, asked, Question: "And was there some sort of investigation conducted at the Supreme Court? I'm not asking about the JCC, Mr. Lancaster, pertaining to the Home Gas v. Strafford Fuels matter." Answer: "Yes." Question: "And do you have a recollection of that as you sit here today?" Answer: "I have, you know, a rather vague recollection of it." Later in the discussion of the same matter, Judge Brock stated, "Yeah, and another thing I remember here is when these things occurred I wrote letters to Senator Bartlett and Senator Dupont telling them the appropriate way to go about handling these matters." Question: "Do you have copies of those letters?" Answer: "I don't, they would be part of the report that was filed by the court with the Judicial Conduct Committee." In his deposition the next day, May 24th, regarding the same matter, Judge Brock was again asked by Attorney Steinfield, "You testified last time, Mr. Chief Justice, that you were relying on memory, do you remember it so stated?" Answer: "I remember with respect to certain questions, I was definitely relying on memory." Question: "And that you said you did not have the benefit of having the documents in this "Home Gas" investigation before you." Answer: "I did not have the benefit of having them here to look at." Question: "You had, in fact, read them all within a week or so before, before you testified." Answer: "I read most of them. I had done so, you know, rather quickly and not assimilating details." Question: "You had access to them?" Answer: "I had access to them, yes, sir." Once again Attorney Steinfield asked, "I asked you last time whether you had copies of letters written to Senator Bartlett and to Senator Dupont and you said, 'I don't, they would be a part of the report that was filed by the Court with the JCC.' You had actually seen that report, as you are now testifying in including those letters when you gave that answer, isn't that true?" Now even though Judge Brock did not directly answer that question, Attorney Steinfield went on to quote for him from his previous testimony and asked, "Now you had seen those letters as part of the report that you had obtained and reviewed within a week before you gave that testimony, isn't that right?" Answer: "But I didn't have copies of those." Question: "With you?" Answer: "With me, that's correct." Question: "So that's the distinction that you intended to draw when you gave that testimony?" Answer: "Yup, as a matter, my lawyers had copies of it, but I didn't have copies of those letters with me, that's correct." Question: "Your lawyers had them?" Answer: "I believe so, yes." Now regarding number three, the committee voted in Article II, number two, that there was in fact an ex parte communication with Justice Thayer in the hallway and therefore must, in fact, also conclude that he gave false testimony to that during his deposition. On May 19th and 23rd Judge Brock testified that on February 4th, 2000, he did not have a conversation in the hallway outside the Supreme Court conference room with Justice Thayer as you heard previously. On June 23rd, 2000 Attorney Steinfield asked, "And since you did not go into the corridor to find Justice Thayer, the question of whether you had a conversation in the hallway with Justice Thayer answers itself?" Answer: "That's correct, I had no conversation in the corridor with Justice Thayer." Number four, the committee decided in Article I, part 1, that Judge Brock did in fact make the call to Douglas Gray. Part of the reason they had done that is that no less than six judges confirmed and agreed that the call had actually been made, four Supreme Court Justices and Judge Gray and Judge McHugh corroborated also by an attorney and the court stenographer. Therefore he had testified under oath falsely to the committee in that regard. When he had denied making the call or any knowledge of it 13 years ago, he was not under

oath. He was under oath when he testified to that effect with us. While deliberating whether to bring this article of impeachment, I wanted you to know that the committee gave particular weight to a decision written by Judge Brock in 1991 in re: Astles Case in which he wrote about the need for maintaining and requiring the highest possible levels of honesty and trustworthiness, he said, "No single transgression reflects more negatively on the legal profession than a lie. As well as being the most fundamental of dishonesties, a lie is the most pernicious." Please support the report of the committee and vote this number III as an Article of impeachment. Thank you.

Speaker Sytek: Would the member yield to questions? Rep. Marjorie Smith, you may inquire.

Rep. Marjorie Smith: Thank you very much, Madam Speaker. Thank you, Representative Woods, for taking my question. Representative Woods, I appreciate your having read from those transcripts. Those are the same sections that I have spent a lot of time reading. I wonder if you could answer a question for me? I know that it was the Attorney General and not the Judiciary Committee which gave Justice Thayer immunity. I wonder if you could tell me if you know what would happen to that immunity if Justice Thayer were subsequently found to have lied in any of his testimony before the Judiciary Committee?

Rep. Phyllis Woods: That is a very good question and very frankly, Representative, I have no idea.

Rep. Marjorie Smith: Representative Woods, do you have any idea if the same policies would apply here as would apply in other settings in which, if the Justice were found to have lied, he would lose that immunity and thereafter be subject to charges from which he is now protected?

Rep. Phyllis Woods: That sounds very likely that that would be the case to me, but I have no legal background. I'm not a lawyer. I'm sorry, I really can't give you good answers to these questions. Perhaps someone else on the committee could.

Rep. Marjorie Smith: I appreciate your effort. Thank you.

Speaker Sytek: Would the member yield to another question? Rep. Alger, you may inquire.

Rep. Alger: Thank you, Madam Speaker, thank you, Representative. There has been quite a discussion today about the need for compassion and that these judges, in particular Brock and others have suffered enough and therefore we should perhaps forgive this and yet I heard you speak and deliberate in the committee when you were voting on the issue of compassion versus about duty, and could you tell us a little about how you came out that duty was the important thing to resolve at this point in this particular hearing. Thank you.

Rep. Phyllis Woods: I think what you might be referring to, Representative, is in response to the committee valuing or showing value to one of the justices preponderance to be compassionate and sensitive, that we should value that. I think I just drew the analogy that the twin virtue to compassion was courage. I don't think that there was anyone sitting on that committee that did not feel compassion for the justices and still do today for what they have been through and what they are going through. However, we had been admonished to look at the facts and to bring facts before the House and to bring them with our votes, so I don't think that I'm saying that there is not a place for compassion but I'm saying it's not at this stage of our investigation.

Rep. Alger: So in other words, you are saying, I believe, it became, really in a sense, your duty to report the facts as you found them and be compassionate in the process.

Rep. Phyllis Woods: That is what we have tried to do.

Rep. Solow: Thank you, Madam Speaker and thank you once again, representatives. Again, I appreciate very much your tolerance in allowing the same voice and the same face to come before you so many times. I'll be brief because much of what I have to say to you I have said or has been said earlier today by Representatives Dokmo, Rowe and Withee. It is obvious that it has not been persuasive. I do want to say, again being a person who's particular about what is done, that we need to read the words and what this article says is that the Chief did knowingly testify falsely under oath with the intention of hindering the HB 50 investigation. Although he said at one point that he didn't have the documents, there is no way that you can prove, even with a preponderance of evidence, that he was intending to hinder the investigation. Let me tell you a little bit about how I come to that conclusion. I don't know how many of you have ever been deposed. I had one experience with it myself. I was a plaintiff in a case and I was deposed by an attorney who had an approach that was very harsh and was asking a lot of questions that I thought were totally inappropriate, about my personal background, which didn't relate at all to the item at hand, and I consulted with my attorney and said, "Do I have to answer those questions?" And he said, "You are under oath, you have to answer every question that's put to you to the best of your ability...(tape change)... that is presented to you and no more." And I put it to you that that is exactly the kind of advice that Chief Brock got from his attorney. I would be surprised to learn if it were otherwise and that when he was asked did he have a document with him, he didn't have it with him and so he answered, "No." When he was asked about this letter announcing the threats by Thayer, he was asked whether that had been sent or delivered to the Attorney General, he said, "I assumed it was or it is my assumption that it was." The reason he said it was his assumption is that Justice Brockerick had also been implicated in that letter about the threats and the letter had gone to Justice Broderick's attorney, Mr. Tober, and was going to be move from Mr. Tober's office to the Attorney General's office and for whatever reason, that's not relevant to this, it didn't get there but when it left Justice Brock it was headed for the Attorney General's office. So for him to say that it was his assumption that it had gotten there was not a false statement intended to hinder the investigation. I hope you can believe that, I can believe that. If you've been watching and following the Judiciary Committee's adventures, you will know that the question of perjury as we were discussing it was the one that bothered me the most. As I testified to you earlier this afternoon, when I reported in my own notes to myself, my impression of Justice Broderick, excuse me, Justice Brock, I felt that he was evasive. Evasion is not lying. Failure to tell a complete answer is not lying. This article says "knowingly", "intending to hinder" that he "testified falsely", I put it to you that he did none of those with respect to that letter which eventually was discovered in his lawyer's briefcase, apparently, even though he had thought it had gone onto the Attorney General's office. With regard to the documents on the "Home Gas" case, that was a case that had been sent to the JCC. We've talked here a lot or maybe not enough, about secrecy of the JCC and the fact that it is very difficult to find out what goes on in that body. Well, believe it or not, the Chief Justice and his attorney had as much difficulty getting documents from the JCC as our own counsel, Joseph Steinfield. When he said he didn't have the documents, if you look at the testimony of the deposition, you'll see that it was in somewhat of a badgering situation where Mr. Steinfield was questioning him, not allowing him to complete his answers but interrupting him and putting him on edge. At this point, Chief Justice Brock probably felt threatened. At this point I'm sure he felt he was a target of the investigation rather than thinking it was Justice Thayer and he was being defensive which he had every right to be, but that doesn't mean he was testifying untruthfully. It means he was doing the best he could, relying on his memory and not trying to hinder the investigation and testifying falsely. In the February 4th hallway conversation, we've discussed that at some length with regard to the previous article, if you believe that he went out in the corridor and talked to Justice Thayer, you can believe anything. You can believe anything could have happened in that conversation because you don't know what happened in that conversation. He has said, under oath, that he did not leave the conference room to talk to Justice Thayer, that when he talked to Justice Thayer it was later in the day, in the Clerk's corridor, not in the conference corridor and that what he had to say was to scold Justice Thayer for his outburst in the meeting. For item number four, Justice Broderick, excuse me, Justice Brock ... I'm sorry, Representatives, it's been a long day, I'm trying very hard to be sure you understand what the facts are and it's hard

sometimes to keep these straight, but I want very much to keep them straight because it is important that you keep them straight because that is how you're going to make your judgement. Justice Brock said several times in his deposition and in the public testimony, that he did not make the call, therefore there is no reason, well I guess that is the extent of what is being asked of you to adopt here. I feel as if I am pushing that snowball up the hill and it's melting rapidly as we all are. I just remember that if you vote in favor of this Article, you must believe that David Brock did knowingly, purposefully testify falsely, with the intent of hindering the investigation. If you doubt anyone of those elements you probably should vote no. Thank you.

Speaker Sytek: Would the member yield to questions? Rep. Zolla, you may inquire.

Rep. Zolla: Thank you, Madam Speaker and thank you, Representative. Representative, during the testimony on items one and two, of Chief Justice Brock, from previous testimony on the transcript, he sounded like he was a little confused. Can you tell me how long he had been under questioning when these questions were being put to him aggressively?

Rep. Solow: Thank you for the question, Representative. I can't tell you exactly because I am not going to rely on my memory. I do know that he testified more than any other person over several days, I believe it was two and a half days and then had his presentation to the public or whoever was there when he came in to publicly testify to the committee. Have I answered your question?

Rep. Zolla: I believe so, thank you. With respect to item four, I'm a little confused about the telephone call. We know there was a telephone call. We know that Gray says that he was called. I'm not sure that I heard that Gray say or the other justices say, that Justice Brock personally called Gray or did he receive the call from the Clerk of Court who Brock says he called. Is that testimony clear in your mind anywhere in this?

Rep. Solow: Not only, Representative, is it not clear in my mind, it is not clear in the documents, in the transcript of the depositions. There is conflicting testimony on this point. Judge Brock says he did not call Judge Gray, that he called the Clerk of Court. There is some question about whom to believe because Judge Gray was not asked about it until two years later and Judge McHugh was reporting only what Judge Gray had told him. Judge McHugh's testimony relates to a period of time when he was in the Rochester Court during time when he was rotating through and there is a question about whether the call that he says was made during that time corresponds with the testimony of Judge Gray who thinks it took place at a different time. So, there is conflicting testimony on that point.

Rep. DePecol: Thank you, Madam Speaker and members of the House. This article is the one that has troubled me the most throughout the whole procedure, the thought that a Supreme Court Justice would come in front of the Judiciary Committee and lie to us. We can sugarcoat this anyway you want. The truth is that when asked a direct question, he gave an answer that was false. When caught on it the next day, he recanted and admitted that he made false statements. Statements were he testified that he did not know whether or not a March 3rd, 2000 letter from his attorney had been sent to the Attorney General's office. He knew, he knew it had not been sent. The question was, did he have evidence, did he have a document in his possession relating to the "Home Gas" investigation? "No I don't," when, in fact, yes he did. Maybe not technically, yes, he did, but his attorney sitting next to him had it and he knew that his attorney had it. I don't know about you, but it kind of, no, it does make me outraged, that we are considering whether or not this level of conduct is okay for a Supreme Court Justice of the State of New Hampshire. The Supreme Court Justices of the State of New Hampshire, or any other place, ought be the highest level of integrity, ought not to fudge their answers in front of a legally, a legal investigation, ought to tell the truth, the whole truth. This man didn't do it. I don't care what you think about all the other articles. This is perjury,

to you, we represented you in this investigation. Chief Justice Brock lied to you and I think that is substantial grounds for impeachment. Thank you, Madam Speaker.

Rep. Ford: Madam Speaker and members of the House, I cannot vote for impeachment. I cannot condemn Justice Brock for unwisely saying words that gave Mr. Thayer the opportunity to do wrong. I cannot condemn a hallway conversation that we do not even know whether or not it took place. The "Home Gas" case was a mess from the beginning for which we have contradictory testimony and differing memories of what happened 11 years ago. I do not mean to trivialize what we have learned. There have been shortcomings and some steps like the new recusal rules are the beginning of a happier time. But impeachment is about high crimes and misdemeanors, treason and efforts to overthrow the government. It is the crime against the very being of our state and this is not it. I hated the impeachment of President Clinton because I found no high crime or treason. That high bar, treason against the state, was trivialized and demeaned. It will be easier from now on to use impeachment of the President as a tool for a powerful majority in congress to use against the executive and our nation will see unhappy results from it. I have hated this impeachment for the same reason. I have read every deposition, studied each exhibit. We have had the most thorough investigation ever in the State of New Hampshire by the finest team imaginable headed by Attorney Steinfeld. We have run a fine-toothed comb through the Supreme Court. We have found three instances in 22 years that Justice Brock may have made mistakes. I wish that each of us in our working lives could find only three mistakes in 22 years. If you watched or listened on public TV or radio to our deliberations, that long, long day last week, you will know that we started out with a draft of five articles of impeachment with 14 separate listings. There are now three articles and eight listings remaining. What started out as the focal part of the investigation, the recusal policy, was found in the case of all three judges to not rise to the level of an impeachable offense. Through ten or more justices, of all the years, not one had singled out the recusal policy as dangerous. Are we to impeach all of these men or are we suggesting that one or maybe three are to be held responsible? The policy, while open to the perception of abuse, had never, ever been abused until the Feld's case in 1999 and this year's attempt by Justice Thayer to compromise his divorce panel. The "Home Gas" case, as I said earlier, was a mess from the start. It was only a small part of a larger problem, a problem which I experienced years ago in other sessions and again this year. The legislature and the judiciary do not understand each other. In 1987, there was a clash of the giants. Perhaps the most powerful Senator in years, Senator Bartlett, and the newly installed Chief Justice, David Brock, each have testified that their battles were legendary over the budget, over judicial pay raises, over the policy of the Judicial Conduct Committee, over the independence of the Court, over the unified court. It was a battle that neither side won. Into this was woven "Home Gas" with misjudgments and errors on both sides. The case was over 11 years ago, far beyond any statute of limitations and the testimony we have heard is conflicting, full of "I have no memory of that, I can't remember what date that may have been." The bad taste lingers on, but 11 years ago four sitting justices, Justices Souter, Batchelder, Thayer and Johnson found upon investigation that Justice Brock had done nothing to affect the outcome of the case. Perhaps there is a silver lining to this cloud. Never again will there be any conversation about individual legal cases between the two branches. All one need do is say "Home Gas" to the other and silence will ensue. Article II is a great puzzle to me. I think it is a stretch to think that an ex parte conversation with five different people there together in a conference room between conferences, but I am not a lawyer. But this I know. Justice Broderick and Justice Brock have testified that there was no hallway conversation, that Justice Brock did not leave the room. Attorney Fox and Justice Thayer say that Justice Brock left the room, but no one has testified that they saw them together and no one knows besides the two of them what was in any alleged conversation. May I suggest looking for motives. Justice Brock had none, but Justice Thayer is the person who had threatened to bring the Court down, to take everyone with him and what better way to do it than to say that Justice Brock had asked him if he liked Judge O'Neil for his divorce case. There is a terrible irony in this. Article II, 2 says flatly that the hallway conversation did occur, taking Justice Thayer's word against Justice Brock. The person who will benefit from the Court's downfall is believed and this is wrong. There is no clear and convincing evidence that there

ever was a hallway conversation. Article III is also beyond me. I do not know the laws about testifying falsely and how to prove it. How can you get inside a mind to prove with clear and convincing evidence what someone was thinking? Justice Brock endured, by my quick reckoning, six days of intensive questioning, one-on-one, for as many as nine and one-half hours one day, approximately 1,624 pages of testimony resulting in about 2,084 words. Could any of us have done such a thing without making errors? I think not. I do know this. Nothing in God's world would hinder the investigation. Attorney Steinfield and his team could ferret out any evidence they needed to pursue anything they wished to know. They are exceedingly wonderful in obtaining evidence. There is no clear and convincing evidence that number 3 ever happened and number 4 is a repeat of what was explained in Article I. But, as I said, I am not a lawyer although I wish I were one. My field was history and history has lessons. Yes, we have found mistakes and misjudgements and sad relationships between our legislative and judicial branches, but I find no evidence of treason, no evidence of repeated corrosive corruption, no hints of money changing hands, no gross injury to the state and maladministration, as we have been told, is on that same level. It is far, far above the bounds of what we have seen here. We, of the minority, are convinced that we must keep the bar for impeachment high, very high, to offenses that are seen as equal to bribery and corruption and sedition. If we do not, our judicial system will melt into turmoil. I give you a recent example: 1999, a bill of address. No one, I mean almost no one, in this legislature had ever heard of a bill of address before 1999. Now we talk about how many of bills of address we will have for the next session. In one year the monster has grown. With the first impeachment we open the door for more, each will take up the same time and effort and heart wrenching agony that this one has, again and again. I cannot vote to impeach Justice Brock. I do not want future historians to just say that we should be ashamed of our actions. I only know that I am clear that these allegations do not rise anywhere near the equivalent of bribery, corruption and treachery to our State of New Hampshire. Here I stand, I can do no other. Thank you, Madam Speaker.

Speaker Sytek: Would the member yield to a question? Rep. Phyllis Woods, you may inquire.

Rep. Phyllis Woods: Thank you to my colleague for taking my question. Rep. Ford, I wanted to ask you about your reference that you've made on a couple of occasions now about the importance of not setting the bar too low for impeachment. In regards to that, I believe that if there is mistrust in the public of the judicial branch of our government, that by our actions in the legislature we are serving to buildup people's trust in government; that, in fact, in our constitution we have a remarkable set of checks and balances to make sure that we will snap to attention and take action quite quickly if there are problems. My question to you regarding the bar therefore is this: the bar, I believe in the Constitution, for impeachment is really exactly where it was when the founders of the constitution wrote it and, in fact, it has not been abused or changed any time within the last 210 years, and I don't believe we are abusing it now. So I'd like to ask you if you would agree that the bar is where the bar is, and that it would not be in the best interest of the public, at this point, for us to raise the bar, thereby saying that we would tolerate an increased or larger level of misconduct, maladministration and so forth?

Rep. Ford: Thank you for that long question. To me, the bar for impeachment is something that will harm forever the state, like repeated corruption, like bribery, influencing the judiciary to a point that all justice comes down. I think it is so high that it should be equated, and it is in our constitution of the United States, to treason. I see none of that there. I believe that through the legislature, through this House, we can make changes in the judiciary system and good changes, but I do not feel we should take one man and impeach him at a level lower than that equal to treason to the state.

Rep Mock: Thank you, Madam Speaker. Members of the House, thank you for listening to my Yankee twang almost one last time. Keep this in mind again. Two out of four of these items listed in Article III, number one and number two, took place right in front of the committee. We don't have to guess about those, those took place right there. Three and four follow Articles I and II which you

have already approved. We admit that it is very difficult to prove a state of mind and in this case, knowingly. But we deserve to have the chance of having a trial on these items in the Senate. I hope you will vote with the committee and press the green button.

Rep Mock requested a roll call; sufficiently seconded.

The question being the adoption of Article III of House Resolution No. 51.

YEAS 242 NAYS 112

YEAS 242

BELKNAP

Bartlett, Gordon	Boyce, Robert	Johnson, James	Lawton, David
Rice, Thomas	Rosen, Ralph	Russell, David	Salatiello, Thomas
Thomas, John	Turner, Robert	Wendelboe, Francine	Wood, Jane

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Kenney, Joseph	Lyman, L Randy	Mock, Henry
Patten, Betsey	Philbrick, Donald	Sullivan, P Judith	Torressen, Gary

CHESHIRE

Avery, Stephen	Blaisdell, Michael	DePecol, Benjamin	Hunt, John
Lerandeau, Alfred	Manning, Joseph	McGuirk, Paul	Mitchell, McKim
Pratt, John	Richardson, Barbara	Roberts, William	Rose, William
Royce, H Charles	Smith, Edwin	Zerba, Roger	

COOS

Davis, Perley	Gallus, John	Horton, Lynn	Landers, Dana
Mears, Edgar	Pratt, Leighton	Tholl, John Jr	Woodward, David

GRAFTON

Akins, Ralph	Alger, John	Brothers, Richard	Cobb, John
Dudley, Terri	Gilman, G Michael	Hall, David	Ham, Bonnie
Harmon, Hobart	Hinman, Harry	MacNeil, Allen	Marshall, Gene

Mirski, Paul
Scanlan, David

Nordgren, Sharon
Ward, Brien

Phinney, William
Weber, Phil

Picconi, Al

HILLSBOROUGH

Alukonis, David
Batula, Peter
Brundige, Robert
Calawa, Leon Jr
Clegg, Robert Jr
Coughlin, Pamela
Desrosiers, William
Fenton, James
Foster, Linda
Goley, Jeffrey
Herman, Keith
Jean, Claudette
L'Heureux, Robert
Leonard, Peter
McCarthy, William
McGough, Tim
Milligan, Robert
Nolan-Piteri, Dawn
Pepino, Leo
Sarette, John
Vaillancourt, Steve

Arnold, Thomas Jr
Beaupre, Roland
Bruno, Pierre
Carlson, Donald
Clemons, Jane
Craig, James
Drabinowicz, A Theresa
Fields, Dennis
Franks, Suzan
Gorman, Mary
Herman, Richard
Jean, Loren
LaPorte, George
Lozeau, Donnalee
McCarty, Winston
McRae, Karen
Moran, Edward
O'Connell, Timothy
Peterson, Andrew
Sargent, Maxwell

Arthur, Rose
Belvin, William
Buckley, Raymond
Chabot, Robert
Cote, David
Dawe, Eileen
Dyer, Merton
Fletcher, Richard
Gagnon, Eugene
Goulet, Maurice
Holley, Sylvia
Keye, Harvey
LaRose, Richard
Martel, Andre
McColgan, Philip Jr
Mendenhall, Leslie
Moriarty, Mary
O'Hearn, Jane
Reeves, Sandra
Tate, Joan

Baroody, Benjamin
Bergeron, Lucien
Burkush, James
Christiansen, Lars
Cote, Peter
Desmarais, Vivian
Emerton, Lawrence
Flora, Kathleen
Ginsburg, Ruth
Haley, Robert
Hunter, Bruce
Kurk, Neal
Lefebvre, Roland
Martin, Mary Ellen
McDonald, James Sr
Mercer, Robert
Mosher, William
Ouellette, Dean
Rowe, Robert
Thulander, O Alan

MERRIMACK

Anderson, Eric
Jacobson, Alf
Leber, William
Soltani, Tony

Brewster, Richard
Langer, Ray
Marple, Richard
St Cyr, Gerard

Chase, George
Larrabee, David Sr
Nichols, Avis
Virtue, Carolyn

Hess, David
Lavoie, Gerard
Poulin, Dave
Whalley, Michael

ROCKINGHAM

Arndt, Janet

Beaulieu, Jon

Belanger, Ronald

Bishop, Franklin

Bridle, Russell	Carson, Gregory	Christie, Andrew Jr	Clark, Vivian
Cox, Russell	Dalrymple, Janeen	Dearborn, Bruce	DiFruscia, Anthony
Dunham, Vivian	Fesh, Robert	Flanagan, Natalie	Flanders, David
Flanders, John Sr	Gleason, John	Grant, Kenneth	Griffin, Mary
Hamel, Albert	Henderson, Warren	Hutchinson, Karen	Katsakiores, George
Katsakiores, Phyllis	Kelley, Jane	Kelley, William	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Lovejoy, Marian
Major, Norman	McKinney, Betsy	Moore, Benjamin	Nowe, Mary Lou
Nowe, Ronald	Noyes, Richard	O'Keefe, Patricia	O'Neil, Michael
Packard, Sherman	Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne
Putnam, Ed II	Rabideau, Marie	Raynowska, Bernard	Ruffner, Walter
Shelton, Richard	Stickney, Nancy	Stone, Joseph	Tufts, J Arthur
Varrell, Thomas	Vaughn, Charles	Weare, Everett	Welch, David
Weyler, Kenneth	Whittier, John		

STRAFFORD

Brennan, William	Brown, George	Cossette, Larry	DeChane, Marlene
Gilmore, Gary	Heon, Richard	Kaen, Naida	Knowles, William
Lundborn, Raymond	McKinley, Robert	Rogers, Rose Marie	Rollo, Michael
Smith, Marjorie	Taylor, Kathleen	Wall, Janet	Woods, Phyllis

SULLIVAN

Cloutier, John	Flint, Gordon Sr	Jones, Constance	Kibbey, David
Robb-Theroux, Amy			

NAYS 112

BELKNAP

Holbrook, Robert	Millham, Alida	Pilliod, James
------------------	----------------	----------------

CARROLL

None

CHESHIRE

Batchelder, Robert	Burnham, Daniel	Lynch, Margaret	Lynott, Margaret
Meader, David	Pratt, Irene	Riley, William	Robertson, Timothy

COOS

Guay, Lawrence	Rodrigue, Robert
----------------	------------------

GRAFTON

Almy, Susan	Copenhaver, Marion	Eaton, Stephanie	Guest, Robert
Johnson, Gary	Solow, Martha		

HILLSBOROUGH

Ahern, Richard	Andrews, Frederick	Daigle, Robert	Dokmo, Cynthia
Dwyer, Paul Sr	Ford, Nancy	Garrish, Linda	Haettenschwiller, Alphonse
Hall, Betty	Hansen, Herbert	Johnson, Lionel	Lasky, Bette
Leishman, Peter	Lynde, Harold	MacGillivray, Jeffrey	McDonough-Wallace, Alice
Melcher, Harold	Messier, Irene	Murphy, Robert	Reidy, Frank
Simon, Anthony	White, John	Withee, Dennis	

MERRIMACK

Asplund, Bronwyn	Bouchard, Candace	Crosby, Toni	Daneault, Gabriel
Fortnam, Janet	Fraser, Marilyn	Gile, Mary	Hager, Elizabeth
Kennedy, Richard	Lockwood, Priscilla	Marshall, Kenneth	Maxfield, Roy
Moore, Carol	Owen, Derek	Potter, Frances	Reardon, Tara
Rodd, Beth	Rosenfield, Jay	Seldin, Gloria	Wallin, Jean
Wallner, Mary Jane	Whittemore, James	Yeaton, Charles	

ROCKINGHAM

Abbott, Dennis	Blanchard, MaryAnn	Case, Margaret	Clark, Martha
Cooney, Richard	Dowling, Patricia	Downing, Michael	Francoeur, Sheila
Gibbons, Paul	Hutchinson, Rebecca	Johnson, Robert	Kane, Cecelia
Morse, Charles	Norelli, Terie	Reardon, Neil	Sabella, Norma

Sapareto, Frank	Shultis, Elizabeth	Splaine, James	Stritch, C Donald
Weatherspoon, Jackie	Zolla, William		

STRAFFORD

Berube, Roger	Bickford, David	Brown, Julie	Callaghan, Frank
Dunlap, Patricia	Estabrook, Iris	Grassie, Anne	Johnson, Nancy
Keans, Sandra	Lent, Donald	Musler, George	Pelletier, Arthur
Pelletier, Marsha	Snyder, Clair	Torr, Franklin	Twardus, Joseph
Vachon, Dennis	Vincent, Francis		

SULLIVAN

Allison, David	Donovan, Thomas Jr	Leone, Richard	Phinizy, James
Tuthill, John	Wiggins, Celestine	Young, David	

and Article III was adopted.

Rep. Jacobson offered a floor amendment.

Floor Amendment (4796h)

Amend the resolution by inserting the following:

ARTICLE OF IMPEACHMENT

During the period beginning with his appointment as chief justice, on or about October 4, 1986, and continuing until on or about April 1, 2000, chief justice Brock engaged in conduct that constituted the impeachable offense of maladministration by permitting and overseeing a practice whereby recused and disqualified justices were permitted to receive draft opinions and to attend case conferences, thereby enabling them to comment on and influence opinions in the cases from which they were recused and disqualified.

Rep. Jacobson: Thank you, Madam Speaker. You and I have been participating in an historic process that is both sad and difficult for all of us. At our house, the family room is buried in paper from the time that I have spent. You know, Sonja and I made a compact long ago, if I got too irascible she would take me over to the Old Soldiers Home and leave me off. Right now I think she is considering an amendment because of the chaos of paper that has, in fact, accumulated. Now, I have not tried to influence any member of this House on any of these votes. I believe it is your responsibility and it is my responsibility. If there is one surprise in this process, it is the failure of the recusal amendment that you have before you. There is a very special reason why that happened, but I'm not going to get into it because it belongs to the people who voted against. What I have done is I have reviewed the testimony via the video tape last night to see just what was said with respect to this proposed amendment to House Resolution 51. I found, for example, that there were persons who said that Chief Justice Brock came to the court and he inherited the practice. In actual fact, there are cases that have been before the court in which recusal was the issue. I was involved in one of those and

that was the recusal of Governor Meldrim Thompson in his effort to get rid of the Director of Probation. And you know, in that 1976 decision, you know what it says? That Meldrim Thompson be recused from all proceedings that related to that trial. So, it was known what an effective recusal was. Similarly, there are any number of cases with local boards in which, if a member of that board had a conflict of interest he had to recuse himself from it. Another argument that was put forward was that it was wrong but everybody did it. Well, if you follow out the logic of that argument, we're in real trouble. Again, it was even likened to saying that the federal government is guilty in the Oklahoma bombing case. Now, I haven't been able to comprehend the rationale behind that yet. Even today it was said, for example, there are no victims. How do we know that? No proof was offered for that. One of the things that I believe in strongly is documentation. If you can't document it, the generalizations are unimportant. In that little school in Cambridge, I had an old professor, Arthur Darby Knock, and one thing he taught me that has stayed with me, if you are going to make a statement, document it. That is what I find lacking in many of the rationales that were offered against it. You may well have heard recently that some further documents were found. They were actually drafts of opinions and it is most unfortunate that those documents did not come to the Judiciary Committee in time so that we could include them in the deliberations. What I did was, I went back and looked at the opinions that were actually published and then I looked at the drafts. These happen to be drafts by Justice Broderick and there is considerable commentary. He was arguing in the deliberations that we had that he was the grammarian, but when I look at those documents and his notes, and compare them with the final product, there were changes. There were changes in words, there were changes in sentences, and he was recused at the time. I took a look at the total picture in 1998 and I found that in the cases that came before the Supreme Court there were 36 incidents of "did not sit" and then there were eight incidents of "did not participate". As far as I've been able to find, "did not sit" still meant that you participated and that, I think, in many ways is the heart of the matter. Because if you are recused, you should not participate. For me, as I just said, recusal is the heart of the matter. It is true that the court has now recognized it and changed its policy but I am quite certain that that does not necessarily excuse the practice that has gone on for the last 20 years. Somebody said it had been going on for 50 years, but nobody documented. I went back to 1950 to discover that, at that time, they had 15 incidents of recusal; but ever since that time, recusal has grown and of course there are no drafts to look at to see whether they did participate. I believe that if this amendment fails that we will be setting a very bad precedent for the future. I think it is important to remember that we are only sending a recommendation and Chief Justice Brock will have every opportunity to defend himself, to cross examine the witnesses so that he will then have that chance to acquit himself from whatever charges have been made. Finally I want to say, Part I, Article 35 of the Constitution of New Hampshire that has been in effect since 1784 says something very important. It says that the justices shall impartially interpret the laws and administer justice and whenever that falls short our people, our citizens, whoever they may be, will suffer. Therefore, I urge you to support this proposed amendment to the articles of the bill of impeachment. Thank you.

