SENATE

TUESDAY, JULY 6, 1937

Rev. Richard A. Cartmell, assistant rector, Church of the Epiphany, Washington, D. C., offered the following prayer:

Almighty God, the protector of all that trust in Thee, open our eyes, we beseech Thee, that we may behold that great cloud of witnesses which Thou hast compassed about us, of those whose faith in the right could brook no compromise with wrong, who saw beyond the present success to the inevitable victory of truth. Grant to us, O God, such a measure of that faith that we may run with patience the race that is set before us, looking unto Jesus, the author and finisher of our faith, who for the joy that was set before him endured the cross, despising the shame, and is set down at the right hand of the throne of God. Send down upon us assembled here in Thy presence, O Lord, the Light of Thy Being, that all our works begun, continued, and ended in Thee may have that fruition which it is Thine alone to give. Through the same Jesus Christ, our Lord. Amen.

THE JOURNAL

On request of Mr. ROBINSON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Friday, July 2, 1937, was dispensed with, and the Journal was approved.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

CALL OF THE ROLL

Mr. LEWIS. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Copeland	Johnson, Colo.	Pittman
Andrews	Davis	King	Pope
Ashurst	Dieterich	La Follette	Radcliffe
Austin	Duffy	Lee	Reynolds
Bankhead	Ellender	Lewis	Robinson
Barkley	Frazier	Lodge	Schwartz
Berry	George	Logan	Schwellenbach
Bilbo	Gerry	Lonergan	Sheppard
Black	Gillette	Lundeen	Shipstead
Bone	Glass	McAdoo	Steiwer
Borah	Green	McCarran	Thomas, Okla.
Brown, N. H.	Guffey	McGill	Thomas, Utah
Bulkley	Hale	McKellar	Townsend
Bulow	Harrison	McNary	Truman
Burke	Hatch	Minton	Tydings
Byrd	Hayden	Moore	Vandenberg
Capper	Herring	Murray	Van Nuys
Caraway	Hitchcock	Neely	Wagner
Chavez	Holt	O'Mahoney	Walsh
Clark	Hughes	Overton	Wheeler
Connally	Johnson, Calif.	Pepper	White

Mr. LEWIS. I announce that the Senator from Connecticut [Mr. MALONEY] is detained from the Senate because of illness.

The Senator from North Carolina [Mr. BAILEY], the Senator from Michigan [Mr. BROWN], the junior Senator from South Carolina [Mr. BYRNES], the Senator from Ohio [Mr. DONAHEY], the Senator from Georgia [Mr. RUSSELL], the Senator from New Jersey [Mr. SMATHERS], and the senior Senator from South Carolina [Mr. SMITH] are detained on important public business.

Mr. SCHWELLENBACH. I announce that the senior Senator from Nebraska [Mr. NORRIS] is absent because of illness.

Mr. AUSTIN. I announce that my colleague the junior Senator from Vermont [Mr. GIBSON] is necessarily absent.

The Senator from New Hampshire [Mr. BRIDGES] is absent on official business.

The PRESIDENT pro tempore. Eighty-four Senators having answered to their names, there is a quorum present.

FEES IN PROBATE CASES, AMERICAN CONSULAR COURTS IN EGYPT

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, which was read, and, with the accompanying papers, referred to the Committee on Foreign Relations, as follows:

To the Congress of the United States:

I transmit herewith a copy of an order issued on March 1, 1937, by the Minister of the United States to Egypt, with the assent of the several American consular officers in Egypt, prescribing the fees to be paid in probate cases in the American consular courts in Egypt.

This order has been issued by virtue of authority contained in section 5 of the act of Congress of June 22, 1860 (R. S. 4117, 4118; U. S. C., title 22, secs. 147, 148), and is transmitted to the Congress in compliance with the provisions of section 6 of the said act (R. S. 4119; U. S. C., title 22, sec. 148).

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *July 6, 1937.*

[Enclosure: Order.]

TRANSFER OF PROPERTY AT WEST POINT MILITARY RESERVATION, N. Y.

The PRESIDENT pro tempore laid before the Senate a letter from the Acting Secretary of the Treasury, transmitting a draft of proposed legislation to authorize the transfer to the jurisdiction of the Secretary of the Treasury of portions of the property within the West Point Military Reservation, N. Y., for the construction thereon of certain public buildings, and for other purposes, which, with the accompanying papers, was referred to the Committee on Military Affairs.

RELINQUISHMENT OF LAND IN FAVOR OF BLACKFEET TRIBE, MONTANA

The PRESIDENT pro tempore laid before the Senate a letter from the Acting Secretary of the Interior, transmitting a draft of proposed legislation to authorize the Secretary of the Interior to relinquish in favor of the Blackfeet Tribe, of the Blackfeet Indian Reservation, Mont., the interest in certain land acquired by the United States under the Federal reclamation laws, which, with the accompanying paper, was referred to the Committee on Indian Affairs.

MIGRATION OF WORKERS

The PRESIDENT pro tempore laid before the Senate a letter from the Secretary of Labor, transmitting, in response to Senate Resolution 298 (74th Cong; submitted by Mr. POPE), a preliminary report on the subject of migration of workers across State lines, and stating, in part, "The absence of any special appropriation for investigating this subject has made it impossible to survey and analyze the complex problems involved to the extent that is necessary for a final report with recommendations for legislation", which, with the accompanying report, was referred to the Committee on Education and Labor.

IRVIN H. JOHNSON

The PRESIDENT pro tempore laid before the Senate a letter from the Acting Comptroller General of the United States, transmitting his report and recommendation concerning the claim of Irvin H. Johnson against the United States, which, with the accompanying paper, was referred to the Committee on Claims.

PETITIONS AND MEMORIALS

The PRESIDENT pro tempore laid before the Senate the following resolution of the House of Representatives of the State of Minnesota, which was referred to the Committee on Agriculture and Forestry:

Resolution memorializing the Congress of the United States to refrain from increasing the interest rate on loans made by the Farm Credit Administration

Whereas the Farm Credit Administration, an agency of the United States Government, has made innumerable loans to the farmers in this State over a period of the last few years; and

Whereas such loans have been made at low and reasonable interest rates, which have resulted in great and extensive benefits to those persons affected thereby; and

Whereas it has been proposed that the Congress of the United States increase the interest rate on loans made by the Farm Credit Administration; and

Whereas if such increase is made a great injustice will be done to many farmers who need financial assistance of the type offered by the Farm Credit Administration; and

Whereas such increase should not be made for a period of at least 5 years, during which period the farmers will have had an opportunity to readjust themselves financially: Now, therefore, be it

Resolved by the house of representatives, That this body memorialize the Congress of the United States of America to refrain from increasing the interest rate on loans made by the Farm Credit Administration; be it further

Resolved, That the chief clerk of the house of representatives be instructed to send copies of this resolution to both Houses of Congress and to each Member in Congress from the State of Minnesota.

