

**The University of Akron**

---

**From the Selected Works of Richard L. Aynes**

---

1993

# The Impeachment and Removal of Tennessee Judge West Humphreys: John Bingham's Prologue to the Johnson Impeachment Trial

Richard Aynes, *University of Akron School of Law*



Available at: [https://works.bepress.com/richard\\_aynes/54/](https://works.bepress.com/richard_aynes/54/)

# The Impeachment and Removal of Tennessee Judge West Humphreys: John Bingham's Prologue to the Johnson Impeachment Trial

BY RICHARD L. AYNES\*

On May 22, 1862, the vice president of the United States, Hannibal Hamlin, directed the sergeant-at-arms of the United States Senate to "make the usual proclamation." Yet the proclamation was anything but usual.

Oyez! oyez! oyez! All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee.<sup>1</sup>

For only the fifth time in U.S. history the Senate of the United States had convened as a Court of Impeachment.<sup>2</sup>

The United States district judge from Tennessee, West H. Humphreys, was the first federal officer to be impeached, removed from office, and disqualified from holding future offices.<sup>3</sup> The story of West Humphreys and his chief prosecutor, Congressman John A. Bingham, follows.

## West H. Humphreys: An Active Political Career

Born into an elite family in Clarksville, Tennessee, on August 26, 1806, West H. Humphreys became one of the prominent men of Tennessee. His father, Parry Wayne Humphreys, was a successful lawyer, member of the United States House of Representatives, and judge of the Superior Court and Circuit Court of Tennessee. Lawyers with whom Parry Humphreys practiced included Cave Johnson, a promi-

---

\* Associate Dean and Professor of Law, The University of Akron School of Law

nent political figure who served in Congress and as postmaster general of the United States.<sup>4</sup> One of Humphreys's uncles, James Hughes, was a prominent member of the Lexington, Kentucky, bar. Another uncle, Charles Hughes, taught law at Transylvania University.<sup>5</sup> West Humphreys's mother was Mary West Humphreys, the daughter of prominent farmers in Montgomery County, Tennessee.

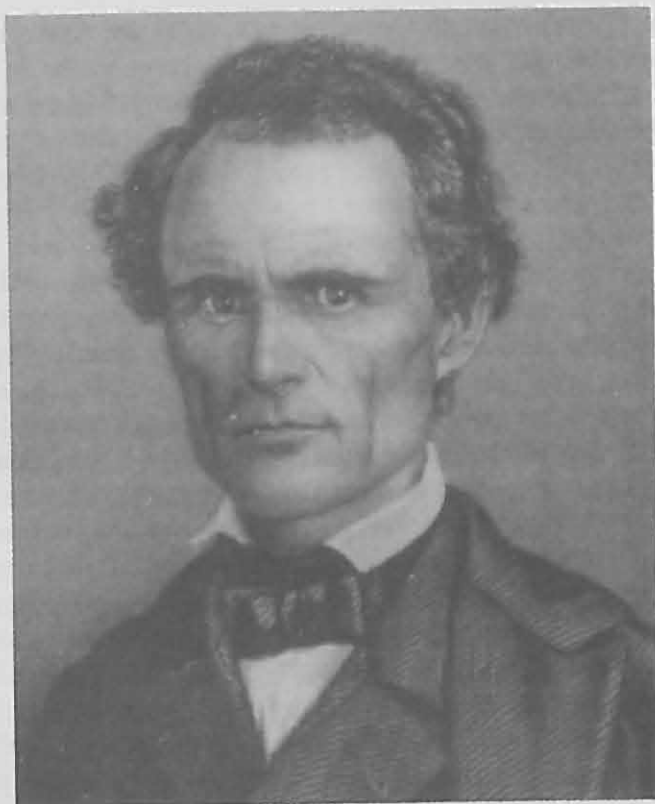
Special attention was given to the education of West Humphreys, the eldest son. He benefited from "all the advantages that the best schools of the day could furnish."<sup>6</sup> The prosperity of his father enabled him to attend Transylvania University in Kentucky.<sup>7</sup> Poor health, however, kept him from graduating. He returned to his home in Clarksville and continued a classical education, which included Greek, Latin, and French.<sup>8</sup>

Humphreys studied law in the offices of his father and other prominent lawyers and was admitted to practice in 1828.<sup>9</sup> In 1831 he moved to Somerville in Fayette County, which is about fifteen miles east of Memphis. He formed a partnership with David Fentress.<sup>10</sup> Humphreys had a "lucrative practice" and earned the respect of the local bench and bar.<sup>11</sup>

Humphreys was also involved in politics. In 1832 he supported Andrew Jackson and "disdained nullification."<sup>12</sup> In a three-way race in 1834, he was elected to the Tennessee constitutional convention, where he played a modest role.<sup>13</sup> Humphreys was an unsuccessful candidate for governor against incumbent Democrat William Carroll and Newton Cannon, who both soundly defeated him in 1835.<sup>14</sup>

Humphreys suffered another political defeat in 1836 when he supported Tennessee Senator Hugh Lawson White for president instead of Martin Van Buren, whose candidacy was advocated by Andrew Jackson and his followers.<sup>15</sup> Humphreys's support for White may have been motivated by White's Tennessee connections. But Humphreys also distrusted the Van Buren wing of the Democratic Party, in part because of its failure to adequately support pro-slavery views.<sup>16</sup>

Humphreys served as a Democrat in the Tennessee leg-



West H. Humphreys (Reprinted from John Livingston, *Portrait of Eminent Americans* (1853))

islature from 1835 to 1838. During this time, he opposed the national bank and internal improvements sponsored by the federal government. At the same time, he supported internal improvements administered by the state government. He was defeated for reelection in 1838.<sup>17</sup>

In January 1839 Humphreys married Amanda M. Pillow of Nashville. One early biographer stated that his marriage ended "all connections with politics."<sup>18</sup> But in fact, his marriage made him a brother-in-law to two prominent Tennessee political leaders who helped further his career, General Gideon J. Pillow and Governor Aaron Brown.<sup>19</sup> Indeed, politicians in Middle Tennessee believed Humphreys was in the Democratic "inner circle."<sup>20</sup> In 1839 the state legislature

elected Humphreys attorney general of the state and reporter of the opinions for the state supreme court.<sup>21</sup> He was elected to another term for both offices in 1844 and retired from the offices in 1851 at the end of that term.<sup>22</sup> He campaigned actively to help elect James K. Polk president of the United States in 1844.<sup>23</sup>

Humphreys returned to private practice but also worked for legislation to support railroad development and court reform.<sup>24</sup> During the crises of 1850, Humphreys attended the Nashville convention. He supported the "moderate" plan of Brown and Pillow to extend the line of the Missouri Compromise through all of the territory acquired from Mexico.<sup>25</sup>