Speaker Sytek: Would the member yield to a question? Rep. Avery, you may inquire.

Rep. Avery: Thank you, Madam Speaker and thank you, Representative Jacobson. Is it your intent that your amendment would supplant the three articles that we have voted on or is this in addition?

Rep. Jacobson: This is in addition to and it relates to one question, to the recusal question.

Speaker Sytek: Would the member yield to another question? Rep. Vaughn, you may inquire.

Rep. Vaughn: Thank you very much, indeed, Madam Speaker. The honorable member from New London, in reviewing the interim report of the special counsel, I see, would you give me by way of summation for our honored colleagues, how many states have recusal and also forbid decisions to be

distributed among the court members? Perhaps I can jog your memory. It was somewhere between 25 and 45, or maybe you know.

Rep. Jacobson: I don't recall the exact number...(tape change)...oddly enough, a jurist from West Virginia came to my little book shop this weekend and he expressed to me astonishment that we did have such a lax recusal policy because again, the issue is if you are recused, you do not participate.

Rep. Vaughn: What amazed me in listening to the testimony was the fact that I understood that some of the recused judges actually wrote the decision. Was that the case? In fact, the answer to the other question was 25 states have the justices recused and can't see the decisions.

Rep. Jacobson: The question of a recused justice writing an opinion is known often times as a per curium opinion in which his name does appear on the opinion. However, according to the justices, the justices who were not recused agree with the way that he wrote the opinion.

Speaker Sytek: Would the member yield to another question? Rep. Wendelboe, you may inquire.

Rep. Wendelboe: Representative Jacobson, there has been a lot of comment made about the opportunity for the justices in conference to comment on cases they were recused from. But is there not also the opportunity when a justice is recused and gets a copy of the opinion in advance that there is the opportunity that that justice could either on purpose or inadvertently tip off the party that they had a conflict of interest because of their relationship with that party, that there could be cases, and I understand that Justice Brock testified that half of all cases that go to oral arguments never come out in opinion, that the potential exists that some of those cases might have gone away because some of the interested parties might have been tipped? The opportunity exists that people could think that that might have happened. Would you not agree?

Rep. Jacobson: Yes, as I understand it, the draft opinions were circulated to both recused justices and those that were not.

Speaker Sytek: Would the member yield to another question? Rep. Gilmore, you may inquire.

Rep. Gilmore: Thank you, Madam Speaker. Everything that was spoken of today I'm fairly familiar with. The only thing that has come up that caught me a little bit by surprise is what you raise in number two of Article IV, and as you spoke earlier you said you believe in providing some documentation towards what you are saying and it has to do with the per curium opinions and also in the justices sitting. Could you just give us some background on that?

Rep. Jacobson: It is difficult for me to answer that question at the moment because I have been concentrating on one item.

Rep. John Pratt: Thank you, Madam Speaker. Those of us, no, I speak for myself. I voted against this amendment in committee and did so for one major reason. The reason was not because there wasn't a problem. There is a problem. The reason was because, in my judgement, this wasn't an impeachable offense against the Chief Justice. You had a systemic court-wide problem everybody in the court had been doing. The Chief Justice inherited a court that had been doing it. No one raised the issue of should we do it differently? And it was my judgement that if we are going to impeach a Chief Justice, we should impeach him for acts which were intentional, knowing, and of some motive other than pure. I just did not think this rose to an impeachable offense. The offenses were there, that's not the issue.

Rep. Loren Jean: Good afternoon. Before I start on this article, I would just like to clear the record on the prefix "mal". Now, we've heard corruption, bribery, treason, everything attributed to "mal" anything, maladministration, malpractice and I went and looked it up in the Secretary of State's Office. It means in the French, bad, in the Latin, badly, inadequate. Malodorous, malpractice were two of the uses in the definition which are quite appropriate, I would say. Now, on the recusal policy, I couldn't agree more with Representative Jacobson. We have heard phrases, on this floor this morning even, well, we had a bad ball policy in place. Yesterday in committee, no harm was done and that we always did it that way. That no harm was done, I simply, absolutely can not agree. They have always done it that way because, according to the court, while they didn't have a policy and after all everybody did it and they have been doing that since Hector was a pup, obviously, and we had one member of our committee liken them somewhat to a Rockwellian atmosphere that you didn't really need rules because they were all honorable men, therefore you didn't have to write anything in stone. Well this is neither Mayberry or Stockbridge, Mass. This is the state of New Hampshire and I think we should hold our justices to a little bit higher standard. Now this whole thing is on the recusal policy. The recusal policy should be well known to every attorney and to every judge in the state of New Hampshire. When I researched a recusal policy a year or two ago, the first thing that came up, and I got it in research in about two minutes, and that was Alabama v. Lavoie and I think all the attorneys in here are familiar with Alabama v. Lavoie. It is a U.S. Supreme Court decision that absolutely negates the entire opinion if one of the justices is disqualified. Now, Representative Jacobson said that we have documentation and indeed we do. One is Winslow v. Holderness Planning Board, and this is the court speaking, this brings us to the principal question raised in this appeal, whether the master heard in applying to this case of rule the judicial act by a tribunal, one of whose members is disqualified, to act is voidable if the disqualified member participates therein. Well, that is pretty plain English and the defendants argument that bias of a single board member should not void the board's decision unless his participation produced the decision. They said, "no". And what did they do? They referred to, and I will get it shortly, Rollins v. Connor, and in Rollins v. Connor, this is our Supreme Court, held that mere participation by one disqualified member of a tribunal was sufficient to invalidate the tribunal's decision because it was impossible to estimate the influence one member might have on his associate. Now, what do we do here, what am I doing here? What I am doing is trying to influence you in the wisdom of my point of view. We all do it. That's what we do. Every time we speak in committee, speak on this floor, in subcommittee, whether it is a word, a gesture or a soliloquy we are all focused in one direction and that is trying to make your point the dominant point of view. We have heard that, well, it's only a sentence, I mean a period, a comma, it's grammar, it's stylistic. Well, I questioned sharply on this issue and here is what I got. You have the justices opinion, it goes to his law clerk, it goes to a second law clerk then it goes to a fellow named Peck who is described as being the most intellectual biped on the planet and then it goes to the court's Mrs. McKenzie. Now, anybody that has been watching this knows Mrs. McKenzie's background and that is the one that really corrects the grammar and the stylistics and the punctuation, etc. Then it goes to the justices in the conference committee, case conference or whatever and if there is, now, we've already got five people, now if there is one recused member on that board, the other four participate and now we have nine, is there any need for that tenth? I seriously doubt there is. Now, being legislators, has anybody in here ever, ever filed a bill, fought for it, all the way to the Governor's signature with the back of his mind always saying this will not apply to me? I doubt it very, very much. However, apparently our Supreme Court holds that opinion. I can only interpret what they have done as setting a higher standard and we are talking about high standards here, we have seen this, heard this all afternoon, setting a bar. Apparently our Supreme Court has set a bar way up here for your planning board, your zoning board, your quasi-judicial agencies, etc., etc., but they walk under the bar. Therefore, I certainly hope that you would find favor with this article of impeachment and vote yes. Thank you.

Speaker Sytek: Would the member yield to a question? Rep. Keans, you may inquire.

Rep. Keans: Thank you, Madam Speaker. Representative Jean, was this amendment offered in committee? I think it was and would you tell us what the vote was please?

Rep. Loren Jean: We all know this failed in committee.

Rep. Keans: Would you tell us the vote, please?

Rep. Loren Jean: The vote was 13 to 9. However, I might add, since that vote, you never know whose hot buttons are going to be pushed by any one issue. When I went to the picnic in Loudon the other day, and I graciously accept your well-dones for myself and the committee, but one common theme was hey, what happened with the recusal? That was a very common theme, I might add, and in talking to an awful lot of you people here today, it still is.

Rep. Pepino: Madam Chairman, ladies and gentlemen, I rise in support of the Jacobson amendment. I'll just give you a few comments. I won't take up much of your time because it is getting late. It seems as though every time there was a problem with our court system, they fixed it. Change a policy, change a rule, all their problems go away. You must remember that every time they write a rule, for example, Article 73-a of our constitution says this rule is law, even though it might invalidate a state statute. This was the reasoning some members of the committee used during the hearings. Yet, they did these things, they said they were wrong, they said they were mistakes, but they fixed it again and they would never do these things again. I've been here for 12 years, I've been hearing that for 12 years. State statutes were disregarded, court rules and state statutes were ignored, these are listed in your calendar. I also believe that five or more words in our constitution were disregarded: good behavior, high principals, maladministration. They picked up open and accessible, accountable and that last again, their rule that has the force and effect of law, 73-a. I believe when you appoint a Chief Justice, he is the CEO of that branch of government, he is in charge. He sets policies, he makes rules and what ever is wrong with the system he is expected to correct it in the private sector. These things didn't happen. That's maladministration. Like one justice said, the court has appointed, the court has operated on past practices and procedures, you'll have to forgive me just wrote, just scribbled it all out in pencil so it is all over the place here, like one of our justices said, the court has operated on past practices and procedures but nobody knows how far back these past practices and procedures go. But, we do know the code of official conduct was adopted in 1973. That is in our calendar. The judges acted like this rule never existed. The main issues that are not in three articles are perjury and recusal. One member of the committee said the recusal policy was 60 years old, but never documented. The Chief Justice inherited this and if the policy was wrong it should have been changed. The article contained perjury or testified to falsely, even though Attorney Steinfield told the committee perjury has to be included otherwise a less serious offense could be a bill of address. But the legal minds on the committee disagreed with that. One of the most best comments that I heard, and I taped 15 tapes of Channel 11, was by Representative Rowe. This is what he said, he said, "If local planning boards conducted themselves like the Supreme Court, they would be hung." In the three articles that were being discussed, Chairman Mock said it all. "You keep chewing this, there'll be nothing left." Another quote by Chairman Mock, "Just about everything you want to turn over to the JCC, let's turn over everything and we'll all go home." Chairman Mock again, in case you people didn't see it on Channel 11, "One issue that is broken down in the Supreme Court is recusal. They do not recuse themselves. The good old boys go in the back room and settle things. Any judge should have said, "What are you doing?" sat but did not participate, participate but did not sit. This is wrong and people are looking to us to straighten this out." These are the Chairman's quotes as the committee was discussing the language in one of these three articles, I agree with him 100 percent. Thank you.

Rep. Mock: Madam Speaker, thank you. Thank you for listening to me one more time. Of all the articles that you may hear today, the one that your constituents back home know about is this one. They know why you are here today. You are here because they heard about judges who were recused

sitting on cases and most of them, many of them, who sit on planning boards, school boards, boards of selectmen, know how very, very strict the Supreme Court has been about recused officials sitting on cases. I'll give you Article 35 of the Constitution. It says, "It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well;" Isn't it interesting that they put behavior in there with the recusal issue? I find that rather interesting. Then there is a court case, and any of you who may live in the town of Holderness, planning board, Eugene Winslow versus the Town of Holderness, and this is what the court declared. They said, "Where a member of the planning board had prejudged the facts of a particular case before joining the board, this prejudgment constituted a cause for disqualification from the quasi judicial function of the planning board in the case." The Supreme Court held in Rollins v. Connor, 1908, that mere participation by one disqualified member of a tribunal was sufficient to invalidate the tribunal's decision because it was impossible to estimate the influence of one member, that one member, might have on his associates. Enough said. It was wrong and I give them credit. They have changed it, and it should have been changed, we have no way of knowing how many people were hurt or how many people were helped by this decision and unfortunately, like the Chief Justice said, "The buck stops here." Thank you.

Rep. Bergin: Thank you, Madam Speaker. I rise in opposition of this article and I'll tell you why. There has been much discussion on recusal. Attorney Steinfield, when he deposed a number of witnesses, including the judges, the question was asked about recusal. We know more about recusal now in the Supreme Court than we have ever known and we know for sure, and there is no doubt in my mind, that the recusal policy of the court was abused, but it was abused not by just Chief Justice Brock. It was abused by every member of the court, Justice Broderick, Justice Horton, Justice Johnson, Justice Batchelder, Souter, we can go on and on and on and every one of those justices who abused the recusal policy in the court knew the canon. They knew the conduct of judicial code of conduct yet they abused the recusal policy. So, if we are going to pass this article of impeachment on Justice Brock, then we might as well impeach all the other justices on the same article and that's why I voted against this and I also voted against this because the reality is that the recusal abuses finally caught up with the court. They first caught up with the court in the Feld case, when Justice Thayer, a recused justice, spoke out and then, because they just ignored this policy, it was like an accident waiting to happen, and it happened in Thayer v. Thayer. If the policy was not abused, Justice Thayer would have never said what he said, Justice Horton would have never said what he said and Justice Brock would not have sat there and let them do it. So I voted for the Article II, Thayer v. Thayer because in my mind that's what recusal was all about, that's what the abuse was during that instance. You have to also look at these justices when they sit on the bench and they all testified to this, they are equals. They are equals and it is up to them to make sure they live by the rules of judicial conduct and we know some sat and some participated and etc., we had all kinds of inquiries on that. So I would urge all of you to uphold the committee vote, 13 to 9, and let's not put all the responsibility on the Chief Justice. Every justice that served on the bench broke that rule of recusal. Thank you.

Speaker Sytek: Would the member yield to questions? Rep. Solow, you may inquire.

Rep. Solow: Thank you, Madam Speaker and thank you, Representative Bergin. In support of your argument, would you answer the question whether this was a practice or a policy that had been established and discussed at some length and whether we had discovered any evidence whatsoever that any case, in terms of the merits, so-and-so versus so-and-so, had been altered by the practice that was conducted and whether or not this discussion of cases in conferences, about opinions, came after the judgement had been made as to who was the winner and the loser in each case? Thank you.

Rep. Bergin: Thank you, Representative. Every justice that came in testified that it was a practice of the court, that they came on the court and this is what was happening and so they went through the various stages of recusing themselves but then going through the various practices which have already been outlined well by Representative Jacobson and other speakers. As far as we know, the testimony we saw, the only two cases that we got into were the Feld and the Thayer v. Thayer where the recusal was a major problem. We didn't get any other evidence that I'm aware of saying that because of this practice other cases were altered or decisions were altered or whatever. Of course, we didn't get all the information either, but, as I said previously, it was a practice and all of them practiced it.

Speaker Sytek: Will the member yield to another question? Rep. Mirski, you may inquire.

Rep. Mirski: Thank you, Madam Speaker. Representative, are you aware that you will have the opportunity to address the other two sitting justices, Horton and Broderick, in two following resolutions with respect to the wrongfulness of this recusal policy?

Rep. Bergin: Yes, I am aware of that and that's why I voted for reprimand on both Justice Horton and also on Justice Broderick.

Speaker Sytek: Will the member yield to another question? Rep. Withee, you may inquire.

Rep. Withee: Thank you, Representative Bergin. I just have one question because this is coming under the maladministration point. Could you point me to, because maybe I'm wrong, but I see this as being a negligent practice, could you point me to where there is willfulness or intentional implementing of this policy?

Rep. Bergin: That's why I voted against that, I don't see any willfulness. I think that it was a practice of the court, it was a bad practice, it was an accident waiting to happen and it did happen and that's why we're here today, but if we look at all the justices, they all fell into the rut of going along with this. Every one of them had a choice. I asked the question to several of them, you had a choice on this and they do bear the responsibility of the practices that they held in the court by not following the proper procedures for recusal. But, I do not look at it as malice or manipulation of the administration of justice in the State of New Hampshire.

Speaker Sytek: Would the member yield to another question? Rep. Hamel, you may inquire.

Rep. Hamel: Thank you, Madam Speaker. Twice in a year, in two years, I'm happy and proud to say that I am not of a legal bent, I have a good idea of what "is", is, what "has", means. I'm not sure what the word "call" means in relation to call to Judge Gray. I have a pretty good idea of what I understand by "recusal". I thought I knew what I understood by "sit" and "participate". I guess I'm really upset at this hairsplitting verbal gymnastics that we have been spending a lot of time on and I'm going to stop. The question is, I thought your lead-in, or your refusal, was a lead-in to trying to impeach the other justices and if that's the case fine.

Rep. Bergin: Well, the choice is all yours, but I wouldn't impeach any justices on a recusal policy that everybody practiced. Thank you.

Rep. Mock requested a roll call; sufficiently seconded.

The question being the adoption of the Jacobson floor amendment.

YEAS 244 NAYS 108

YEAS 244

BELKNAP

Bartlett, Gordon	Boyce, Robert	Czech, Stanley	Johnson, James
Lawton, David	Pilliod, James	Rice, Thomas	Rosen, Ralph
Russell, David	Salatiello, Thomas	Thomas, John	Turner, Robert
Wendelboe, Francine			

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Kenney, Joseph	Lyman, L Randy	Mock, Henry
Patten, Betsey	Philbrick, Donald	Sullivan, P Judith	Torressen, Gary

CHESHIRE

Avery, Stephen	Batchelder, Robert	Blaisdell, Michael	Hunt, John
Lerandeau, Alfred	Manning, Joseph	McGuirk, Paul	Meader, David
Mitchell, McKim	Richardson, Barbara	Roberts, William	Rose, William
Smith, Edwin	Zerba, Roger		

COOS

Davis, Perley	Gallus, John	Horton, Lynn	Landers, Dana
Mears, Edgar	Pratt, Leighton	Tholl, John Jr	Woodward, David

GRAFTON

Akins, Ralph	Alger, John	Almy, Susan	Brothers, Richard
Cobb, John	Dudley, Terri	Gilman, G Michael	Hall, David
Ham, Bonnie	Harmon, Hobart	Hinman, Harry	MacNeil, Allen
Marshall, Gene	Mirski, Paul	Nordgren, Sharon	Phinney, William
Picconi, Al	Scanlan, David	Ward, Brien	Weber, Phil

HILLSBOROUGH

Alukonis, David	Arnold, Thomas Jr	Arthur, Rose	Batula, Peter
Beaupre, Roland	Belvin, William	Bergeron, Lucien	Brundige, Robert
Bruno, Pierre	Buckley, Raymond	Calawa, Leon Jr	Carlson, Donald
Chabot, Robert	Christiansen, Lars	Clegg, Robert Jr	Clemons, Jane
Cote, David	Cote, Peter	Coughlin, Pamela	Dawe, Eileen
Desmarais, Vivian	Desrosiers, William	Drabinowicz, A Theresa	Emerton, Lawrence
Fenton, James	Fields, Dennis	Fletcher, Richard	Flora, Kathleen
Foster, Linda	Franks, Suzan	Gagnon, Eugene	Ginsburg, Ruth
Gorman, Mary	Haley, Robert	Hansen, Herbert	Herman, Keith
Herman, Richard	Holley, Sylvia	Hunter, Bruce	Jean, Loren
Keye, Harvey	Kurk, Neal	L'Heureux, Robert	LaPorte, George
LaRose, Richard	Lasky, Bette	Leonard, Peter	Lozeau, Donnalee
MacGillivray, Jeffrey	Martel, Andre	Martin, Mary Ellen	McCarthy, William
McCarty, Winston	McColgan, Philip Jr	McDonald, James Sr	McDonough-Wallace, Alice
McGough, Tim	McRae, Karen	Mendenhall, Leslie	Mercer, Robert
Milligan, Robert	Moran, Edward	Moriarty, Mary	Mosher, William
Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane	Ouellette, Dean
Pepino, Leo	Peterson, Andrew	Reeves, Sandra	Reidy, Frank
Sarette, John	Sargent, Maxwell	Simon, Anthony	Tate, Joan
Thulander, O Alan	Vaillancourt, Steve		

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Brewster, Richard	Jacobson, Alf
Langer, Ray	Larrabee, David Sr	Lavoie, Gerard	Leber, William
Marple, Richard	Maxfield, Roy	Nichols, Avis	Seldin, Gloria
Soltani, Tony	St Cyr, Gerard	Virtue, Carolyn	Whalley, Michael

ROCKINGHAM

Abbott, Dennis	Arndt, Janet	Beaulieu, Jon	Belanger, Ronald
Bishop, Franklin	Bridle, Russell	Christie, Andrew Jr	Clark, Martha
Clark, Vivian	Cox, Russell	Dalrymple, Janeen	Dearborn, Bruce
DiFruscia, Anthony	Dowling, Patricia	Downing, Michael	Fesh, Robert
Flanagan, Natalie	Flanders, David	Flanders, John Sr	Francoeur, Sheila

Gleason, John	Grant, Kenneth	Griffin, Mary	Hamel, Albert
Henderson, Warren	Hutchinson, Karen	Hutchinson, Rebecca	Katsakiores, George
Katsakiores, Phyllis	Kelley, Jane	Kelley, William	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
McKinney, Betsy	Moore, Benjamin	Morse, Charles	Nowe, Mary Lou
Nowe, Ronald	Noyes, Richard	O'Neil, Michael	Packard, Sherman
Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne	Putnam, Ed II
Rabideau, Marie	Raynowska, Bernard	Reardon, Neil	Ruffner, Walter
Shelton, Richard	Stickney, Nancy	Stone, Joseph	Tufts, J Arthur
Varrell, Thomas	Vaughn, Charles	Weare, Everett	Welch, David
Weyler, Kenneth	Whittier, John	Zolla, William	

STRAFFORD

Bickford, David	Cossette, Larry	DeChane, Marlene	Gilmore, Gary
Heon, Richard	Knowles, William	McKinley, Robert	Rogers, Rose Marie
Rollo, Michael	Smith, Marjorie	Taylor, Kathleen	Wall, Janet
Woods, Phyllis			

SULLIVAN

Cloutier, John	Flint, Gordon Sr	Jones, Constance	Kibbey, David
Leone, Richard	Robb-Theroux, Amy	Young, David	

NAYS 108

BELKNAP

Holbrook, Robert	Millham, Alida	Wood, Jane
------------------	----------------	------------

CARROLL

None

CHESHIRE

Burnham, Daniel	DePecol, Benjamin	Lynch, Margaret	Lynott, Margaret
Pratt, Irene	Pratt, John	Robertson, Timothy	Royce, H Charles

COOS

Guay, Lawrence

GRAFTON

Copenhaver, Marion
Solow, Martha

Eaton, Stephanie

Guest, Robert

Johnson, Gary

HILLSBOROUGH

Ahern, Richard
Burkush, James
Dwyer, Paul Sr
Goley, Jeffrey

Andrews, Frederick
Craig, James
Dyer, Merton
Goulet, Maurice

Baroody, Benjamin
Daigle, Robert
Ford, Nancy
Haettenschwiller,
Alphonse

Bergin, Peter
Dokmo, Cynthia
Garrish, Linda
Hall, Betty

Jean, Claudette
Lynde, Harold
Rowe, Robert

Johnson, Lionel
Melcher, Harold
White, John

Lefebvre, Roland
Messier, Irene
Withee, Dennis

Leishman, Peter
Murphy, Robert

MERRIMACK

Bouchard, Candace
Fraser, Marilyn
Kennedy, Richard
Owen, Derek
Rodd, Beth
Whittemore, James

Chase, George
Gile, Mary
Lockwood, Priscilla
Potter, Frances
Rosenfield, Jay
Yeaton, Charles

Daneault, Gabriel
Hager, Elizabeth
Marshall, Kenneth
Poulin, Dave
Wallin, Jean

Fortnam, Janet
Hess, David
Moore, Carol
Reardon, Tara
Wallner, Mary Jane

ROCKINGHAM

Blanchard, MaryAnn
Gibbons, Paul
Norelli, Terie
Shultis, Elizabeth

Carson, Gregory
Johnson, Robert
O'Keefe, Patricia
Splaine, James

Case, Margaret
Kane, Cecelia
Sabella, Norma
Stritch, C Donald

Cooney, Richard
Lovejoy, Marian
Sapareto, Frank
Weatherspoon, Jackie

STRAFFORD

Berube, Roger	Brennan, William	Brown, George	Brown, Julie
Callaghan, Frank	Dunlap, Patricia	Estabrook, Iris	Grassie, Anne
Johnson, Nancy	Kaen, Naida	Keans, Sandra	Lent, Donald
Lundborn, Raymond	Musler, George	Pelletier, Arthur	Pelletier, Marsha
Snyder, Clair	Torr, Franklin	Twardus, Joseph	Vachon, Dennis
Vincent, Francis			

SULLIVAN

Allison, David	Donovan, Thomas Jr	Phinizy, James	Tuthill, John
Wiggins, Celestine			

and the Jacobson Floor Amendment was adopted.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

Rep. Mirski offered a floor amendment.

Floor Amendment (4806h)

Amend the resolution by replacing the introductory paragraph after the resolving clause with the following:

That the judiciary committee has found that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether David A. Brock, chief justice of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the articles of impeachment below, each of which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

Rep. Mirski: Madam Speaker. Obviously I favor this, but the Representative from Epsom was going to speak to this, not I. Thank you.

Rep. Soltani: Thank you, Madam Speaker. Madam Speaker, the exclusive purpose of this amendment is to eliminate the language in the original resolution which was passed by the House Judiciary Committee to the extent of eliminating the requirement of clear and convincing evidence. That's all it does. If this amendment passes, we delete the words of "clear and convincing evidence" from the resolution which has been recommended by the House Judiciary Committee. I'm going to tell you why we're doing that and there are three reasons. One is the principle reason, another one is a policy reason and the third is that there no is support in law for it. What is the principle reason? As I said earlier, the inquest, the House of Representatives, has the ultimate discretion in establishing the standard of evidence with each member. You as individuals decide what the standard of evidence is, what the impeachable conduct is and whether there is sufficient facts to send the case to the Senate for the trial. You do that on behalf of your constituents. Any invasion of that right is a derogation of your right and thereby your voters' rights. It just can not happen, it's an implicit

amendment to the New Hampshire Constitution. It is essentially turning a political process into a legal process by additional legal mumbo-jumbo which means nothing at all. We don't have that power, we can not usurp the authority of the each individual member, that's all there is to it. The second reason is the policy reason. Well, we did pass a requirement of clear and convincing evidence, but what we said was well, we'll call it clear and convincing evidence but we won't define it. So you just think what ever you want and vote for it. In essence, what we've done, they used to call it in the old days a head-fake, say something, do another with a wink and a nod, call it clear and convincing evidence, well, for all I care you can call it spaghetti. If there is no definition for it, it's not binding and no one can tell you, the members, the elected members of the General Court that your standard is not good enough. I will not presume the lack of intellect on any member of this House and I will ask you not to presume the lack of intellect on my part. The adoption of a standard of evidence most likely will attack my ability to carry out my office and it is important for historical purposes that we don't conduct ourselves with a head-fake, a wink and a nod, and do something that is less than up-front. It is a meaningless gesture, it's a ruse. We don't need to do it and there is good evidence that the Senate won't agree with it anyway. They will most likely adopt no standard and leave it to the individual Senator just as they should. I got a feeling they know better. Finally, there is no support for this. There is no support in the constitution, there is no support in New Hampshire law and, in fact, there is no preliminary proceeding in New Hampshire, legal preliminary proceeding, that requires clear and convincing evidence to return an indictment or an accusatory instrument. It's always either preponderance of the evidence, probable cause. Never, never, never, never, never, never, never, as Winston Churchill said, is there anything in New Hampshire law for a preliminary body to require clear and convincing evidence. We look for support to other jurisdictions. It turns out that two of them, with entirely different constitutions, have adopted clear and convincing evidence as opposed to approximately 22 of them who have done otherwise. It looks like New Hampshire is suddenly starting to march to the tune of a different drummer and we've done it based on legal mumbo-jumbo with no support, no textual support, in the letter of the constitution. This is a momentous proceeding. If we start acting without textual support in this proceeding, where will we stop next? I ask you to please remove that language and for the prosperity, for the sake of our children and their children, make sure that the rights of the voters and the rights of the representatives are preserved to their conscience. Thank you. And my warning about answering all the questions, stands so if you want me to leave, don't ask me any questions.

Rep. DiFruscia: Thank you, Madam Speaker. I've learned not to talk more than three and a half minutes and please stop me if I do. Now, don't take that off my time, please. One of the things that is most sad today, but yet again you've got to look at some positive things... (tape change) ...heard from a lot of attorneys and it seems that maybe you've got a little bit of an education in terms of rules of evidence. As I look to the fourth floor I have to compliment the attorney for the Chief Justice. He convinced the Judiciary Committee that clear and convincing is your criteria and quite frankly, you've got to understand what it means. The first question I think all of us should understand, just for a moment and believe me it's quick, is what is a burden of proof? Are we a grand inquest, not an inquisition? Are we investigatory? If you are akin to a grand jury, as the counsel for the Committee on Judiciary thinks you are, then you apply the criminal rules. If you apply the criminal rules, it is very simple. It's probable cause and as so many judges stand up before you in court every day, whether it is a civil case or a criminal case, you apply different standards. Now, a very easy method of doing it is by most judges, and I see it constantly, spreading their hands and they say, "This is the scale of justice." If tips just a little bit, then you have the preponderance of evidence. That's a civil, that's a civil criteria. If you go to clear and convincing evidence, which is civil again, it goes to the scale is tipped like three-quarters. So the bar now raises, so to speak. So the burden of proof, what you have to prove, raises. I'm suggesting to each and every one of us that since this is clearly a historical event, we must not set that bar that high. To do that takes away from you, your conscience, it takes away your right and I'm very grateful to the Speaker. I wrote the Speaker on a number of occasions asking what is the burden of proof. The response I got was a very fair one and I'm grateful to the Speaker, follow your conscience, that's basically what was said. When you get to

the criminal aspect it's beyond a reasonable doubt. Now what is proof? Proof is evidence, too. Is it oral? Simply put, do not let us be dictated by various, I don't want to use the word legal mumbo-jumbo because I had to take rule 16, but I'm still voting, do not lose sight of the fact that you are losing something and that's very important to you. If, deep in your stomach and in your heart, you know it's wrong or you know it's right, then you vote the right way, your conscience. I certainly support this amendment, I hope you vote for the green button.

Speaker Sytek: Would the last speaker yield to a question? Rep. Zolla, you may inquire.