The PRESIDENT pro tempore also laid before the Senate the following joint resolution of the Legislature of the State of Wisconsin, which was referred to the Committee on Banking and Currency:

Joint resolution memorializing Congress to pass bill H. R. 6092, providing for reduction of interest rates of H. O. L. C. mortgages and extending the amortization periods thereon to 25 years

Whereas the number of foreclosures on Home Owners' Loan Corporation mortgages are steadily increasing; and

Whereas in most cases the immediate cause of foreclosure is the inability of the mortgagor to meet the periodic installment payments as they become due under the terms of the mortgage indenture; and

Whereas there is now pending before the Congress of the United States bill H. R. 6092, which seeks to enable the majority of Home Owners' Loan Corporation mortgagors to meet current obligations on their mortgages and retain their homes by reducing interest rates from 5 to 3½ percent and by extending the time for amortization from the present 10 and 15 years to 25 years on such mortgages; and

Whereas if bill H. R. 6092 becomes law it is apparent that many a small home owner will be saved from the clutches of foreclosure: Now, therefore, be it

Resolved by the assembly (the senate concurring), That the Legislature of the State of Wisconsin respectfully memorializes the Congress of the United States to pass bill H. R. 6092; and be it further

Resolved, That properly attested copies of this resolution be sent to both Houses of Congress and to each Wisconsin Member thereof.

The PRESIDENT pro tempore also laid before the Senate a resolution adopted by the Common Council of the City of Detroit, Mich., favoring the prompt enactment of the pending low-cost housing bill, which was referred to the Committee on Education and Labor.

He also laid before the Senate a resolution adopted by the national convention of the United States Junior Chamber of Commerce, assembled at Denver, Colo., favoring the creation in each House of Congress of a permanent committee on civil aeronautics, which was referred to the Committee on Rules.

He also laid before the Senate a resolution adopted by the Board of Aldermen of the City of New York, favoring the appropriation of sufficient funds to maintain the W. P. A. with its present employment level, except for persons who may be privately reemployed, which was ordered to lie on the table.

He also laid before the Senate a resolution adopted by San Francisco (Calif.) Bay Area District Council, No. 2, of the Maritime Federation of the Pacific Coast, favoring the carrying out of the present W. P. A. program without personnel cuts and the making of further appropriations therefor when current appropriations become exhausted, which was ordered to lie on the table.

Mr. WALSH presented a petition of sundry citizens of Dorchester and vicinity, in the State of Massachusetts, praying for the enactment of legislation abolishing the Federal Reserve System as at present constituted, and also praying that Congress exercise its constitutional right to coin money and regulate the value thereof, which was referred to the Committee on Banking and Currency.

He also presented a resolution adopted by the board of directors of the Peabody (Mass.) Chamber of Commerce, favoring the placing of an increased tariff duty of 30 percent on cement-soled shoes based on American valuation of shoes delivered in the United States; also favoring a Tariff Commission investigation of the relative costs of manufacturing shoes in the United States and abroad, and protesting against the inclusion of shoes on the conference agenda for discussing a proposed trade treaty with Czechoslovakia, which was referred to the Committee on Finance.

REPORTS OF COMMITTEES

Mr. COPELAND, from the Committee on Commerce, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

S. 2579. A bill to provide more effectively for the marking of wrecked and sunken craft for the protection of navigation, to improve the efficiency of the Lighthouse Service, and for other purposes (Rept. No. 864);

H. R. 1961. A bill to authorize the conveyance by the United States to the State of Wisconsin of a portion of the Twin River Point Lighthouse Reservation, and for other purposes (Rept. No. 865); and

H. R. 5860. A bill making further provision for the fisheries of Alaska (Rept. No. 866).

Mr. BULOW, from the Committee on Indian Affairs, to which was referred the bill (S. 2444) for the relief of William C. Willahan, reported it with amendments and submitted a report (No. 867) thereon.

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, to which was referred the bill (S. 2060) to amend the Wisconsin Chippewa Jurisdictional Act of August 30, 1935 (49 Stat. L. 1049), reported it with an amendment and submitted a report (No. 873) thereon.

Mr. PITTMAN, from the Special Committee on Conservation of Wildlife Resources, to which was referred the bill (S. 2670) to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes, reported it with amendments and submitted a report (No. 868) thereon.

Mr. SCHWELLENBACH, from the Committee on Claims, to which was referred the bill (S. 2417) for the relief of Samuel L. Dwyer, reported it with an amendment and submitted a report (No. 869) thereon.

Mr. WHITE, from the Committee on Claims, to which was referred the bill (S. 2261) for the relief of Scott Hart, reported it with amendments and submitted a report (No. 870) thereon.

He also, from the same committee, to which was referred the bill (S. 667) for the relief of William E. Jones, Walter M. Marston, William Ellery, Richard P. Hallowell, 2d, and Malcolm Donald as executors under the will of Frank W. Hallowell; and Malcolm Donald as executor under the will of Gordon Donald, reported it without amendment and submitted a report (No. 871) thereon.

Mr. LOGAN, from the Committee on Claims, to which was referred the bill (S. 1514) for the relief of the Corbitt Co., reported it with amendments and submitted a report (No. 872) thereon.

NEW YORK WORLD'S FAIR

Mr. COPELAND. From the Committee on Commerce I report back favorably without amendment the joint resolution (H. J. Res. 379) authorizing Federal participation in the New York World's Fair 1939, and I submit a report (No. 863) thereon.

Mr. President, as will be observed, this is the joint resolution which has to do with the New York World's Fair in 1939. It will be recalled that on a previous occasion the Senate passed a joint resolution for a similar purpose, which received a veto from the President. The President objected to the sum of money included in the measure and also to certain features of it which he thought made it unconstitutional. These defects have been remedied in the House. The amount of money appropriated has been cut down from $5,000,000 to $3,000,000 and the commissioner general is to be appointed by the President.