The death of Judge Morgan W. Brown in 1853 created a vacancy on the federal bench in Tennessee. Aaron Brown and Gideon Pillow worked to obtain the appointment of Humphreys. Governor Brown went to Washington to manage the campaign, and General Pillow, who had been President Pierce's commander during the Mexican War and had organized Democratic veterans to support Pierce's election, used his connections with the administration in Humphreys's favor.<sup>26</sup>

President Franklin Pierce appointed Humphreys U.S. district judge for Tennessee in 1853. According to Kermit Hall, Humphreys's contemporaries viewed his appointment as a victory for the states' rights wing of the Democratic Party in Tennessee and a defeat for the moderates, who had supported George W. Churchwell of Knoxville. Though the appointment was the result of Humphreys's political influence, Hall characterizes Humphreys as "a man of considerable legal attainments."<sup>27</sup> Even after his appointment to the bench, Humphreys, in league with Brown and Pillow, remained active in Democratic politics.<sup>28</sup> Humphreys also continued to take public positions on the banking system.<sup>29</sup>

By 1860 Humphreys held fourteen people as slaves. Kermit Hall maintains that Humphreys pursued a moderate course and did not directly advocate secession.<sup>30</sup> Yet as early as March 18, 1861, Andrew Johnson received reports that Humphreys was a secessionist.<sup>31</sup> In *Justice in Grey*, William Robinson, Jr., indicated that Humphreys "had taken a con-

spicuous part in the secession movement."<sup>32</sup> Carl Swisher suggests that true to his states' rights antecedents, Humphreys went on to become "a fire-eating secessionist."<sup>33</sup>

Judge Humphreys actively promoted the secessionist movement in Tennessee. On April 15, 1861, President Lincoln called on the various governors, including the governor of Tennessee, to provide troops to enforce federal laws. Judge Humphreys responded by calling a grand jury without formally impaneling it. In his charge, Judge Humphreys said the president's proclamation was unconstitutional, the governor should not supply soldiers, and the grand jury should not return any indictments for treason. On the latter point, Judge Humphreys insisted that under the current circumstances those resisting Union authority were not traitors and could not be held for treason.<sup>34</sup>

In mid-May 1861, an agent of the Confederate secretary of war indicated that Humphreys's actions merited a court appointment: "The position of Judge Humphreys is right and his conduct highly praiseworthy."<sup>35</sup> Jefferson Davis nominated Humphreys for Confederate district judge, and the Confederate Senate approved the nomination.<sup>36</sup>

Humphreys continued to exercise all of his judicial functions in what were formerly U.S. facilities, but now on behalf of the Confederacy. Under the Confederate government, he presided over proceedings for treason against Tennesseans who remained loyal to the United States and enforced Confederate confiscation statutes against people such as Unionist senator and future military governor Andrew Johnson.<sup>37</sup> Kermit Hall credits him with ameliorating the harsh treatment of prisoners.<sup>38</sup> Indeed, after examining over three hundred cases involving political opposition to the Confederacy and petitions for writs of habeas corpus, Kermit Hall concludes that Humphreys was "remarkably lenient."<sup>39</sup> But Swisher, relying on contemporary accounts, characterizes Humphreys as "a thorn in the side of all Union people."<sup>40</sup>

The latter view, in and of itself, may have made Humphreys an inviting target for impeachment. But more was at stake. Unlike many members of the United States Army, the Congress, and at least thirteen other federal

judges, Judge Humphreys did not resign his commission as a federal judge when he accepted a position with the Confederacy.<sup>41</sup> Rather, he simply began service under the Confederacy, holding active commissions from two governments.

The failure to resign left Humphreys open to impeachment. Further, it created an ambiguous situation for the Lincoln administration. President Lincoln wanted to restore Tennessee to Union control at the earliest possible moment. For this reason, he appointed Andrew Johnson as military governor and maintained a constant concern for military action in eastern Tennessee.<sup>42</sup>

To accomplish this goal, President Lincoln needed to re-establish the federal courts in Tennessee. As part of this process, he relied upon the loyalty of Justice John Catron, whose circuit included Tennessee. But he also wanted to appoint a vigorous Unionist to the bench of the federal trial court. The impeachment and removal of Judge Humphreys allowed a symbolic attack upon a man who Unionists thought was harsh to Southern Unionists and, at the same time, opened the way for the anticipated Lincoln appointment. Moreover, in a very practical way it allowed the Union to assert jurisdiction over Tennessee and deny that the war had broken the legal ties between the states.<sup>43</sup>

#### John Bingham: A Radical Republican Well-Versed in Impeachment Proceedings

John A. Bingham entered Congress in 1854 as a radical member of the new Republican party.<sup>44</sup> The radical abolitionist Joshua R. Giddings became Bingham's ally and mentor. After Giddings was defeated for reelection to Congress in 1858, many viewed Bingham as the leader of the abolitionists in the House.<sup>45</sup> Bingham was known for his forceful speeches and his willingness to stand up to southern "fire-eaters" in Congress.

The election for Speaker of the House in 1860 provides a prewar example. The Republican candidate, John Sherman of Ohio, like Bingham, had allowed his name to be used in a printed endorsement of Hinton Helper's 1859 book, *The*

*Impending Crisis*. Sherman steadfastly refused to talk about his endorsement of the book. In the debate over a resolution which indicated that no man was "fit" to be elected Speaker if he had endorsed the book,<sup>46</sup> Bingham responded to the speech by Representative William "Extra Billy" Smith of Virginia.

Rather than denounce the book or qualify his endorsement, Bingham combattedly pointed out that the book contained quotations from the instructions of the Virginia Convention of 1774 to its delegates in Congress, a speech by James McDowell, the former governor of Virginia, and the words of Virginian Thomas Jefferson. In quoting the Declaration of Independence, Bingham emphasized the portion which said the people could "abolish" the government. "I ask the gentleman to remember that the bold word 'abolish' is there. Abolition, if you please, is incorporated in that memorial declaration, . . . I adopt the words as mine." Ultimately, Bingham forced the future Confederate Major General to explicitly repudiate the Virginia authorities Bingham cited from the Helper book, much to the "derisive laughter from the Republicans."<sup>47</sup>

When the House was finally organized under the Speakership of Republican Galusha Grow, Bingham was appointed chairman of the House Judiciary Committee.<sup>48</sup> By this point in his career, Bingham had already had ample opportunities to consider the constitutional and legal issues involved in impeachment.

Bingham's first public statement concerning impeachment occurred on March 13, 1858.<sup>49</sup> At the time, a bill to authorize an additional military force to be used in disturbances contemplated in the territory of Utah was pending in Congress. Bingham opposed that authorization on a variety of grounds.