Rep. Zolla: Thank you, Madam Speaker. Representative, we've been here for seven hours. We've been talking about everything within in the content of clear and convincing evidence. Don't you think that at this hour it's a little late to bring up this particular amendment?

Rep. DiFruscia: Absolutely not.

Rep. Bergin: Thank you, Madam Speaker. When the time came for deliberations and to vote on articles of impeachment and prior to that time I should say, Attorney Steinfield released the interim report around June 30th, and in the interim report on page 12 we had burden of proof. He gave us three burdens of proof: preponderance of evidence, which is the lower, likely than not in percent terms a likelihood of more than 50 percent; and he also gave us clear and convincing, which was the mid-level of burden of proof; and then the other choice we had was beyond a reasonable doubt. The clear and convincing standard has been used in at least two impeachments, one judicial and one presidential, and so the committee felt that we should set the bar right around the middle with burden of proof. The committee also felt that it was important that we set a burden of proof, so by a vote of 13 to 9 the committee voted "clear and convincing". There were a number of members that also spoke and said that it is really up to your conscience. I feel, or a member said, I feel that I can, in my mind, establish what a burden of proof was, and really when you think of it that is exactly what happened when the votes were taken and every member, after 12 weeks of depositions, of testimony, of sitting in their chair like I did, waking up at 2:00 in the morning, thinking about this constantly, when the vote came they knew the burden of proof, and as the representative just said, we've been discussing the article of impeachment all day and you voted on four of them and it says clear and convincing and so I would ask you to support the committee with clear and convincing evidence and defeat the Mirski amendment. Thank you, Madam Speaker.

Speaker Sytek: Would the member yield to a question? Rep. Wallin, you may inquire.

Rep. Wallin: Thank you, Madam Speaker. I am now really very confused because we have been talking all day about clear and convincing. I am concerned that if we remove clear and convincing that means that when it gets to the Senate they have a lower necessity to prove anything, that it doesn't have to rise to the level of clear and convincing and I'm just wondering if we do this amendment whether or not it is going to be easier to convict in the Senate.

Rep. Bergin: The answer would be that the Senate would decide on how they want to conduct their trial, because if you look at the resolution it says that the Judiciary Committee has found by clear and convincing evidence, that the Judiciary Committee has found by clear and convincing evidence, meaning, the Committee. If you voted on these articles of impeachment going along with the report, the resolution from the House and vote on the final resolution, then you are voting on clear and convincing evidence. Now, when it goes to the Senate they will set their rules and procedures and carry on.

Rep. Wallin: I'm sorry, Madam Speaker, I think I probably wasn't clear. Let me give you a hypothetical. If I am sitting in the Senate and over from the House comes these articles of

impeachment and they tell me that the House has clear and convincing evidence that the justice has done the following things, does not that have a greater, does not that lend greater importance or a higher bar than if it just says the House thinks that they did this and we don't really have any evidence at all?

Rep. Bergin: No, it won't, because what we're doing is we're saying based on whether it is clear and convincing evidence, whatever the evidence is, that we have voted on four articles of impeachment and then we're going to send over to the Senate these four articles of impeachment along with all of the evidence and they're going to conduct a trial and they're going to bring in witnesses and they are going to look at evidence and they may do other things, depose, I'm not sure if they will depose people, but they will conduct a trial. The final outcome of that trial will be they'll have to vote or come up with a verdict just like in a jury trial, and they'll have to use their burden of proof standard. So, whether or not we send it over from the House clear and convincing or if we establish another burden of proof, it wouldn't matter. It is then up to the Senate to conduct a trial, come up with a verdict based on their burden of proof and their conscience.

Speaker Sytek: Will the member yield to a question? Rep. DiFruscia, you may inquire.

Rep. DiFruscia: Thank you for yielding. Isn't it correct that when the House agreed to divide the question, go article by article, that the words clear and convincing was in the first paragraph? And, is it not also correct if clear and convincing is in the first paragraph, that we don't know if the House voted on that criteria of clear and convincing?

Rep. Bergin: The House voted on each article separately, you're right they divided it and in the House voted on the evidence that the House Judiciary Committee delivered to the House and if the members read the first part of it, it does say clear and convincing. Now, again, as I mentioned earlier, that was the standard that we set. But I think each one of you here today, after talking to Judiciary members, reading depositions, watching things on TV, listening, etc., you all voted by your conscience. You all did just like we did on the Judiciary committee. You set your burden of standard, burden of proof and so I don't think it has any bearing on the vote.

Speaker Sytek: Rep. Haettenschwiler, you may state your inquiry.

Rep. Haettenschwiler: Madam Speaker in light of this last exchange, I'm confused. If we have voted on each article separately, the issue that is now being discussed, is the introduction or the preamble to the resolution and it's not clear to me how we can be voting on an amendment to that until we actually have addressed it? Am I correct in that?

Speaker Sytek: The amendment is before us. It happens to amend the preamble and we'll do whatever the will of the majority is.

Rep. Solow: Thank you, Madam Speaker, thank you for your patience. It seems to me if we adopt this amendment, we will be speaking falsely because the committee did adopt its proposal by clear and convincing evidence. Thank you.

Rep. DePecol: Thank you, Madam Speaker and members of the House. I don't know about you, but I never used clear and convincing evidence to make my decision. The burden of proof that I used was did it offend me enough that I was willing to impeach a sitting member of the court. Now, this clear and convincing is kind of nefarious, I mean I can't define it. I can't tell you it is 75 percent you're convinced or 80 percent you're convinced. It is what you feel in your hearts. What we are doing here is an historic precedent thing. If this ever happens again, than the next Judiciary Committee and the next body of this House is going to look back at us and say, "What did they use? How did they

proceed? What kind of procedures did they have to come to this conclusion?" and if we burden them with this kind of proof, we are effectively making a precedent that will take away some of their leeway and some of their leverage and some of their ability to make a decision. So, I would just say this, clear and convincing, that's up to you. We can't put it on paper, we can't nail it down. Let your own hearts decide what you feel is a level of evidence enough to impeach. Let your own hearts decide what we are going to do to the next legislature and the next Judiciary Committee. Thank you, Madam Speaker.

Rep. Mock requested a roll call; sufficiently seconded.

The question being the adoption of the Mirski floor amendment.

YEAS 113 NAYS 231

YEAS 113

BELKNAP

Bartlett, Gordon	Boyce, Robert	Johnson, James	Lawton, David
Rosen, Ralph	Wendelboe, Francine		

CARROLL

Babson, David Jr	Dickinson, Howard	Sullivan, P Judith	Torressen, Gary
------------------	-------------------	--------------------	-----------------

CHESHIRE

DePecol, Benjamin	Roberts, William	Robertson, Timothy	Rose, William
-------------------	------------------	--------------------	---------------

COOS

Gallus, John	Tholl, John Jr
--------------	----------------

GRAFTON

Akins, Ralph	Alger, John	Cobb, John	Dudley, Terri
Gilman, G Michael	Hall, David	Harmon, Hobart	Hinman, Harry
Mirski, Paul	Phinney, William	Ward, Brien	Weber, Phil

HILLSBOROUGH

Arnold, Thomas Jr	Beaupre, Roland	Belvin, William	Bergeron, Lucien
Brundige, Robert	Bruno, Pierre	Buckley, Raymond	Carlson, Donald

Christiansen, Lars	Clegg, Robert Jr	Cote, David	Desrosiers, William
Drabinowicz, A Theresa	Fenton, James	Gorman, Mary	Goulet, Maurice
Hansen, Herbert	Herman, Keith	Holley, Sylvia	Hunter, Bruce
Jean, Loren	Kurk, Neal	L'Heureux, Robert	Lasky, Bette
Lefebvre, Roland	MacGillivray, Jeffrey	Martin, Mary Ellen	McCarthy, William
McCarty, Winston	McDonough-Wallace, Alice	McGough, Tim	McRae, Karen
Mercer, Robert	Ouellette, Dean	Pepino, Leo	Simon, Anthony
Vaillancourt, Steve			

MERRIMACK

Brewster, Richard	Kennedy, Richard	Langer, Ray	Lavoie, Gerard
Leber, William	Marple, Richard	Reardon, Tara	Soltani, Tony
Virtue, Carolyn			

ROCKINGHAM

Arndt, Janet	Beaulieu, Jon	Bishop, Franklin	Bridle, Russell
Clark, Vivian	DiFruscia, Anthony	Dowling, Patricia	Fesh, Robert
Flanders, David	Grant, Kenneth	Henderson, Warren	Hutchinson, Karen
Kelley, William	Kobel, Rudolph	Letourneau, Robert	McKinney, Betsy
Moore, Benjamin	Nowe, Mary Lou	Nowe, Ronald	Noyes, Richard
Packard, Sherman	Putnam, Ed II	Rabideau, Marie	Raynowska, Bernard
Reardon, Neil	Varrell, Thomas	Vaughn, Charles	Weare, Everett
Welch, David	Weyler, Kenneth		

STRAFFORD

Bickford, David	Gilmore, Gary	Grassie, Anne	McKinley, Robert
Rollo, Michael	Woods, Phyllis		

SULLIVAN

Jones, Constance	Kibbey, David	Young, David
------------------	---------------	--------------

BELKNAP

Czech, Stanley	Holbrook, Robert	Millham, Alida	Pilliod, James
Rice, Thomas	Russell, David	Salatiello, Thomas	Thomas, John
Turner, Robert	Wood, Jane		

CARROLL

Bradley, Jeb	Chandler, Gene	Howard, Godfrey	Kenney, Joseph
Lyman, L Randy	Mock, Henry	Patten, Betsey	Philbrick, Donald

CHESHIRE

Avery, Stephen	Batchelder, Robert	Blaisdell, Michael	Burnham, Daniel
Hunt, John	Lerandeau, Alfred	Lynch, Margaret	Lynott, Margaret
Manning, Joseph	McGuirk, Paul	Meadar, David	Mitchell, McKim
Pratt, John	Richardson, Barbara	Royce, H Charles	Smith, Edwin
Zerba, Roger			

COOS

Davis, Perley	Guay, Lawrence	Horton, Lynn	Landers, Dana
Mears, Edgar	Pratt, Leighton	Woodward, David	

GRAFTON

Almy, Susan	Brothers, Richard	Copenhaver, Marion	Guest, Robert
Ham, Bonnie	Johnson, Gary	MacNeil, Allen	Marshall, Gene
Nordgren, Sharon	Picconi, Al	Scanlan, David	Solow, Martha

HILLSBOROUGH

Ahern, Richard	Alukonis, David	Andrews, Frederick	Arthur, Rose
Baroody, Benjamin	Batula, Peter	Bergin, Peter	Burkush, James
Calawa, Leon Jr	Chabot, Robert	Cote, Peter	Coughlin, Pamela
Craig, James	Daigle, Robert	Desmarais, Vivian	Dokmo, Cynthia
Dwyer, Paul Sr	Dyer, Merton	Emerton, Lawrence	Fields, Dennis
Fletcher, Richard	Flora, Kathleen	Ford, Nancy	Foster, Linda

Franks, Suzan	Gagnon, Eugene	Garrish, Linda	Ginsburg, Ruth
Goley, Jeffrey	Haettenschwiller, Alphonse	Haley, Robert	Hall, Betty
Jean, Claudette	Johnson, Lionel	Keye, Harvey	LaPorte, George
LaRose, Richard	Leishman, Peter	Leonard, Peter	Lozeau, Donnalee
Lynde, Harold	Martel, Andre	McColgan, Philip Jr	McDonald, James Sr
Melcher, Harold	Mendenhall, Leslie	Messier, Irene	Milligan, Robert
Moran, Edward	Moriarty, Mary	Mosher, William	Murphy, Robert
Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane	Peterson, Andrew
Reeves, Sandra	Reidy, Frank	Rowe, Robert	Sarette, John
Sargent, Maxwell	Tate, Joan	Thulander, O Alan	White, John
Withee, Dennis			

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Chase, George
Daneault, Gabriel	Fortnam, Janet	Fraser, Marilyn	Gile, Mary
Hager, Elizabeth	Hess, David	Jacobson, Alf	Larrabee, David Sr
Lockwood, Priscilla	Marshall, Kenneth	Moore, Carol	Nichols, Avis
Owen, Derek	Potter, Frances	Poulin, Dave	Rodd, Beth
Rosenfield, Jay	Seldin, Gloria	St Cyr, Gerard	Wallin, Jean
Wallner, Mary Jane	Whalley, Michael	Whittemore, James	Yeaton, Charles

ROCKINGHAM

Abbott, Dennis	Belanger, Ronald	Blanchard, MaryAnn	Carson, Gregory
Case, Margaret	Christie, Andrew Jr	Clark, Martha	Cooney, Richard
Cox, Russell	Dalrymple, Janeen	Dearborn, Bruce	Downing, Michael
Flanagan, Natalie	Flanders, John Sr	Francoeur, Sheila	Gibbons, Paul
Gleason, John	Griffin, Mary	Hamel, Albert	Hutchinson, Rebecca
Johnson, Robert	Kane, Cecelia	Katsakiores, George	Katsakiores, Phyllis
Kelley, Jane	Langley, Jane	Langone, John	Lovejoy, Marian
Major, Norman	Morse, Charles	Norelli, Terie	O'Keefe, Patricia
O'Neil, Michael	Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne
Sapareto, Frank	Shelton, Richard	Shultis, Elizabeth	Splaine, James
Stickney, Nancy	Stone, Joseph	Stritch, C Donald	Tufts, J Arthur

Weatherspoon, Jackie

Whittier, John

Zolla, William

STRAFFORD

Berube, Roger

Brennan, William

Brown, George

Brown, Julie

Callaghan, Frank

Cossette, Larry

DeChane, Marlene

Dunlap, Patricia

Estabrook, Iris

Heon, Richard

Johnson, Nancy

Kaen, Naida

Keans, Sandra

Knowles, William

Lent, Donald

Lundborn, Raymond

Musler, George

Pelletier, Arthur

Pelletier, Marsha

Rogers, Rose Marie

Smith, Marjorie

Snyder, Clair

Taylor, Kathleen

Torr, Franklin

Twardus, Joseph

Vachon, Dennis

Vincent, Francis

Wall, Janet

SULLIVAN

Allison, David

Cloutier, John

Donovan, Thomas Jr

Flint, Gordon Sr

Leone, Richard

Phinizy, James

Robb-Theroux, Amy

Tuthill, John

Wiggins, Celestine

and the Mirski floor amendment failed.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

Speaker Sytek: The question now is on the adoption of the resolution with amendment, Ought to Pass with the amendment we've adopted. This is for the adoption of the whole thing plus the Jacobson amendment.

Rep. Hager: Thank you, Madam Speaker. Madam Speaker, it has been a long day, you have handled this House very well. I do believe the train has left the station but I need to rise in opposition to this resolution and all four of its articles. I am gravely disappointed that we adopted those articles and do know that we have one last chance to say no to them. I, and an obviously small minority of this House, voted against those articles of impeachment primarily because we do not feel that the awesome power that our forefathers gave us to impeach in our constitution should be used for what the Representative from Litchfield said so eloquently were simply bad acts. There is no question in my mind that David A. Brock made mistakes. I submitted an amendment to this bill that was a censure article to tell him we believe he made mistakes, but David Brock is a good man and he did not make those mistakes intentionally and I would urge you to vote no on this resolution at the present time. Thank you, Madam Speaker.

Rep. John Pratt: The hour is late, Madam Speaker. We have voted on each of the individual articles. Now comes the moment of asking that we vote the entire resolution forward. I don't think anything more needs to be said other than that by this resolution, in my judgement, we are not lowering any bar. We are holding the Supreme Court and the Chief Justice to the same high standard we would hold any judge, any lawyer, any citizen of New Hampshire, in a position of trust. I ask for a "yes" vote.

Rep. Mock requested a roll call; sufficiently seconded.

The question being the adoption of the resolution as amended.

YEAS 253 NAYS 95

YEAS 253

BELKNAP

Bartlett, Gordon	Boyce, Robert	Czech, Stanley	Johnson, James
Lawton, David	Rice, Thomas	Rosen, Ralph	Russell, David
Salatiello, Thomas	Thomas, John	Turner, Robert	Wendelboe, Francine
Wood, Jane			

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Kenney, Joseph	Lyman, L Randy	Mock, Henry
Patten, Betsey	Philbrick, Donald	Sullivan, P Judith	Torressen, Gary

CHESHIRE

Avery, Stephen	Batchelder, Robert	Blaisdell, Michael	DePecol, Benjamin
Hunt, John	Lerandeau, Alfred	Manning, Joseph	McGuirk, Paul
Meador, David	Mitchell, McKim	Pratt, John	Richardson, Barbara
Roberts, William	Robertson, Timothy	Rose, William	Royce, H Charles
Smith, Edwin	Zerba, Roger		

COOS

Davis, Perley	Gallus, John	Horton, Lynn	Landers, Dana
Mears, Edgar	Pratt, Leighton	Tholl, John Jr	Woodward, David

GRAFTON

Akins, Ralph	Alger, John	Brothers, Richard	Cobb, John
Dudley, Terri	Gilman, G Michael	Hall, David	Ham, Bonnie
Harmon, Hobart	Hinman, Harry	MacNeil, Allen	Marshall, Gene
Mirski, Paul	Phinney, William	Picconi, Al	Scanlan, David

Ward, Brien

Weber, Phil

HILLSBOROUGH

Alukonis, David	Arnold, Thomas Jr	Arthur, Rose	Baroody, Benjamin
Batula, Peter	Beaupre, Roland	Belvin, William	Bergeron, Lucien
Bergin, Peter	Brundige, Robert	Bruno, Pierre	Buckley, Raymond
Burkush, James	Calawa, Leon Jr	Carlson, Donald	Chabot, Robert
Christiansen, Lars	Clegg, Robert Jr	Clemons, Jane	Cote, David
Cote, Peter	Coughlin, Pamela	Craig, James	Dawe, Eileen
Desmarais, Vivian	Desrosiers, William	Drabinowicz, A Theresa	Emerton, Lawrence
Fenton, James	Fields, Dennis	Fletcher, Richard	Flora, Kathleen
Foster, Linda	Franks, Suzan	Gagnon, Eugene	Ginsburg, Ruth
Goley, Jeffrey	Gorman, Mary	Goulet, Maurice	Haley, Robert
Hansen, Herbert	Herman, Keith	Holley, Sylvia	Hunter, Bruce
Jean, Claudette	Jean, Loren	Keye, Harvey	Kurk, Neal
L'Heureux, Robert	LaPorte, George	LaRose, Richard	Lasky, Bette
Lefebvre, Roland	Leonard, Peter	Lozeau, Donnalee	Lynde, Harold
MacGillivray, Jeffrey	Martel, Andre	Martin, Mary Ellen	McCarthy, William
McCarty, Winston	McDonald, James Sr	McGough, Tim	McRae, Karen
Mendenhall, Leslie	Mercer, Robert	Messier, Irene	Milligan, Robert
Moran, Edward	Moriarty, Mary	Mosher, William	Nolan-Piteri, Dawn
O'Connell, Timothy	O'Hearn, Jane	Ouellette, Dean	Pepino, Leo
Peterson, Andrew	Reeves, Sandra	Sarette, John	Sargent, Maxwell
Simon, Anthony	Tate, Joan	Thulander, O Alan	Vaillancourt, Steve

MERRIMACK

Brewster, Richard	Hess, David	Jacobson, Alf	Langer, Ray
Larrabee, David Sr	Lavoie, Gerard	Leber, William	Marple, Richard
Nichols, Avis	Soltani, Tony	St Cyr, Gerard	Virtue, Carolyn
Whalley, Michael	Whittemore, James		

ROCKINGHAM

Abbott, Dennis	Arndt, Janet	Beaulieu, Jon	Belanger, Ronald
Bishop, Franklin	Bridle, Russell	Carson, Gregory	Christie, Andrew Jr

Clark, Vivian	Cox, Russell	Dalrymple, Janeen	Dearborn, Bruce
DiFruscia, Anthony	Dowling, Patricia	Downing, Michael	Fesh, Robert
Flanagan, Natalie	Flanders, David	Flanders, John Sr	Francoeur, Sheila
Gleason, John	Grant, Kenneth	Griffin, Mary	Hamel, Albert
Henderson, Warren	Hutchinson, Karen	Hutchinson, Rebecca	Katsakiores, George
Katsakiores, Phyllis	Kelley, Jane	Kelley, William	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
McKinney, Betsy	Moore, Benjamin	Morse, Charles	Nowe, Mary Lou
Nowe, Ronald	Noyes, Richard	O'Keefe, Patricia	O'Neil, Michael
Packard, Sherman	Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne
Putnam, Ed II	Rabideau, Marie	Raynowska, Bernard	Reardon, Neil
Shelton, Richard	Stickney, Nancy	Stone, Joseph	Tufts, J Arthur
Varrell, Thomas	Vaughn, Charles	Weare, Everett	Welch, David
Weyler, Kenneth	Whittier, John		

STRAFFORD

Bickford, David	Brennan, William	Brown, George	Cossette, Larry
DeChane, Marlene	Gilmore, Gary	Heon, Richard	Kaen, Naida
Knowles, William	Lundborn, Raymond	McKinley, Robert	Rogers, Rose Marie
Rollo, Michael	Smith, Marjorie	Taylor, Kathleen	Wall, Janet
Woods, Phyllis			

SULLIVAN

Cloutier, John	Flint, Gordon Sr	Jones, Constance	Kibbey, David
Leone, Richard	Robb-Theroux, Amy	Young, David	

NAYS 95

BELKNAP

Holbrook, Robert	Millham, Alida	Pilliod, James
------------------	----------------	----------------

CARROLL

None

CHESHIRE

Burnham, Daniel	Lynch, Margaret	Lynott, Margaret	Pratt, Irene
-----------------	-----------------	------------------	--------------

COOS

Guay, Lawrence

GRAFTON

Almy, Susan	Copenhaver, Marion	Guest, Robert	Johnson, Gary
Nordgren, Sharon	Solow, Martha		

HILLSBOROUGH

Ahern, Richard	Andrews, Frederick	Daigle, Robert	Dokmo, Cynthia
Dwyer, Paul Sr	Dyer, Merton	Ford, Nancy	Garrish, Linda
Haettenschwiller, Alphonse	Hall, Betty	Johnson, Lionel	Leishman, Peter
McColgan, Philip Jr	McDonough-Wallace, Alice	Melcher, Harold	Murphy, Robert
Reidy, Frank	Rowe, Robert	White, John	Withee, Dennis

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Chase, George
Daneault, Gabriel	Fortnam, Janet	Fraser, Marilyn	Gile, Mary
Hager, Elizabeth	Kennedy, Richard	Lockwood, Priscilla	Marshall, Kenneth
Moore, Carol	Owen, Derek	Potter, Frances	Poulin, Dave
Reardon, Tara	Rodd, Beth	Rosenfield, Jay	Seldin, Gloria
Wallin, Jean	Wallner, Mary Jane	Yeaton, Charles	

ROCKINGHAM

Blanchard, MaryAnn	Case, Margaret	Clark, Martha	Cooney, Richard
Gibbons, Paul	Johnson, Robert	Kane, Cecelia	Lovejoy, Marian
Norelli, Terie	Sabella, Norma	Sapareto, Frank	Shultis, Elizabeth
Splaine, James	Stitch, C Donald	Weatherspoon, Jackie	Zolla, William

STRAFFORD

Berube, Roger	Brown, Julie	Callaghan, Frank	Dunlap, Patricia
Estabrook, Iris	Grassie, Anne	Johnson, Nancy	Keans, Sandra
Lent, Donald	Musler, George	Pelletier, Arthur	Pelletier, Marsha
Snyder, Clair	Torr, Franklin	Twardus, Joseph	Vachon, Dennis
Vincent, Francis			

SULLIVAN

Allison, David	Donovan, Thomas Jr	Phinizy, James	Tuthill, John
Wiggins, Celestine			

and HR 51 as amended was adopted.

Ordered to third reading.

Rep. Whittemore voted Yea and intended to vote Nay.

Reps Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

HB 1500-FN, relative to judicial retirement compensation and benefits for supreme court chief justice Brock.

1 Judicial Compensation and Benefits for Supreme Court Chief Justice Brock. If supreme court chief justice David Brock voluntarily resigns from the court during the period between a vote to impeach him by the full house of representatives and prior to the beginning of an impeachment trial by the senate, he shall be entitled to receive the retirement compensation and benefits under RSA 490:2 beginning upon the date he would have begun receiving such compensation and benefits if he had served as a supreme court justice until he was 65 years of age.

2 Effective Date. This act shall take effect upon its passage.

Rep. Dyer moved Ought to Pass with Amendment and offered a floor amendment.

Floor Amendment (4813h)

Amend the bill by replacing all after the enacting clause with the following:

1 Judicial Compensation and Benefits for Supreme Court Chief Justice Brock. If supreme court chief justice David Brock voluntarily resigns from the court, he shall be entitled to receive the retirement compensation and benefits under RSA 490:2 beginning upon the date he would have begun receiving such compensation and benefits if he had served as a supreme court justice until he was 65 years of age.

2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill allows chief justice David Brock to receive judicial retirement compensation and benefits even if he resigns prior to reaching 65 years of age.

Rep. Dyer: Thank you, Madam Speaker. This has been proposed earlier for the bill and I rise in support of the bill before you. We have been through a difficult period, but we will send a recommendation, if you vote in the affirmative, to the Senate that this individual should receive his retirement benefits. Why do we need this bill? We have sent to the Senate that he should be tried by the Senate. This bill is effective upon passage. That will not be effective until the Senate acts on it. But, if the Senate finds the Chief Justice not guilty, I think we need this bill in place so that he can retire as soon as possible so that we can begin the healing of the court and get in place some organization of the court processing. He will not receive his retirement benefit until he is eligible in July of the year 2001 at which time he will be 65. He has served the required number of years on the bench. So, I think this is an important step for the House to take to get this in place. One of his conditions of employment, when he was appointed, as with all other judges, was that he would receive a retirement benefit. There have been some questions raised about the legality of doing this. I appeared before the Judiciary Committee yesterday and spoke to it. Alan Cleveland also appeared before the Judiciary Committee yesterday and spoke to the retirement. The question being raised is does this affect the qualified status of the judicial plan? Attorney Cleveland and I have had numerous conversations about this. He is taking a very, very narrow view of this. I do not believe it would affect the present plan. I would like to read a little bit from the letter that was received in May of 1999 from Attorney Russell Godrow of Ropes and Gray. He was the one that submitted the original papers to the IRS to establish this 457 plan. The judges have a non-tax qualified plan, a deferred compensation plan. What is needed for a qualified state judicial plan is that one, the plan shall have been in existence since December 31st, 1979, and it has period small Roman two, under such plan all judges eligible to benefit under the plan, one, are required to participate. They do. Two, are required to contribute the same fixed percentage of their basic or regular rate of compensation. They all contribute the same rate, which is zero. It is fully paid by the state. Small Roman three, under such plan, no judge has an option as to contributions or benefits the exercise of which would affect the amounts of includable compensation. Nothing in this amendment will affect that. Four, small Roman four, the retirement payments of a judge under the plan are a percentage of the compensation of judges of the state holding similar positions. They will be. The plan during any year does not pay more benefits than limitations of section 415-b, the Internal Revenue Code, and that sets a total amount of which they can pay. I feel that this bill will not upset the classified status. Senator King had taken out an LSR in this effect earlier in the year. He withdrew it. So I feel it is appropriate for the House to pass this bill to put in place a retirement provision for the Chief Justice if he wishes to retire early. This is not unusual. I can recall two special bills in the past that have been put in for special retirement benefits for people who for one reason or another did not comply with the present statute. I would hope you would support this amendment and pass the bill to the Senate. Thank you.

Speaker Sytek: Would the member yield to questions? Rep. Avery, you may inquire.

Rep. Avery: Thank you, Madam Speaker. Representative Dyer, I've got some real problems with this. Originally the idea was floated that if Chief Justice Brock would retire before an actual trial in the Senate, then we would do his retirement fund, and as I read this now, even if he goes before the Senate and gets impeached, he'll still get his retirement. Is that true?

Rep. Dyer: No, that is not true. If the bill passes the House, and is not acted upon by the Senate prior to the announcing of the verdict of the Senate, this is my understanding, he will not be eligible for retirement benefits if impeached. If the Senate comes down with a not guilty verdict, yes, he could retire and I think that would be appropriate so we can get a fresh start and move forward.

Rep. Avery: So, what we're saying now is that if Chief Brock puts the Senate and the state through an expensive impeachment trial in the Senate, we're still going to give him his retirement if he is acquitted.

Rep. Dyer: If they find him not guilty. If they find him not guilty, he can go back to sitting on the court and get his retirement in July 2001, but I put this in so that if they find him not guilty and he feels he can not do his job properly because of all the cloud over his administration, he can get out, but he will not receive his retirement benefits until July of 2001.

Rep. Avery: What would happen if he retired, resigned now?

Rep. Dyer: He would get no benefits if he resigned right now.

Speaker Sytek: Would the member yield to another question? Rep. MacGillivray, you may inquire.

Rep. MacGillivray: Thank you, Madam Speaker. Thank you, Representative Dyer. I just want to make sure I understand. The amendment takes out the phrases that say, "if he resigns prior to the Senate starting its debate." So, what you're saying is that if we chose to amend this bill in this way, I'm speaking only to the amendment at this point, if we chose to amend the bill in this way, we will go from a situation in which the justice either resigns before the trial begins or doesn't get a pension if he's convicted, to a situation where if the Senate were to pass this, prior to their taking action on the trial itself, he would then be in a position where he could wait, listen to how the entire evidence goes and then 15 minutes before the verdict is announced, turn in his resignation to the Secretary of State.

Rep. Dyer: That would not go to the Secretary of State, if I may, it would go to the Governor. But, that is correct. The reason I did not like, and this is what I told the Judiciary Committee, the reason I did not like the language in the original bill, it looked like we were driving him or holding a club over his head to get out but there was nothing in it that would say the Senate would act between the time the House met and the Senate began their trial if there was going to be one. So there were flaws with the original bill.

Speaker Sytek: Would the member yield to another question? Rep. Belvin, you may inquire.

Rep. Belvin: Thank you, Madam Speaker and thank you Representative Dyer for taking my question and I guess it's got two pieces. Let's assume that the bill as proposed, 1500, passes. We still have before us House Resolutions 52 and 53. I do not know the fate of those, but my question is, let's assume that either Justice Broderick or Justice Horton is also impeached. What posture should you recommend for us towards their pensions in that event?

Rep. Dyer: That's why I included in his name in the bill. It is a private bill for one individual. The others have not served on the bench as long as he has. Horton is eligible for retirement the first part of next year. He has only been on the bench for seven years, I believe, something like that. Broderick has not been on the bench very long. It would be treated as an individual person if we put in a generic bill without some specificity to it. I think we would be faced with that question on the other two should it come up.

Speaker Sytek: Will the member yield to another question? Rep. Pepino, you may inquire.

Rep. Pepino: Representative Dyer, are you aware that when Governor Gallen was the sitting governor and he passed away they tried to get a pension for his family and somewhere along the line it failed? Here is a person we are talking about impeaching and we're going to reward him?

Rep. Dyer: We have no retirement benefits for governor, any governor. That was one that was put in for Governor Gallen. We have a pension plan in place for the Judiciary. We do not have any options for offering a reduced pension if he is less than age 65.

Rep. Pepino: I know at that time, and there never was a pension for a governor, but the people up here, I remember it very clearly, were doing it just like you're doing this, out of the goodness of their heart and they failed.

Rep. Dyer: I wasn't here at the time for that one.