It is important that the bill be passed in order that the activities of the fair may go forward. The city of New York and others have contributed very large amounts to the fair, and, in order to have the aid of foreign governments, the good will of our Government is essential. So I ask unanimous consent that immediate consideration may be given to House Joint Resolution 379.

The PRESIDENT pro tempore. Is there objection?

Mr. McNARY. Mr. President, I favor this measure, having supported it in the committee. It is different from the measure that passed the Senate and the House 3 weeks ago. However, I am curious to know what the order of business will be today. Being Tuesday, the calendar does not automatically come before the Senate. We, of course, will have the routine morning business before any motion may be made by a Senator to proceed to the consideration of any measure on the calendar.

I have no objection, as I have said, to the consideration of the joint resolution if it be the policy during routine morning business of considering bills on the calendar. I shall be very happy to see this bill passed, but there should be some understanding as to what the Senate is going to do today.

Mr. ROBINSON. Mr. President, I have no intention of asking for an agreement for the consideration of the calendar today. I have no objection to the consideration of the joint resolution reported by the Senator from New York. The time is approaching when legislation on the subject matter of the joint resolution should be acted upon in the Senate. I, therefore, make no objection to its consideration.

Mr. COPELAND. I hope the Senator from Oregon, under the circumstances, will permit action to be taken.

Mr. McNARY. Yes; I stated a moment ago that I would be very glad to have action taken in this case, but I wanted to know what would be the procedure in case other motions or requests were made of a similar nature.

Mr. COPELAND. I thank the Senator.

The PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution (H. J. Res. 379) authorizing Federal participation in the New York World's Fair 1939, which is as follows:

Whereas there is to be held in the city of New York during the year 1939 a world's fair and celebration commemorating the one hundred and fiftieth anniversary of the inauguration of the first President of the United States of America and of the establishment of the Federal Government in the city of New York; and

Whereas the State and city of New York have provided a site and permanent public improvements adjacent to the site at an estimated cost of $18,000,000 and New York World's Fair, 1939, Inc., proposes to make available for such world's fair through the sale of its debentures to the public or otherwise a sum not less than $25,000,000; and

Whereas such world's fair and celebration are worthy and deserving of the support and encouragement of the United States; and the United States has aided and encouraged such world's fairs and celebrations in the past: Therefore be it

Resolved, etc., That there is hereby established a Commission, to be known as the United States New York World's Fair Commission and to be composed of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, three Members of the House to be appointed by the Speaker of the House of Representatives, and three Members of the Senate to be appointed by the President of the Senate; which Commission shall serve without additional compensation and shall represent the United States in connection with the holding of a world's fair and celebration in the city of New York during the observance in the year 1939 of the one hundred and fiftieth anniversary of the inauguration of the first President of the United States of America and of the establishment of the Federal Government in the city of New York.

SEC. 2. There shall be a United States Commissioner for the New York World's Fair, who shall be appointed by the President and who shall receive compensation at the rate of $10,000 per annum, and two Assistant Commissioners, not of the same political party, for said New York World's Fair, who shall be appointed by the Commissioner with the advice and approval of the Commission herein designated and shall receive compensation not to exceed $7,500 per annum. The salary and expenses of the Commissioner, the Assistant Commissioners, and such staff as the Commission may require, shall be paid out of the funds authorized to be appropriated by this joint resolution, for such period prior to the opening of the world's fair as the Commission may determine, for the duration of the world's fair, and for not more than 6 months after the official closing thereof.

SEC. 3. The Commission shall prescribe the duties of the United States Commissioner and shall delegate such powers and functions to him as it shall deem advisable in order that there may be exhibited at the New York World's Fair by the Government of the United States, its executive departments, independent offices, and establishments, such articles and materials and documents and papers as may relate to this period of our history and such as illustrate the function and administrative faculty of the Government in the advancement of industry, science, invention, argiculture, the arts, and peace, and demonstrating the nature of our institutions, particularly as regards their adaptation to the needs of the people.

SEC. 4. The Commission is authorized to appoint, without regard to the civil-service laws and regulations and the Classification Act of 1923, as amended, such clerks, stenographers, and other assistants as may be necessary; purchase such materials, contract for such labor and other services as are necessary, including the preparation of exhibits plans: *Provided*, That the Commission may delegate such powers in its discretion. The Commissioner may exercise such powers as are delegated to him by the Commission as hereinbefore provided, and in order to facilitate the functioning of his office may subdelegate such powers (authorized or delegated), as may be deemed advisable by the Commission, to the Assistant Commissioners or others in the employ of or detailed to the Commission.

SEC. 5. The heads of the various executive departments and independent offices and establishments of the Government are authorized to cooperate with said Commissioner in the procurement, installation, and display of exhibits, and to lend to the New York World's Fair, with the knowledge and consent of said Commissioner, such articles, specimens, and exhibits as said Commissioner shall deem to be in the interest of the United States and in keeping with the purposes of such world's fair and celebration, to be placed with the science or other exhibits to be shown under the auspices of such New York World's Fair; to appoint without regard to civil-service laws and regulations and the Classification Act of 1923, as amended, such draftsmen and other assistants as may be necessary; to contract for such labor or other services as shall be deemed necessary; and to designate officials or employees of their departments or branches to assist said Commissioner. At the close of the world's fair, or when the connection of the Government of the United States therewith ceases, said Commissioner shall cause all such property to be returned to the respective departments and branches concerned, and any expenses incident to the restoration, modification, and revision of such property to a condition which will permit its use at subsequent expositions and fairs, and for the continued employment of personnel necessary to close out the fiscal and other records and prepare the required reports of the participating organizations, may be paid from the appropriation authorized therein; and if the return of such property is not feasible, he may, with the consent of the Commission and the department or branch concerned, make such disposition thereof as he may deem advisable and account therefor.