Bingham's opposition stemmed in part from an unwillingness to place additional troops under the command of President Buchanan. Bingham felt that Buchanan's use of military force in Kansas was unwarranted and that his actions in forcing the legitimate settlers of the territory to abide by laws passed by a territorial legislature which



John A. Bingham (*Courtesy Library of Congress*)

Bingham thought had been elected by fraud constituted a gross abuse and betrayal of power. Consequently, Bingham concluded, Buchanan was "wholly unfit" to have additional responsibilities placed in his care. Bingham thought it more appropriate to "prefer articles of impeachment against the President of the United States for high crimes and misdemeanors" than to place additional troops under his command.<sup>50</sup>

Though no serious effort was made to impeach President Buchanan, during the same Congress significant charges were made against the federal district judge for Texas, Judge John C. Watrous. Bingham heard the speeches of other congressmen concerning Judge Watrous and, as shown by his

detailed discussion of the case in his speech and his references to specific pages in the committee report, reviewed with care the report of the committee recommending impeachment. Bingham's speech also evidenced research into the history of impeachment, with references to previous impeachment proceedings against Judge Samuel Chase and Judge James Peck.<sup>51</sup>

During the course of his speech supporting the impeachment of Watrous, Bingham recognized the importance of the independence of the judiciary and expressed devotion to that concept. At the same time, however, he held that the "high power of impeachment" was "absolutely essential to secure to all and to each of us protection against the oppressive abuse of powers entrusted to them only for the purposes of just and good government." While indicating that the impeachment power should be used only within the strict limitations of the Constitution, Bingham rejected the view that the person accused must have committed an offense indictable under the laws of the United States or at common law.

It is sufficient to the impeachment of a judge of the Federal Court that he shall be guilty of an indictable offense, or of an offense not indictable, but which is in degradation of his office, a virtual violation of his official oath, and a wanton denial of justice or of public or private right.<sup>52</sup>

In support of this position, he cited as examples the impeachments of Judges Chase and Peck. Bingham believed Watrous was guilty of an abuse of his office by conspiring to deprive citizens of Texas of their right to a fair and impartial trial by a jury of the vicinage.

The effort to impeach Watrous failed.<sup>53</sup> But Bingham continued to believe in the efficacy of impeachment. In his argument for establishing a stronger Court of Claims on April 15, 1862, Bingham pointed out that one of the safeguards for the tribunal was that the "Judges were liable to impeachment and removal from office for misfeasance or malfeasance in office."<sup>54</sup> Thus, Bingham was well-versed in impeachment precedents and proceedings prior to the time he was selected to prosecute Judge Humphreys.

### Impeachment

On January 8, 1862, Congressman Horace Maynard, a Tennessee Unionist, presented a resolution which suggested that Humphreys had not held court for almost twelve months and that he had accepted a judicial commission "in hostility to the Government of the United States." Consequently, Congressman Maynard asked that the Judiciary Committee be given the power to subpoena persons and records for purposes of inquiring into the situation. This resolution was adopted by a voice vote the same day.<sup>55</sup> The committee held hearings in February 1862.<sup>56</sup>

To obtain action on the report of the Judiciary Committee, Bingham took the floor on May 6, 1862, only a month after the battle of Shiloh and one day after an engagement at Williamsburg, Virginia. The evidence previously taken by the committee had been printed and distributed to the House. Bingham indicated that he was seeking action on the report "at the insistence of one of the representatives in Tennessee, who thinks it is very important for the Administration of Justice in that state that the matter should be disposed of."<sup>57</sup> Bingham then presented the resolution of the Judiciary Committee calling for the impeachment of Judge Humphreys for high crimes and misdemeanors.

Congressman Wickliffe, a Kentucky Democrat, asked whether the report by the committee indicated the grounds for impeachment. At that point, the clerk read the committee's five paragraph report to the House. The report indicated that the committee had taken testimony from Congressman Maynard, Mr. Trigg, and Mr. Lellyett, citizens of Tennessee.<sup>58</sup> The report concluded that Judge Humphreys had advocated secession; that he had failed to discharge his duties as the United States judge; that he had acted as a judge for the Confederacy; that he had tried the citizens' loyalty to the United States for disloyalty to the Confederacy; and that he had aided the rebellion by confiscating the property of loyal citizens.<sup>59</sup>

Before a vote was taken, Congressman Maynard was given the opportunity to make a statement to the House.

After summarizing the grounds for removal, he indicated that he wanted to remove Humphreys and "place a loyal man in his seat."<sup>60</sup> Publicly, Maynard gave no indication of who such a person might be. But privately Maynard had, some two months before, joined Andrew Johnson to "designate" Unionist and Judiciary Committee witness Connally Trigg for that appointment.<sup>61</sup>

The House agreed to the resolution reported by the committee. Immediately thereafter, Congressman Bingham offered a resolution that a committee of two be appointed to go to the Senate to impeach Humphreys and to seek an order from the Senate requiring the appearance of Humphreys to answer that impeachment. Congressman Wickliffe asked whether or not articles of the impeachment should be framed first. Bingham indicated that according to precedent in all cases "of this character," the Senate was informed of the impeachment and obtained jurisdiction over the individual by bringing him to its bar or giving personal notice to him before the articles of impeachment were framed.<sup>62</sup> Bingham's resolution was adopted by a voice vote.

On May 7, 1862, in the midst of General McClellan's movement through Yorktown and Williamsburg towards Richmond, John Bingham and George H. Pendelton, by appointment of the Speaker of the House, appeared in the Senate to inform it of the impeachment of Judge Humphreys. The matter was referred to a special Senate committee of three on May 8.<sup>63</sup>

A political struggle over who would be Humphreys's successor must have already occurred. On May 18 Andrew Johnson, who had previously supported Trigg, telegraphed President Lincoln: "I hope you will make no nomination of Judge for Tennessee for the present. There is ample time & we must have the right man, one who will meet present requirements."<sup>64</sup> Meanwhile, the House Judiciary Committee proposed seven articles of impeachment, which the House adopted on May 19, 1862.<sup>65</sup> The House also directed the Speaker to appoint five managers to conduct the impeachment against Judge Humphreys. The chairman of the managers was John Bingham. The other managers were Con-

gressmen George H. Pendleton (D-Ohio), Charles R. Train (R-Mass.), George W. Dunlap (Unionist-Ky.), and John Hickman (R-Pa.).<sup>66</sup>

### The Trial in the Senate

Acting upon the recommendation of its committee, the Senate resolved itself into "a court of impeachment" on May 21, 1862.<sup>67</sup> Bingham and three of the managers appeared before the United States Senate at 1:00 P.M. the next day. Congressman Hickman was absent. Though the managers had been conveyed to their seats on the floor of the Senate and the vice-president had invited them to sit down, they remained standing while Bingham read seven articles of impeachment. The articles charged Humphreys with the following:

- (1) that in violation of his duties as a citizen owing allegiance to the United States and his oath as a judge, he tried to "incite revolt and rebellion" in Nashville, Tennessee, on December 29, 1860, by stating at a public meeting that the state had a right to secede;
- (2) that he openly advocated and supported Tennessee's ordinance of secession;
- (3) that with others he organized armed rebellion and levied war against the United States;
- (4) that since August 1, 1861, he unlawfully conspired to use force to oppose the U.S. government;
- (5) that in violation of the law and with an intent to aid the rebellion, he failed to hold court as a U.S. judge since July 1, 1861;
- (6) that he served as a judge of the rebel government; and
- (7) that as a judge he violated the rights of loyal citizens, including U.S. Supreme Court Justice Catron, U.S. Senator Andrew Johnson, and future Governor William G. Brownlow.<sup>68</sup>

The Senate set the trial date for June 9, 1862, and directed the sergeant-of-arms to issue a summons to Judge Humphreys.<sup>69</sup>

On the date designated for the trial, the Senate convened at one o'clock. This was only eight days after the battle of Seven Pines and on the same day as the Battle of Port Republic in the Shenandoah Valley. In recognition of the Senate's different function, the senators assumed seats on

the platform to the right and left of the vice-president. The House of Representatives, as a Committee of the Whole, occupied the floor of the Senate. The managers, with Congressman Hickman still absent, took the seats previously allotted them. Similar accommodations were reserved "for the judge impeached and his counsel, if they should appear."<sup>70</sup>

The sergeant-at-arms of the U.S. Senate, George T. Brown, reported that he had gone to Nashville to serve the summons on Judge Humphreys, "but he could not be found."<sup>71</sup> This was not surprising, because Nashville had been occupied by Union troops since February 1862 and Humphreys had moved his court to Knoxville.<sup>72</sup> Consequently, the summons was left at Judge Humphreys's "usual place of residence" in Nashville.<sup>73</sup>

After Humphreys failed to respond to an oral call for his appearance, the Senate granted Bingham a continuance to obtain the attendance of witnesses. At the same time, the Senate ordered that a notice of the proceeding be published in newspapers in Washington, D.C., and Nashville.<sup>74</sup> Meanwhile, Congressman Maynard wrote to Andrew Johnson, asking for the names of witnesses who could testify about Humphreys's role in the secessionist movement, the raising of volunteers to resist the government, and the confiscation of property.<sup>75</sup> Bingham also corresponded with Tennessee's military governor, apparently authorizing Johnson to name witnesses to be subpoenaed for the trial.<sup>76</sup>

The Senate reconvened on June 26, the day after the Virginia Seven Days campaign began and the day of the Virginia battle of Mechanicsville. The president *pro tempore* of the Senate, Solomon Foot, rather than the vice-president, presided.<sup>77</sup> The galleries were crowded.<sup>78</sup>

After the president *pro tempore* determined that Judge Humphreys would make no response, he ruled that Judge Humphreys was "in default." He did not, however, suggest that a default judgment could be rendered. Rather, he allowed the managers of the House of Representatives to proceed with their case. Before the proceedings began, Bingham indicated that though they had summoned Andrew

Johnson as a witness, he was asking that Johnson be excused from testifying because his public duties made it impossible for him to attend. The Senate adopted this proposal.<sup>79</sup>

Congressman Charles Train, a Republican lawyer from Massachusetts, made the opening argument, which consisted of explaining the charges against Judge Humphreys. Bingham's initial offering of evidence included documents establishing Humphreys's nomination for district judge, the consent of the Senate to that nomination, and the judicial commission issued to Humphreys. Further, "to prove the existence of a state of insurrection and war against the United States," the managers offered into evidence seven authenticated presidential proclamations from April 15 to August 16, 1861.<sup>80</sup> This documentation shows the care with which the managers pursued this case.

Only four witnesses were called, and Bingham examined each. The first witness, Jacob McGavock of Nashville, Tennessee, had served as clerk of the court for both the United States and the Confederate courts. He provided testimony indicating that Humphreys had, in fact, assumed the duties of a judge for the Confederate government and turned the United States district court into a Confederate district court.<sup>81</sup>

Next, Bingham called Isaac Litton, who had served as deputy clerk of Humphreys's Confederate court. Litton's testimony established that Judge Humphreys had presided over criminal charges against citizens of the United States for disloyalty or treason against the Confederate States. Some of the individuals charged were jailed, some were released on bond, and some were allowed to enlist in the Confederate army if they took an oath of allegiance to the Confederate government. During the course of Litton's testimony, senators interposed several objections on the grounds that some of the testimony Bingham elicited was hearsay. Bingham defended himself against the charge of eliciting improper testimony on the grounds that it was the best evidence available, but ultimately agreed not to pursue the matter.<sup>82</sup>

The next witness called by Bingham was attorney

John U. Smith, who indicated he had known Judge Humphreys for fifteen to twenty years. Mr. Smith's testimony established that Judge Humphreys had not held court for the United States in the state of Tennessee since the term of April 1861. He also testified about Judge Humphreys's participation in a public meeting on December 29, 1860, in Nashville, Tennessee, where Humphreys had sided with the secessionist faction against the unionist faction. During that meeting, Humphreys argued that secession was a "right." Governor Foote, then a Unionist, questioned Humphreys. Foote suggested it was inconsistent with Humphreys's oath as a judge of the court of the United States to make arguments "which, in their tendencies, were to incite rebellion against the Government of the United States."<sup>83</sup>

H. G. Scovil testified next, concerning his arrest in October 1861 for sedition and rebellion against the Confederate States because he said the stars and stripes would float over the capitals of all the seceded states within sixty to ninety days. Because the judge concluded that Mr. Scovil was "a dangerous man" who sympathized with the United States, he placed Scovil on a ten thousand dollar bond, conditioned on his obeying the laws of the Confederacy. During the opening of Scovil's examination, Bingham, obviously attempting to expedite the proceedings, told him to "make it brief."<sup>84</sup> To focus Scovil's testimony upon his arrest, Bingham also resorted for the first time to a leading question.