Rep. Kurk: Thank you, Madam Speaker. Madam Speaker, I rise in opposition to the pending motion, the Dyer bill as amended. There are three amendments dealing with this and they all suffer from the same potential flaw. The original House Bill 1500 is conditional, if Justice Brock resigns. Representative Dyer's proposal is conditional, if Justice Brock resigns, and Representative Peterson's proposal is also conditional and his proposal appears on page 1623, if a justice voluntarily resigns. All of these are conditional. It takes an action of the justice, at his discretion, to invoke whatever consequences there are, the receipt of the pension. That constitutes what most people would call an election or an option and it is that fact that is of great concern to me and should be to this House, because if the attorneys who have informed the Judiciary Committee are correct, there is a significant chance that passage of this legislation and the exercise of the option by a justice or, in the case of Representative Dyer's bill, Justice Brock, will render our current judicial pension system to be non-tax qualified. Now, that's not certain, but it is likely. That's our legal advice, or the legal opinion from someone who is an expert in the area of pension plans. Should that happen, it will be a real financial problem for justices and potentially for the state and let me explain. If a current retired justice is determined to be a member of a non-tax qualified plan and he is actually receiving a pension, then all of the value in today's dollars of his future pension which might be as much as a million or two million dollars if his life expectancy is long, would be considered taxable income today and he would have to pay taxes on perhaps \$800,000. That might be \$200,000 or \$300,000 even though he is only receiving in cash an \$80,000 pension. Any judge who retired in the future and participated in what now would be a non-qualified, non-tax qualified plan would face the same problem. For those reasons we do not adopt any of these bills. If we do there is a potential consequence for the general fund, even though we would not have to pay any more money to the judges than we are currently ... (tape change)... might ask us, and there has been some discussion or question in the papers as to whether they would, might ask us to reimburse them for the extraordinary taxes they would have to pay initially, or least give them a loan to care of those taxes on the grounds that they originally bought into or were promised a tax-qualified plan and we changed that on them. And to the extent that comes to pass, there would be a significant multi-million dollar, potential multi-million dollar impact on the general fund. You know that is not desirable. So, for both of these reasons, I think it is imprudent at this time to adopt any of these three proposals. Indeed, if they are adopted, I would ask the Speaker to refer the bill to the Finance Committee so that we could actually determine what the consequences to the general fund might be. But beyond the tax issue, I think there is a real policy issue that we need to consider and from my point of view passing this bill or any other bill like it is bad public policy. First, I don't think we should give a reward to a person whom we have just impeached. I don't think that makes sense. On the one hand we say your conduct was improper and on the other hand we say, yet we are going to give you a reward for this that you are not otherwise entitled to. Secondly, there is a great deal of irony here. As many of you know, I and former Representative Robert Wheeler introduced a judicial pension bill in 1996 which was designed to allow judges not to have to be 65 before they got anything but to allow them to retire earlier and get a partial pension, in effect, based on the number of years of service, which is similar to what we do with our state employees. This would have been a contributory pension plan. You heard from Representative Dyer that judges don't contribute at all to their pensions as compared with state employees who do. This would have required judges to contribute to the pensions. Well, the judiciary, led by Chief Justice Brock, fought that tooth and nail

and right now after four years, it's still in a study committee, in this case in Finance. I find it particularly ironic that Justice Brock, who opposed this, would now be the beneficiary of the very kinds of protections that the bill, this judicial pension reform bill, was designed to offer the judiciary. Lastly, like all of you, I feel there is a great deal of compassion involved in this case. This is a terrible thing to befall a judge so near to retirement, so near to his pension and to have it all snatched away by a series of events for which I believe he is culpable, but certainly which tug at our heart strings because of the effect on him and his family. I put it to you, however, that the time for compassion is not here in this chamber when we are impeaching. The time for compassion is after the Senate has a trial and it convicts on the grounds that we have sent over to the Senate. At that point it is appropriate for the Senate to determine the appropriate penalty. It is my understanding that the Senate is not obligated, if they convict, to automatically remove Justice Brock from his office. The constitution, Part I, Article 36 can be read, excuse me that's Article 39, Part II, allows the Senate to impose a different penalty or no penalty upon conviction, so at that point the Senate could act or make some recommendations. But I think the better time to do this, should the Senate convict, would be next year when we take up the judicial pension bill and we determine what is appropriate. At that time the House would have an opportunity to look into the tax consequences of what it might do and what is fair. Part I, Article 36 allows us to pay pensions to people who have provided actual service to the state, so even if Justice Brock were not qualified to receive his pension under the judicial pension plan, nothing, as I understand that article, prevents us from providing him with a pension if we felt, on a compassionate basis at that time, that he deserved it. But this is not, I believe, for us to do today. This is something that needs to be done later. We have done our job. We have acted properly by passing these articles of impeachment. The other issues are for another time. So I would urge you to defeat this proposed piece of legislation as well as any amendments which would have the same effect. Thank you, Madam Speaker.

Rep. Rose: Thank you, Madam Speaker. Members of the House, I rise in favor of House Bill 1500, but with a small wrinkle. I also agree with the amendment by Representative Dyer. First of all, I do agree with the impeachment of Justice Thayer. But, during many years on the bench, I'm sure that Justice Thayer did, Thayer, Broderick, Brock, it's getting hotter and hotter, I think. During Judge Brock's 14 years plus on the bench he must have done some good things and I think we could all agree with that, despite these four violations and you can look at the violations and whether they are big or small or medium, but they are violations and we deem them as such. He still should not be deprived of his retirement, I don't believe. I don't think that this House is mean spirited or unfair. I don't think we want to mete out double punishment. Even murderers often times only have one punishment, whether it is life or 20 years. They don't get two, usually they don't get two punishments. I do agree and I don't often agree with Representative Robinson, I don't know where he is, Robertson, anyway, he was on the radio recently and he made a statement. He said, "The government doesn't take away your social security benefits if you violate your DWI. Why should we take away Judge Brock's pension, why should we do that?" This bill, 1500, allows the judge to have a retirement if he resigns at some point in the future before or after the Senate. I hope that he, if he is looking or looking on television or whatever, will take the gentlemanly course and decide to save the state treasury maybe a third of a million dollars or a quarter of a million dollars and a trial in the Senate and his own expenses, law fees for his lawyers, he will save that also, if he simply resigns, period. Soon. Then we can close this door, this unfortunate situation, we can close the door on this unfortunate situation and get on with our individual lives. Let's pass House Bill 1500. Don't you think that double punishment would be excessive, would be an excessive piling on? Isn't impeachment enough? Thank you, Madam Speaker.

Rep. Pantelakos: Thank you, Madam Speaker. I rise in opposition to House Bill 1500. I would like to compliment the Judiciary Committee for the great job they did on the very hard task that was put before them, but I am very opposed to this bill, giving the justice a retirement and full benefit. Give me a break! The House of Representatives is a place where laws are made, not a place that says, "We know you did wrong, but if you will resign, not cost us any more money or time, or headaches, we

will reward you and give you everything you ask for." What a great message that sends to our people, young and old. If you can afford a high-priced lawyer and he knows the judge that believes the person and his family has suffered enough, they will walk away scot-free. Why not? The New Hampshire House believes that is the way they should do things. After all, they did it for a judge. Now comes a person who is poor, committed the same crime only can't afford the high-priced lawyer who talks the talk the judge talks, down comes a gavel and that person pays the penalty. Is that what we call justice? This person was appointed because he was supposed to be honest, fair impartial and above all to take a long look at the whole picture, because the people in the state of New Hampshire believe they go into that courtroom, they will get a fair shake and justice will be served. This House was elected to do what is right for the majority of the people, not to set one person aside and say, yes, we know you've done wrong but we feel you've been punished enough by having your name in the paper and it has hurt your family. I believe the people in the State of New Hampshire trusted this man. He failed. You do not give rewards for failing. Is this House afraid that if this man goes on trial for impeachment a lot more dirty laundry will come falling out of our judicial system? For years, people have tried to tell the New Hampshire House it is wrong to give somebody a job for life with no one to account to and that's what we do with the judges. Even the governor has to account to somebody. The judges do not. They can do anything they want to and there is no penalty, unless we disgrace the whole state with a mess like this court has created now. Please vote with me and overturn the committee report. Show the people and the State of New Hampshire that this House believes that our judges should be honest, fair and trustworthy. If not, they must go. Let's start to put a little bit of dignity back in to the court system today. Thank you.

Rep. Sapareto: Thank you, Madam Speaker. In retirement plans we are talking about a qualified plan, right now, that the judges get from the general fund. There are 153 judges and they derive that money from the general fund. It is very simple. At age 64, if we wanted to pass this bill, we simply give it to them with the payment of annuity or stipend and there is no tax implication whatsoever. Anyone telling you different is not, either doesn't know or, is not telling you the truth. Hybrid plans exist in the corporate world all the time, you could easily get by that. Age 64 is not subject to 59 and a half penalty; he can take the money. If we wanted to pass this bill, we can do it. There are no IRS implications, that's one point I absolutely want to make. The second point is that we have Justice Thayer, who has clearly been the person with malintent in this entire affair, granted full immunity, at age 54 is going to go out and be fully vested in some other plan and get a full retirement, getting out of impeachment, walks away from it and we're going to hang a 64 year old, one year away from his retirement after 25 years of service and he is going to go through this while the guy who did most of the wrong is walking free. If you think that's justice then you just vote against 1500. But for me, anyway, if you want to grant something to at least this person's family after 25 years of service, when somebody else is going to get off free at age 54, then you would support this bill. Thank you.

(Rep. Lozeau in the Chair)

Rep. Wendelboe: Thank you, Madam Speaker. I rise to oppose the Dyer amendment and any others that come afterwards dealing with a special pension for Justice Brock. Particularly, I think the first thing that I find the most onerous is that it's tied to resignation. If we feel that Justice Brock should be due a retirement because of his 22 years of service, he should get it whether he is impeached and removed from office or whether he resigns and I know a lot of you can't believe I said that. However, I totally disagree with him getting a full retirement before he qualifies for the plan and under the judges' plan you're totally not qualified until you reach age 65. What do you think your constituents are going to think? The constituents that have been telling you how wrong they thought what the court has been doing. What will they think when they find out that we've rewarded him with an early full retirement at 75 percent of pay that goes up every single time any of the current judges get a raise without having put one dime of contribution to it? What are your constituents who served in the military going to think when they realize that in the highest service someone can give, service to their country and fighting in a war, that if they had done something wrong, even if they had 35 years

of service in, if they were removed for that wrongdoing, they would get nothing. I think it would be a pretty hard sell to our constituents to justify giving him a sweetheart goodbye golden handshake. It really kind of scared me to realize how much Representative Kurk brought out of the notes that I had made as well. It would be very foolish of us to pass any bill that would endanger the tax-qualifying plan unless we got a formal IRS opinion before that went into effect. We don't have time to do that before the Senate takes up the impeachment hearing. However, Neal Kurk did touch on what it could trigger. If Justice Brock took that retirement and that plan ended up being unqualified, we could have a huge financial liability to this state because all those other justices would say, "Your action triggered me having hundreds of thousands of dollars worth of tax liability." The comment was made about Justice Thayer and that he could go on somewhere else and get a retirement but a 64 year old man doesn't have time. Well, I would like to point out that he would get social security, that he did not come to work for the state until he was 42 years old, I would hope that up until that point that he was putting something aside for retirement, and he has been making over \$100,000 a year. I would hope some of that he had put away for retirement. However, I don't think it would be fair to his family to give him nothing but there are alternatives. We do not have to act today. There is legislation in the hopper, in study committee. There is nothing to say we can't make it retroactive to include Justice Brock, particularly since he is not eligible until he turns age 65 anyway. You may recall in past years we've had special bills to allow people to buy into the group II retirement plan. There is also another special plan for commissioned officers of the state, for example the treasurer and the secretary of state, apply to. We could pass a bill to say that Justice Brock could buy into that retirement and get what a regular state employee would have gotten with 22 years of service to our state. My guesstimate, figuring after him off-set paying in, would be that he would get around a \$45,000 a year retirement. Granted, it is not full boat but it is something for his family. We don't reward him completely but yet we don't set him adrift. We can do that in the future. We don't have to act in haste and repent at leisure. Representative Kurk made a very good point. The Senate can do anything they want to do with the pension. This is a moot point if this impeachment goes to the Senate and they don't convict. So for us to pass a bill doing this is kind of putting the cart before the horse. So, I recommend that we definitely not pass any of these retirement bills. Let the Senate come up with a suggestion and we can come back and agree with them or disagree with them and hammer it out after we know definitely if they are removing Justice Brock from office. Thank you.

Rep. Lozeau: Does the member yield to a question? Representative Vaillancourt, you may inquire.

Rep. Vaillancourt: Thank you, Madam Speaker. I apologize for being called a couple of other times. I had made a note that I wanted to ask this question to the proponent of the original bill but I consider it an important question, so I'll ask it in the opportunity I do have. I was at home at 11:15 the night this bill was proposed and I was playing the role of note-taker and I thought for a minute I was watching David Letterman's monologue or something, I heard one Representative say, "Totally, totally out of the bounds of decency, shocking that you brought it forward, I'm overwhelmed by it", then this Representative went to vote for it. The other thing I was shocked by, and this is what the question is, the Representative, whom I respect tremendously, who proposed this said five words that I somehow could not bring myself to believe. This is not a deal. If this is not a deal, I keep wondering why was the stipulation put in that the Chief Justice would only be allowed this opportunity if he resigned prior to the Senate action? Did you see this as a deal?

Rep. Wendelboe: Representative Vaillancourt, no I don't see it as a deal. I see it more as a plea bargain and I think whether it's a deal or whether it's a plea bargain, they are both wrong.

Rep. Lozeau: Will the member yield to another question? Rep. Leighton Pratt, you may inquire.

Rep. Leighton Pratt: I, as a past state employee, did stop my job and I received the money I put in. Should we give him money or should we give him the money he put in?

Rep. Wendelboe: I'm not quite sure I understood the question. If we came up, or the Senate came up and we agreed with something to do with him being able to be in another state employee plan, it would have to be contingent on him buying into the plan. So, in other words, he would have to make a contribution of that 10 percent of his yearly salary for every year he worked for the state as well as the rate of return that that money generated, so that he would not be actually taking anything away from that state employee plan that he wouldn't have been due had he paid in along. I think that is within the realm since there is precedent that other people have been allowed to buy into that plan. It is an opportunity to give him a partial retirement and I think that with that alternative it makes sense to vote down all of these measures dealing with retirement.

Rep. Lozeau: Would the member yield to a further question? Rep. Andrews, you may inquire.

Rep. Andrews: Thank you, Madam Speaker. I'm a little bit upset the way this is going. It seems that all day we have been listening to, it is not up to the House, the whole case is going to come before the Senate, any action is going to be taken by the Senate, not by the House, we're only going to send this to the Senate and now my question. Am I not correct in the fact that if Mr. Brock defeats the claim against him, then he continues on until he is at least 65 and gets his whole pension in full, nothing deterrent against his pension whatsoever if he is found not guilty? On the other hand, the Senate, if they want to work to accommodate Justice Brock, if they find him guilty, they can still say, "Chief Justice, you're guilty. Tomorrow morning be back on the bench and do the rest of your term." Now, I don't think it is up to us at this point to say, dicker so that he'll retire early and take his full pension. All day it's been leave this to the Senate to decide. My question is should we leave this to the Senate and not try to settle it on the floor of the House?

Rep. Wendelboe: Yes, Representative Andrews, I agree completely. We should leave this to the Senate which is the appropriate body to address this issue.

Rep. Lefebvre: Thank you, Madam Speaker. Members of the House, this is almost like a riddle. Did you ever wonder why the word discipline is followed by the word disciple? Very nicely how that these two words were put in conjunction, almost together, in the dictionary and I often wondered if there was a message in there. I'm opposed to bill 1500 because it is too much of a big temptation and I'd like to tell you why. How does one discipline the disciplinarian? By what exemplary means does a chief instill discipline into his counterparts when they fell apart? With absolute guidelines, of course, where there is no room to hide under anyone's cloak that could lead to one's folly or set-up. I can not believe Chief Brock, the beacon, the highest and brightest light of our state, could ever be happy or satisfied to stoop down to pick up the marbles offered in House Bill 1500. He must exemplify as he has done for 24 years and show us his true American colors. He should have the opportunity to choose to go to the Senate where they might be able to clear. I would be proud to stand with him as they give him liberty or give him death, no marbles. Let him have freedom honorably or die dishonorable. As I often, as my grandmother used to teach me to say in French, "Vivre Libertie, et Justice." Thank you.

Rep. Craig: Thank you, Madam Speaker, you snuck up on me. I'll be very brief. I voted for the original pension bill last Wednesday, after midnight and I have no regrets about doing that. I'm not going to talk about the specifics of the pension bill we vote for. My feeling is that the Chief Justice, although I feel reluctantly that he committed impeachable offenses, I think that he committed no crimes, no bribery, no corruption, did not have the black heart that we were told about, the malice in his heart, I never saw any of that. On the other hand, I saw that he had 20/25 years of good and decent service to this State of New Hampshire. I understand that he has a wife and children and someone asked me before if I was doing what I did for revenge, absolutely not. I think that, I think that this is, it may be a measure of compassion on my part, but my feeling is that compassion is a character strength and not a character defect so if it's compassion then I'm not embarrassed to say that it's compassion. I don't care if people say that I'm doing this because it looks like a deal. I don't

care if people say I'm doing this that it looks like a plea bargain, that it looks like anything. I don't care. I think it is the right and fair thing to do to offer Chief Justice Brock a pension and I'm happy to stand up here on this miserable day and say that. Thank you.

Rep. Hamel: Thank you, Madam Speaker. I can't believe this. One point of order, first. Representative Wendelboe made a comment about a military getting a retirement after 35 years, or not getting retirement after serving 35 years. Not quite true. If the person in the military has served 20 years, he or she is entitled to retirement. An example, I guess in the last ten days, a major general was accused of sexually harassing a one star general. He was allowed to retire. He was allowed to retire because the parameters of that retirement system has time-in-service. He served 20 years. If he had served eighteen and a half years he would be out of luck, he'd get nothing. To come back to 1500, a very similar issue as far as I'm concerned. Our statute says that the parameters for his retirement are two things: time on the bench and age. He hasn't met that requirement. It is not revenge. That is what the law says. I think it is a bad precedent to set. I would ask you to vote against this 1500 and any other amendment to 1500, as far as that goes. Thank you, very much.

Rep. Kennedy: I thank you, Madam Speaker. Madam Speaker, I would like your memory to go back to a man by the name of Donovan, I believe it was Donovan, it might have been Donnolly. He was a Secretary of Labor in one of our past presidential groups, I forget now which one. They hauled him into court and they charged him with all sorts of things. It was one of these things where they thought they had him and they made a massive amount of trouble for him, they even had a congressional look at him. In the end he was exonerated and he had one thing to say. He said, "For God sakes, where do I get my integrity and honor back and reputation back?" Dave Brock is in that position right now. Where does he get his integrity and his honor back? He doesn't get it from this. Do I feel compassion for the man, yes. He has kids in school, he has girls in college, he has a boy in high school, his older daughter is in the hospital, I believe, with some sort of a malignancy. Yes, the man has troubles and serious ones, but what price for integrity? What price to cop a plea like a common criminal? I think it is asking far too much. Last I knew, if I offered a traffic cop a bribe, they threw me in the hoosegow. Now what we are considering doing is bribing the judge to avoid an unfortunate incident. We have created it, let nature takes it course. My feeling is he will be exonerated. I believe him to be an honorable man. I believe he'll be back on the bench and serve out the rest of his time. It is my belief that we are going to pass all sorts of bills, those of us who are going to return here, luckily some of us will and some of us won't, there will be an ungodly number of bills to correct the judicial problems. Somewhere there has to be somebody there with the institutional knowledge to help us put it into effect and Dave Brock has that knowledge. So, I am hoping that he is exonerated. I hope that he walks out of here with his head high and saying, "I did my best. Maybe it wasn't as good as you wanted, but it was my best and I did it in an honorable fashion, thank you very much." Now, I don't believe in bribes. No, that's not true, I have a German shepherd and I give him dog biscuits. But beyond that, I think it is a bit much, it is a tremendous amount of money. We also know that by doing it this way we may end up with a financial problem. There is nothing to say that the next legislature that adjourns here tomorrow or next year or whenever we come here cannot put in a bill and change the law so that it covers all judges for all times and creates a clear operation. You have been told by the head of the finance group that it creates a problem. Representative Sapareto who's pretty good with funds of that type, says there may be a way around it, but if we wish to move in that direction, let's do that. Let's not cloud it with a bribe. It stinks, it reeks, it is beneath the dignity of every member of this House to even consider a bribe. Thank you, very much.

(Speaker Sytek in the Chair)

Rep. Peterson: Thank you, Madam Speaker. You may have noticed that there have been a number of speakers on the Dyer amendment and I'd like to explain why that is. The reason is because this is the bill, this is the one amendment, this is the decision on this matter. The others that are printed in

the calendar, the various proponents have decided to set aside and go along with the amendment recommended by the senior representative from my district of Peterborough, the man who is clearly the Dean of the House when it comes to retirement matters and a person who has spent much of his career in this legislature protecting the integrity of the retirement system. I've sent a handout into the mailboxes and maybe some of you had a chance to glance at it. It is a fifty-state review which was prepared by our research people here to give you a sense on what the judicial retirement situation is in the fifty states of the country. Some of them are rather bare bones in their analysis but I think one conclusion can be drawn from reading that handout and that is that the situation in the State of New Hampshire may very well be unique which Chief Justice David Brock finds himself in. As we know, matters such as this are very often solved through resignation, not because the person involved doesn't believe that they have a right and an obligation to some extent to clear their name and face the charges, but because they believe that it is better for the state, for the institution which they represent for them to step aside and put those personal considerations to one side. In the State of New Hampshire, such a resignation for the Chief Justice would, in essence, leave his family out in the cold. That would be something which in my view would be wrong. In opposition to this measure, we've heard what I would take to be something in the nature of a technical foul that's been called in the second period of overtime, perhaps, or just as we come to consideration of this. We've heard from Representative Dyer that he believes this to be a fallacy, that there is in fact no tax problem with the bill as presented. We've heard from perhaps one of the finest tax planners that's among our membership, Representative Sapareto from Derry, who spends every day and earns his living in this field, that if there were such an issue that came up that it would be able to be handled by an amendment or by a slight adjustment made to the bill in the Senate. So, the fact is that those of you who wish to allow, and I hope there are some that haven't gone out to dinner or perhaps are still willing to listen to this, because it is a very important thing, those are willing to allow a technical consideration or perhaps something that is only a red herring to stand in their way of a basic moral decision about what is right today should consider otherwise at this point. This I offer to you as a policy decision of the House. This is something that we have to decide today and pass on to the Senate or not. If we pass it on to the Senate, it would take further action by the Senate and by the Governor to become a reality, but it would be a statement of what the House feels is right. That is what happened to the very people who looked, I'll say with respect to all of you who have looked hard at this, the hardest at the evidence compiled in the impeachment inquiry, the 22 members of the committee upon which I am honored to be a member the House Judiciary Committee. People in the state saw over the TV the kind of work that we did and heard it on their radios on the way home from work and so forth and had a chance to get involved in this extraordinary and most public process in our inquiry. But, you know, it is the very people who, after a great deal of consideration, and those who were closest to the facts, who came with a 19 to 3 vote to support this principle. It has been called bizarre by some that we could support impeachment and then support the Chief Justice having a right to his pension, I find it to be something quite different. I find it to be a very human and a very dignified action on the part of our committee because I think we have to separate the impeachment from the pension. In most private situations where people have pensions they become vested in the pension. In business or in regular life, if someone embezzles from the company or even murders the chief executive, let's say, they still have their pension. They may collect it in jail but at any rate they still have it. Now, the fact is that we have, and this is another thing I think about which some resentment has surrounded and clouded this issue, for our judiciary, we have as established by this legislature, a defined benefit plan. That means when I ask someone or when a person is asked, I certainly don't ask, but when we ask someone as citizens of the state to be a judge, a person who might earn twice as much as an attorney in fact, if they are the type of person that we want as a judge, we say to them, when you retire you'll have a decent retirement living, in the meantime you'll be giving service to the state, good public service, and you'll be limited, to a degree in your other earnings, but the fact is when it comes time to retire, you're going to have that benefit. So the defined benefit plan which we have presupposes, in fact, that the state is paying in, as part of a salary, into a retirement plan. At least on the face of it that that would be the relationship as opposed to a contributory system which is one where the person would probably be paid more but

contributes to a plan which builds a benefit. Now, if we had had a contributory system in place, we wouldn't even be at this point today because the pension would be long ago vested. There are, in fact, people on the court today who are likely to receive their pensions with only ten years of service, not the 25 which David Brock has put in. Now, I'm going to brief but I want to make a point and I want to make it without any equivocation and I want to say one other thing, too. I haven't spoken at all today. I haven't come down here although I was, I believe, an active and participating member of the Judiciary Committee because I found that this decision was one of the most difficult I've ever had to make in my time in public service and I did not want to be in the position of encouraging anyone in terms of a vote on their conscience of what they thought they should do on this impeachment. I felt, frankly, it had been tough enough for me to do it and I wasn't about to tell you how to work your way through it. But, I will make a comment about what we have done here today. I think it has been a black day for the State of New Hampshire. At best, what we've done has been in essence the gray march of duty through this process. But there is a principle that is important that has rung out from these proceedings and I want to suggest to you that that's the principle that the constitutional right of equal protection under the law is not negotiable. That's something this House has said in ringing fashion today and it's something which I could not ignore. It was revealed in the conduct and therefore I voted for the articles of impeachment. Now we have the rest of the job to do. Our courage in standing for that principle should now be crowned with compassion. That represents the best of what our citizens would ask us. You know, in the House of Representatives, there is probably not one in a thousand in our communities who would run for our office. The duties are heavy, the pay is short, the hours are long, but I believe that today we need to stand up and represent the best of our citizenry. Let's not submit ourselves to government by sound bite. Let's cast a vote for government by sound judgement and let's say that after 25 years of service to this state, it is an ill-fitting postscript to our actions here today to leave this man's family destitute. I don't want to stand by and watch it. I will not without taking this action here. This is the vote. It is a clear choice, a clear moral choice. What will you do? I ask that you vote for this amendment and vote to pass this bill on to the Senate to give us the opportunity to have the means to move forward together ... (tape change) ...

Speaker Sytek: Would the member yield to a question? Rep. Vaillancourt, you may inquire.

Rep. Vaillancourt: Thank you, Madam Speaker, and I am certainly gratified to have the opportunity for you to clear up this question because I did write down those five words you said about 11:15 the night this matter came up in your committee, and, unlike my colleague from Manchester, I do care if in fact this is meant as a deal, but you did in fact affirm that it is not a deal. Could you clear up in my mind how, if it is not a deal, you chose to force the Chief Justice to decide before the Senate hearing? If your compassion was so great, why did you put that time frame in?

Rep. Peterson: That was recommended by others on the committee as an amendment to my original bill, and I stand before you today to support the Dyer amendment, which removes that language. But, I'll say something beyond that and that is that I appreciate the question of the Representative from Manchester, because it is a very important point. This is not a deal. What it is is a choice for the Chief Justice to retire with some dignity or other wise move forward to clear himself of the charges which we have leveled here today. That will be completely up to him, but I believe that this pension is earned and we should not withhold it. Thank you.

Rep. DePecol: I rise, sadly, in opposition to this bill. I rise mostly in opposition because I dislike the process, to tell you the truth. If we pass this today, then by due process here it will have to go to the Finance Committee. The Finance Committee will to send us some recommendation back. We will have to vote on it one way or the other. If we pass it then it will have to go to the Senate. The Senate will have to hold public hearings, they will have to make a decision. They might amend it, they might change it, they might do whatever they want to it and then if they pass it intact it has go to the governor to be signed. That's going to take more than one day. It's going to take a long time for this and all this time the Chief Justice is going to be sitting there debating whether or not he must

resign. Now the other thing I find sad about this is it is a personal bill. Only one person is going to benefit from this. None of the other state employees, not you or I would get this same kind of consideration. I don't think the House ought to be making these kinds of decisions based on past service. There has been a spoken mistake up here tonight. If you spent time in the Air Force like I did, I'm retired from the Air Force, and on the day before you are due to retire you get convicted and court-martialed and bounced out with a dishonorable discharge, you receive no pension, you receive no benefits, there is no mercy for bad acts. Does Chief Justice Brock deserve mercy? I believe so, but not here under this body. Let the Senate be the merciful ones. They can say yes, you're guilty but you can stay or yes, you're guilty but we're going to let you have your pension. That's okay with me and the other thing that's okay with me is if anybody wants to bring in a bill here that says that every justice in the State of New Hampshire gets a pension after serving "X" amount of years and a percentage of the pension based on how much time the justices have served, I'm very happy to vote for that. I don't think we should be making one person bills, special favor bills, just because it makes us feel good. We are compassionate, I think, in this body. This is not the time for compassion. This is the time for sense and adhering to procedures. Thank you.

Speaker Sytek: Will the member yield to questions? Rep. Robertson, you may inquire.

Rep. Robertson: Thank you, Madam Speaker and thank you, Representative. Do you understand that if the state had chosen to make this a funded plan, which they very well could except the complication of judges, some of whom serve for five years and some who serve for 40, that if he had put in one percent, to fund this plan and we had put in 99 percent, after ten years, a hundred percent of that would be his and he would walk away in spite of the fact that he walked in and took a machine up there and killed forty of us, it would be his and we chose not to make this a funded plan, he did not, we did it for our convenience and it would be his under normal circumstances?

Rep. DePecol: Thank you, Representative Robinson. Yes sir, I do understand that and it's unfortunate the way it worked out, but I still feel, all being said and done, that this is a one person bill, that we have process and someone talked earlier about equal protection under the law. This is more than equal protection under the law. It's more protection than you and I would get under the law, it's above and beyond the protection. So, yes I agree with you, Representative Robertson that it is an unfair situation. I'm sorry.

Rep. Dyer requested a roll call; sufficiently seconded.

The question being the adoption of the Dyer floor amendment.