SEC. 6. The sum of $3,000,000 is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for the purposes of this joint resolution, and shall remain available until expended; except that, upon the termination of the Commission, any unexpended or unobligated balance shall be covered back into the Treasury of the United States. And, subject to the provisions of this joint resolution, the Commission is authorized to erect such building or buildings, or other structures, for its own use, and such other buildings and structures as will further the trade and good will between the United States and the other nations of the world, and to provide for the landscaping of the site or sites thereof; to rent such space without regard to the provisions of section 322 of the act of June 30, 1932 (47 Stat. 412), as the Commission may deem adequate to carry out effectively the provisions of this joint resolution; to provide for the decoration of such buildings or structures, and for the proper maintenance of such buildings or structures, site, and grounds during the period deemed necessary by the Commission. The appropriation authorized by this joint resolution shall be available for the operation of the building or buildings, structure or structures, improvement or improvements, including light, heat, water, gas, janitor, and other required services; for the rental of space in the District of Columbia or elsewhere; for the selection, purchase, preparation, assembling, transportation, installation, arranging, safekeeping, exhibiting, demonstration, and return of such articles and materials as the Commission may decide shall be included in such Government exhibit and in the exhibits of the New York World's Fair; for the purchase of uniforms, for the compensation of said Commissioner, Assistant Commissioners, and other officers and employees of the Commission in the District of Columbia and elsewhere, for the payment of salaries of officers and employees of the Government employed by or detailed for duty with the Commission, for actual traveling expenses, including travel by air, and for per diem in lieu of actual subsistence at not to exceed $5 per day: *Provided*, That no Government official or employee detailed for duty with the Commission shall receive a salary in excess of the rate which he has been receiving in the department or branch where regularly employed; for telephone service, purchase or rental of furniture and equipment, stationery and supplies, typewriting,

adding, duplicating, and computing machines, their accessories and repairs, books of reference and periodicals, maps, reports, documents, plans, specifications, manuscripts, newspapers, and all other appropriate publications, and ice and drinking water for office purposes: *Provided further,* That payment for telephone service, rents, subscriptions to newspapers and periodicals, and other similar purposes, may be made in advance; for the purchase and hire of passenger-carrying automobiles, their maintenance, repair, and operation, for the official use of said Commissioner and Assistant Commissioners in the District of Columbia or elsewhere as required; for printing and binding; for entertainment of distinguished guests; and for all other expenses as may be deemed necessary by the Commission to fulfill properly the purposes of this joint resolution. All purchases, expenditures, and disbursements of any moneys made available by authority of this joint resolution shall be made under the direction of the Commission: *Provided further,* That the Commission, without release of responsibility, as hereinbefore stipulated, may delegate these powers and functions: *Provided further,* That the Commission or its delegated representatives may allot funds appropriated herein to any executive department, independent office, or establishment of the Government with the consent of the heads thereof, for direct expenditure by such executive department, independent office, or establishment under such regulations as the Commission may promulgate, for the purpose of defraying any proper expenditure which may be incurred by such executive department, independent office, or establishment in executing the duties and functions delegated by the Commission. All accounts and vouchers covering expenditures shall be approved by said Commissioner or by such assistants as the Commission may designate except for such allotments as may be made to the various executive departments, independent offices, and establishments for direct expenditure; but these provisions shall not be construed to waive the submission of accounts and vouchers to the General Accounting Office for audit, and permit any obligations to be incurred in excess of the amount authorized to be appropriated herein: *And provided further,* That in the construction of buildings and exhibits requiring skilled and unskilled labor, the prevailing rate of wages, as provided in the act of March 3, 1931, shall be paid. Subject to the provisions of this joint resolution, the Commission is authorized to make any expenditures or allotments deemed necessary by it to fulfill properly the purposes of this joint resolution.

SEC. 7. The Commissioner, with the approval of the Commission, may receive contributions from any source to aid in carrying out the purposes of this joint resolution, but such contributions shall be expended and accounted for in the same manner as the funds authorized to be appropriated by this joint resolution. The Commissioner is also authorized to receive contributions of material, or to borrow material or exhibits, and to accept the services of any skilled and unskilled labor that may be available through State or Federal relief organizations, to aid in carrying out the general purposes of this joint resolution. At the close of the world's fair and celebration or when the connection of the Government of the United States therewith ceases the Commissioner shall dispose of any such portion of the material contributed as may be unused, and return such borrowed property; and, under the direction of the Commission, dispose of any buildings or structures which may have been constructed and account therefor: *Provided,* That all disposition of materials, property, buildings, and so forth, shall be at public sale to the highest bidder, and the proceeds thereof shall be covered into the Treasury of the United States: *Provided further,* That the Commission may, if it deems it desirable and in the public interest, transfer without consideration and title to the Federal Exhibits Building erected or constructed to the city of New York.

SEC. 8. It shall be the duty of the Commission to transmit to Congress, within 6 months after the close of the world's fair, a detailed statement of all expenditures, and such other reports as may be deemed proper, which reports shall be prepared and arranged with a view to concise statement and convenient reference. Upon the transmission of such report to Congress the Commission established by and all appointments made under the authority of this joint resolution shall terminate.

Mr. JOHNSON of California. Mr. President, may I inquire of the Senator from New York if the authorized amount of the appropriation made in the joint resolution is $3,000,000?

Mr. COPELAND. Yes.

Mr. JOHNSON of California. In the previous measure it was $5,000,000?

Mr. COPELAND. It was.

Mr. JOHNSON of California. I have not seen the joint resolution at all, but the objection to the measure heretofore passed was that it was unconstitutional because of the delegation of authority in connection with the United States Commissioner's appointment.

Mr. COPELAND. That is correct.

Mr. JOHNSON of California. Is the commissioner now authorized to be appointed by the President?

Mr. COPELAND. The Commissioner General is to be appointed by the President. The Senator will recall that the other measure delegated to the Commission itself the power to appoint the Commissioner General. The President objected, and I think very properly.

Mr. JOHNSON of California. Does that obviate the objection which was made against the prior measure?

Mr. COPELAND. That was the objection to the previous joint resolution, and it has been removed in this measure.

Mr. CONNALLY. Mr. President, I am in hearty agreement with the joint resolution submitted by the Senator from New York. Congress last year was pretty generous in an appropriation to my State for a similar purpose. I think it accomplished a great deal of good in the way of education and as a matter of historic value. I am sure this appropriation will serve similar purposes for New York.

I think the Senator from California [Mr. JOHNSON] was correct that one of the objections to the previous measure was that it was a legislative invasion of the executive function. I think that was a valid objection. It seems to me highly important that we should respect the executive function, and that the Executive should respect the legislative function, and that both should respect the judicial function.

Mr. CLARK. Mr. President, does not the Senator think it is time for the Department of Justice to direct its energies and efforts to a consideration of the question of separating the powers under the Constitution of the Government of the United States?

Mr. COPELAND. Mr. President, I thank the Senator from Texas. I was glad to support the appropriation for the Texas exposition. The questions involved were all canvassed in the House, and I am assured by those in authority at the other end of the Capitol that the joint resolution is now in conformity with the wishes of the administration. I trust that it is.