Next, Bingham called William G. ("Parson") Brownlow, the former Whig political enemy of Andrew Johnson, renowned Tennessee Unionist, and future Reconstruction governor of Tennessee.<sup>85</sup> Brownlow testified about the trials of Perez Dickinson for being a Union man and Dr. Thornburg for attempting to lead a company of cavalry through the Cumberland Gap to join the federal army.<sup>86</sup>

Brownlow also related a speech by Humphreys in September and October 1861 in which he denied that those supporting the rebellion could be indicted for treason. Humphreys said "that there could be no treason committed against the United States in times of revolution, that we were in the midst of a revolution, and there could be no such

thing as treason against the United States." In addition, Brownlow testified about his own arrest for treason against the Confederate government on a warrant issued by Robert Reynolds, whom Judge Humphreys had appointed as his commissioner. The commissioner denied bail and Brownlow was jailed. Brownlow indicated that a military officer who interviewed him told him that if he would take the oath of allegiance to the Confederacy, he would be released. Brownlow testified that he told the officer:

I denied he had any government, . . . I maintained that he organized a southern mob . . . I would see the confederacy, and him and myself on top of it, in the infernal regions before I would take the oath of allegiance to that government, . . . they never pestered me any more after that.<sup>87</sup>

In conclusionary fashion, Brownlow testified that the judge was "a terror" to Union men in east Tennessee and that he regarded him "as one of the most violent secessionists we had in the state." This denunciation drew applause from the galleries.<sup>88</sup>

Finally, Bingham recalled Isaac Litton to question him about the property of Justice Catron. Litton testified he did not recall any sequestration concerning Catron coming before Humphreys. But Litton indicated that the next friend of Mrs. Catron had filed a petition concerning property. At that point, Bingham offered as evidence certified copies of eleven pages of the trial dockets of the district court. Though the managers apparently had additional witnesses available, they chose to rest their case on the evidence presented. Bingham concluded by indicating that the case was "so plainly made out by the testimony" that no argument in support of the case would be presented.<sup>89</sup>

The Senate again moved with care and deliberation. A rollcall vote was taken on the first article of impeachment. After a vote of thirty-eight to zero for conviction on the first article, Bingham's Ohio colleague, Senator John Sherman (R-Ohio), moved that the vote be taken on all the remaining articles together. Senator William Fessenden (R-Maine) objected, however, because he doubted whether one or more of them had been "sufficiently proved." Consequently, indi-

vidual votes continued on each article.<sup>90</sup>

When the vote on the third article was taken, Senator Timothy Howe (Union-R-Wis.) asked the Senate to excuse him from voting because he had heard "no testimony on that article."<sup>91</sup> The Senate excused him. Similarly, Senator Willard Saulsbury (D-Del.) was excused from voting on article four. Senators Howe and Saulsbury were excused from voting on article five. Senator Milton Latham (D-Calif.) and Senator Saulsbury were excused from voting on the first specification of article six. Senator Howe was excused from voting on the second specification of article six because he did not hear the evidence on this charge.<sup>92</sup>

On the same specification, Senator Edgar Cowan (R-Pa.) indicated that he had not heard all of the testimony, but what he had heard would compel him to vote not guilty. Senator Preston King (R-N.Y.), who thought the testimony supported a finding of guilt and who eventually voted to convict, asked that notes of the testimony showing guilt be read. He apparently made this request so that Senator Cowan could base his vote on the testimony he had not heard. The president *pro tempore* held that request "entirely out of order at this stage."<sup>93</sup>

The Senate convicted Humphreys on six of the seven charges.<sup>94</sup> Humphreys was acquitted only on the second specification of article six, confiscation of property of citizens of the United States, including Andrew Johnson and John Catron. Comments by a few senators prior to their vote suggest that those who voted not guilty did so because no evidence showed that the property of Catron or Johnson had been confiscated. Those who had voted guilty might have based their vote on the fact that general evidence proved that Humphreys enforced the confiscation laws.

The trial, which began at noon, concluded at 3:15 P.M., with the Senate adjourning until 4:00 P.M. When the Senate reassembled to determine whether Humphreys should be removed from office and prohibited from holding future federal offices, it debated a motion to meet in secret session. Senator Cowan, who made the motion, indicated he was not concerned about this case but was worried that "at

some future time it may be of importance. Should we adopt a different mode as a precedent, is the question." Senator Jacob Collamer (R-Vt.) pointed out that while the Senate "as a Court of Impeachment" had previously deprived people of their office, it had never before decided to prohibit the individuals from holding future offices. Similarly, Senator Lyman Trumbull (R-Ill.) recognized that there had been only one case in which a federal official had been found guilty in impeachment proceedings. The Senate decided to continue with its deliberations in open session.<sup>95</sup>

Again showing the seriousness with which the Senate accepted its duty in these proceedings, the senators had an extended debate about whether or not the questions of removal from office and prohibition from holding future offices had to be presented as one question or whether they could be voted upon separately. On the question of bifurcating the vote, Senator Garrett Davis (D-Ky.), indicated the Senate was "about to decide . . . a matter of very great importance."<sup>96</sup> The Senate decided, by a vote of twenty-seven to ten, that the questions would be decided separately.

On the question of Judge Humphreys's removal from office, the vote was thirty-eight to zero. On the question of whether he should be prohibited from holding future offices, the vote was thirty-six to zero. Senator John Hale (R-N.H.) and Senator Lazarus Powell (D-Ky.), who voted for conviction, apparently chose not to vote on the question of prohibiting Humphreys from holding future offices.

The president *pro tempore* announced the conclusion of the impeachment proceedings:

So this Court, therefore do [*sic*] order and decree, and it is hereby adjudged, that West H. Humphreys, judge of the district court of the United States in the eastern, middle, and western districts of Tennessee, be, and he is hereby, removed from his said office, and that he be, and is, disqualified to hold and enjoy any office of honor, trust, or profit under the United States.<sup>97</sup>

On June 27 the Senate voted to transmit its judgment "as the High Court of Impeachment" to the president. The final act of Congress in this matter was the appropriation of ten thousand dollars for the expenses of the trial.<sup>98</sup>

## The Aftermath of the Impeachment Trial

On July 16, 1862, President Lincoln appointed Impeachment Committee witness Connolly F. Trigg to replace Humphreys on the district court. Trigg was an "ardent, bold, uncompromising" Unionist from east Tennessee.<sup>99</sup> Trigg had been Oliver Temple's law partner from 1856 to 1860 and had cooperated with east Tennessee Unionists Thomas A. R. Nelson, Oliver R. Temple, and Horace Maynard in opposing secession.<sup>100</sup> Andrew Johnson, military governor of Tennessee, had appointed Trigg on March 20, 1862, as a commissioner to assist Tennessee citizens in Union prisoner of war camps and to recruit soldiers for Tennessee's Union regiments.<sup>101</sup>

If Judge Humphreys was concerned about his place in history as the first judge removed from office and disqualified from holding future offices, he did not express that concern in any easily accessible source. He continued his duties as a Confederate judge, holding court in Knoxville. When that city was captured by Union forces in 1863, he moved to territory controlled by rebel forces. The Union Army captured him in Brownburgh, Alabama, in 1864, and he was later exchanged as a prisoner of war.<sup>102</sup>