YEAS 103 NAYS 231

YEAS 103

BELKNAP

Pilliod, James

Rosen, Ralph

Turner, Robert

CARROLL

Mock, Henry

CHESHIRE

Blaisdell, Michael	Burnham, Daniel	Lerandean, Alfred	Lynch, Margaret
Lynott, Margaret	Manning, Joseph	Pratt, Irene	Pratt, John
Richardson, Barbara	Robertson, Timothy	Rose, William	

COOS

Guay, Lawrence	Horton, Lynn
----------------	--------------

GRAFTON

Copenhaver, Marion	Guest, Robert	Ham, Bonnie	Johnson, Gary
Ward, Brien			

HILLSBOROUGH

Ahern, Richard	Arnold, Thomas Jr	Baroody, Benjamin	Burkush, James
Craig, James	Dyer, Merton	Emerton, Lawrence	Ford, Nancy
Garrish, Linda	Goley, Jeffrey	Jean, Claudette	LaPorte, George
Lasky, Bette	McCarthy, William	McColgan, Philip Jr	McDonough-Wallace, Alice
Melcher, Harold	Mercer, Robert	Murphy, Robert	O'Hearn, Jane
Peterson, Andrew	Reidy, Frank	Sarette, John	White, John
Withee, Dennis			

MERRIMACK

Brewster, Richard	Chase, George	Daneault, Gabriel	Fraser, Marilyn
Jacobson, Alf	Larrabee, David Sr	Lockwood, Priscilla	Marshall, Kenneth
Moore, Carol	Owen, Derek	Potter, Frances	Rodd, Beth
Rosenfield, Jay	Wallin, Jean	Wallner, Mary Jane	Yeaton, Charles

ROCKINGHAM

Abbott, Dennis	Blanchard, MaryAnn	Case, Margaret	Christie, Andrew Jr
Cooney, Richard	Gibbons, Paul	Johnson, Robert	Katsakiores, George
Katsakiores, Phyllis	Lovejoy, Marian	McKinney, Betsy	Noyes, Richard

O'Keefe, Patricia
Sapareto, Frank
Tufts, J Arthur

Rabideau, Marie
Shelton, Richard
Whittier, John

Reardon, Neil
Shultis, Elizabeth

Sabella, Norma
Stritch, C Donald

STRAFFORD

Brennan, William
Johnson, Nancy
Rogers, Rose Marie

Brown, Julie
Kaen, Naida
Snyder, Clair

Dunlap, Patricia
Keans, Sandra
Twardus, Joseph

Grassie, Anne
Musler, George
Vachon, Dennis

SULLIVAN

Allison, David
Wiggins, Celestine

Donovan, Thomas Jr
Young, David

Flint, Gordon Sr

Leone, Richard

NAYS 231

BELKNAP

Bartlett, Gordon
Johnson, James
Russell, David
Wood, Jane

Boyce, Robert
Lawton, David
Salatiello, Thomas

Czech, Stanley
Millham, Alida
Thomas, John

Holbrook, Robert
Rice, Thomas
Wendelboe, Francine

CARROLL

Babson, David Jr
Howard, Godfrey
Philbrick, Donald

Bradley, Jeb
Kenney, Joseph
Sullivan, P Judith

Chandler, Gene
Lyman, L Randy
Torressen, Gary

Dickinson, Howard
Patten, Betsey

CHESHIRE

Batchelder, Robert
Meador, David
Smith, Edwin

DePecol, Benjamin
Mitchell, McKim
Zerba, Roger

Hunt, John
Roberts, William

McGuirk, Paul
Royce, H Charles

COOS

Davis, Perley

Gallus, John

Mears, Edgar

Pratt, Leighton

Tholl, John Jr

Woodward, David

GRAFTON

Akins, Ralph

Alger, John

Almy, Susan

Brothers, Richard

Cobb, John

Dudley, Terri

Gilman, G Michael

Hall, David

Harmon, Hobart

Hinman, Harry

Marshall, Gene

Mirski, Paul

Nordgren, Sharon

Phinney, William

Picconi, Al

Scanlan, David

Weber, Phil

HILLSBOROUGH

Alukonis, David

Andrews, Frederick

Arthur, Rose

Batula, Peter

Beaupre, Roland

Belvin, William

Bergeron, Lucien

Bergin, Peter

Brundige, Robert

Bruno, Pierre

Buckley, Raymond

Calawa, Leon Jr

Carlson, Donald

Chabot, Robert

Christiansen, Lars

Clegg, Robert Jr

Clemons, Jane

Cote, David

Cote, Peter

Coughlin, Pamela

Daigle, Robert

Desmarais, Vivian

Desrosiers, William

Drabinowicz, A Theresa

Fenton, James

Fields, Dennis

Fletcher, Richard

Flora, Kathleen

Foster, Linda

Franks, Suzan

Gagnon, Eugene

Ginsburg, Ruth

Gorman, Mary

Goulet, Maurice

Haettenschwiller,
Alphonse

Haley, Robert

Hall, Betty

Hansen, Herbert

Herman, Keith

Holley, Sylvia

Hunter, Bruce

Jean, Loren

Johnson, Lionel

Keye, Harvey

Kurk, Neal

L'Heureux, Robert

LaRose, Richard

Lefebvre, Roland

Leishman, Peter

Leonard, Peter

Lozeau, Donnalee

Lynde, Harold

MacGillivray, Jeffrey

Martel, Andre

Martin, Mary Ellen

McCarty, Winston

McDonald, James Sr

McGough, Tim

McRae, Karen

Mendenhall, Leslie

Messier, Irene

Milligan, Robert

Moran, Edward

Moriarty, Mary

Mosher, William

Nolan-Piteri, Dawn

O'Connell, Timothy

Ouellette, Dean

Pepino, Leo

Reeves, Sandra

Sargent, Maxwell

Simon, Anthony

Tate, Joan

Thulander, O Alan

Vaillancourt, Steve

MERRIMACK

Anderson, Eric

Asplund, Bronwyn

Bouchard, Candace

Fortnam, Janet

Gile, Mary

Hess, David

Kennedy, Richard

Langer, Ray

Lavoie, Gerard	Leber, William	Marple, Richard	Nichols, Avis
Poulin, Dave	Reardon, Tara	Seldin, Gloria	Soltani, Tony
St Cyr, Gerard	Virtue, Carolyn	Whalley, Michael	Whittemore, James

ROCKINGHAM

Arndt, Janet	Beaulieu, Jon	Belanger, Ronald	Bishop, Franklin
Bridle, Russell	Clark, Martha	Clark, Vivian	Cox, Russell
Dearborn, Bruce	DiFruscia, Anthony	Dowling, Patricia	Downing, Michael
Fesh, Robert	Flanagan, Natalie	Flanders, David	Flanders, John Sr
Francoeur, Sheila	Gleason, John	Grant, Kenneth	Griffin, Mary
Hamel, Albert	Henderson, Warren	Hutchinson, Karen	Hutchinson, Rebecca
Kane, Cecelia	Kelley, Jane	Kelley, William	Kobel, Rudolph
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
Moore, Benjamin	Morse, Charles	Norelli, Terie	Nowe, Mary Lou
Nowe, Ronald	O'Neil, Michael	Packard, Sherman	Pantelakos, Laura
Pitts, Jacqueline	Priestley, Anne	Putnam, Ed II	Raynowska, Bernard
Splaine, James	Stickney, Nancy	Stone, Joseph	Varrell, Thomas
Vaughn, Charles	Weare, Everett	Weatherspoon, Jackie	Welch, David
Weyler, Kenneth	Zolla, William		

STRAFFORD

Berube, Roger	Bickford, David	Cossette, Larry	DeChane, Marlene
Estabrook, Iris	Gilmore, Gary	Heon, Richard	Knowles, William
Lundborn, Raymond	McKinley, Robert	Pelletier, Arthur	Pelletier, Marsha
Rollo, Michael	Smith, Marjorie	Taylor, Kathleen	Torr, Franklin
Vincent, Francis	Wall, Janet	Woods, Phyllis	

SULLIVAN

Cloutier, John	Jones, Constance	Kibbey, David	Phinizy, James
Robb-Theroux, Amy	Tuthill, John		

and the Dyer Floor Amendment failed.

Reps. Burling, Carson, Dalianis and Quandt declared conflicts of interest and did not participate.

Speaker Sytek: Without objection, we will allow Rep. Simon to offer a floor amendment.

Rep. Simon offered a floor amendment.

Floor Amendment (4817h)

Amend the bill by replacing all after the enacting clause with the following:

1 Judicial Compensation and Benefits for Supreme Court Chief Justice Brock. If supreme court chief justice David Brock voluntarily resigns from the court, he shall be entitled to receive 80 percent of the retirement compensation and benefits which he would have otherwise received under RSA 490:2 beginning upon the date he would have begun receiving such compensation and benefits if he had served as a supreme court justice until he was 65 years of age.

2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill allows chief justice David Brock to receive 80 percent of judicial retirement compensation and benefits, even if he resigns prior to reaching 65 years of age.

Rep. Simon: Thank you, Madam Speaker and thank you members of the House. I will be brief; in fact, I have authorized the Speaker to use the gavel on my head if I exceed two minutes. I would ask that the depth of your consideration of this amendment be in inverse proportion to the amount of time I intend to speak. We have certainly heard all the arguments. At a very late hour, I had this amendment drafted because I'm concerned about this subject. I stand here, as I think we all are today, saddened and disappointed about the events that bring us here today. But, on the other hand we've talked a great deal about compassion and I'm sympathetic to that. I suggest to you that this amendment takes the middle road that allows us to do what's right but allows us to extend the compassion that I feel we ought to be extending. I think, also, it is expedient, and as a lawyer I'm used to settling cases. I see this in that vein in part and that's expedient, but I don't think there is anything wrong with being expedient, so I think this works on a variety of levels. I think it rewards the Chief Justice for his dedicated service to the state. I think it is a significant sanction beyond the sanction of what we've already done which is incredible, but it allows the beneficial purposes of this to take effect and may provide an inducement to save the state a great deal of time, anguish and expenditure. I see the gavel coming for my head, so I'll stop talking.

Rep. Vivian Clark: Thank you very much, Madam Speaker. I have sat there patiently all day preventing myself from jumping up and down on any one of these issues but I finally reached one where I couldn't because since this is an unexpected amendment I knew that nobody had signed up to speak against it. There are several reasons why we should not accept this amendment. The first of these is that we have made here an historic move, we have recommended impeachment of a Supreme Court Justice for the first time in incredible periods of time. There is, therefore, an expectation in the public that there is reason for this and that there ought to be a trial and we should not be doing something specifically to subvert that process. Next reason, the only reason for this House, other than to subvert the trial, to grant somebody pension rights outside of the normal process would be because we are presuming that the Senate is going to find him guilty of the points that we have made in the impeachment statement. Now, I don't believe it is appropriate for us to do that. And, the third reason why we shouldn't support this particular amendment is because we have just made a statement of opinion of this House that it is inappropriate for us to grant a pension concomitant on a resignation. Now we're being asked to approve it because it's going to cost us 20 percent less. Now, this in fact, folks, gets us back down to that joke you may have heard one time about whether or not

one is a prostitute and does it in fact depend upon how much it costs. There are good reasons for not passing this, there are good reasons for not passing any kind of presupposed pension plan. Please vote "no" on the amendment. Thank you.

Rep. Dyer: Thank you, Madam Speaker. I rise in opposition to the pending motion. We have spent a great deal of time discussing the legal requirements of a judicial 457, deferred compensation plan, and as I briefly read to you, among the items that are in here, Roman IV, the retirement payments of a judge under the plan are a percentage of the compensation of judges of that state holding similar positions. You are changing the compensation rate. That will raise a great deal more questions on the Internal Revenue Code, the IRS, than anything we have discussed before. This amendment is clearly in violation of the IRS regulations and I urge you to vote "no".

Rep. Bishop requested a roll call; sufficiently seconded.

The question being the adoption of the Simon floor amendment.

YEAS 37 NAYS 298

YEAS 37

BELKNAP

Mock, Henry

CARROLL

None

CHESHIRE

Burnham, Daniel

Lynott, Margaret

Manning, Joseph

Pratt, John

Rose, William

COOS

Guay, Lawrence

GRAFTON

Guest, Robert

Ham, Bonnie

HILLSBOROUGH

Craig, James

Garrish, Linda

Ginsburg, Ruth

LaPorte, George

McDonough-Wallace,
Alice

Reidy, Frank

Simon, Anthony

White, John

MERRIMACK

Fraser, Marilyn

Moore, Carol

Rodd, Beth

Rosenfield, Jay

Wallner, Mary Jane

Yeaton, Charles

ROCKINGHAM

Blanchard, MaryAnn

Francoeur, Sheila

McKinney, Betsy

Noyes, Richard

Reardon, Neil

Tufts, J Arthur

STRAFFORD

Brennan, William

Johnson, Nancy

Keans, Sandra

Snyder, Clair

Twardus, Joseph

Vachon, Dennis

SULLIVAN

Leone, Richard

Young, David

NAYS 298

BELKNAP

Bartlett, Gordon

Boyce, Robert

Czech, Stanley

Holbrook, Robert

Johnson, James

Lawton, David

Millham, Alida

Pilliod, James

Rice, Thomas

Rosen, Ralph

Russell, David

Salatiello, Thomas

Thomas, John

Turner, Robert

Wendelboe, Francine

Wood, Jane

CARROLL

Babson, David Jr

Bradley, Jeb

Chandler, Gene

Dickinson, Howard

Howard, Godfrey

Kenney, Joseph

Lyman, L Randy

Patten, Betsey

Philbrick, Donald

Sullivan, P Judith

Torressen, Gary

CHESHIRE

Batchelder, Robert

Blaisdell, Michael

DePecol, Benjamin

Hunt, John

Lerandeau, Alfred	Lynch, Margaret	McGuirk, Paul	Meador, David
Mitchell, McKim	Pratt, Irene	Richardson, Barbara	Roberts, William
Robertson, Timothy	Royce, H Charles	Smith, Edwin	Zerba, Roger

COOS

Davis, Perley	Gallus, John	Horton, Lynn	Pratt, Leighton
Tholl, John Jr	Woodward, David		

GRAFTON

Akins, Ralph	Alger, John	Almy, Susan	Brothers, Richard
Cobb, John	Copenhaver, Marion	Dudley, Terri	Gilman, G Michael
Hall, David	Harmon, Hobart	Hinman, Harry	Johnson, Gary
Marshall, Gene	Mirski, Paul	Nordgren, Sharon	Phinney, William
Picconi, Al	Scanlan, David	Ward, Brien	Weber, Phil

HILLSBOROUGH

Ahern, Richard	Alukonis, David	Andrews, Frederick	Arnold, Thomas Jr
Arthur, Rose	Baroody, Benjamin	Batula, Peter	Beaupre, Roland
Belvin, William	Bergeron, Lucien	Bergin, Peter	Brundige, Robert
Bruno, Pierre	Buckley, Raymond	Burkush, James	Calawa, Leon Jr
Carlson, Donald	Chabot, Robert	Christiansen, Lars	Clegg, Robert Jr
Clemons, Jane	Cote, David	Cote, Peter	Coughlin, Pamela
Daigle, Robert	Desmarais, Vivian	Desrosiers, William	Drabinowicz, A Theresa
Dwyer, Paul Sr	Dyer, Merton	Emerton, Lawrence	Fenton, James
Fields, Dennis	Fletcher, Richard	Flora, Kathleen	Ford, Nancy
Foster, Linda	Franks, Suzan	Gagnon, Eugene	Goley, Jeffrey
Gorman, Mary	Goulet, Maurice	Haettenschwiller, Alphonse	Haley, Robert
Hall, Betty	Hansen, Herbert	Herman, Keith	Holley, Sylvia
Hunter, Bruce	Jean, Claudette	Jean, Loren	Johnson, Lionel
Keye, Harvey	Kurk, Neal	L'Heureux, Robert	LaRose, Richard
Lasky, Bette	Lefebvre, Roland	Leishman, Peter	Leonard, Peter
Lozeau, Donnalee	Lynde, Harold	MacGillivray, Jeffrey	Martel, Andre
Martin, Mary Ellen	McCarthy, William	McCarty, Winston	McColgan, Philip Jr

McDonald, James Sr	McGough, Tim	McRae, Karen	Melcher, Harold
Mendenhall, Leslie	Mercer, Robert	Messier, Irene	Milligan, Robert
Moran, Edward	Moriarty, Mary	Mosher, William	Murphy, Robert
Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane	Ouellette, Dean
Pepino, Leo	Peterson, Andrew	Reeves, Sandra	Sarette, John
Sargent, Maxwell	Tate, Joan	Thulander, O Alan	Vaillancourt, Steve
Withee, Dennis			

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Brewster, Richard
Chase, George	Daneault, Gabriel	Fortnam, Janet	Gile, Mary
Hager, Elizabeth	Hess, David	Jacobson, Alf	Kennedy, Richard
Langer, Ray	Larrabee, David Sr	Lavoie, Gerard	Leber, William
Lockwood, Priscilla	Marple, Richard	Marshall, Kenneth	Nichols, Avis
Owen, Derek	Potter, Frances	Poulin, Dave	Reardon, Tara
Seldin, Gloria	Soltani, Tony	St Cyr, Gerard	Virtue, Carolyn
Wallin, Jean	Whalley, Michael	Whittemore, James	

ROCKINGHAM

Abbott, Dennis	Arndt, Janet	Beaulieu, Jon	Belanger, Ronald
Bishop, Franklin	Bridle, Russell	Case, Margaret	Christie, Andrew Jr
Clark, Martha	Clark, Vivian	Cooney, Richard	Cox, Russell
Dearborn, Bruce	DiFruscia, Anthony	Dowling, Patricia	Downing, Michael
Fesh, Robert	Flanagan, Natalie	Flanders, David	Flanders, John Sr
Gibbons, Paul	Gleason, John	Grant, Kenneth	Griffin, Mary
Hamel, Albert	Henderson, Warren	Hutchinson, Karen	Hutchinson, Rebecca
Johnson, Robert	Kane, Cecelia	Katsakiores, George	Katsakiores, Phyllis
Kelley, Jane	Kelley, William	Kobel, Rudolph	Langley, Jane
Langone, John	Letourneau, Robert	Lovejoy, Marian	Major, Norman
Moore, Benjamin	Morse, Charles	Norelli, Terie	Nowe, Mary Lou
Nowe, Ronald	O'Keefe, Patricia	O'Neil, Michael	Packard, Sherman
Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne	Putnam, Ed II
Rabideau, Marie	Raynowska, Bernard	Sabella, Norma	Sapareto, Frank
Shelton, Richard	Shultis, Elizabeth	Splaine, James	Stickney, Nancy

Stone, Joseph	Stritch, C Donald	Varrell, Thomas	Vaughn, Charles
Weare, Everett	Weatherspoon, Jackie	Welch, David	Weyler, Kenneth
Whittier, John	Zolla, William		

STRAFFORD

Berube, Roger	Bickford, David	Brown, Julie	Cossette, Larry
DeChane, Marlene	Dunlap, Patricia	Estabrook, Iris	Gilmore, Gary
Grassie, Anne	Heon, Richard	Kaen, Naida	Knowles, William
Lundborn, Raymond	McKinley, Robert	Musler, George	Pelletier, Arthur
Pelletier, Marsha	Rogers, Rose Marie	Rollo, Michael	Smith, Marjorie
Taylor, Kathleen	Torr, Franklin	Vincent, Francis	Wall, Janet
Woods, Phyllis			

SULLIVAN

Allison, David	Cloutier, John	Donovan, Thomas Jr	Flint, Gordon Sr
Jones, Constance	Kibbey, David	Phinizy, James	Robb-Theroux, Amy
Tuthill, John	Wiggins, Celestine		

and the Simon floor amendment failed.

Reps. Burling, Carson, Dalianis and Quandt declared conflicts of interest and did not participate.

The question now being Ought to Pass on House Bill 1500.

Rep. Brothers requested a roll call; sufficiently seconded.

YEAS 72 NAYS 263

YEAS 72

BELKNAP

Pilliod, James	Rosen, Ralph	Wood, Jane
----------------	--------------	------------

CARROLL

Mock, Henry

CHESHIRE

Burnham, Daniel	Lerandeau, Alfred	Lynott, Margaret	Manning, Joseph
Pratt, Irene	Pratt, John	Richardson, Barbara	Robertson, Timothy
Rose, William			

COOS

Guay, Lawrence

GRAFTON

Copenhaver, Marion	Guest, Robert	Ham, Bonnie	Ward, Brien
--------------------	---------------	-------------	-------------

HILLSBOROUGH

Ahern, Richard	Baroody, Benjamin	Burkush, James	Craig, James
Garrish, Linda	Goley, Jeffrey	Jean, Claudette	LaPorte, George
Lasky, Bette	McCarthy, William	McColgan, Philip Jr	McDonough-Wallace, Alice
Melcher, Harold	Peterson, Andrew	Reidy, Frank	Sarette, John
White, John	Withee, Dennis		

MERRIMACK

Brewster, Richard	Fraser, Marilyn	Jacobson, Alf	Lockwood, Priscilla
Moore, Carol	Owen, Derek	Potter, Frances	Rodd, Beth
Rosenfield, Jay	Wallner, Mary Jane	Yeaton, Charles	

ROCKINGHAM

Blanchard, MaryAnn	Case, Margaret	Christie, Andrew Jr	Johnson, Robert
Lovejoy, Marian	McKinney, Betsy	Noyes, Richard	O'Keefe, Patricia
Reardon, Neil	Sapareto, Frank	Shelton, Richard	Shultis, Elizabeth
Stritch, C Donald	Tufts, J Arthur	Whittier, John	

STRAFFORD

Brown, Julie	Dunlap, Patricia	Johnson, Nancy	Keans, Sandra
Snyder, Clair	Vachon, Dennis		

SULLIVAN

Allison, David	Donovan, Thomas Jr	Wiggins, Celestine	Young, David
----------------	--------------------	--------------------	--------------

NAYS 263

BELKNAP

Bartlett, Gordon	Boyce, Robert	Czech, Stanley	Holbrook, Robert
Johnson, James	Lawton, David	Millham, Alida	Rice, Thomas
Russell, David	Salatiello, Thomas	Thomas, John	Turner, Robert
Wendelboe, Francine			

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Kenney, Joseph	Lyman, L Randy	Patten, Betsey
Philbrick, Donald	Sullivan, P Judith	Torressen, Gary	

CHESHIRE

Batchelder, Robert	Blaisdell, Michael	DePecol, Benjamin	Hunt, John
Lynch, Margaret	McGuirk, Paul	Meador, David	Mitchell, McKim
Roberts, William	Royce, H Charles	Smith, Edwin	Zerba, Roger

COOS

Davis, Perley	Gallus, John	Horton, Lynn	Pratt, Leighton
Tholl, John Jr	Woodward, David		

GRAFTON

Akins, Ralph	Alger, John	Almy, Susan	Brothers, Richard
Cobb, John	Dudley, Terri	Gilman, G Michael	Hall, David
Harmon, Hobart	Hinman, Harry	Johnson, Gary	Marshall, Gene
Mirski, Paul	Nordgren, Sharon	Phinney, William	Picconi, Al
Scanlan, David	Weber, Phil		

HILLSBOROUGH

Alukonis, David	Andrews, Frederick	Arnold, Thomas Jr	Arthur, Rose
Batula, Peter	Beaupre, Roland	Belvin, William	Bergeron, Lucien
Bergin, Peter	Brundige, Robert	Bruno, Pierre	Buckley, Raymond
Calawa, Leon Jr	Carlson, Donald	Chabot, Robert	Christiansen, Lars
Clegg, Robert Jr	Clemons, Jane	Cote, David	Cote, Peter
Coughlin, Pamela	Daigle, Robert	Desmarais, Vivian	Desrosiers, William
Drabinowicz, A Theresa	Dwyer, Paul Sr	Dyer, Merton	Emerton, Lawrence
Fenton, James	Fields, Dennis	Fletcher, Richard	Flora, Kathleen
Ford, Nancy	Foster, Linda	Franks, Suzan	Gagnon, Eugene
Ginsburg, Ruth	Gorman, Mary	Goulet, Maurice	Haettenschwiller, Alphonse
Haley, Robert	Hall, Betty	Hansen, Herbert	Herman, Keith
Holley, Sylvia	Hunter, Bruce	Jean, Loren	Johnson, Lionel
Keye, Harvey	Kurk, Neal	L'Heureux, Robert	LaRose, Richard
Lefebvre, Roland	Leishman, Peter	Leonard, Peter	Lozeau, DonnaLee
Lynde, Harold	MacGillivray, Jeffrey	Martel, Andre	Martin, Mary Ellen
McCarty, Winston	McDonald, James Sr	McGough, Tim	McRae, Karen
Mendenhall, Leslie	Mercer, Robert	Messier, Irene	Milligan, Robert
Moran, Edward	Moriarty, Mary	Mosher, William	Murphy, Robert
Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane	Ouellette, Dean
Pepino, Leo	Reeves, Sandra	Sargent, Maxwell	Simon, Anthony
Tate, Joan	Thulander, O Alan	Vaillancourt, Steve	

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Chase, George
Daneault, Gabriel	Fortnam, Janet	Gile, Mary	Hager, Elizabeth
Hess, David	Kennedy, Richard	Langer, Ray	Larrabee, David Sr
Lavoie, Gerard	Leber, William	Marple, Richard	Marshall, Kenneth
Nichols, Avis	Poulin, Dave	Reardon, Tara	Seldin, Gloria
Soltani, Tony	St Cyr, Gerard	Virtue, Carolyn	Wallin, Jean
Whalley, Michael	Whittemore, James		

ROCKINGHAM

Abbott, Dennis	Arndt, Janet	Beaulieu, Jon	Belanger, Ronald
Bishop, Franklin	Bridle, Russell	Clark, Martha	Clark, Vivian
Cooney, Richard	Cox, Russell	Dearborn, Bruce	DiFruscia, Anthony
Dowling, Patricia	Downing, Michael	Fesh, Robert	Flanagan, Natalie
Flanders, David	Flanders, John Sr	Francoeur, Sheila	Gibbons, Paul
Gleason, John	Grant, Kenneth	Griffin, Mary	Hamel, Albert
Henderson, Warren	Hutchinson, Karen	Hutchinson, Rebecca	Kane, Cecelia
Katsakiores, George	Katsakiores, Phyllis	Kelley, Jane	Kelley, William
Kobel, Rudolph	Langley, Jane	Langone, John	Letourneau, Robert
Major, Norman	Moore, Benjamin	Morse, Charles	Norelli, Terie
Nowe, Mary Lou	Nowe, Ronald	O'Neil, Michael	Packard, Sherman
Pantelakos, Laura	Pitts, Jacqueline	Priestley, Anne	Putnam, Ed II
Rabideau, Marie	Raynowska, Bernard	Sabella, Norma	Splaine, James
Stickney, Nancy	Stone, Joseph	Varrell, Thomas	Vaughn, Charles
Weare, Everett	Weatherspoon, Jackie	Welch, David	Weyler, Kenneth
Zolla, William			

STRAFFORD

Berube, Roger	Bickford, David	Brennan, William	Cossette, Larry
DeChane, Marlene	Estabrook, Iris	Gilmore, Gary	Grassie, Anne
Heon, Richard	Kaen, Naida	Knowles, William	Lundborn, Raymond
McKinley, Robert	Musler, George	Pelletier, Arthur	Pelletier, Marsha
Rogers, Rose Marie	Rollo, Michael	Smith, Marjorie	Taylor, Kathleen
Torr, Franklin	Twardus, Joseph	Vincent, Francis	Wall, Janet
Woods, Phyllis			

SULLIVAN

Cloutier, John	Flint, Gordon Sr	Jones, Constance	Kibbey, David
Leone, Richard	Phinizy, James	Robb-Theroux, Amy	Tuthill, John

and HB 1500 failed.

Reps. Burling, Carson, Dalianis and Quandt declared conflicts of interest and did not participate.

Rep. Rollo moved that House Bill 1500 be Inexpedient to Legislate.

Adopted.

HOUSE RESOLUTION NO. 52

recommending that no article of impeachment be brought against supreme court justice Sherman D. Horton, Jr.

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the New Hampshire house of representatives adopt the following resolution relative to justice Sherman D. Horton, Jr; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found no clear and convincing evidence that justice Sherman D. Horton, Jr has acted in such a way as to require the house, acting under Part II, Article 17 of the New Hampshire constitution, to make and send to the senate an article of impeachment, and accordingly moves that no article of impeachment be brought against justice Sherman D. Horton, Jr.

Rep. Jane Wood moved Ought to Pass.

Rep. Mirski offered a floor amendment.

Floor Amendment (4811h)

Amend the title of the resolution by replacing it with the following:

A RESOLUTION recommending impeachment of supreme court justice Sherman D. Horton, Jr.

Amend the resolution by replacing all after the title with the following:

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the house adopt the following resolution relative to justice Sherman D. Horton, Jr.; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether justice Sherman D. Horton, Jr., of the supreme court of New Hampshire, should be

convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the article of impeachment below, which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

ARTICLE I

That during the period from his appointment as an associate justice of the New Hampshire supreme court to the present, justice Sherman D. Horton, Jr. engaged in conduct which corrupted the supreme court's capacity to dispense impartial justice and to insure the right of every New Hampshire citizen to equal protection under the law. Justice Horton has done so by participating in a process whereby disqualified justices were permitted to receive draft opinions for cases before the court and to attend case conferences which enabled them to comment on and influence opinions from which they were recused and disqualified. Specifically, he committed one or more of the following acts:

1. Engaged in a pattern of acts, and allowed the continued existence of an implicit secret policy at the supreme court whereby the justices did or were allowed to do one or more of the following:

A) recused, disqualified or non-participating judges were allowed to comment, or provide input, orally or in writing, on matters from which they were disqualified, recused or in which they purportedly did not participate;

B) recused, disqualified or non-participating judges were provided with draft copies of decisions of cases from which they were disqualified, recused or in which they purportedly did not participate, before the ordinary citizens were allowed to do the same;

C) recused, disqualified or non-participating judges were allowed to attend conferences where cases from which they were disqualified or in which they did not participate were discussed and decided;

2. As the administrative head of the New Hampshire supreme court, he permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts:

A) allowed the opinions and decisions of the court to be published as per curiam opinions and falsely purported that a particular disqualified justice had not sat nor participated in the said opinions, where in fact the said justice had participated in the said decision and had, on occasion, in fact authored the said decision;

B) allowed the opinions and decisions to be published indicating that a certain justice or certain justices had not participated in the progress of the case where in fact they had, thereby misinforming, and misleading the people of the state and the litigants in the matter and creating a false historical record.

That because of justice Sherman D. Horton, Jr.'s failure to insure that the dispensation of impartial justice and equal protection under the law has been uniformly afforded to those who had cases before the New Hampshire supreme court, the New Hampshire house of representatives finds that justice Sherman D. Horton, Jr. has committed an impeachable offense warranting trial by the New Hampshire senate.

AMENDED ANALYSIS

This house resolution recommends that one article of impeachment be brought against justice Sherman D. Horton, Jr., of the New Hampshire supreme court.

Rep. Mirski: Thank you, Madam Speaker. Just as an aside, I was thinking about the historic events of today and I reminded myself that this morning when I was speaking about rolling a cannon up in front of Governor Wentworth's door and the assault on Fort William and Mary, it occurred to me that there is at least one member of this House who had relatives at both of those events, so it is interesting about the continuum of time and how we get to play these things out over time. With respect to the impeachment of Chief Justice Brock, Article I, Article II, Article III, all had to do with specific administrative acts by the Chief Justice as an individual. When this House voted to also add an article which would impeach him for the recusal policies of the court, however, that vote changed the dynamic of today's proceedings and this is why. The recusal policy of the court is not a policy for which the Chief Justice is solely responsible as the member from Amherst so eloquently spoke to. What Article 73-a of the Constitution says is this: that the Chief Justice, with the concurrence of a majority of the court, sets the policies and procedures for the court. That means that a majority of the justices on the court were perfectly willing, interested, in having the recusal policy be a part of their daily procedural activities. Secondly, the canons of ethics require that every judge who perceives a wrongful act on the part of another judge or group of judges has an obligation under the canons to report that wrong. What does this recusal practice mean as a practical matter to litigants? What the recusal practice essentially does is allow a prejudiced judge to participate in the judicial proceedings of the Supreme Court. It is impossible for any judge to comply with their oath of office in upholding the constitutional requirement which encumbers upon them an absolute obligation to act impartially. It is impossible to participate as a prejudiced judge and simultaneously meet the Constitutional requirement of impartiality, impossible. I said earlier this morning what the constitution does is it establishes an independent set of judges, independent judges. Each judge is responsible for his or her own personal performance, vis-a-vis the constitutional obligation. That means that when Justice Horton, Justice Broderick or any other justice participates in a process, offers opinions in anyway related to cases before the court, in which they have an interest, they violate their oath of office, they violate their canons and they do other things with respect to litigants, which I'll mention in a minute, so the wrong is huge. Just think about this. The nature of the abuse to litigants is what? It is straightforward. Its denial of due process, the right to equal treatment under the law. Equal protection is absolute, someone said earlier today. It is impossible for each member of the Supreme Court, and unfortunately HR 50 primarily addresses the individuals who are presently serving, but it is impossible for members of the Supreme Court to participate or condone in anyway a recusal policy which denies litigants, our constituents, of their due process rights. Further, I had a conversation with somebody else who has some knowledge about this and they said to me, "You know, the other thing that might happen here is that if the State of New Hampshire, the Supreme Court of New Hampshire, has, in fact, denied individuals their due process rights, that may be actionable under the Civil Rights Act of 1982 and that means appeals at the federal court." There was an article by a reporter, in the Monitor, when this began, concerning the number of individuals who are incarcerated in the state prison who are now looking at appeals on account of this recusal process. I think what we are looking at, the reality is, a long period of time where this is going to be before us. It is not right to treat Justice Brock separately and to hold him accountable for this process. Justice Horton and Justice Broderick are also responsible. I ask you in the interest of equity and fairness to vote "yes" on this amendment, because otherwise what we are saying is that it was perfectly fine for this violation to permit the Supreme Court members, who all would have an interest in this, to assert themselves the privilege of secret proceedings, the privilege of being able to intervene in cases, the privilege of denying these due process rights and the privilege to covertly serve the rich and powerful. A couple of days after the Attorney General came out with his report, every member of the court and also retired justices admitted to having participated in these horrible recusal practices and interestingly, when I finally learned of the Judge Gray business, the relationship between the court, the politically powerful member of the Senate and the judiciary, I

thought to myself, my God, we're back at 1775. I think that the remainder of the Justices, Horton and Broderick, deserve to be impeached as well and I ask for your support. Thank you.