The PRESIDENT pro tempore. If there are no amendments to be proposed, the question is on the third reading of the joint resolution.

The joint resolution was ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. ROBINSON:

A bill (S. 2746) to provide for tuberculosis hospitals and their operation; to the Committee on Education and Labor.

By Mr. McGILL:

A bill (S. 2747) to provide funds for the initiation of a mapping program in the State of Kansas; to the Committee on Appropriations.

By Mr. BORAH:

A bill (S. 2748) granting a pension to Leroy S. Vader (with accompanying papers); to the Committee on Pensions.

By Mr. SHEPPARD:

A bill (S. 2749) granting an increase of pension to Mrs. Francis Holliday Carson; to the Committee on Pensions.

By Mr. GILLETTE and Mr. CAPPER:

A bill (S. 2750) to amend the Packers and Stockyards Act, 1921; to the Committee on Agriculture and Forestry.

EXERCISE OF TRUST POWERS BY BANKS—AMENDMENTS

Mr. HERRING (for himself and Mr. TOWNSEND) submitted amendments intended to be proposed by them to the bill (S. 2344) to provide for the regulation of the sale of certain securities in interstate and foreign commerce, and the trust indentures under which the same are issued, and for other purposes, which were referred to the Committee on Banking and Currency and ordered to be printed.

INVESTIGATION OF RADIO BROADCASTING

Mr. WHITE. I submit a resolution authorizing an investigation and study of the broadcasting industry, of broadcasting in the United States, and of interstate and foreign

communications by radio, and ask its reference to the Interstate Commerce Committee.

The PRESIDENT pro tempore. The resolution will be received and referred as requested by the Senator from Maine.

The resolution (S. Res. 149) was referred to the Committee on Interstate Commerce, as follows:

Whereas the Communications Act of 1934 declared it to be the purpose of Congress—

(a) To maintain the control of the United States over all the channels of interstate and foreign radio transmission; to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time under licenses granted by Federal authority, and that no such licenses should be construed to create any right beyond the terms, conditions, and periods thereof;

(b) That no station license should be granted until the applicant therefor had signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of such frequency;

(c) That there should be no transfer or assignment of a station license or the frequency authorized to be used without the consent in writing of the licensing authority, to the end that technical considerations, citizenship, character, the financial, and other qualifications of a transferee or assignee should be taken into account in determining whether a transferee or assignee possessed the statutory qualifications of a license holder and that his use of a frequency would be in the public interest;

(d) That the people of the different States and the communities thereof should have efficient and equitable radio service;

(e) That broadcasting licenses should not be for a longer term than 3 years, but with the right of the Commission to grant a renewal from time to time upon the same considerations which justified the original license;

(f) That the Commission should include in the license granted to a licensee engaged in foreign communication such of the terms, conditions, or restrictions which the President might impose with respect to cable licenses under the act relating to the landing and operation of submarine cables in the United States, approved May 27, 1921, as would make certain just and reasonable rates and service and that a licensee should not enjoy exclusive rights of operation;

(g) That all laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, and agreements in restraint of trade should be applicable to the manufacture and sale of and trade in radio apparatus and devices entering into or affecting interstate or foreign radio communication, and that should any licensee be guilty of any violation of such laws his license should be revoked;

(h) That a station license should be refused any person unlawfully monopolizing or attempting unlawfully to monopolize radio communication through control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to any person having used unfair methods of competition;

(i) That there should be no combination between wire companies and radio companies if the purpose or effect thereof was to lessen competition in interstate or foreign communication; and

Whereas it has been charged among other things and is believed by many persons that rights in frequencies beyond the terms of licenses are being asserted by the holders thereof and recognized by the Federal Communications Commission; that licenses, though in form limited in time as provided by law, and the frequencies therein granted, are being treated by the holders and the users thereof and by the Commission as though granted for much longer terms than designated in the licenses; that the licensing authority has in effect recognized vested property rights of great value in licenses and in frequencies contrary to the letter and spirit of the law; that by various devices and means control of licenses and of frequencies have passed to others than the original licensee without the written approval of the Commission or with Commission approval given in disregard of congressional purpose; that persons and companies have been engaged in the acquisition and sale of broadcasting stations, licenses, and frequencies; that the licensing authority has permitted concentration of stations in some parts of the country and has failed to give equitable radio service to the people of the several States and the communities thereof; that with the approval of the Commission there has come about a monopolistic concentration of ownership or control of stations in the chain companies of the United States that through exclusive traffic arrangements and otherwise monopolistic control of the facilities of foreign communication by radio is being accomplished, and that the acts and attitude of the Commission are aiding and encouraging such monopoly; that the Commission in its decision of causes disregards its own rules and standards; that in the determination of matters before it the Commission has been affected and controlled by political and other influences not contemplated by statute and not entitled to consideration by a regulatory and quasi-judicial body; and that it has failed to observe and effectuate the purposes of the Congress and the laws enacted by it in the foregoing and other respects: Therefore be it

Resolved, That the Committee on Interstate Commerce is authorized and directed to make a thorough and complete investigation of the broadcasting industry in the United States and of broadcasting, and of the acts, rules, regulations, and policies of the Federal Communications Commission with respect to broadcasting and to report to the Senate the results thereof.

In particular, but not to the exclusion of other matters, the said committee is authorized and directed to make and to report to the Senate the results of an investigation and study of—

(1) The cases, if any, in which the Commission has departed from or has modified the application of its regulations and the engineering and other standards generally observed by it, together with the reasons for each such departure or modification;

(2) All acts by the Commission which recognize or seem to recognize the right of a licensee to a license or a frequency other than as specified in the terms, conditions, and time of the license;

(3) Whether the acts and decisions of the Commission in broadcasting cases have been influenced by matters not apparent in the public records;

(4) The geographical distribution of broadcasting facilities and whether there is an equitable distribution of broadcast service to all parts of the country; and if not, what steps should be taken to provide fair and equitable service throughout the United States;

(5) The extent to which broadcast stations have been concentrated in the larger communities of the country by transfer of stations from smaller communities to such centers or otherwise;

(6) The extent to which and the circumstances under which the ownership, control, management, or interest in more than a single broadcast station has passed into the hands of any person or group of persons;

(7) The circumstances surrounding and the considerations for the voluntary transfer of station licenses or construction permits;

(8) Instances of the transfer of minority interests in broadcasting-station licensees, and all transactions directly or indirectly affecting the control of such licensees, and whether said transfers have or have not been submitted to the Commission for approval and have received Commission approval or acquiescence;