Following the war, Humphreys returned to the practice of law. Though he was indicted for treason and conspiracy to commit treason in 1862, he was never brought to trial.<sup>103</sup> Initially, Humphreys was among those excluded from President Johnson's amnesty proclamation.<sup>104</sup> In 1865, however, he took an oath of allegiance to the United States and was granted amnesty by President Andrew Johnson, his former Tennessee rival.<sup>105</sup> In addition to the practice of law, he was active in the temperance movement.<sup>106</sup> He died on October 16, 1882, outside of Nashville at the home of John W. Morton, his son-in-law.<sup>107</sup>

Bingham, after brief government service as solicitor of the U.S. Court of Claims and judge advocate general in the court-martial of the surgeon general of the United States, returned to Congress to take part in the struggle over reconstruction. He assisted Judge Advocate Joseph Holt in the

prosecution of those accused of the conspiracy to assassinate President Lincoln.<sup>108</sup>

He actively supported many of the radical measures of the Congress during Reconstruction and authored the due process, equal protection, and privileges or immunities clauses of the Fourteenth Amendment. In his speech on Reconstruction and the policy of President Johnson on January 9, 1866, Bingham recalled the removal of Judge Humphreys. Discussing the effect of judgments of "the rebel judiciary" confiscating the property of U.S. citizens, Bingham referred to the trial of Humphreys for his "treason against the country" and indicated that the U.S. government could set those judgments aside.<sup>109</sup>

Though Bingham initially opposed the impeachment of President Johnson, he changed his position when, in his view, Johnson violated the Tenure of Office Act by removing Secretary Edwin M. Stanton. Bingham received more votes than any other member of the House of Representatives for serving on the board of managers to prosecute the impeachment of President Johnson in the Senate.<sup>110</sup>

During the Senate's deliberations in the Humphreys trial, the president *pro tempore* noted that it was a "novel proceeding, unfamiliar to the present members of this Senate."<sup>111</sup> When Bingham appeared in the Johnson impeachment trial, however, his prior experience in prosecuting Judge Humphreys gave him familiarity with impeachment proceedings in the Senate.

Unlike the Humphreys trial, managers other than Bingham examined the witnesses in the Johnson trial. Bingham's principle public function in the trial was to give the final closing argument on behalf of the managers. In contrast to his waiver of argument in the Humphreys case, Bingham spoke for three days in the Johnson trial.<sup>112</sup>

The *History of the Sixth Circuit* articulates the traditional view that in the Humphreys's impeachment trial, "Congress broadened the ground for impeachment[,] which led in part to the proceedings against President Johnson" because it convicted him of offenses which did not amount to crimes.<sup>113</sup> But Congress had, of course, already removed Judge John

Pickering for acts which did not amount to a crime. In 1858 Bingham himself had articulated the view that this was proper during the debate over the impeachment of Judge Watrous. Even so, in his closing argument in the Johnson trial, Bingham relied almost exclusively on Johnson's criminal violation of the Tenure of Office Act as the basis for impeachment.<sup>114</sup>

Bingham was defeated for renomination by his party in 1872, but was appointed by President Grant to serve as the U.S. minister to Japan. He served in that capacity longer than any other U.S. ambassador. He returned to the United States in 1885 with the election of President Cleveland. Whether or not he took note of Judge Humphreys's death in 1882 remains unknown.

Bingham continued to hold his Reconstruction views and support the Republican Party, including support for the election of his distant cousin, William McKinley, in 1896. He died at his home in Cadiz, Ohio, on March 19, 1900, at the age of eighty-five.

### The Significance of the Impeachment Proceedings Against Judge Humphreys

In many ways, Humphreys's impeachment trial amalgamated a series of "firsts." It was the shortest Senate trial in U.S. history,<sup>115</sup> the first Senate trial in which a U.S. official was accused of treason, the first Senate trial held in wartime, and the first proceeding in which a government official was not only removed from office, but also prohibited from holding future offices. But its real significance today lies in the seriousness with which the Senate treated the proceedings. During the time of critical military conflict, the United States Senate set aside its legislative duties to try a district court judge, whose district was primarily in the war zone. The House of Representatives came as a body to witness those proceedings.

The notorious fact that Humphreys had failed to hold a U.S. court and Humphreys's adherence to those in rebellion made this action by the Congress especially significant. Presi-

dent Lincoln and the Congress might have rationally decided that Humphreys, by his actions, had "vacated" his seat, thus obviating the need for a trial.<sup>116</sup> Humphreys himself took this position when, in his application for amnesty, he indicated that by joining the Confederacy he broke his ties to the government of the United States and that a formal resignation would have been meaningless.<sup>117</sup>

But the Senate proceeded with the trial, taking great precautions to insure that the proceedings were fair. These included following resident service on Humphreys with service by publication, having the full Senate hear the testimony, senatorial objections to alleged hearsay testimony, voting *ad seriatim* on the charges, and excusing from voting those who had not heard the testimony on any specific charge. While not free from ambiguity, this process suggests that the Senate of 1868 would not accept the current practice of allowing a Senate committee to hear the trial evidence in an impeachment proceeding.<sup>118</sup>

## Endnotes

\* Research for this article was facilitated by National Endowment for the Humanities Travel to Collections Grant FE-27345-92, which allowed me to inspect relevant documents held by the Library of Congress.

1. *Congressional Globe*, 37th Cong., 2d sess., May 22, 1862, 2227.

2. Those previously impeached were Senator William Blount, Judge John Pickering, Associate Justice Samuel Chase, and Judge James H. Peck. *Impeachment and the U.S. Congress*, comp. Congressional Quarterly (Washington, 1974), 8.

3. Judge John Pickering had been removed from office. But the Senate declined to prohibit Pickering from holding future offices. Though the proceedings against Pickering are often described as partisan actions of the Jeffersonians against the Federalists, historians believe that Pickering may have been insane at the time of his removal. See *Impeachment and the U.S. Congress*, *supra* note 2, at 8. Consequently, his removal might have had more to do with his inability to serve in his position than culpability in office. This may explain the Senate's unwillingness to "punish" Pickering by prohibiting him from holding future offices, even though it probably contemplated that he was unfit to hold those offices and would not serve in any in the future.

4. John Livingston, *Portraits of Eminent Americans Now Living* (New York: Cornish, Lamport & Co., 1853), 2:829; *Biographical Directory of the United States Congress*, ed. Daune Nystrom (Washington: U.S. Government Printing Office, 1989), 1323; C. L. Grant, "The Public Career of Cave Johnson," 10 *Tennessee Historical Quarterly* (1951), 195, 197.

5. Kermit L. Hall, "West H. Humphreys and the Crisis of the Union," 34 *Tennessee Historical Quarterly* (1975), 48, 49.

6. Livingston, *supra* note 4, at 829.

7. The Bicentennial Committee of the Judicial Conference of the United States, *History of the Sixth Circuit* (1976), 147 [hereinafter, *Sixth Circuit*].

8. Livingston, *supra* note 4, at 829.

9. *Id.* at 830.