Rep. Carson: Thank you, Madam Speaker and honorable members of the House. I rise today in opposition to the Mirski floor amendment for a number of reasons, but I'll try and be very, very brief because the hour is late. I've refrained from speaking earlier today on this historic day, especially since it's my last, probably likely day to speak in this House, but for over 20 years the New Hampshire Supreme Court has followed a procedure for better or worse, just or unjust, moral, immoral or just simply wrong. I don't agree with the practice. I believe the practice would probably not meet the standard of what you would try and teach your children on whether to tell the truth or tell a lie. I'm deeply disturbed by Justice Broderick's comment about momentary lapses in ethical behavior, I was appalled when I read that statement in the newspaper on the proceedings that occurred. However, this practice has gone on for more than 20 years, a number of justices, including one now a U.S. Supreme Court Justice, have participated in this action. One of the things that makes our form of government in New Hampshire and in the United States very unique is that when we find wrongs, we fix them. Simply, if it is wrong we change the law, we change a policy, we change procedure. What we don't do, however, is go back and look in hindsight and charge people with crimes, misdemeanors, or sanction penalties against people who have practiced under those practices prior to them being wrong, immoral, illegal. To do this today in either Articles I or II of the first House resolution for Justice Brock or in this article or in the following article would simply be wrong. It would be unjust, it would be anti-American, in fact. It goes against everything that we really believe in as Americans and in due process. I voted earlier against Articles I and II and I voted for Article III and I voted against Representative Jacobson's amendment because I think recusal is not the issue here. The issue has been resolved, we don't need to look into it further, we know it was wrong, we all abhor it and it is behind us now. We look to need to move forward and get the confidence back in the court system for the citizens that we represent. We don't need to keep going over a problem that we know has been fixed. However, we do need to take a look at the court because systemic problems like this exist throughout the entire court system and while we are addressing those issues in future legislative sessions, we should not be doing it now at the level of impeachment of individual justices for a systemic problem of the court system that, in fact, we, for the most part, have set up over the course of 200 years. I would be really, really disappointed in knowing that we impeached individual justices for such a broad systemic practice and that to look back in hindsight I think we would all regret what we were to do if we were to impeach these individuals for that practice. I would ask that simply, today, that we think before we vote and say are we penalizing individuals for a practice that was systemic in the system for years and years and years because we are angry, upset or have a personal qualm with one or many of the things that they have done? Or, are we voting today because we really believe that impeachment is the only solution? I, however, do not think so. I think other remedies, other than impeachment, are probably more just and more equitable, such as censure or some other penalty. So, I would ask you today to simply vote against these amendments and go along with the committee report and vote this bill or vote this amendment Inexpedient to Legislate. Thank you.

Rep. Brothers: Thank you, Madam Speaker. Members of the House, I hadn't intended on speaking on this bill, I'll be very brief. As a matter of fact, until about an hour ago I had intended on voting against this amendment. I was convinced to vote for this amendment by the member from Amherst when he opposed the Article IV. The fact is we have voted, in the majority, to impeach Judge Brock on Article IV which had to do with recusal. We would be hypocrites if we did not also vote to impeach the other justices who have taken part in this. What's wrong is wrong, what's illegal is illegal, what's impeachable is impeachable. The excuse that we've been hearing here is that it's policy, it's been going on for years. It reminds me of the time I was in 8th grade, I got caught skipping school and tried to say that Tommy Gallagher did, too, and it is the same thing. This is ridiculous. Any one of us would send our children to their room for coming up with this excuse. Again, I'll just close with another cliché, if I may, if you'll bear with me, what's good for the goose is good for the gander. We've

voted in the majority to impeach Judge Brock for his policy of recusal. Judge Horton also did it. Thank you.

Speaker Sytek: Would the member yield to a question? Rep. Dickinson, you may inquire.

Rep. Dickinson: Thank you, Madam Speaker. Sir, I take it then that you feel that both Horton and, at least we're talking about just Horton, that Judge Horton is equally culpable of this questionable recusal policy and should be punished in some way. Is it correct, it is my understanding and do you agree, that if we were to impeach him and the Senate decides, no, that's too serious, that they would be in a position to reduce this to reprimand?

Rep. Brothers: It would be up to the Senate to decide. They can refuse to remove him, they can punish him in any way, they can refuse to punish him at all. But, if we don't want to be hypocrites, those of us who voted on Article IV are compelled, right now, to vote for impeachment of Judge Horton. Thank you.

Rep. Dickinson: Thank you, Madam Speaker. Well, would you believe that I feel that both Horton and Broderick deserve somewhat of a reprimand in any case, a good swift slap up aside the head and I know of no other way of doing this without passing the Mirski amendment, so would you agree that that's a good idea?

Rep. Brothers: Yes, I would.

Rep. Mock: Madam Speaker, members of the House. Thank you for listening one more time. I rise in opposition to this amendment and I rise because impeachment is a very serious thing. Justice Brock was not impeached on just recusal and furthermore, furthermore the recusal policy is administered by the Chief Justice, not by the justices. It was up to the Chief Justice to change that policy and he could have done it with the snap of a finger or the stroke of a pen. Article 73-a asks you today to do your constitutional duty one more time because 73-a says the Chief Justice of the Supreme Court shall be the administrative head of all the courts. Whatever Justice Horton did, and he did the recusal bit, whatever he did certainly didn't rise to clear and convincing evidence. As a matter of fact, it didn't even make 51 percent, preponderance of the evidence. I ask you to vote down this amendment and accept the committee report. Thank you.

Speaker Sytek: Would the member yield to a question? Rep. Carson, you may inquire.

Rep. Carson: Thank you, Madam Speaker. I was wondering if the member could elaborate for me on one point that was made by the previous speaker, once impeached, always impeached. Is that not correct, that the impeachment itself is not reduced to a reprimand, a warning, a censure, a slap on the wrist? Impeachment is impeachment is impeachment and a trial and conviction and penalties in the Senate are something completely different?

Rep. Mock: You are correct. Once you are impeached, you are impeached. To be impeached is like being a fine piece of china that is cracked, you can never repair it.

Rep. Dudley: Thank you, Madam Speaker. Members of the House, Justice Sherman Horton is the senior justice on the Supreme Court. He is well aware of the canons of judicial conduct which have the force and effect of the law. Supreme Court law 38, the Code of Judicial Conduct, is very clear. A judge should avoid impropriety and an appearance of impropriety in all his activities. A judge should perform the duties of his office impartially and diligently. A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism. I believe the canons are very, very clear. If a judge shall become aware of

unprofessional conduct by a judge or lawyer, he shall in the instance of a judge report his knowledge to the Committee on Judicial Conduct and shall, in the instance of a lawyer, report his knowledge to the Committee on Professional Conduct. A judge should disqualify himself in proceedings in which his impartiality might possibly be questioned, including but not limited to instances where he has a personal bias or prejudice concerning a party or personal knowledge of disputed facts concerning a proceeding. Justice Horton was a friend and a mentor of Justice Thayer, a strong argument for recusal. Justice Horton believed in the collegial atmosphere where people could work together harmoniously. This is fine in most instances but not in the culture of the Supreme Court. Justice Horton believed that editorial... (tape change)... did not violate the code of ethics. He believed it was important to write court opinions properly, even pointing out when commas and punctuation should be properly placed, each "t" must be crossed and each "i" must be dotted, but apparently the language of the canons was not observed. Despite the loose recusal policy of the Supreme Court, the majority of the Judiciary Committee, and these are members that I deeply respect, I have served with this year, and it's very difficult for me to speak against their recommendation today they stated impeachment was not appropriate for Justice Horton. This despite the fact that the committee did recognize that the canons were violated. Thank you.

Rep. Mirski requested a roll call; sufficiently seconded.

The question being the adoption of the Mirski floor amendment.

YEAS 135 NAYS 190

YEAS 135

BELKNAP

Boyce, Robert	Czech, Stanley	Johnson, James	Lawton, David
Rice, Thomas	Salatiello, Thomas	Thomas, John	Wendelboe, Francine

CARROLL

Babson, David Jr	Bradley, Jeb	Dickinson, Howard	Howard, Godfrey
Patten, Betsey	Philbrick, Donald	Sullivan, P Judith	Torressen, Gary

CHESHIRE

McGuirk, Paul	Roberts, William
---------------	------------------

COOS

Davis, Perley	Gallus, John	Holl, John Jr	Woodward, David
---------------	--------------	---------------	-----------------

GRAFTON

Akins, Ralph	Alger, John	Brothers, Richard	Cobb, John
Dudley, Terri	Gilman, G Michael	Hall, David	Ham, Bonnie
Harmon, Hobart	Hinman, Harry	Mirski, Paul	Phinney, William
Ward, Brien	Weber, Phil		

HILLSBOROUGH

Alukonis, David	Arnold, Thomas Jr	Batula, Peter	Beaupre, Roland
Brundige, Robert	Bruno, Pierre	Buckley, Raymond	Calawa, Leon Jr
Carlson, Donald	Christiansen, Lars	Clegg, Robert Jr	Clemons, Jane
Desmarais, Vivian	Drabinowicz, A Theresa	Fenton, James	Fields, Dennis
Fletcher, Richard	Flora, Kathleen	Franks, Suzan	Gorman, Mary
Holley, Sylvia	Hunter, Bruce	Jean, Loren	Keye, Harvey
Kurk, Neal	L'Heureux, Robert	LaPorte, George	LaRose, Richard
MacGillivray, Jeffrey	Martin, Mary Ellen	McCarthy, William	McGough, Tim
McRae, Karen	Mendenhall, Leslie	Milligan, Robert	Ouellette, Dean
Reeves, Sandra	Sargent, Maxwell	Tate, Joan	Thulander, O Alan
Vaillancourt, Steve			

MERRIMACK

Kennedy, Richard	Langer, Ray	Larrabee, David Sr	Lavoie, Gerard
Leber, William	Marple, Richard	St Cyr, Gerard	Virtue, Carolyn
Whalley, Michael	Whittemore, James		

ROCKINGHAM

Arndt, Janet	Belanger, Ronald	Bishop, Franklin	Clark, Vivian
Cox, Russell	Dearborn, Bruce	Dowling, Patricia	Downing, Michael
Fesh, Robert	Flanders, David	Grant, Kenneth	Hamel, Albert
Henderson, Warren	Hutchinson, Karen	Kelley, Jane	Kelley, William
Kobel, Rudolph	Major, Norman	McKinney, Betsy	Moore, Benjamin
Nowe, Mary Lou	Nowe, Ronald	Noyes, Richard	Packard, Sherman
Pitts, Jacqueline	Priestley, Anne	Putnam, Ed II	Rabideau, Marie
Raynowska, Bernard	Stickney, Nancy	Varrell, Thomas	Weare, Everett
Welch, David	Weyler, Kenneth		

STRAFFORD

Cossette, Larry	DeChane, Marlene	Gilmore, Gary	McKinley, Robert
Rogers, Rose Marie	Rollo, Michael	Smith, Marjorie	Taylor, Kathleen
Woods, Phyllis			

SULLIVAN

Jones, Constance	Kibbey, David	Leone, Richard	Phinizy, James
Tuthill, John			

NAYS 190

BELKNAP

Bartlett, Gordon	Holbrook, Robert	Millham, Alida	Pilliod, James
Rosen, Ralph	Russell, David	Turner, Robert	Wood, Jane

CARROLL

Chandler, Gene	Lyman, L Randy	Mock, Henry
----------------	----------------	-------------

CHESHIRE

Batchelder, Robert	Blaisdell, Michael	Burnham, Daniel	DePecol, Benjamin
Hunt, John	Lerandeau, Alfred	Lynch, Margaret	Lynott, Margaret
Manning, Joseph	Meador, David	Mitchell, McKim	Pratt, Irene
Pratt, John	Richardson, Barbara	Robertson, Timothy	Rose, William
Royce, H Charles	Smith, Edwin	Zerba, Roger	

COOS

Guay, Lawrence	Horton, Lynn	Pratt, Leighton
----------------	--------------	-----------------

GRAFTON

Almy, Susan	Copenhaver, Marion	Guest, Robert	Johnson, Gary
Marshall, Gene	Nordgren, Sharon	Picconi, Al	Scanlan, David
Solow, Martha			

HILLSBOROUGH

Andrews, Frederick	Arthur, Rose	Baroody, Benjamin	Bergeron, Lucien
Bergin, Peter	Burkush, James	Chabot, Robert	Cote, David
Cote, Peter	Coughlin, Pamela	Craig, James	Daigle, Robert
Dwyer, Paul Sr	Dyer, Merton	Emerton, Lawrence	Ford, Nancy
Foster, Linda	Gagnon, Eugene	Garrish, Linda	Ginsburg, Ruth
Goley, Jeffrey	Goulet, Maurice	Haettenschwiller, Alphonse	Haley, Robert
Hall, Betty	Hansen, Herbert	Herman, Keith	Jean, Claudette
Johnson, Lionel	Lasky, Bette	Lefebvre, Roland	Leishman, Peter
Leonard, Peter	Lozeau, DonnaLee	Lynde, Harold	McCarty, Winston
McColgan, Philip Jr	McDonald, James Sr	McDonough-Wallace, Alice	Melcher, Harold
Mercer, Robert	Messier, Irene	Moran, Edward	Moriarty, Mary
Mosher, William	Murphy, Robert	Nolan-Piteri, Dawn	O'Connell, Timothy
O'Hearn, Jane	Peterson, Andrew	Reidy, Frank	Sarette, John
Simon, Anthony	White, John	Withee, Dennis	

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Brewster, Richard
Chase, George	Daneault, Gabriel	Fortnam, Janet	Fraser, Marilyn
Gile, Mary	Hager, Elizabeth	Hess, David	Jacobson, Alf
Lockwood, Priscilla	Marshall, Kenneth	Moore, Carol	Nichols, Avis
Owen, Derek	Potter, Frances	Poulin, Dave	Reardon, Tara
Rodd, Beth	Rosenfield, Jay	Seldin, Gloria	Soltani, Tony
Wallin, Jean	Wallner, Mary Jane	Yeaton, Charles	

ROCKINGHAM

Abbott, Dennis	Blanchard, MaryAnn	Bridle, Russell	Carson, Gregory
Christie, Andrew Jr	Clark, Martha	Cooney, Richard	DiFruscia, Anthony
Flanagan, Natalie	Flanders, John Sr	Francoeur, Sheila	Gleason, John
Griffin, Mary	Hutchinson, Rebecca	Johnson, Robert	Kane, Cecelia
Katsakiores, George	Katsakiores, Phyllis	Langley, Jane	Langone, John
Letourneau, Robert	Morse, Charles	Norelli, Terie	O'Keefe, Patricia

O'Neil, Michael	Pantelakos, Laura	Reardon, Neil	Sabella, Norma
Sapareto, Frank	Shelton, Richard	Shultis, Elizabeth	Splaine, James
Stone, Joseph	Stritch, C Donald	Tufts, J Arthur	Vaughn, Charles
Weatherspoon, Jackie	Whittier, John	Zolla, William	

STRAFFORD

Berube, Roger	Bickford, David	Brennan, William	Brown, Julie
Dunlap, Patricia	Estabrook, Iris	Grassie, Anne	Heon, Richard
Johnson, Nancy	Kaen, Naida	Keans, Sandra	Lundborn, Raymond
Musler, George	Pelletier, Arthur	Pelletier, Marsha	Snyder, Clair
Torr, Franklin	Twardus, Joseph	Vachon, Dennis	Vincent, Francis
Wall, Janet			

SULLIVAN

Allison, David	Cloutier, John	Donovan, Thomas Jr	Robb-Theroux, Amy
Wiggins, Celestine	Young, David		

and the Mirski floor amendment failed.

Reps. Belvin, Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

The question now being the adoption of HR 52.

Rep. Jane Wood: Thank you, Madam Speaker. Members of the House, I just would like to remind you, as I think most people are aware, that the committee was totally attentive to the depositions and the public hearing testimony with regard to Justice Horton. That we were aware that there was behavior that we were extremely unhappy with, but yes, he did speak up about that Thayer divorce panel, even though he was also disqualified and the fact that he would say that he thought it was really an appointment to the JCC panel really is no excuse. Further, he indicated by his own testimony that he didn't even realize that the grossly inappropriate behavior by Justice Thayer was a problem until Justice Broderick spoke with him about it a week later and yes, he participated in the recusal policy that was a matter of procedure at the time. But, in his defense, we found that Justice Horton was very forthright in the questioning by our special counsel and in the questioning by the committee in public testimony, to the extent that he would even tell things the way they were even though they might have been somewhat self-incriminating. Justice Horton has had an honorable career, he has done very fine work for the people of the State of New Hampshire. His behavior was inappropriate, perhaps unethical, but the committee found, by a clear and convincing vote of 19 to 3, that these mistakes do not in anyway rise to the level of impeachment and we would ask that you would please vote with the committee and pass House Resolution 52, recommending that no article of impeachment be brought against Supreme Court Justice Sherman D. Horton, Jr. Thank you.

Speaker Sytek: Would the Chairman of the Committee yield to a question? Rep. Franks, you may inquire.

Rep. Franks: Thank you, Madam Speaker. Thank you, Representative Mock. One of the things that I think there is a frustration amongst the membership is the feeling that either we do an impeachment or we do nothing. My question to the Chairman is, at the time this discussion was held by the committee was there any discussion of, at the very least, reporting this behavior to the Judicial Conduct Committee by the committee?

Rep. Mock: I had to double check here, some of these cases start running together. Were any other charges considered? Yes, as a matter of fact the committee took a vote on reprimand on both Justice Horton and Justice Broderick and they did not pass. The reason they didn't pass the committee is because the constitution says you have a choice, you can impeach or you can address, and it wasn't a choice that we had. I happen to disagree with that, but that doesn't matter, perhaps that's the case. In other words, we had one hard choice to make, impeach or nothing.

Rep. Mirski requested a roll call; sufficiently seconded.

The question being the adoption of House Resolution 52.

YEAS 187 NAYS 134

YEAS 187

BELKNAP

Holbrook, Robert	Millham, Alida	Pilliod, James	Rosen, Ralph
Russell, David	Salatiello, Thomas	Turner, Robert	Wood, Jane

CARROLL

Chandler, Gene	Mock, Henry	Philbrick, Donald
----------------	-------------	-------------------

CHESHIRE

Batchelder, Robert	Blaisdell, Michael	Burnham, Daniel	DePecol, Benjamin
Hunt, John	Lerandeau, Alfred	Lynch, Margaret	Lynott, Margaret
Manning, Joseph	Meader, David	Mitchell, McKim	Pratt, Irene
Pratt, John	Richardson, Barbara	Robertson, Timothy	Rose, William
Royce, H Charles	Smith, Edwin	Zerba, Roger	

COOS

Guay, Lawrence	Horton, Lynn	Pratt, Leighton
----------------	--------------	-----------------

GRAFTON

Almy, Susan	Copenhaver, Marion	Guest, Robert	Johnson, Gary
Marshall, Gene	Nordgren, Sharon	Picconi, Al	Scanlan, David
Solow, Martha			

HILLSBOROUGH

Andrews, Frederick	Arthur, Rose	Baroody, Benjamin	Bergin, Peter
Burkush, James	Chabot, Robert	Coughlin, Pamela	Craig, James
Drabinowicz, A Theresa	Dwyer, Paul Sr	Dyer, Merton	Emerton, Lawrence
Fenton, James	Fields, Dennis	Flora, Kathleen	Ford, Nancy
Foster, Linda	Gagnon, Eugene	Garrish, Linda	Ginsburg, Ruth
Goley, Jeffrey	Goulet, Maurice	Haettenschwiller, Alphonse	Haley, Robert
Hall, Betty	Hansen, Herbert	Jean, Claudette	Johnson, Lionel
LaPorte, George	Lasky, Bette	Leishman, Peter	Lozeau, Donnalee
Lynde, Harold	McCarty, Winston	McColgan, Philip Jr	McDonald, James Sr
McDonough-Wallace, Alice	Melcher, Harold	Mercer, Robert	Messier, Irene
Moran, Edward	Moriarty, Mary	Mosher, William	Murphy, Robert
Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane	Peterson, Andrew
Reidy, Frank	Sarette, John	Simon, Anthony	White, John
Withee, Dennis			

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Brewster, Richard
Chase, George	Daneault, Gabriel	Fortnam, Janet	Fraser, Marilyn
Gile, Mary	Hess, David	Jacobson, Alf	Larrabee, David Sr
Lockwood, Priscilla	Marshall, Kenneth	Moore, Carol	Nichols, Avis
Potter, Frances	Poulin, Dave	Reardon, Tara	Rodd, Beth
Rosenfield, Jay	Wallin, Jean	Wallner, Mary Jane	Yeaton, Charles

ROCKINGHAM

Abbott, Dennis	Belanger, Ronald	Blanchard, MaryAnn	Bridle, Russell
----------------	------------------	--------------------	-----------------

Carson, Gregory	Christie, Andrew Jr	Clark, Martha	Cooney, Richard
Cox, Russell	Dearborn, Bruce	DiFruscia, Anthony	Downing, Michael
Flanagan, Natalie	Francoeur, Sheila	Griffin, Mary	Hutchinson, Rebecca
Johnson, Robert	Kane, Cecelia	Katsakiores, George	Katsakiores, Phyllis
Langley, Jane	Langone, John	Letourneau, Robert	Major, Norman
Morse, Charles	Noyes, Richard	O'Keefe, Patricia	O'Neil, Michael
Pitts, Jacqueline	Sabella, Norma	Sapareto, Frank	Shelton, Richard
Shultis, Elizabeth	Splaine, James	Stone, Joseph	Varrell, Thomas
Vaughn, Charles	Weatherspoon, Jackie	Whittier, John	Zolla, William

STRAFFORD

Berube, Roger	Bickford, David	Brennan, William	Brown, Julie
Dunlap, Patricia	Estabrook, Iris	Grassie, Anne	Heon, Richard
Johnson, Nancy	Kaen, Naida	Lundborn, Raymond	Musler, George
Pelletier, Arthur	Pelletier, Marsha	Rogers, Rose Marie	Snyder, Clair
Torr, Franklin	Twardus, Joseph	Vachon, Dennis	Vincent, Francis
Wall, Janet			

SULLIVAN

Allison, David	Cloutier, John	Donovan, Thomas Jr	Leone, Richard
Robb-Theroux, Amy	Wiggins, Celestine	Young, David	

NAYS 134

BELKNAP

Bartlett, Gordon	Boyce, Robert	Czech, Stanley	Johnson, James
Lawton, David	Rice, Thomas	Thomas, John	Wendelboe, Francine

CARROLL

Babson, David Jr	Bradley, Jeb	Dickinson, Howard	Howard, Godfrey
Lyman, L Randy	Patten, Betsey	Sullivan, P Judith	Torressen, Gary

CHESHIRE

McGuirk, Paul

Roberts, William

COOS

Davis, Perley

Gallus, John

Tholl, John Jr

Woodward, David

GRAFTON

Akins, Ralph

Alger, John

Brothers, Richard

Cobb, John

Dudley, Terri

Gilman, G Michael

Hall, David

Ham, Bonnie

Harmon, Hobart

Hinman, Harry

Mirski, Paul

Phinney, William

Ward, Brien

Weber, Phil

HILLSBOROUGH

Alukonis, David

Arnold, Thomas Jr

Batula, Peter

Beaupre, Roland

Bergeron, Lucien

Brundige, Robert

Bruno, Pierre

Buckley, Raymond

Calawa, Leon Jr

Carlson, Donald

Christiansen, Lars

Clegg, Robert Jr

Clemons, Jane

Cote, David

Cote, Peter

Daigle, Robert

Desmarais, Vivian

Fletcher, Richard

Franks, Suzan

Gorman, Mary

Herman, Keith

Holley, Sylvia

Hunter, Bruce

Jean, Loren

Keye, Harvey

Kurk, Neal

L'Heureux, Robert

LaRose, Richard

Lefebvre, Roland

Leonard, Peter

MacGillivray, Jeffrey

Martin, Mary Ellen

McCarthy, William

McGough, Tim

McRae, Karen

Mendenhall, Leslie

Milligan, Robert

Ouellette, Dean

Reeves, Sandra

Sargent, Maxwell

Tate, Joan

Thulander, O Alan

Vaillancourt, Steve

MERRIMACK

Hager, Elizabeth

Kennedy, Richard

Langer, Ray

Lavoie, Gerard

Leber, William

Marple, Richard

Seldin, Gloria

Soltani, Tony

St Cyr, Gerard

Virtue, Carolyn

Whalley, Michael

Whittemore, James

ROCKINGHAM

Arndt, Janet

Bishop, Franklin

Clark, Vivian

Dowling, Patricia

Fesh, Robert

Flanders, David

Flanders, John Sr

Grant, Kenneth

Hamel, Albert

Henderson, Warren

Hutchinson, Karen

Kelley, Jane

Kelley, William	Kobel, Rudolph	McKinney, Betsy	Moore, Benjamin
Norelli, Terie	Nowe, Mary Lou	Packard, Sherman	Pantelakos, Laura
Priestley, Anne	Putnam, Ed II	Rabideau, Marie	Raynowska, Bernard
Reardon, Neil	Stickney, Nancy	Stritch, C Donald	Weare, Everett
Welch, David	Weyler, Kenneth		

STRAFFORD

Cossette, Larry	DeChane, Marlene	Gilmore, Gary	Keans, Sandra
McKinley, Robert	Rollo, Michael	Smith, Marjorie	Taylor, Kathleen
Woods, Phyllis			

SULLIVAN

Jones, Constance	Kibbey, David	Phinizy, James	Tuthill, John
------------------	---------------	----------------	---------------

and House Resolution 52 was adopted.

Ordered to third reading.

Rep. Neil Reardon voted Nay and intended to vote Yea.

Reps. Belvin, Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

PROTEST

Pursuant to Part 2, Article 24 of the New Hampshire Constitution, Rep. Boyce requested that his protest be entered on the Journal.

The New Hampshire House, in HR 50 charged the Judiciary committee to investigate whether impeachment or other actions were called for in relation to the revelations by the Attorney General and others of questionable actions committed by the State Supreme Court. The charge was to seek and follow the information available and did not limit the scope of that investigation. Rather the committee was expected to follow the information they found where ever it led.

In the actions taken by the committee during the investigation it is clear that this charge was disregarded by the chair and other members, in fact only a minority of the committee sought to follow that information completely. That chairman Mock and the majority of the committee refused to subpoena either former justice Souter or Michael O'Malley are examples of what I believe to be an attempt to shield from the scrutiny of the Legislature and thereby the public certain current and past members of the Judiciary, the Executive and perhaps the Legislative branches of the state government.

Had Mr. O'Malley been publicly questioned about how he came to know, before the Attorney General, details about what would be reported to the AG by Clerk Zibel, would we find collusion between the Governor and members of the Court or its staff? Would questioning Justice Souter have

exposed further depth of the problems just now being exhumed? Or would the integrity of the US Supreme Court be questioned if it were learned that the flaws in judgment exhibited by members of our Court had parallels and precedents there? Unfortunately we may never know.

Would a wider investigation reveal as fact what many believe, that those responsible for the cover-up of the corruption of Judge Fairbanks have been elevated to the highest levels in this state and that these people cannot stand scrutiny in the light of day and are in a position to thwart the Legislature's investigation?

We are here today voting on the recommendations of the committee concerning their investigation. I for one am not satisfied that this investigation has been thorough nor without bias. That many members of the committee are also members of the Bar and others derive their income from or are married to other members of the Bar leads me to wonder whom these members are serving – their constituents or the Unified Bar.

Under these circumstances I must hereby enter my protest to our actions today.

HOUSE RESOLUTION NO. 53

recommending that no article of impeachment be brought against supreme court justice

John T. Broderick, Jr.

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the New Hampshire house of representatives adopt the following resolution relative to justice John T. Broderick, Jr; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found no clear and convincing evidence that justice John T. Broderick, Jr. has acted in such a way as to require the house, acting under Part II, Article 17 of the New Hampshire constitution, to make and send to the senate an article of impeachment, and accordingly moves that no article of impeachment be brought against justice John T. Broderick, Jr.

Rep. Janet Wall moved Ought to Pass.

Rep. Mirski offered a floor amendment.

Floor Amendment (4810h)

Amend the title of the resolution by replacing it with the following:

A RESOLUTION recommending impeachment of supreme court justice John T. Broderick, Jr.

Amend the resolution by replacing all after the title with the following:

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist ... to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the house adopt the following resolution relative to justice John T. Broderick, Jr.; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether justice John T. Broderick, Jr., of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the article of impeachment below, which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

ARTICLE I

That during the period from his appointment as an associate justice of the New Hampshire supreme court to the present, Justice John T. Broderick, Jr. engaged in conduct which corrupted the supreme court's capacity to dispense impartial justice and to insure the right of every New Hampshire citizen to equal protection under the law. Justice Broderick has done so by participating in a process whereby disqualified justices were permitted to receive draft opinions for cases before the court and to attend case conferences which enabled them to comment on and influence opinions from which they were recused and disqualified. Specifically, he committed one or more of the following acts:

1. Engaged in a pattern of acts, and allowed the continued existence of an implicit secret policy at the supreme court whereby the justices did or were allowed to do one or more of the following:

A) recused, disqualified or non-participating judges were allowed to comment, or provide input, orally or in writing, on matters from which they were disqualified, recused or in which they purportedly did not participate;

B) recused, disqualified or non-participating judges were provided with draft copies of decisions of cases from which they were disqualified, recused or in which they purportedly did not participate, before the ordinary citizens were allowed to do the same;

C) recused, disqualified or non-participating judges were allowed to attend conferences where cases from which they were disqualified or in which they did not participate were discussed and decided;

2. As the administrative head of the New Hampshire supreme court, he permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts:

A) allowed the opinions and decisions of the court to be published as per curiam opinions and falsely purported that a particular disqualified justice had not sat nor participated in the said opinions, where in fact the said justice had participated in the said decision and had, on occasion, in fact authored the said decision;

B) allowed the opinions and decisions to be published indicating that a certain justice or certain justices had not participated in the progress of the case where in fact they had, thereby misinforming, and misleading the people of the state and the litigants in the matter and creating a false historical record.