(9) The sale price of any broadcasting station in any manner sold and transferred, together with a statement of the fair value of the physical assets and of other property, rights, contracts, and licenses involved in said sales, and in particular the value placed by the parties to the transaction upon the frequency licensed to be used;

(10) The sale of stock or other securities of any broadcasting stations, of any licensees, or of any person or persons directly or indirectly controlling such licensees, and the valuation put by the person transferring the same upon the station license or the frequency, the power or the hours of operation fixed in the station license, and the circumstances surrounding and the consideration for such sales and transfers and as to the participation in the negotiations for such sales and transfers by any person other than the seller and purchaser, the transferor and the transferee;

(11) The licensing of broadcast stations to persons other than the owners of the physical equipment, and in particular all cases involving the leasing of transmitting equipment;

(12) The surrender of control of facilities by licensees including all agreements to accept proffered programs with or without supervision by the licensee;

(13) All acts or assertions by broadcast station licensees which involve the claim to any right or interest beyond the terms, conditions, and periods of the license;

(14) Whether considerations have been paid or promised to any licensee or permittee for not interposing objection to an application for all or a part of his facilities or for other facilities which could not be granted without disregard for the Commission's rules or its standards except with the consent of such licensee or permittee;

(15) All cases in which persons whose applications for the renewal of a broadcasting license have been refused by the Commission, have received from persons licensed to use the facilities for which renewal of license has been refused, money or other consideration in excess of the value of the physical equipment taken off the air and sold to the new licensee;

(16) Cases in which the real parties in interest in any application for broadcast facilities have not been disclosed to the Commission;

(17) The extent to which holding or other intermediate companies or persons have been employed in the ownership or control of broadcast stations and the effect of such intermediate ownership or control upon the effective regulation of broadcasting;

(18) The investments by licensees in the stations authorized to be operated by them, including the investment in equipment and in other items of cost;

(19) The charges for the use of station facilities and the profit or loss resulting therefrom;

(20) The extent to which broadcast stations are used to build up other businesses or enterprises in which the station licensees or persons financially interested in the licensees are engaged; the extent to which the facilities of broadcast stations are refused or are granted conditionally to competitors of such other businesses or enterprises, and the effect of the ownership and use of such radio facilities upon the businesses of those in competition with the businesses of those having the radio facilities;

(21) The extent to which broadcast stations are owned or controlled by or are affiliated with newspapers or other media of information or entertainment, and the effect of such ownership, control, or affiliation upon competing newspapers not possessing such facilities and upon the public interest;

(22) The development and present facts concerning broadcasting networks or chains, including the effects of chain association upon the licensee's control over his station;

(23) The effect of chain operations upon the financial results and status of chain-affiliated stations and independent stations, the ability of the chain-owned or affiliated station to render a local service, both sustaining and commercial and the duplication of broadcast programs; and the desirability of special regulations governing chains and stations engaged in chain broadcasting;

(24) The extent to which licensees of broadcast stations censor or refuse programs offered to them for transmission and the reasons for and the effects of such censorship or refusal;

(25) The extent to which, the basis upon which, and the times at which broadcast stations carry programs relating to public affairs, education, religion, labor, agriculture, charity, and public service generally;

(26) The extent to which and basis upon which broadcast stations carry programs offered by or on behalf of candidates for public office or programs relating to controversial subjects in the field of National, State, or local politics; and

(27) The extent to which, the basis upon which, the manner in which, and the times at which broadcast stations are used for commercial programs, including programs advertising products claimed to have medicinal or therapeutic value and programs relating to products or services, the sale or use of which may be illegal in any State in which the programs of the station carrying such programs may be received, the time given by the several classes of stations to commercial advertising or sales talk in the programs broadcast, and whether there should be control or regulation of advertising by radio and the character and extent thereof;

Said committee is further authorized and directed to make and report to the Senate the facts with respect to:

(1) Competition between wire companies in communication between the United States and foreign countries, between radio companies in such foreign communication, and between wire and radio companies in this field of foreign communication.

(2) Instances in which the Commission has granted licenses for transmission in foreign communication or has refused or withheld action upon applications for licenses and frequencies in this field of communication, and whether such action by the Commission or its nonaction, has been with the purpose or has had the effect of aiding one company in this branch of communications or of destroying or lessening competition between American companies in foreign communication.

(3) The extent to which companies engaged in radio communication between the United States and any foreign country have entered into exclusive traffic arrangements or other agreements with the purpose or effect of securing a monopoly in such communication or of lessening competition therein and the effect of such arrangements or agreements upon competing American companies.

Said committee is further authorized and directed to make a study of the policies and principles which should be declared and made effective in legislation providing for the regulation and control of the radio industry, of broadcasting, and of interstate and foreign communication by radio.

For the purposes of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places, either in the District of Columbia or elsewhere, during the sessions, recesses, and adjourned periods of the Senate in the Seventy-fifth Congress, to employ such experts, and clerical, stenographic, and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production and impounding of such books, papers, and documents, to administer such oaths and to take such testimony and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per 100 words. The expenses of the committee, which shall not exceed , shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

DEMOCRACY WILL KEEP THE FAITH—ADDRESS BY SENATOR DUFFY

[Mr. BARKLEY asked and obtained leave to have printed in the RECORD an address delivered by Senator DUFFY on the White House Ellipse at the Fourth of July celebration in Washington, D. C., which appears in the Appendix.]

INDUSTRY AND LABOR—ADDRESS BY SECRETARY ROPER

[Mr. MCKELLAR asked and obtained leave to have printed in the RECORD an address delivered over the radio on July 5, 1937, by Hon. Daniel C. Roper on the subject Industry and Labor—Their Mutual Problems, which appears in the Appendix.]

SAN JACINTO MEMORIAL MONUMENT—ADDRESS BY JESSE H. JONES

[Mr. SHEPPARD asked and obtained leave to have printed in the RECORD an address delivered by Hon. Jesse H. Jones at the laying of the cornerstone of the San Jacinto Memorial Monument on Apr. 21, 1937, the one hundred and first anniversary of Texas independence, which appears in the Appendix.]

AMERICA'S ROLE IN INTERNATIONAL AFFAIRS, AND THE DOMESTIC LABOR CRISIS

[Mr. DAVIS asked and obtained leave to have printed in the RECORD an editorial appearing in the Philadelphia Inquirer of July 6, 1937, entitled "America Has Learned Her Lesson", and an editorial appearing in the same paper on July 2, 1937, entitled "What Are They Waiting For?" which appear in the Appendix.]