10. Hall, *supra* note 5, at 50.

11. Livingston, *supra* note 4, at 830. Most of Humphreys's cases were in the trial courts. Paul Stark searched the Reports of the Tennessee Supreme Court (Yerger) and found only one case in which Humphreys was counsel: *Polk v. Lane*, 12 Tenn. (4 Yerger) 29 (1833) (question of whether the fence in question met the requirements for recovery for damages by trespassing cattle).

12. Hall, *supra* note 5, at 52.

13. Livingston, *supra* note 4, at 830, 831.

14. Robert Cassell, "Newton Cannon and State Politics, 1825-1839," 15 *Tennessee Historical Quarterly* (1956), 308-310. The vote was Cannon: 41,862; Carroll: 33,180; and Humphreys: 7,999. *Id.* at 310 n. 28.

15. *Id.* at 308, 310.

16. Hall, *supra* note 5, at 52-54.

17. Livingston, *supra* note 4, at 831, 832. Livingston suggested that when the banks of the United States suspended specie payments, public opinion turned against men like Humphreys who had opposed the bank. *Id.* See also Hall, *supra* note 5, at 50, 53 n. 22, citing West H. Humphreys, *Address to the Citizens of Davidson County, on the Subject of the Proposed Railroad Subscriptions* (Nashville, 1853).

18. Livingston, *supra* note 4, at 832.

19. Kermit Hall, *The Politics of Justice* (Lincoln: University of Nebraska Press, 1979), 125.

20. Hall, *supra* note 5, at 51. For example, in 1843 Sarah Polk wrote to her husband about the activities of General Pillow and Humphreys on behalf of the Democratic candidate for the Senate. "Letters of Mrs. James K. Polk to her husband," 11 *Tennessee Historical Quarterly* (1952), 282-287.

21. Livingston, *supra* note 4, at 832. He was the reporter for volumes 20 to 30 of the *Tennessee Reports*.

22. *Id.* at 833.

23. Hall, *supra* note 5, at 51.

24. Livingston, *supra* note 4, at 833-834. See also Hall, *supra* note 5, at 53 n. 22, citing West H. Humphreys, *Address to the Citizens of Davidson County, on the Subject of the Proposed Railroad Subscriptions* (Nashville, 1853).

25. Hall, *supra* note 5, at 54.

26. Hall, *supra* note 19, at 125.

27. Hall, *supra* note 5, at 49.

28. In 1856 Andrew Johnson's assessment was as follows: "Brown, Pillow and Humphreys Seem to think they are the State and there Can be nothing done unless they are on it somewhere." Andrew Johnson to William M. Lowry, June 26, 1856, *The Papers of Andrew Johnson*, ed. Leroy P. Graf and Ralph W. Haskins (Knoxville: Univ. of Tenn. Press, 1970), 2:386.

29. Hall, *supra* note 5, at 52, n. 20 citing West H. Humphreys, *Some Suggestions on the Subject of Monopolies and Special Charters* Nashville, Tenn., 1859) and Humphreys, *Suggestions on the Subject of Bank Charters* (Nashville, Tenn., 1859).

30. Hall, *supra* note 5, at 52 n. 15, 55.

31. Blackstone McDonnell to Andrew Johnson, March 18, 1861,

Graf and Haskins, *supra* note 28, at 4:404.

32. William M. Robinson, Jr., *Justice in Grey* (Cambridge, Mass.: Harvard University Press, 1941), 18.

33. Carl B. Swisher, *The Taney Years, 1863-64* (New York: Macmillan Publishing Co., Inc., 1974), 268. (Footnote omitted).

34. Graf and Haskins, *supra* note 28, at 5:393 n. 6.

35. Swisher, *supra* note 33, at 858.

36. *Sixth Circuit*, *supra* note 7, at 147.

37. See Graf and Haskins, *supra* note 28, at 5:105-108 (Application to amend Sequestration Petition and Writ of Attachment before Judge Humphreys.)

38. Several letters in *The War of the Rebellion: Official Records of the Union and Confederate Armies* (1880-1901) complain of Judge Humphreys issuing writs of habeas corpus and/or releasing civilian prisoners held by the Confederate Army. See series 1 (1882), 4:476-477, 7:720, 744-745 [hereinafter, *Official Records*]. See also *Congressional Globe*, 37th Cong. 2d sess., June 26, 1862, 2946 (testimony of Isaac Litton).

39. Hall, *supra* note 5, at 58.

40. Swisher, *supra* note 33, at 58.

41. *Sixth Circuit*, *supra* note 7, at 147.

42. See Hans L. Trefousse, *Andrew Johnson* (New York: W. W. Norton & Co., 1991), 127-175; Richard N. Current, *Lincoln's Loyalists* (Boston: Northeastern Univ. Press, 1992), 29, 52.

43. Hall, *supra* note 5, at 57.

44. For background information on Bingham, see Richard L. Aynes, "The Antislavery and Abolitionist Background of John A. Bingham," 37 *Catholic University Law Review* (1988), 881.

45. *Id.* at 926-930.

46. *Congressional Globe*, 36th Cong., 1st sess., January 13, 1860, 437.

47. *Id.* at 436.

48. Glyndom Howard, *Notable Men in the "House"* (New York: Baker & Godwin, 1862), 69-70.

49. *Congressional Globe*, 35th Cong., 1st sess., March 13, 1858, 1174.

50. *Id.*

51. *Congressional Globe*, 35th Cong., 2d sess., December 14, 1858, 91.

52. *Id.* at 90.

53. *Id.*, December 15, 1858, at 102. In 1870 the House of Representatives, with Bingham's support, passed a bill to induce Watrous, who was permanently incapacitated, to retire. *Id.*, 41st Cong. 2d sess., 1870, at 5357.

54. *Id.*, 37th Cong., 2d sess., April 15, 1862, 1674.

55. *Id.*, January 8, 1862, at 229.

56. Hall, *supra* note 5, at 61.

57. *Congressional Globe*, 37th Cong., 2d sess., May 6, 1862, 1966.

58. Connally Trigg was a Tennessee Unionist. See page 89 *infra*. John Lellyett was a Tennessee Unionist and correspondent of Andrew Johnson. See Hall, *supra* note 5, at 48 n. 1.

59. The committee's full report is in "Impeachment of West H. Humphreys," *H.R. Rep. No. 44*, 37th Cong., 2d sess., I (1862), cited in Swisher, *supra* note 33, at 857 n. 64.

60. *Congressional Globe*, 37th Cong., 2d sess., May 6, 1862, 1966.