That because of justice John T. Broderick, Jr. failure to insure that the dispensation of impartial justice and equal protection under the law has been uniformly afforded to those who had cases before the New Hampshire supreme court, the New Hampshire house of representatives finds that justice John T. Broderick, Jr. has committed an impeachable offense warranting trial by the New Hampshire senate.

AMENDED ANALYSIS

This house resolution recommends that one article of impeachment be brought against justice John T. Broderick, Jr., of the New Hampshire supreme court.

Rep. Mirski: Thank you, Madam Speaker. Same argument, different judge. Thank you.

Rep. Vaillancourt: Thank you, Madam Speaker. I rise in favor of the Mirski floor amendment and I do so somewhat perplexed because I realize that we are now truly on the horns of a dilemma, having voted to impeach one justice and then voted not to impeach another. We have the third we are now considering and I'll go quickly, but not quite as quickly as my predecessor. About 10:00 this morning, for the second time this year, I felt a shiver run up and down my spine as I looked at the American flag and recited the words of the Pledge of Allegiance, which I think, you, like me, take for granted all too often when we say those words. They just become something we do and probably don't even think about them. But when we got to those final words today they meant something to me, like they meant something to me back in February when, I believe it was the day before the Michigan primary, I was listening to John McCain speaking about one of his colleagues in the Hanoi Hilton who gathered red, white and blue material to sew a flag together so that the prisoners in Hanoi could salute when they said the Pledge of Allegiance and then, as related by Senator McCain, the North Vietnamese found that he had created this flag and came and beat him bloody because he had done this in the name of freedom and justice for all. But, the very next day, he went back and started gathering the three threads together, the red, the white and the blue, even though he had been bloodied by the North Vietnamese so that he could start the process again. After hearing a story like that the words of the Pledge of Allegiance have meaning and when we get to those words, "with liberty and justice for all" they had meaning for me once again this morning after so many times of hearing them over the last three months when they did not have that meaning. Chief Justice David Brock, who now stands impeached on four counts before this great House, did not act in a vacuum, he did not act alone. He should not take the fall alone for what has happened to the judicial system in this state. Justice Broderick maybe is not totally as guilty as Chief Justice Brock, but let's compare it to the conspiracy of murder and I use those words with some reluctance, but you know, if somebody drives the get-away car in a murder conspiracy, according to the law that individual is just as culpable, every bit as culpable, as the man who actually pulled the trigger. So, if we say that Chief Justice Brock pulled the trigger on the judicial system and sent it spiraling into disgrace, we have to say, with all good conscience, that Justice Broderick was, at the very least, waiting to drive the get-away car. With "liberty and justice for all", I certainly hope so. I've been very disturbed by several of the arguments that swirled around the Judiciary Committee in the past several weeks, and some

that were even offered here today. We should not take action against Justice Broderick because he is an intellectual, we were told by one member of the committee, because he is a kind person, a sincere person. We are not here today to judge whether David Brock or Justice Broderick are kind people, are intellectuals, are sincere people, whether they in fact admitted that they had made wrongs. If somebody were to commit a murder and then admit that he was guilty and apologized, we wouldn't let him off scot-free. If so we could just open the doors of the prisons and let everybody go free. We should hold the justices of our courts to at least that high a standard. An intellectual, a kind person, a sincere person, somebody who comes across with great qualities before the Judiciary Committee, that does not lessen the guilt that they bear one iota. Let's not be side tracked by these issues as the Chairman of the Judiciary Committee has pointed out time and again to us today. This House is serving merely to send this matter on to the Senate where they can, in fact, determine if the proper punishment for Justice Brock and Justice Broderick are the same. There is culpability in this justice. I say to you, as the member from Laconia was quoted as saying, "If not for Howie Zibel, Justice Broderick would never have come forward." It wasn't a merely a wait of 14 days. He could have waited 14 years and if not for Howie Zibel he would never have come forward to report the actions, not even when Justice Thayer threatened him. Can you imagine a justice being threatened by another and still not coming forward? If you, in your heart, believe he would have come forward, by all means vote against this amendment. But, if you, in your heart, look deep inside and judge that he would not have come forward, then I say you have to convict him in this House. Just think about it. He is like somebody who is driving with a speeder, going 75 miles an hour. We know that's illegal in this state don't we? Well, he wasn't caught by the police, fourteen days later did he turn himself in? No? and I say to you 14 years later he wouldn't have turned himself in either. This is something that would have gone completely by the board had it not been for that hero, Howie Zibel. For us to let this justice off, simply because we consider him an intellectual, or a fine person or somebody who served this state well or somebody who has apologized, that is tantamount to jury nullification. We have no right to do that any more than a jury, led by one of these judges, perhaps, would have a right to deem that somebody murdered somebody else and yet say, "Oh I think he's an honorable man he went 20 years without murdering anybody, so now we have to let him go." The speaker from Laconia that preceded me seemed to be saying that in regard to Justice Horton, ignorance of the law is an excuse. We all know that for you, or me, or the most common lay person, ignorance of the law is no excuse. How can ignorance of the law be an excuse for one of the top five judicial officials in this state? Liberty and justice for all, for you and me and certainly for those men who we approve to serve on the Supreme Court. You know, I was thinking a lot this past weekend as I was trying to come to the best analogy as to how this whole matter came down and I thought of how Justice Broderick was saying that he didn't want to be the one to put the final bullet in his friend, Justice Thayer. That is an indictment in itself. If you know somebody is guilty, you have to come forward and provide that evidence. When I was in high school, we did a little skit for winter carnival and it has a gun involved so I guess it is only fitting that I analogize with the bullet theory of Justice Broderick. There was this woman who walks into a saloon and shoots up the place and then she goes into a song. Maybe you know it, goes, "I didn't know the gun was loaded and I'm so sorry my friends. I didn't know the gun was loaded, and I'll never, ever do it again." I suggest to you that Justice Brock and Justice Broderick both knew the gun was loaded and they didn't want to point it at their friend, Justice Thayer so what they did to that gun is, they pointed it at the judicial system of this state, at every one of us and they fired that gun and if we let them get away with it today, even though Justice Broderick may only be the get-away car driver, then we have failed to do the duty for every other individual in this state, people like Carl Graf who because of the arrogant nature that the court has engendered are languishing in our prisons, because if you read this article in the Laconia Citizen recently, this same kind of thing is happening all over because this kind of mentality has been allowed to happen by Broderick, by Brock and by everybody. They didn't want to load the gun and shoot it at each other, so they unloaded it on us and now we have a responsibility to say "yes" to the Mirski amendment. Thank you.

Speaker Sytek: Would the member yield to a question? Rep. Jane Wood, you may inquire.

Rep. Jane Wood: Thank you, Madam Speaker. I'm just wondering if possibly you would recognize that your memory isn't exactly perfect at times either, because when you quoted my saying, if Mr. Zibel hadn't reported, I think you said that Justice Broderick would never have reported, we wouldn't know, I said, "I wasn't sure if we would know." It was in the midst of the deliberations. I certainly didn't say it the way you put it forth and I have a very different opinion from all of the work that we have done from what you have just presented.

Rep. Vaillancourt: Well, thank you, perhaps I was giving you more credit than you deserve, but I was quoting, in fact, I was quoting what I read in the Sunday News. In fact I was thinking this very thing, myself. I was thinking, you know, this idea that he would have come forward and reported it. I thought, no, that never would have happened if Howie Zibel hadn't done it and then I read in the paper that you, the honorable Representative, had said something like that, so I was trying to give you great credit for analogizing to that degree. Did you not say something to the effect that Howie Zibel was a hero and if he had not brought this forward, it probably never would have come forward? Is that not the case?

Rep. Jane Wood: It was a matter that I brought it forth as though it were a question in my mind as to what would have happened but we had a lot of deliberating to follow that issue. Yes, I did wonder but I didn't state it the way you had put it forth originally. I think the thing is this is an issue that is the problem with the whole affair is in how a person perceives things, how a person states things and how a person remembers things. The fact is, we need to remember what we are talking about with impeachment. It is a very serious matter and if we take that lightly we are going to be in a sorry state because our three branches of government have got to be separate and equal. Thank you.

Speaker Sytek: Would you yield to another question? Representative Arnold, you may inquire.

Rep. Arnold: Thank you, Madam Speaker. Representative, I'm going to ask you to do something and then answer a question. Would you read Arabic number two of Article I and tell me if you think it is true.

Rep. Vaillancourt: What page are you on now?

Rep. Arnold: Page 1624, Article I, Arabic number two, it's the second from the bottom line on the page.

Rep. Vaillancourt: As the administrative head of the New Hampshire Supreme Court?

Rep. Arnold: Yeah, do you think that's true?

Rep. Vaillancourt: He permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts?

Rep. Arnold: Yes. Do you think Justice Broderick is the administrative head of the New Hampshire Supreme Court? You're urging me to vote on this thing.

Rep. Vaillancourt: He individually or in concert with other justices did one or more of the following acts...

Rep. Arnold: I'm not arguing the acts. My question is, do you believe that first phrase up to the comma is true? Or, do you think Justice Brock might be the administrative head?

Rep. Vaillancourt: Well, Justice Brock is the head of the Supreme Court. As I pointed out in my comments, the fact that somebody is the head means perhaps that they are more culpable but other culpability still flows down to the other people involved in these processes.

Rep. Arnold: I've heard the argument. I'm not in an argument. I'm merely asking you a question. Do you believe that Justice Broderick is the administrative head of the New Hampshire Supreme Court?

Rep. Vaillancourt: The Chief Justice is the head of the, the administrative head of the New Hampshire Supreme Court.

Rep. Arnold: Then is not this in error?

Rep. Vaillancourt: Yes, I would say it is and I'm sure if you wish to offer an amendment, to remedy the error we can do that.

Speaker Sytek: Will the member yield to a question? Rep. Dickinson, you may inquire.

Rep. Dickinson: I'm sure you are aware that awhile ago that the Supreme Court came to a decision, clearly to finding recusal policies for our municipal boards and commissions. For example, if there is a conflict of interest on the board of selectmen in a town, that person must excuse or recuse themselves and they can have absolutely nothing to do with the subject. Now, the same thing applies to planning boards and conservation commissions and so on and so forth. Don't you find it curious that the Justices found it difficult to follow their own advice?

Rep. Vaillancourt: I find it curious that, once again, we are living in a society where we are under the impression that we have equal liberty and justice for all. For one group of people who are sworn to uphold justice to put themselves above the system of justice is especially disturbing. That's why in response to my colleague from Laconia, I was going to say we are definitely taking this seriously and I believe most of us, through the graces of Channel 11, have had a chance to watch all of this and even though we weren't there in those rooms, that room for all those days, we took it equally as seriously and found it equally as disturbing for just that kind of instance.

Speaker Sytek: Would the member take another question? Rep. Gary Johnson, you may inquire.

Rep. Gary Johnson: Thank you, Madam Speaker. Thank you, Representative. My question is short and simple. If, when the Judiciary Committee finished their work and they only had one article, not four, one, and that article had to do with recusal, do you think he would have ever been impeached, Justice Brock?

Rep. Vaillancourt: Well, these hypothetical questions are all very well and interesting, but I subscribe to the idea that every individual in this House has an equal vote. I do realize that committees are very important, but we have already overturned the Judiciary Committee on one very important vote by a very, very wide margin today. So, to answer your hypothetical, I would say that it is imperative upon each and every one of us to decide how we are going to vote, regardless of any particular committee recommendation. I've never been one enamoured with somebody who gets up and says, "Will you follow the 18 to 3 vote of my colleagues on this committee?" We all have a responsibility to make up our own minds so I think the hypothetical falls short in that regard.

Speaker Sytek: The Chair recognizes Rep. Keith Herman for a parliamentary inquiry.

Rep. Keith Herman: Thank you, Madam Speaker. Madam Speaker if I know that there may be a typographical mistake in the proposed floor amendment, would a motion to table this now be in order so a proper amendment can be brought be for us?

Speaker Sytek: A motion to table is in order. It is non-debatable. If the member wishes to have an amendment drafted that he could offer at a subsequent time he could be recognized to table it and then the House would have to vote to table it on a majority. Then at some subsequent time, before we go home, it would be in order to take it off the table and act on it then.

motion to lay on the table

Rep. Mirski moved that Floor Amendment numbered 4810h, be laid on the table.

(Clerk's note)

Speaker Sytek informed the members that by voting to lay the floor amendment on the table, they would also be tabling House Resolution No. 53.

On a division vote, 131 members having voted in the affirmative and 190 in the negative, the motion failed.

DEBATE ON FLOOR AMENDMENT NO. 4810H (CONT'D.)

Rep. Carson: Thank you, Madam Speaker. Had I immediately followed Rep. Mirski, I would just have said "ditto" and I guess "ibid" would probably be incorrect because that would diminish his statement to being just a footnote. So, I would say for the same reasons that we discussed before, we should vote the same way that we did prior to this vote for the last article and I would just ask for people to think, especially the 135 people who voted in favor of the Mirski amendment last time, think of when knowing all the rules and how the rules are practiced, have you ever thought, have you ever made a mistake or have you not known or done something unintentionally and have you ever done something innocently or unintentionally? Obviously you all agree, I'm sure, but I'll challenge you with this thought and then I'll finish. Just a few moments ago, in a previous article on the House Resolution, I recused myself. I would ask that all of the people who voted in the 135 to tell me or to think before you vote this time if you as a member of this House recuse yourself, do you sit in your chair? Do you turn the light on? Do you turn the light off? Do you sit in the gallery? If you don't know that answer right this moment and there is a gray area in your mind, think of the practice, the consistent twenty year, procedure that was applied in the court, whether you like it or not. Honestly say to yourself before you press the button, I know the answer as it applies to myself, never mind how it applies how to somebody else. Thank you, Madam Speaker.

Rep. Soltani: Thank you, Madam Speaker. The hour is getting late and the House is beginning to act in a strange manner. By that, I am going to refer to one of my favorite writers and he coined the phrase of "doublethink" and that means the power of holding two contradictory beliefs in ones own mind, simultaneously, and accepting both of them. That means that the person who can do this can re-write history and have no doubt in his own mind that there is a contradiction with history. Doublethink absolves you from having any conscience and I wonder if we are prepared to do just that, to begin the practice of doublethink. We know, we know Judge Broderick does not get a clean bill of health, yet we are sitting here telling ourselves, yes he does, yes he does. It is fascinating, you look at the articles. These are irrefutable facts. He did engage in a pattern of conduct whereby disqualified judges commented and tried to affect the outcome of the cases, the very core of the cases,

unbeknownst to the people that were litigating the matters. Never told them. That is again the difference between princes and peasants. That is not refutable, that's not challenged. He did, as a judge himself, participate in at least two cases whereby he himself, by his own disclosure, after the Attorney General's report, said that he was disqualified from. During the hearings I offered him the opportunity, Judge Broderick you say in your disclosure you were disqualified from these judges, from these lawyers cases, yet you sat on them and on these cases it says Broderick participated. Do you have a response? "No". I'm still waiting for an answer. The only way we can close our eyes, the only way we can walk away and say he gets a clean bill of health is if we become Orwellian, rewrite history and engage in doublethink, that's the only way. And that's what these folks have done. You see, with the stroke of a pen they said Thayer, J. did not participate. They rewrote history. That part of our history is gone forever. We will never know who really participated in those cases, we never know who really wrote those cases. You see, Thayer, J. who supposedly did not participate had actually written those cases and he so testified. Broderick confirmed it. Brock confirmed it. They all had an obligation to report. What about the Zibel issue? The Thayer case where Judge Brock comes in illegally, and announces to four disqualified, three disqualified judges, well, I'm going to go with X and Y, completely illegal and they know it, they sit there and watch him. He asks for input. Broderick so testified and Broderick knew it was illegal. They gave input yet none of them did anything. It goes until Friday, Zibel comes in and says, "Look I'm going to file a report." Broderick says, "I have decided not to." Now you're going to hear the spin. The spin is, well, there is no mandate, there is no time limit on how long you have to report misconduct by a judge. That's the spin you see, and it worked well with a case called "Home Gas". They sat on it until the time limit had expired and then here we are 13 years later trying to dig it up. Do you really think for a moment that had Zibel not done what he did we would have found out about that episode? No. Judge Broderick openly, overtly, clearly told Zibel, "I am not going to go with it. I am not going to report. Period, paragraph, end of the story. Later, Zibel says look, "I'm going to go with this." And Judge Broderick says, "If you go with this it is going to ruin Judge Brock's career, it is going to ruin Judge Thayer's career and it is going to bring shame on the court." Therefore, what is the natural message that you get? A superior telling his subordinate, these are all the ills that you will cause if you tell the people the truth, the answer is don't ... (tape change) ...when a superior is telling you that. He did that with the clear intent of discouraging Howie Zibel from going forward as he was doing and Howie Zibel described his experience. It was a living hell, make no mistake about it. We know he was going through a living hell. He didn't get any assistance from Judge Broderick, none at all. Until it was good well and clear into the episode of Howie Zibel having blown up the institution, nothing was done by Judge Broderick. Now we have papers, we have testimony, it cannot be challenged in anyway, that they broke the canons of ethics, they broke the law and they failed to report as they were obligated to do. That includes Judge Broderick. What are we going to do? We only have a choice between two things, doublethink and think. I'm going to think. There is no way I can look at this evidence and say it didn't happen. It did happen and what are the responses that we've gotten? Well, he's a compassionate man. He is, I don't doubt it, but compassion is not a mutually exclusive quality from being a judge. In other words you can be a judge and compassionate at the same time. Well, he's talented. True, that means he knew better. Well, he's intelligent. True, that means he definitely knew better. They are asking you well, give these up and just look the other way, re-write history, do what we've done in the Supreme Court, follow our example. Wrong this is what the instructions are that they give to the jurors every day in this state. It is up to you to decide the facts in this case. You must decide the facts, solely from the evidence in this trial. You must apply the law given to you in these instructions to the facts and in this way reach a fair and just verdict. You should decide the facts in this case without prejudice, without fear, without sympathy. You should decide this case solely based on the evidence presented and the law as explained to you. That's what the judges are telling jurors and when it comes to us doing the same, "We're told, doublethink. Re-write history." Well, when Orwell wrote that he wasn't exactly establishing what we in the New Hampshire Legislature might do years later. I like something better that was written by George Washington in a letter that was written in 1789, and that was, "The administration of the justice is the firmest pillar of government." That is what has been betrayed in this process and unless we revive it, unless

we reclaim it and today is the vote, here is the place and now is the time, we don't have a choice. We can't just walk away, we can't doublethink. Thank you, Madam Speaker.

Speaker Sytek: Would the member yield to a question? Rep. Boyce, you may inquire.

Rep. Boyce: Thank you, Madam Speaker. Representative, I was out of town until late last night, but did I hear on the news this morning, maybe it was before that because I haven't kept up, did I hear there is now evidence that has been turned over by the Supreme Court which was withheld either on purpose or not, which shows in Broderick's handwriting, his own handwriting, on draft cases on which he was recused, comments that he wrote on cases in which he was not participating or not sitting? Is that not what I heard this morning on the news?

Rep. Soltani: I wasn't with you, but what you heard was true if you heard it. If it was product of delusions then you didn't hear it but I got a feeling that you heard right. Those papers turned up the day after the committee vote. Call it mysterious, call me suspicious, but they are there and they have Judge Broderick's handwritings on it. They have nothing to do with punctuation or grammar. The testimony that was given to us was if he was disqualified from a case he would only comment on punctuation and grammar. Those documents contradict that testimony.

Rep. Craig: Thank you, Madam Speaker. I wasn't prepared to address this, but I was asked to and so hopefully I'll be brief because I'm as sick of being up here as you are of seeing me up here, but I want to first point out, with regard to Justice Broderick, that he was not on the court when the "Home Gas" matter took place, nothing to do with Judge Broderick. With regard to the recusal, I voted not, I voted against Article IV on the recusal and, as was pointed out, to find that Justice Broderick was responsible for the recusal policy would be in effect to say that he is the Chief Justice of the Supreme Court. But article 73-a clearly says that the Chief Justice of the Supreme Court shall be the administrative head of all the courts, he shall with the concurrence of the majority of the Supreme Court, make rules governing the administration of all the courts, etc. If the Chief Justice does not make the initiative then no one has to concur with him. He clearly has a higher duty and a higher burden with regards to the court's rules than the other justices. The committee felt that that was the case and that's why Justice Broderick's participation with regard to recusal was not an impeachable offense and I still think that's true. With regard to the paper work that was recently found at the Supreme Court, I don't have it in front of me. Like I said, I wasn't prepared to look at all the evidence today, but there is no evidence that Justice Broderick had anything to do with withholding that, those documents. All I know is that they appeared today. With regard to the February 4th incident, Justice Broderick was there. He recognized, he testified that he recognized, that a serious problem had taken place, he admitted that. He spoke to Howard Zibel, he spoke to Eileen Fox, and he said, "Look, something is wrong here, what am I going to do about it?" And for two weeks, 14 days, he told us what his thought process was. He said, "I thought about the Chief Justice, about his career. I thought about Justice Thayer, what he had gone through with his divorce and that he knew that he was under the gun." And he thought about that. He thought about the court and the ramifications of the court and he thought about Howie Zibel and what he was going through and, as a matter of fact, I think Howard Zibel testified that Justice Broderick, he never got the feeling that Justice Broderick ever tried to force him not to report his memorandum. As a matter of fact, he said, "Howie, do what you have to do," if I'm not mistaken, I think words to the effect, that's what he told him and that's what Mr. Zibel testified to. So, when Justice Broderick testified that he did come to the conclusion that he wasn't going to do anything, I said to myself, "Gee, what did you do that for, that was your out. "Say I hadn't made up my mind yet, I don't know what to make of that, why he didn't take that advantage, but I'll give him credit for being honest. That's part of the deal. We're all entitled to understand and to look at the people we are dealing with. He said that, and then he said after he consulted with his attorney he had to reconsider. Whether I would have done the same thing, as fast as he did, I don't know, and you're right there is a spin to it. We heard testimony, it's not my spin, it was the testimony that we heard because we were concerned about well, how long do

you have to report something that you see that you think is unethical and the answer was you have up until a year to report it. There is no question Howard Zibel reported it first and you know, you're in the same boat I am. You can believe or not believe that he ever would have reported that. I can't answer that but I chose, the bottom line for me is that I voted to impeach Justice Brock, but I cannot, I couldn't then last week, I cannot today, see where Justice Broderick committed any impeachable offense. And again, I go back to the test that I was giving to myself. What about if a client says to me, what if a client says to me, "It's all fixed, just go and get it fixed anyways." Can I live with Justice Broderick, Justice Horton still being on the court? And I think that the answer is yes. To say that they are not punished by going through this procedure and having their families go through this procedure and that they didn't learn anything from that, I said it at the hearing, they would have to be dead from the neck up not to have learned anything from this procedure and I don't think that either Justice Horton or Judge Broderick by any means is dead from the neck up. And so, my feeling and my strong feeling is that Justice Horton and Justice Broderick committed no impeachable offense and I ask you to vote with the committee on this issue and against the amendment. Thank you.

Rep. Mock: Madam Speaker, once again, thank you. Members, thank you. I am not going to belabor this. You've heard a lot of rhetoric here, and most of it was rhetoric. Listen, this was the junior justice of the court. He has been there five years. He had a boss, the Chief Justice. The Chief Justice sets the policy. He followed it. Was it wrong? Yes. You know it, I know it and an eighth grader would know it. However, of all the justices, this was the one justice that seemed to us in our committee, the majority of us, to be the most concerned about the practices at the court. And let me reiterate what my good committee member from Manchester just said, there is not one single shred of evidence that Judge Broderick ever, ever, ever tried to dissuade the Clerk of the Court from filing a report to the JCC. I heard that said earlier here in testimony. As far as the late documents that arrived last Friday, I addressed that this morning. Judge Broderick was known as the Mrs. McKenzie on the court. Mrs. McKenzie was his grade school teacher who taught him to love the English grammar and so he was the grammarian. Did that give him a right to tinker around with drafts where he was recused? No, it didn't. However, that was the practice of the court which we have all condemned here today by large votes. It wasn't right, but I can tell you that Judge Broderick's integrity, integrity, in our committee, was never in question to the majority and that's important, very, very important. I ask you to vote down this amendment by hitting the red button.

Rep. Mirski: Madam Speaker, I have an amendment which corrects the offending language which the gentlemen from somewhere down country, the town escapes me now, pointed out was in error and if I want to get that language on this proposed amendment, how would I do it?

Speaker Sytek: I've had a chance to look at your amendment, the way it is drafted it amends the amendment that is before us. If we were to adopt the amendment that is before us, it would be on second reading and open to further amendment. At that time you could offer it if this amendment is adopted. The reason we are not doing it now is that Representative Hunt had asked for the previous question.

Rep. Mirski requested a roll call; sufficiently seconded.

The question being the adoption of the Mirski floor amendment.

YEAS 145 NAYS 177

YEAS 145

BELKNAP

Bartlett, Gordon	Boyce, Robert	Czech, Stanley	Holbrook, Robert
Johnson, James	Lawton, David	Rice, Thomas	Rosen, Ralph
Thomas, John	Wendelboe, Francine		

CARROLL

Babson, David Jr	Bradley, Jeb	Chandler, Gene	Dickinson, Howard
Howard, Godfrey	Patten, Betsey	Philbrick, Donald	Sullivan, P Judith
Torressen, Gary			

CHESHIRE

McGuirk, Paul	Roberts, William	Smith, Edwin	
---------------	------------------	--------------	--

COOS

Davis, Perley	Gallus, John	Guay, Lawrence	Pratt, Leighton
Tholl, John Jr	Woodward, David		

GRAFTON

Akins, Ralph	Alger, John	Brothers, Richard	Cobb, John
Dudley, Terri	Gilman, G Michael	Hall, David	Ham, Bonnie
Harmon, Hobart	Hinman, Harry	Mirski, Paul	Phinney, William
Ward, Brien	Weber, Phil		

HILLSBOROUGH

Alukonis, David	Arnold, Thomas Jr	Batula, Peter	Beaupre, Roland
Belvin, William	Brundige, Robert	Bruno, Pierre	Buckley, Raymond
Calawa, Leon Jr	Carlson, Donald	Christiansen, Lars	Clegg, Robert Jr
Clemons, Jane	Desmarais, Vivian	Fenton, James	Fields, Dennis
Fletcher, Richard	Flora, Kathleen	Franks, Suzan	Gorman, Mary
Hansen, Herbert	Herman, Keith	Holley, Sylvia	Hunter, Bruce
Jean, Loren	Keye, Harvey	Kurk, Neal	L'Heureux, Robert
LaPorte, George	LaRose, Richard	Lefebvre, Roland	MacGillivray, Jeffrey

Martin, Mary Ellen	McCarthy, William	McCarty, Winston	McGough, Tim
McRae, Karen	Mendenhall, Leslie	Milligan, Robert	Nolan-Piteri, Dawn
Ouellette, Dean	Reeves, Sandra	Sargent, Maxwell	Tate, Joan
Thulander, O Alan	Vaillancourt, Steve		

MERRIMACK

Jacobson, Alf	Kennedy, Richard	Langer, Ray	Larrabee, David Sr
Lavoie, Gerard	Leber, William	Marple, Richard	Soltani, Tony
St Cyr, Gerard	Virtue, Carolyn	Whalley, Michael	

ROCKINGHAM

Arndt, Janet	Belanger, Ronald	Bishop, Franklin	Christie, Andrew Jr
Clark, Vivian	Cox, Russell	Dowling, Patricia	Fesh, Robert
Flanders, David	Grant, Kenneth	Hamel, Albert	Henderson, Warren
Hutchinson, Karen	Katsakiores, Phyllis	Kelley, Jane	Kelley, William
Kobel, Rudolph	Letourneau, Robert	McKinney, Betsy	Moore, Benjamin
Nowe, Mary Lou	Nowe, Ronald	Packard, Sherman	Priestley, Anne
Putnam, Ed II	Rabideau, Marie	Raynowska, Bernard	Stickney, Nancy
Varrell, Thomas	Vaughn, Charles	Weare, Everett	Welch, David
Weyler, Kenneth			

STRAFFORD

Cossette, Larry	DeChane, Marlene	McKinley, Robert	Rogers, Rose Marie
Rollo, Michael	Smith, Marjorie	Taylor, Kathleen	Woods, Phyllis

SULLIVAN

Jones, Constance	Kibbey, David	Leone, Richard	Phinizy, James
Tuthill, John			

NAYS 177

BELKNAP

Millham, Alida	Pilliod, James	Russell, David	Salatiello, Thomas
----------------	----------------	----------------	--------------------

Turner, Robert

Wood, Jane

CARROLL

Lyman, L Randy

Mock, Henry

CHESHIRE

Batchelder, Robert

Blaisdell, Michael

Burnham, Daniel

DePecol, Benjamin

Hunt, John

Lerandeau, Alfred

Lynch, Margaret

Lynott, Margaret

Manning, Joseph

Meader, David

Mitchell, McKim

Pratt, Irene

Pratt, John

Richardson, Barbara

Robertson, Timothy

Rose, William

Royce, H Charles

Zerba, Roger

COOS

Horton, Lynn

GRAFTON

Almy, Susan

Copenhaver, Marion

Guest, Robert

Johnson, Gary

Marshall, Gene

Nordgren, Sharon

Picconi, Al

Scanlan, David

Solow, Martha

HILLSBOROUGH

Andrews, Frederick

Arthur, Rose

Baroody, Benjamin

Bergeron, Lucien

Bergin, Peter

Burkush, James

Chabot, Robert

Cote, David

Cote, Peter

Coughlin, Pamela

Craig, James

Daigle, Robert

Drabinowicz, A Theresa

Dwyer, Paul Sr

Dyer, Merton

Emerton, Lawrence

Ford, Nancy

Foster, Linda

Gagnon, Eugene

Garrish, Linda

Ginsburg, Ruth

Goley, Jeffrey

Goulet, Maurice

Haettenschwiller,
Alphonse

Haley, Robert

Hall, Betty

Jean, Claudette

Johnson, Lionel

Lasky, Bette

Leishman, Peter

Leonard, Peter

Lozeau, Donnalee

Lynde, Harold

McColgan, Philip Jr

McDonald, James Sr

McDonough-Wallace,
Alice

Melcher, Harold

Mercer, Robert

Messier, Irene

Moran, Edward

Moriarty, Mary

Mosher, William

Murphy, Robert

O'Connell, Timothy

O'Hearn, Jane
Simon, Anthony

Peterson, Andrew
White, John

Reidy, Frank
Withee, Dennis

Sarette, John

MERRIMACK

Anderson, Eric
Chase, George
Hager, Elizabeth
Moore, Carol
Reardon, Tara
Wallner, Mary Jane

Asplund, Bronwyn
Daneault, Gabriel
Hess, David
Nichols, Avis
Rodd, Beth
Whittemore, James

Bouchard, Candace
Fortnam, Janet
Lockwood, Priscilla
Potter, Frances
Rosenfield, Jay
Yeaton, Charles

Brewster, Richard
Fraser, Marilyn
Marshall, Kenneth
Poulin, Dave
Wallin, Jean

ROCKINGHAM

Abbott, Dennis
Clark, Martha
Downing, Michael
Gleason, John
Kane, Cecelia
Major, Norman
O'Keefe, Patricia
Reardon, Neil
Shultis, Elizabeth
Tufts, J Arthur

Blanchard, MaryAnn
Cooney, Richard
Flanagan, Natalie
Griffin, Mary
Katsakiores, George
Morse, Charles
O'Neil, Michael
Sabella, Norma
Splaine, James
Weatherspoon, Jackie

Bridle, Russell
Dearborn, Bruce
Flanders, John Sr
Hutchinson, Rebecca
Langley, Jane
Norelli, Terie
Pantelakos, Laura
Sapareto, Frank
Stone, Joseph
Whittier, John

Carson, Gregory
DiFruscia, Anthony
Francoeur, Sheila
Johnson, Robert
Langone, John
Noyes, Richard
Pitts, Jacqueline
Shelton, Richard
Stritch, C Donald
Zolla, William

STRAFFORD

Berube, Roger
Dunlap, Patricia
Heon, Richard
Lundborn, Raymond
Snyder, Clair
Vincent, Francis

Bickford, David
Estabrook, Iris
Johnson, Nancy
Musler, George
Torr, Franklin
Wall, Janet

Brennan, William
Gilmore, Gary
Kaen, Naida
Pelletier, Arthur
Twardus, Joseph

Brown, Julie
Grassie, Anne
Keans, Sandra
Pelletier, Marsha
Vachon, Dennis

SULLIVAN

Allison, David

Cloutier, John

Donovan, Thomas Jr

Wiggins, Celestine

Young, David

and the Mirski floor amendment failed.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

The question now being the adoption of Ought to Pass on House Resolution 53.