REORGANIZATION OF FEDERAL JUDICIARY

The PRESIDENT pro tempore. Morning business is closed.

Mr. ROBINSON. Mr. President, I move that the Senate proceed——

Mr. CLARK. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. CLARK. Is the calendar to be called?

The PRESIDENT pro tempore. The calendar is not subject to call today. Today not being Monday, a motion to take up any bill is in order.

Mr. ROBINSON. Mr. President, I move that the Senate proceed to the consideration of the bill (S. 1392) to reorganize the judicial branch of the Government.

Mr. MCNARY. Mr. President, the question is debatable.

Mr. ROBINSON. I make the point of order that during the morning hour the question is not debatable.

The PRESIDENT pro tempore. The point of order is sustained.

Mr. MCNARY. That is correct. A parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. MCNARY. If the motion made by the able Senator from Arkansas is agreed to, the President's bill then would be before the Senate for consideration. If a substitute should be offered by the Senator from Kentucky [Mr. LOGAN], it also would be before the Senate, and both the original bill and the substitute of the Senator from Kentucky would be open to amendment. Is that correct?

The PRESIDENT pro tempore. If a substitute should be offered to the bill, both the substitute and the original text would be open to amendment.

Mr. MCNARY. That is my understanding. If the substitute should be adopted, it would then be too late to offer any amendments to the substitute?

The PRESIDENT pro tempore. That is correct.

Mr. MCNARY. All amendments to the bill and substitute, therefore, must be offered before action is taken on the substitute to be proposed by the Senator from Kentucky?

The PRESIDENT pro tempore. That is the rule.

Mr. MCNARY. Is it the purpose of the Senator from Arkansas to proceed without reference to any other legislation until the final disposition of the bill which he now moves to make the unfinished business?

Mr. ROBINSON. Mr. President, it is my intention to have the bill known as the Court reorganization bill made the unfinished business. I cannot at this juncture say that it will be proceeded with without reference to other legislation. The fact is the question is rather an unusual one. I shall reserve, of course, the right to object to the consideration of other legislation while the Court bill is the unfinished business. I do not announce in advance that I shall object to the consideration of other proposed legislation.

Mr. MCNARY. Specifically I had in mind some proposed legislation that may be pressing and of an emergent character. Would the Senator be willing to lay aside temporarily the unfinished business and take up such bills for consideration?

Mr. ROBINSON. If emergency measures are presented, I shall not object to laying aside the unfinished business for their consideration. However, I shall reserve full freedom

to determine what, in my judgment, is an emergency measure.

Mr. McNARY. Would the Senator from Arkansas be willing to adjourn from day to day in order that the Senate might enjoy the privilege of having routine morning business and a call of the calendar?

Mr. ROBINSON. I cannot answer that inquiry at this juncture. If a filibuster develops, as has been threatened, I shall then take the course, so far as I am concerned, which judgment prompts. I shall not commit myself now to any policy that would be in aid of a threatened filibuster.

Mr. McNARY. Is it the purpose of the Senator from Arkansas to proceed with the consideration of the Court bill today, or the amendment to be offered in the nature of a substitute, and is it his desire and purpose to hold a session of the Senate tomorrow?

Mr. ROBINSON. It is my intention to ask the Senate to be in session tomorrow. I feel that there is no justification whatever for suspending the public business, under the conditions which now prevail, in order that Members may have an opportunity of attending a baseball game. I know there are a great many Senators who would like to attend the ball game, and they are at liberty to do so, with the understanding that they may be sent for if a quorum should not develop.

We have been at leisure quite a long while. My difficulty has been in keeping measures of importance before the Senate for the consideration of this body because of the delay on the part of standing committees of the Senate in submitting reports.

Of that no complaint is to be made at this time. The committees for the most part have been hard at work and have reported in most instances as promptly as was practicable.

However, considering the advanced stage of the session and the fact that it has been heralded throughout the Nation that those who are opposed to the Court reorganization bill in any form have the intention of obstructing business, of preventing the Senate from registering its opinion, I now announce that it is my intention, so far as I am able to do so and so far as I have support in that purpose, to keep the bill before the Senate, when it is taken up, until it is disposed of, making reasonable allowance for such emergency measures as may be brought to the attention of the Senate.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Arkansas.

Mr. CLARK. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Copeland	Johnson, Colo.	Pittman
Andrews	Davis	King	Pope
Ashurst	Dieterich	La Follette	Radcliffe
Austin	Duffy	Lee	Reynolds
Bankhead	Ellender	Lewis	Robinson
Barkley	Frazier	Lodge	Schwartz
Berry	George	Logan	Schwellenbach
Bilbo	Gerry	Lonergan	Sheppard
Black	Gillette	Lundeen	Shipstead
Bone	Glass	McAdoo	Steiwer
Borah	Green	McCarran	Thomas, Okla.
Brown, N. H.	Guffey	McGill	Thomas, Utah
Bulkley	Hale	McKellar	Townsend
Bulow	Harrison	McNary	Truman
Burke	Hatch	Minton	Tydings
Byrd	Hayden	Moore	Vandenberg
Capper	Herring	Murray	Van Nuys
Caraway	Hitchcock	Neely	Wagner
Chavez	Holt	O'Mahoney	Walsh
Clark	Hughes	Overton	Wheeler
Connally	Johnson, Calif.	Pepper	White

The PRESIDENT pro tempore. Eighty-four Senators having answered to their names, a quorum is present. The question is on the motion of the Senator from Arkansas that the Senate proceed to the consideration of Senate bill 1392.

The motion was agreed to; and the Senate proceeded to the consideration of the bill (S. 1392) to reorganize the judicial branch of the Government, which had been reported adversely from the Committee on the Judiciary, with amendments.

Mr. ROBINSON. Mr. President, with the approval of the Senator from Kentucky [Mr. LOGAN], the Senator from New Mexico [Mr. HATCH], and the Senator from Arizona [Mr. ASHURST], I offer an amendment in the nature of a substitute for the pending bill, and ask that it be read.

The PRESIDENT pro tempore. The amendment, in the nature of a substitute, will be read.