61. Horace Maynard and Andrew Johnson to Edwin M. Stanton and William H. Stewart, March 4, 1862, Graf and Haskins, *supra* note 28, at 5:185-186. Later, General John B. Rodgers of Rhode Island emerged as a contestant for the position. Horace Maynard to Andrew Johnson, July 1, 1862, *id.* at 526. W. G. Brownlow and Congressman Maynard met personally with President Lincoln to block the appointment. Brownlow asked Johnson to protest against Rodgers's appointment and also to seek the support of Justice Catron. William G. Brownlow to Andrew Johnson, July 1, 1862, *id.* at 524. See also Andrew Johnson to Abraham Lincoln, July 6, 1862 (telegram), *id.* at 543.

62. *Congressional Globe*, 37th Cong., 2d sess., May 6, 1862, 1966, 1967.

63. *Id.*, May 7, 1862, at 1991; *id.*, May 8, 1862, at 2021. The committee consisted of Senators Lawrence Foster (R-Conn.), James Doolittle (R-Wis.), and Garrett Davis (D-Ky.).

64. Graf and Haskins, *supra* note 28, at 5:403.

65. During this time, Congressman Maynard wrote Governor Johnson, seeking a copy of Judge Humphreys's April 1861 grand jury charge to use as evidence in the Senate trial. Horace Maynard to Andrew Johnson, May 14, 1862, Graf and Haskins, *supra* note 28, at 5:392-93, n. 6.

66. *Congressional Globe*, 37th Cong., 2d sess., May 19, 1862, 2205.

67. *Id.*, May 21, 1862, at 2247.

68. *Id.* at 2277.

69. *Id.*, May 22, 1862, at 2278.

70. *Id.*, June 9, 1862, at 2617.

71. *Id.*

72. Hall, *supra* note 5, at 60.

73. *Congressional Globe*, 37th Cong., 2d sess., June 9, 1862, 2617.

74. *Id.*

75. Horace Maynard to Andrew Johnson, May 19, 1862, June 7, 1862, Graf and Haskins, *supra* note 28, at 5:405-406, 451-452.

76. J. A. Bingham to Gov. Andrew Johnson, June 12, 1863, An-

drew Johnson MSS, Library of Congress.

77. *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2942.
78. "The Humphreys' Impeachment," *New York Times*, June 27, 1862, p. 4.
79. *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2943.
80. *Id.*, June 25, 1862, at 2943, 2944.
81. *Id.* at 2945-46.
82. *Id.* at 2946. The senators might also have been concerned about spending unnecessary time going into details on the trial.
83. *Id.* at 2947.
84. *Id.*
85. *Id.*
86. See also Current, *supra* note 42, at 32-33; Graf and Haskins, *supra* note 28, at 5:150 n. 1 on Thornburg.
87. *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2948.
88. Hall, *supra* note 5, at 64.
89. *Id.* at 64-65; *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2949.
90. *Congressional Globe*, 37th Cong. 2d sess., June 26, 1862, 2945.
91. *Id.*
92. Senator Saulsbury indicated he did not hear the testimony on this charge but would vote not guilty—apparently based on the statements of others or his view of the legal question.
93. *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2950.
94. The votes on guilt or innocence on the seven charges were as follows: Article 1: 38 to 0; Article 2: 35 to 1; Article 3: 32 to 4; Article 4: 27 to 10; Article 5: 30 to 0; Article 6, specification 1: 35 to 1; Article 6, specification 2: 11 to 24 (not guilty); Article 6, specification 3: 35 to 1; and Article 7: 35 to 1.
95. *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2951.
96. *Id.* at 2953.
97. *Id.*, July 16, 1862, at App. 410.
98. *Id.*, June 26, 1862, at 2957; *id.*, July 16, 1862, at App. 410.
99. Graf and Haskins, *supra* note 28, at 2:564 n. 4.
100. *Judges of the United States*, 2d ed. (Washington: U.S. Government Printing Office, 1983), 498. On April 28, 1861, they jointly sent a telegram to the Knox County representatives and the Tennessee legislature calling for "firmness and deliberation" and stating that given time to campaign, East Tennessee would defeat secession by a vote of twenty thousand. Trefousse, *supra* note 42, at 141.
101. Andrew Johnson to [Ohio Governor] David Tod, March 20, 1862, Graf and Haskins, *supra* note 28, at 5:218-219; Andrew Johnson

to Connally F. Trigg, March 20, 1862, *id.* at 5:250 n. 5.

102. Sixth Circuit, *supra* note 7, at 147. See *Official Records*, *supra* note 38, at series 1 (1894), 45:638, series 2 (1899), 8:86-87.

103. See Hall, *supra* note 5, at 68; Robinson, *supra* note 32, at 296.

104. President Johnson's Amnesty Proclamation of May 29, 1865, excluded: "All who left judicial stations under the United States to aid the rebellion." *Messages and Papers of the President*, ed. James D. Richardson (Washington: U.S. Congress, 1896-97), 6:610.

105. Sixth Circuit, *supra* note 7, at 147.

106. *Id.* See also Hall, *supra* note 5, at 65 n. 72, citing West H. Humphreys, *An Address on the Use of Alcoholic Liquor and its Consequences* (Nashville, 1879).

107. Sixth Circuit, *supra* note 7, at 147; Hall, *supra* note 5, at 68.

108. Aynes, *supra* note 44, at 881.

109. *Congressional Globe*, 39th Cong., 1st sess., January 9, 1866, 156-159.

110. Erving Beauregard, *Bingham of the Hills* (New York: Peter Lang, 1989), 126-127.

111. *Congressional Globe*, 37th Cong., 2d sess., June 26, 1862, 2952.

112. *Proceedings in the Trial of Andrew Johnson*, comp. F. & J. Rives & George A. Bailey (Washington, 1868), 786-842.

113. Sixth Circuit, *supra* note 7, at 147. See also Hall, *supra* note 5, at 65-67.

114. Rives & Bailey, *supra* note 112, at 786-842. Almost all of Bingham's argument focused on the claim that Johnson violated the Tenure of Office act when he removed Secretary of War Stanton. The issue was "whether the President is above the laws and can dispense with their execution with impunity in the exercise of what is adroitly called his judicial power of interpretation." *Id.* at 793.

115. John R. Labovitz, *Presidential Impeachment* (New Haven: Yale University Press, 1978), 48.

116. But that might have raised constitutional questions in an era when many of Lincoln's actions were already being challenged on constitutional grounds. See James G. Randall, *Constitutional Problems Under Lincoln* (Urbana: University of Illinois, 1964).

117. Hall, *supra* note 5, at 56.

118. See discussion of current Senate impeachment proceedings in *Nixon v. United States*, 938 F.2d 239 (D.C. Cir. 1991) *aff'd*, 61 U.S.L.W. 4069 (1993) (claim that a full Senate must hear the evidence in an impeachment proceeding is nonjusticiable). *Contra* Alcee Hastings v. United States, 802 F. Supp. 490 (D.D.C. 1992).