Rep. Janet Wall: Thank you, Madam Speaker and good evening. I promise to keep this short. The temptation is great to just say, "Please just vote with the committee." However, I do have a few facts that I want to give to you. This is the final resolution that we're dealing with today. The House Judiciary Committee voted Ought to Pass on this 18 to 4, and you've already heard the opposition. The resolution says that no article of impeachment shall be brought against Justice Broderick. We found no clear and convincing evidence that Justice Broderick acted in any way that could rise to the level of impeachment. We looked at several areas of concern. We did look at the issue of recusal, we looked at the issue of making editorial comments and changes on draft opinions and we looked at the issue of not reporting the February 4th incident. First, we found what did not merit impeachment was the fact that Justice Broderick, as the newest justice on the Supreme Court, had only been confirmed a little more than four years ago. The recusal policy had been in place a very long time. As the new justice in the Supreme Court, Justice Broderick did not step forward and say we have to change this recusal policy. He believed what he was doing was the right thing. We have found that Justice Broderick is a very thoughtful man, a man with a conscience. Justice Broderick did study grammar under Mrs. McKenzie as we heard earlier and, when it came to any changes that were made in draft opinions, Justice Broderick would put a comma here or there. He did nothing in any way to alter the court opinions that were coming out of the court. In his professional career Justice Broderick always focuses heavily on the details, to make certain that everything comes out as it was meant to. Therefore we found that when it came to the recusal policy we did not find enough fault with Justice Broderick to warrant impeachment. Now, we have all heard that the February 4th incident was pivotal in the events leading to the process in which we are engaged today. On February 4th Justice Broderick, in fact, testified that he was stunned by the incident, that he was absolutely in a state of shock because of the outburst from Justice Thayer. He was so stunned that he spoke to Eileen Fox about the incident and then decided to take the matter further by discussing the issue with others. However, that weekend he went home and he thought about what to do, what was the right thing to do. He saw something terribly wrong happen but at the same time he saw that a friend of his was deeply emotional and had done something wrong. He'd gone over the line. The following week, Justice Broderick had three days of oral arguments in which he had to participate. It wasn't until February 11th, the following Friday, that he had the chance to talk with Howard Zibel. He decided after that talk to try to deal with the issue in house. He wanted to make peace, he wanted to smooth the waters, he wanted to try to correct what had gone wrong without causing a great stir about, it although he wasn't altogether comfortable with his decision in doing that. Again that following weekend, the 12th and 13th, he spent the weekend, he thought the facts over during that weekend. He discussed the Thayer conduct with other justices and on the 17th there was a report filed with the JCC and all the justices signed that report. Yes, he delayed in making his decision and signing that report. He delayed 14 days. The offense was prosecutable for up to a year after the offense. He took 14 days to decide what is the best thing to do, how should I proceed. What I should I do so as not to disrupt the court but to make sure that this type of incidence never happens again and he did the right thing by participating and filing the report. In light of the magnitude of the events and the implications that would follow, Justice Broderick did the right thing. I ask that you support the 18 to 4 vote from the committee and press the green button.

Rep. Mock requested a roll call; sufficiently seconded.

The question being the adoption of House Resolution No. 53.

YEAS 176 NAYS 144

YEAS 176

BELKNAP

Bartlett, Gordon	Holbrook, Robert	Millham, Alida	Pilliod, James
Russell, David	Turner, Robert	Wood, Jane	

CARROLL

Lyman, L Randy	Mock, Henry
----------------	-------------

CHESHIRE

Batchelder, Robert	Blaisdell, Michael	Burnham, Daniel	DePecol, Benjamin
Hunt, John	Lerandeau, Alfred	Lynch, Margaret	Lynott, Margaret
Manning, Joseph	Meader, David	Mitchell, McKim	Pratt, Irene
Pratt, John	Richardson, Barbara	Robertson, Timothy	Rose, William
Royce, H Charles	Smith, Edwin	Zerba, Roger	

COOS

Horton, Lynn

GRAFTON

Almy, Susan	Copenhaver, Marion	Guest, Robert	Johnson, Gary
Marshall, Gene	Nordgren, Sharon	Picconi, Al	Scanlan, David
Solow, Martha			

HILLSBOROUGH

Ahern, Richard	Andrews, Frederick	Arthur, Rose	Baroody, Benjamin
Bergin, Peter	Burkush, James	Chabot, Robert	Coughlin, Pamela
Craig, James	Dwyer, Paul Sr	Dyer, Merton	Emerton, Lawrence
Fields, Dennis	Flora, Kathleen	Ford, Nancy	Foster, Linda

Gagnon, Eugene	Garrish, Linda	Ginsburg, Ruth	Goley, Jeffrey
Goulet, Maurice	Haettenschwiller, Alphonse	Haley, Robert	Hall, Betty
Jean, Claudette	Johnson, Lionel	Lasky, Bette	Leishman, Peter
Leonard, Peter	Lozeau, Donnalee	Lynde, Harold	McCarty, Winston
McColgan, Philip Jr	McDonald, James Sr	Melcher, Harold	Mercer, Robert
Moran, Edward	Moriarty, Mary	Mosher, William	Murphy, Robert
Nolan-Piteri, Dawn	O'Connell, Timothy	O'Hearn, Jane	Peterson, Andrew
Reidy, Frank	Sarette, John	Simon, Anthony	White, John
Withee, Dennis			

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Brewster, Richard
Chase, George	Daneault, Gabriel	Fortnam, Janet	Fraser, Marilyn
Hess, David	Lockwood, Priscilla	Marshall, Kenneth	Moore, Carol
Nichols, Avis	Potter, Frances	Poulin, Dave	Reardon, Tara
Rodd, Beth	Rosenfield, Jay	Wallin, Jean	Wallner, Mary Jane
Yeaton, Charles			

ROCKINGHAM

Abbott, Dennis	Belanger, Ronald	Blanchard, MaryAnn	Bridle, Russell
Carson, Gregory	Christie, Andrew Jr	Clark, Martha	Cooney, Richard
DiFruscia, Anthony	Downing, Michael	Flanagan, Natalie	Flanders, John Sr
Francoeur, Sheila	Gleason, John	Griffin, Mary	Hutchinson, Rebecca
Johnson, Robert	Kane, Cecelia	Katsakiores, George	Katsakiores, Phyllis
Langley, Jane	Langone, John	Major, Norman	Morse, Charles
Noyes, Richard	O'Keefe, Patricia	O'Neil, Michael	Pantelakos, Laura
Pitts, Jacqueline	Raynowska, Bernard	Reardon, Neil	Sabella, Norma
Sapareto, Frank	Shelton, Richard	Shultis, Elizabeth	Splaine, James
Stone, Joseph	Stritch, C Donald	Weatherspoon, Jackie	Whittier, John
Zolla, William			

STRAFFORD

Berube, Roger	Bickford, David	Brennan, William	Brown, Julie
---------------	-----------------	------------------	--------------

Dunlap, Patricia
Heon, Richard
Musler, George
Snyder, Clair
Vincent, Francis

Estabrook, Iris
Johnson, Nancy
Pelletier, Arthur
Torr, Franklin
Wall, Janet

Gilmore, Gary
Kaen, Naida
Pelletier, Marsha
Twardus, Joseph

Grassie, Anne
Lundborn, Raymond
Rogers, Rose Marie
Vachon, Dennis

SULLIVAN

Allison, David
Young, David

Cloutier, John

Donovan, Thomas Jr

Wiggins, Celestine

NAYS 144

BELKNAP

Boyce, Robert
Rice, Thomas
Wendelboe, Francine

Czech, Stanley
Rosen, Ralph

Johnson, James
Salatiello, Thomas

Lawton, David
Thomas, John

CARROLL

Babson, David Jr
Howard, Godfrey
Torressen, Gary

Bradley, Jeb
Patten, Betsey

Chandler, Gene
Philbrick, Donald

Dickinson, Howard
Sullivan, P Judith

CHESHIRE

McGuirk, Paul

Roberts, William

COOS

Davis, Perley
Tholl, John Jr

Gallus, John
Woodward, David

Guay, Lawrence

Pratt, Leighton

GRAFTON

Akins, Ralph
Dudley, Terri
Harmon, Hobart

Alger, John
Gilman, G Michael
Hinman, Harry

Brothers, Richard
Hall, David
Mirski, Paul

Cobb, John
Ham, Bonnie
Phinney, William

Ward, Brien

Weber, Phil

HILLSBOROUGH

Alukonis, David

Arnold, Thomas Jr

Batula, Peter

Beaupre, Roland

Belvin, William

Bergeron, Lucien

Brundige, Robert

Bruno, Pierre

Buckley, Raymond

Calawa, Leon Jr

Carlson, Donald

Christiansen, Lars

Clegg, Robert Jr

Clemons, Jane

Cote, David

Cote, Peter

Daigle, Robert

Desmarais, Vivian

Drabinowicz, A Theresa

Fenton, James

Fletcher, Richard

Franks, Suzan

Gorman, Mary

Hansen, Herbert

Herman, Keith

Holley, Sylvia

Hunter, Bruce

Jean, Loren

Keye, Harvey

Kurk, Neal

L'Heureux, Robert

LaPorte, George

LaRose, Richard

Lefebvre, Roland

MacGillivray, Jeffrey

Martin, Mary Ellen

McCarthy, William

McGough, Tim

McRae, Karen

Mendenhall, Leslie

Milligan, Robert

Ouellette, Dean

Reeves, Sandra

Sargent, Maxwell

Tate, Joan

Thulander, O Alan

Vaillancourt, Steve

MERRIMACK

Hager, Elizabeth

Jacobson, Alf

Kennedy, Richard

Langer, Ray

Larrabee, David Sr

Lavoie, Gerard

Leber, William

Marple, Richard

Soltani, Tony

St Cyr, Gerard

Virtue, Carolyn

Whalley, Michael

Whittemore, James

ROCKINGHAM

Arndt, Janet

Bishop, Franklin

Clark, Vivian

Cox, Russell

Dearborn, Bruce

Dowling, Patricia

Fesh, Robert

Flanders, David

Grant, Kenneth

Hamel, Albert

Henderson, Warren

Hutchinson, Karen

Kelley, Jane

Kelley, William

Kobel, Rudolph

Letourneau, Robert

McKinney, Betsy

Norelli, Terie

Nowe, Mary Lou

Nowe, Ronald

Packard, Sherman

Priestley, Anne

Putnam, Ed II

Rabideau, Marie

Stickney, Nancy

Tufts, J Arthur

Varrell, Thomas

Vaughn, Charles

Weare, Everett

Welch, David

Weyler, Kenneth

STRAFFORD

Cossette, Larry
Rollo, Michael

DeChane, Marlene
Smith, Marjorie

Keans, Sandra
Taylor, Kathleen

McKinley, Robert
Woods, Phyllis

SULLIVAN

Jones, Constance
Tuthill, John

Kibbey, David

Leone, Richard

Phinizy, James

and House Resolution 53 was adopted.

Ordered to third reading.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

The Judiciary Committee offered the following:

house resolution no. 54

appointing House Managers

WHEREAS, the House of Representatives has adopted articles of impeachment against David A. Brock, Chief Justice of the New Hampshire Supreme Court, now therefore be it

RESOLVED, that the Speaker appoint and empower managers to conduct the impeachment against Justice David A. Brock and that said managers are hereby instructed to appear before the Senate of the State of New Hampshire in the name of the people of the State of New Hampshire.

Adopted.

Reps. Burling, Dalianis and Quandt declared conflicts of interest and did not participate.

The House of Representatives offered the following:

house resolution no. 27

honoring the House Judiciary Committee

WHEREAS, on April 13, 2000, the New Hampshire House of Representatives adopted House Resolution 50, authorizing and directing the House Judiciary Committee to investigate whether cause existed for the impeachment of David A. Brock, chief justice, and/or any other justice of the New Hampshire supreme court, and

WHEREAS, the House Judiciary Committee devoted many days and long hours to this task, conducting a diligent and thorough investigation which stands as a model for any future inquiries of such historic proportion, and

WHEREAS, the information obtained as a result of the high caliber of work of the House Judiciary Committee will undoubtedly lead to improvements in the operation of the court system and to future

legislative initiatives which will help to re-establish public confidence in the New Hampshire judicial system, and

WHEREAS, the professional manner in which the House Judiciary Committee carried out its task under the watchful eye of extensive public scrutiny brought dignity and honor to the New Hampshire House of Representatives, now therefore be it

RESOLVED, by the House of Representatives in Regular Session convened, that the New Hampshire House of Representatives extend its deepest gratitude, respect and appreciation to the members of this body who serve on the House Judiciary Committee: Henry P. Mock, Andrew R. Peterson, Alf E. Jacobson, Sandra B. Keans, Peter F. Bergin, Cynthia J. Dokmo, Loren J. Jean, Robert H. Rowe, Nancy M. Ford, Dennis J. Withee, Terri C. Dudley, Al J. Picconi, Tony F. Soltani, Phyllis L. Woods, Janet G. Wall, Benjamin J. DePecol, John M. Pratt, James W. Craig, Bette R. Lasky, McKim W. Mitchell, Martha S. Solow, and Jane Wood.

Unanimously adopted.

recognition

The members of the Judiciary Committee recognized Speaker Sytek, House Sergeant-at-Arms Rob Johnson, House Information Officer Susan Woods and House Counsel Betsy Miller for their assistance and support of the committee during the public hearings on Impeachment.

removed from the table

Rep. Alukonis moved that **HR 10**, affirming revenue estimates for fiscal years 1999, 2000 and 2001, be removed from the table.

Adopted.

Rep. Alukonis offered a floor amendment.

Floor Amendment (4816h)

Amend the resolution by replacing all after the title with the following:

Whereas, the House Finance Committee has considered what the unrestricted revenue estimates should be for fiscal years 2000, and 2001 and has presented those estimates to the House of Representatives; now, therefore, be it

Resolved by the House of Representatives:

That the House wishes to go on record as affirming the following revenue estimates for fiscal years 2000 and 2001.

Committee estimates are based on current rates.

		(A)	(B)	(C)	(D)
FY 2000 FY 2001					
	GENERAL & ED TRUST FUNDS:	Official	Committee	Official	Committee
	(Dollars in Millions)	<u>Estimate</u>	<u>Estimate</u>	<u>Estimate</u>	<u>Estimate</u>
(1)	Business Profits Tax	\$194.400	\$166.100	\$190.800	\$159.000
(2)	Business Enterprise Tax	<u>\$127.200</u>	<u>147.400</u>	<u>113.900</u>	<u>141.000</u>
(3)	Subtotal	<u>321.600</u>	<u>313.500</u>	<u>304.700</u>	<u>300.000</u>
(4)	Meals & Rooms Tax	\$156.000	153.300	167.300	164.600
(5)	Liquor Sales	\$80.000	85.000	82.000	89.000
(6)	Interest & Dividends Tax	66.000	65.200	70.000	67.500
(7)	Insurance Tax	63.000	59.300	64.000	60.000
(8)	Tobacco Tax	102.600	92.600	102.600	92.600
(9)	Other	42.650	46.100	42.650	46.500
(10)	Communications Tax	49.000	47.400	53.000	49.000
		(A)	(B)	(C)	(D)
FY 2000 FY 2001					
	GENERAL & ED TRUST FUNDS:	Official	Committee	Official	Committee
	(Dollars in Millions)	Estimate	Estimate	Estimate	Estimate
(11)	Estate & Legacy Tax	52.000	60.600	56.000	66.000
(12)	Real Estate Transfer Tax	85.100	83.000	91.800	87.000
(13)	Court Fines & Fees	22.000	24.000	22.000	24.000
(14)	Utility Tax	10.500	10.000	10.500	10.500
(15)	Securities Revenue	22.500	25.500	22.500	25.000
(16)	Board & Care Revenue	10.700	12.600	10.700	11.000
(17)	Beer Tax	11.700	12.000	11.800	12.000
(18)	Horse Racing	2.500	2.400	2.500	2.500
(19)	Dog Racing	1.000	1.100	1.000	1.000
(20)	<u>Tobacco Settlement Funds</u>	<u>58.698</u>	<u>54.200</u>	<u>46.107</u>	<u>37.000</u>
(21)	SUBTOTAL	<u>\$1,157.548</u>	<u>\$1,147.800</u>	<u>\$1,161.157</u>	<u>\$1,145.200</u>
(22)	Other Medicaid Enhancement	10.000	12.900	10.000	10.000
(23)	Net Medicaid Enhance. Revenue	63.700	74.000	65.300	76.000
(24)	Utility Property Tax	32.400	31.100	23.900	21.800
(25)	State Property Tax	24.100	24.100	24.100	24.100
(26)	<u>Transfers from Sweepstakes</u>	<u>56.000</u>	<u>60.000</u>	<u>56.000</u>	<u>61.000</u>
(27)	<u>TOTAL GEN'L & ED TRUST FUNDS</u>	<u>\$1,343.748</u>	<u>\$1,349.900</u>	<u>\$1,340.457</u>	<u>\$1,338.100</u>
	HIGHWAY FUNDS:				

	(Dollars in Millions)				
(1)	Road Toll - Gross Total	\$142.600	\$134.900	\$147.000	\$141.200
(2)	Less Betterment	<u>(\$18.600)</u>	<u>(\$18.600)</u>	<u>(\$18.700)</u>	<u>(\$18.700)</u>
(3)	Road Toll - Net Total	\$124.000	\$116.300	\$128.300	\$122.500
(4)	Motor Vehicle Fees	68.000	71.800	69.000	73.000
(5)	<u>Miscellaneous</u>	<u>10.200</u>	<u>7.900</u>	<u>10.400</u>	<u>7.900</u>
(6)	TOTAL HIGHWAY FUNDS	\$202.200	\$196.000	\$207.700	\$203.400
	FISH & GAME FUNDS:				
	(Dollars in Millions)				
(7)	Fish & Game Licenses	\$6.800	\$6.500	\$6.900	\$6.900
(8)	<u>Miscellaneous</u>	<u>1.400</u>	<u>1.500</u>	<u>1.400</u>	<u>1.400</u>
(9)	TOTAL FISH & GAME FUNDS	<u>\$8.200</u>	<u>\$8.000</u>	<u>\$8.300</u>	<u>\$8.300</u>

Rep. Alukonis spoke in favor.

Adopted.

HR 10 adopted and ordered to third reading.

RESOLUTION

Rep. Vaughn offered the following: RESOLVED, that the House now adjourn from the early session, that the business of the late session be in order at the present time, that the reading of bills be by title only and resolutions by caption only and that all bills ordered to third reading be read a third time by this resolution, and that all titles of bills be the same as adopted, and that they be passed at the present time, and when the House adjourns today it be to meet at the Call of the Chair.

Adopted.

LATE SESSION

Third reading and final passage

HR 51, recommending impeachment of supreme court chief justice David A. Brock.

HR 52, recommending that no article of impeachment be brought against supreme court justice Sherman d. Horton, Jr.

HR 53, recommending that no article of impeachment be brought against supreme court justice John T. Broderick, Jr.

HR 54, appointing House Managers.

HR 10, affirming revenue estimates for fiscal years 1999, 2000 and 2001.

senate messages

The Senate has voted to override the Governor's vetoes on the following entitled bills:

HB 648, relative to sludge testing program.

HB 1343, appropriating available funds for fiscal year 2000 to provide funding to support research monitoring groundwater reclamation sites that have had sludge applied.

The Senate has voted to sustain the Governor's vetoes on the following entitled bills:

HB 235-FN-A, increasing exemptions under the interest and dividends tax.

HB 542-FN-A, repealing the legacies and succession tax.

SB 468, relative to the family division of the courts and relative to the jurisdiction of the family division in Rockingham County.

veto overridden by senate on sb 153

The question being, notwithstanding the Governor's veto, shall **SB 153-FN-A**, requiring that a percentage of profits derived by the liquor commission be placed into and continually appropriated to a special fund for alcohol education and abuse prevention and treatment programs, become law.

As required by the State Constitution, a roll call was taken.

YEAS 243 NAYS 71

YEAS 243

BELKNAP

Bartlett, Gordon	Czech, Stanley	Johnson, James	Millham, Alida
Pilliod, James	Rice, Thomas	Rosen, Ralph	Russell, David
Salatiello, Thomas	Turner, Robert	Wood, Jane	

CARROLL

Babson, David Jr	Bradley, Jeb	Howard, Godfrey	Lyman, L Randy
Patten, Betsey	Philbrick, Donald		

CHESHIRE

Batchelder, Robert	Blaisdell, Michael	Burnham, Daniel	DePecol, Benjamin
Lynch, Margaret	Lynott, Margaret	Manning, Joseph	McGuirk, Paul
Meador, David	Mitchell, McKim	Pratt, Irene	Pratt, John
Richardson, Barbara	Roberts, William	Robertson, Timothy	Royce, H Charles
Smith, Edwin	Zerba, Roger		

COOS

Davis, Perley	Gallus, John	Guay, Lawrence	Horton, Lynn
Tholl, John Jr			

GRAFTON

Akins, Ralph	Alger, John	Almy, Susan	Brothers, Richard
Cobb, John	Copenhaver, Marion	Dudley, Terri	Gilman, G Michael
Guest, Robert	Ham, Bonnie	Harmon, Hobart	Hinman, Harry
Johnson, Gary	Marshall, Gene	Mirski, Paul	Nordgren, Sharon
Phinney, William	Scanlan, David	Solow, Martha	Ward, Brien

HILLSBOROUGH

Ahern, Richard	Andrews, Frederick	Arnold, Thomas Jr	Arthur, Rose
Baroody, Benjamin	Batula, Peter	Bergeron, Lucien	Bergin, Peter
Brundige, Robert	Bruno, Pierre	Carlson, Donald	Chabot, Robert
Cote, David	Cote, Peter	Coughlin, Pamela	Craig, James
Daigle, Robert	Drabinowicz, A Theresa	Dyer, Merton	Emerton, Lawrence
Fenton, James	Fields, Dennis	Flora, Kathleen	Ford, Nancy
Foster, Linda	Franks, Suzan	Gagnon, Eugene	Garrish, Linda
Ginsburg, Ruth	Goley, Jeffrey	Gorman, Mary	Goulet, Maurice
Haettenschwiller, Alphonse	Hall, Betty	Hansen, Herbert	Jean, Claudette
Jean, Loren	Johnson, Lionel	Keye, Harvey	L'Heureux, Robert
LaPorte, George	LaRose, Richard	Lasky, Bette	Leishman, Peter
Leonard, Peter	Lynde, Harold	Martin, Mary Ellen	McCarthy, William
McCarty, Winston	McColgan, Philip Jr	McDonald, James Sr	McGough, Tim
Melcher, Harold	Mendenhall, Leslie	Milligan, Robert	Moran, Edward

Moriarty, Mary	Mosher, William	Murphy, Robert	Nolan-Piteri, Dawn
O'Connell, Timothy	O'Hearn, Jane	Ouellette, Dean	Peterson, Andrew
Reeves, Sandra	Sarette, John	Sargent, Maxwell	Tate, Joan
White, John	Withee, Dennis		

MERRIMACK

Anderson, Eric	Asplund, Bronwyn	Bouchard, Candace	Brewster, Richard
Chase, George	Daneault, Gabriel	Fortnam, Janet	Fraser, Marilyn
Hager, Elizabeth	Jacobson, Alf	Larrabee, David Sr	Lavoie, Gerard
Leber, William	Lockwood, Priscilla	Moore, Carol	Potter, Frances
Poulin, Dave	Reardon, Tara	Rodd, Beth	Rosenfield, Jay
Soltani, Tony	St Cyr, Gerard	Virtue, Carolyn	Wallin, Jean
Wallner, Mary Jane	Yeaton, Charles		

ROCKINGHAM

Abbott, Dennis	Arndt, Janet	Blanchard, MaryAnn	Bridle, Russell
Carson, Gregory	Christie, Andrew Jr	Clark, Martha	Cooney, Richard
Cox, Russell	Dearborn, Bruce	DiFruscia, Anthony	Dowling, Patricia
Downing, Michael	Flanagan, Natalie	Flanders, John Sr	Gleason, John
Grant, Kenneth	Griffin, Mary	Hamel, Albert	Hutchinson, Rebecca
Johnson, Robert	Kane, Cecelia	Katsakiores, George	Katsakiores, Phyllis
Kelley, Jane	Kobel, Rudolph	Langley, Jane	Langone, John
Morse, Charles	Norelli, Terie	Noyes, Richard	O'Keefe, Patricia
O'Neil, Michael	Pantelakos, Laura	Priestley, Anne	Putnam, Ed II
Rabideau, Marie	Sabella, Norma	Sapareto, Frank	Shelton, Richard
Shultis, Elizabeth	Splaine, James	Stickney, Nancy	Stone, Joseph
Stritch, C Donald	Varrell, Thomas	Vaughn, Charles	Weare, Everett
Welch, David	Whittier, John	Zolla, William	

STRAFFORD

Bickford, David	Brown, Julie	DeChane, Marlene	Dunlap, Patricia
Estabrook, Iris	Gilmore, Gary	Grassie, Anne	Heon, Richard
Johnson, Nancy	Kaen, Naida	Keans, Sandra	Lundborn, Raymond
McKinley, Robert	Musler, George	Pelletier, Arthur	Pelletier, Marsha

Rogers, Rose Marie
Taylor, Kathleen
Wall, Janet

Rollo, Michael
Torr, Franklin
Woods, Phyllis

Smith, Marjorie
Twardus, Joseph

Snyder, Clair
Vachon, Dennis

SULLIVAN

Allison, David
Kibbey, David
Wiggins, Celestine

Cloutier, John
Leone, Richard
Young, David

Donovan, Thomas Jr
Phinizy, James

Jones, Constance
Tuthill, John

NAYS 71

BELKNAP

Boyce, Robert

Holbrook, Robert

Lawton, David

Wendelboe, Francine

CARROLL

Chandler, Gene
Torressen, Gary

Dickinson, Howard

Mock, Henry

Sullivan, P Judith

CHESHIRE

Hunt, John

Lerandeau, Alfred

Rose, William

COOS

Woodward, David

GRAFTON

Hall, David

Picconi, Al

HILLSBOROUGH

Alukonis, David
Burkush, James
Clemons, Jane
Herman, Keith
Lefebvre, Roland

Beaupre, Roland
Calawa, Leon Jr
Desmarais, Vivian
Holley, Sylvia
Lozeau, Donnalee

Belvin, William
Christiansen, Lars
Fletcher, Richard
Hunter, Bruce
MacGillivray, Jeffrey

Buckley, Raymond
Clegg, Robert Jr
Haley, Robert
Kurk, Neal
McRae, Karen

Mercer, Robert
Thulander, O Alan

Messier, Irene
Vaillancourt, Steve

Reidy, Frank

Simon, Anthony

MERRIMACK

Kennedy, Richard
Whalley, Michael

Langer, Ray
Whittemore, James

Marple, Richard

Nichols, Avis

ROCKINGHAM

Belanger, Ronald
Flanders, David
Letourneau, Robert
Nowe, Ronald
Tufts, J Arthur

Bishop, Franklin
Francoeur, Sheila
Major, Norman
Packard, Sherman
Weatherspoon, Jackie

Clark, Vivian
Henderson, Warren
McKinney, Betsy
Raynowska, Bernard
Weyler, Kenneth

Fesh, Robert
Kelley, William
Nowe, Mary Lou
Reardon, Neil

STRAFFORD

Berube, Roger

Brennan, William

Cossette, Larry

Vincent, Francis

SULLIVAN

Burling, Peter

and the veto was overridden by the necessary two-thirds.

appointment of house managers

Pursuant to House Resolution No. 54, the Speaker appointed Reps. Henry Mock, Janet Wall, John Pratt, Loren Jean, Phyllis Woods and James Craig as House Managers.

unanimous consent

Reps. Robertson and Phinizy addressed the House.

RECESS MOTION

Rep. Chandler moved that the House stand in recess for the purpose of receiving Senate Messages only.

Adopted.

The House recessed at 9:30 p.m.

RECESS

(Rep. Chandler in the Chair)

senate messageS

The Senate is ready to receive the House Managers.

senate resolution to dispose of outstanding bills

The Senate of the state of New Hampshire passed the following Resolution on May 18, 2000.

resolution

That all House bills left in Laid on the Table be by this resolution made Inexpedient to Legislate.

HB 53, relative to qualifications and appointments of marital masters.

HB 723-FN, relative to standby and emergency guardianship proxies.

HB 1113, raising the maximum price for lucky 7 tickets.

HB 1203-L, relative to the adoption of rules by the commissioner of cultural resources regarding public libraries.

HB 1371, relative to allocation and distribution of funds for community-based prevention and diversion programs for children and juveniles.

refused by SENATE committee after late introduction

HB 1469, establishing a department of youth development services, advisory board, and relative to changing the name of juvenile services officers.

RECESS

(Clerk's Note)

outstanding bills

At the time of recess on July 12, 2000, the following bills remained:

On the table in the House.

HB 637-FN, establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system. **HB 1229**, requiring the completion of a rate proceeding prior to legislative approval of a settlement agreement with PSNH.

HB 1375, establishing financial assurance for guaranteed promise of customer repayment of rate reduction bonds.

CACR 33, relating to meetings of the legislature. Providing that the legislature shall assemble biennially.

Not signed off in Committee of Conference

HB 75, changing the number required for a quorum on the commission for human rights.

HB 1349-L, authorizing the department of environmental services to collect the costs of administering air pollution control from polluters at different rates for different pollutants, and relative to the mercury emissions reduction program and ash landfill study.

HB 1521-FN-L, relative to the definition and administration of an adequate education.

HB 1620-FN, relative to driver record information.

SB 303, relative to campaign contributions by business organizations.

No action taken (HB 1628, killed)

HR 24, requesting an opinion of the justices on the constitutionality of HB 1628-FN-A-LOCAL, "An act establishing a reformed public school financing system for ensuring educational adequacy for all children; establishing a state public education assistance system funded solely with state tax revenues, and making an appropriation therefor."

RECESS