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Statement by Attorney General Francis Biddle
on H.R. 146
Before a sub-committee of the Senate Judiciary
Committee
Wednesday, November 26, 1941

H. R. 146: "To provide for trials of and judgment upon the issue of good behavior in the case of certain Federal judges."

The Constitution vests the judicial power in the Supreme Court and in "such inferior courts as the Congress may from time to time ordain and establish" and provides that Federal judges shall "hold their offices during good behavior" (Art. III, sec.1). It is an obvious and undisputed corollary that they may be removed from office for lack of good behavior. Thus the Federal judge's behavior may on occasion present an issue appropriate for trial and judgment. Hitherto there has been available only the cumbersome and unwieldy procedure by impeachment. The bill (H.R. 146) recently passed by the House of Representatives (October 22, 1941) and now before the Committee on the Judiciary of the Senate would make available, in cases involving circuit or district judges, an alternative procedure by trial of and judgment upon the issue of good behavior before the special statutory court for which the bill provides.

Briefly the bill provides that upon a resolution of the House of Representatives directed to the Chief Justice of the United States, the Chief Justice shall convene the circuit court of appeals for the circuit in which the accused judge resides in special term to try the issue of good behavior and determine the judge's right to remain in office. The Chief Justice designates three circuit judges to serve on such court. If the judge accused is a circuit judge, all designations must be from other circuits. The United States, represented by the Attorney General, appears as plaintiff in the action and the accused judge appears as defendant.

Procedure is to be governed by rules prescribed by the Supreme Court. If the court determines that behavior has been other than good behavior within the meaning of the Constitution, a judgment of removal follows. Either the United States or the accused judge may appeal to the Supreme Court on the law and the facts.

While the procedure contemplated is novel, its constitutionality would appear to be well founded. Proceedings to determine the issue of good behavior pursuant to the proposed statute clearly present a case or controversy within the judicial power as defined in Article III, section 2, of the Constitution. Nor does the provision made for impeachment in Article I, sections 2 and 3, of the Constitution, expressly made applicable to "the President, Vice President, and all civil officers of the United States" in Article II, section 4, impliedly exclude removal by other and more appropriate procedures. An implied exclusion of alternative procedures for removal has never been conceded in case of civil officers of the executive department. (Cf. Shurtleff v. United States (1903) 189 U. S. 311; Myers v. United States (1926) 272 U. S. 52.) There would seem to be even stronger reason for repudiating any such implied exclusion of alternatives in case of judicial officers. As noted, the judicial officer's tenure is "during good behavior." It would seem peculiarly appropriate for Congress to entrust the determination of good behavior to such court or courts as it may establish for the purpose under its general powers to create courts and define their jurisdiction.

In its provisions for the designation of judges to serve on the special court, for objections to designation, for trial procedure, for the

right of appeal, and otherwise, the bill seeks to assure a full and fair consideration of every right of the accused judge. As further assurance to the same end, it is suggested that Section 1 be amended to provide that one district judge shall be designated to serve on the special court whenever the good behavior of a district judge is in question. It is recognized that the problems confronting district judges are in many respects different from the problems confronting judges of the circuit courts of appeal. The presence of an experienced district judge on the special court, whenever the behavior of a district judge is in issue, should give added assurance of sympathetic and understanding consideration.

The proposed legislation has been endorsed in principle by the Judicial Conference composed of the Chief Justice of the United States and the senior circuit judges, by the American Bar Association, and by other professional bodies. It should assure to the judges of our circuit and district courts a fair trial on any charges of misbehavior, while relieving Congress of the obligation to invoke cumbersome impeachment procedure in cases of relatively minor importance.