The CHIEF CLERK. It is proposed to strike out all after the enacting clause, and to insert in lieu thereof the following amendment in the nature of a substitute:

TITLE I

SECTION 1. Section 215 of the Judicial Code of the United States is hereby repealed and reenacted to read as follows:

"SEC. 215. The Supreme Court of the United States shall consist of a Chief Justice and eight Associate Justices, any six of whom shall constitute a quorum: *Provided, however,* The number of Justices may be increased by the appointment of an additional Justice in the manner now provided for the appointment of Justices, for each Justice, including the Chief Justice, who at the time of the nomination has reached the age of 75 years, but not more than one appointment of an additional Justice as herein authorized shall be made in any calendar year: *Provided,* That the authority to appoint for any calendar year shall not lapse by reason of the rejection of the nomination, delay in confirmation, inability to nominate during an adjournment of the Senate or withdrawal of the nomination in a succeeding calendar year; and when such additional Justice, or Justices, shall have been so appointed no vacancy caused by the death, resignation, or retirement of a Justice (except the Chief Justice) who has reached the age of 75 years, shall be filled, unless the filling of such vacancy is necessary to maintain at not less than nine the number of Justices who have not reached the age of 75. The number of appointments so made shall not, at any time, increase the total number of Justices by more than two-thirds of the permanent membership of the Court. If the number of members of the Supreme Court is in excess of nine not less than two-thirds of the membership shall constitute a quorum. As used in this section, the term 'Justice' shall not include a Justice who has retired from regular, active service."

SEC. 2. (a) An additional judge of any court of the United States other than the Supreme Court may be appointed, in the manner now provided by law, and to the same court, for each judge, appointed to hold his office during good behavior, who at the time of nomination of the additional judge has reached the age of 70 years.

(b) The number of judges of any such court shall be increased by the number appointed thereto under the provisions of subsection (a) of this section, but no vacancy shall be created by the death, resignation, or retirement of a judge of such court (other than a Chief Justice) whose continuance in office has occasioned the appointment of an additional judge. No appointment shall be made under subsection (a) which at any one time would result in (1) more than 20 judges in regular active service, in addition to those otherwise authorized by law, or (2) an addition of more than 2 judges to the number otherwise authorized by law to be appointed to any circuit court of appeals, the Court of Claims, the United States Court of Customs and Patent Appeals, or the United States Customs Court, or (3) more than twice the number of judges otherwise authorized by law to be appointed for any district or, in the case of judges appointed for more than one district, for any such group of districts.

(c) Three-fifths of the judges of each of the following courts shall constitute a quorum thereof: The United States Court of Appeals for the District of Columbia, the Court of Claims, and the United States Court of Customs and Patent Appeals.

(d) An additional judge shall not be appointed under the provisions of this section when the judge who has reached the age of 70 years is commissioned to an office as to which Congress has provided that a vacancy shall not be filled.

SEC. 3. (a) Any circuit judge may be designated and assigned from time to time by the Chief Justice of the United States for general service in the circuit court of appeals for any circuit. Any district judge may be designated and assigned from time to time by the Chief Justice of the United States for general service in any district court, or, subject to the authority of the Chief Justice, by the senior circuit judge of his circuit for service in any district court within the circuit. A district judge designated and assigned to another district hereunder may hold court separately and at the same time as the district judge in such district. All designations and assignments made hereunder shall be filed in the office of the clerk and entered on the minutes of both the court from and to which a judge is designated and assigned, and thereafter the judge so designated and assigned shall be authorized to discharge all the judicial duties (except the power of appointment to a statutory position or of permanent designation of a newspaper or depository of funds) of a judge of the court to which he is designated and assigned. The designation and assignment of a judge shall not impair his authority to per-

form such judicial duties of the court to which he was commissioned as may be necessary or appropriate. The designation and assignment of any judge may be terminated at any time by order of the Chief Justice or the senior circuit judge, as the case may be.

(b) After the designation and assignment of a judge by the Chief Justice, the senior circuit judge of the circuit in which such judge is commissioned may certify to the Chief Justice any consideration which such senior circuit judge believes to make advisable that the designated judge remain in or return for service in the court to which he was commissioned. If the Chief Justice deems the reasons sufficient he shall revoke, or designate the time of termination of, such designation and assignment.

(c) In case a trial or hearing has been entered upon but has not been concluded before the expiration of the period of service of a district judge designated and assigned hereunder, the period of service shall, unless terminated under the provisions of subsection (a) of this section, be deemed to be extended until the trial or hearing has been concluded. Any designated and assigned district judge who has held court in another district than his own shall have power, notwithstanding his absence from such district and the expiration of any time limit in his designation, to decide all matters which have been submitted to him within such district, to decide motions for new trials, settle bills of exceptions, certify or authenticate narratives of testimony, or perform any other act required by law or the rules to be performed in order to prepare any case so tried by him for review in an appellate court; and his action thereon in writing filed with the clerk of the court where the trial or hearing was had shall be as valid as if such action had been taken by him within that district and within the period of his designation. Any designated and assigned circuit judge who has sat on another court than his own shall have power, notwithstanding the expiration of any time limit in his designation, to participate in the decision of all matters submitted to the court while he was sitting and to perform or participate in any act appropriate to the disposition or review of matters submitted while he was sitting on such court, and his action thereon shall be as valid as if it had been taken while sitting on such court and within the period of his designation.

(d) When any judge is assigned to duty outside of his district or circuit his subsistence allowance shall be $10 per diem.

SEC. 4 (a) The Supreme Court shall have power to appoint a Proctor. It shall be his duty (1) to obtain and, if deemed by the Court to be desirable, to publish information as to the volume, character, and status of litigation in the district courts and circuit courts of appeals, and such other information as the Supreme Court may from time to time require by order, and it shall be the duty of any judge, clerk, or marshal of any court of the United States promptly to furnish such information as may be required by the Proctor; (2) to investigate the need of assigning district and circuit judges to other courts and to make recommendations thereon to the Chief Justice; (3) to recommend, with the approval of the Chief Justice, to any court of the United States methods for expediting cases pending on its dockets; and (4) to perform such other duties consistent with his office as the court shall direct.

(b) The Proctor shall, by requisition upon the Public Printer, have any necessary printing and binding done at the Government Printing Office, and authority is conferred upon the Public Printer to do such printing and binding.

(c) The salary of the Proctor shall be $10,000 per annum, payable out of the Treasury in monthly installments, which shall be in full compensation for the services required by law. He shall also be allowed, in the discretion of the Chief Justice, stationery, supplies, travel expenses, equipment, necessary professional and clerical assistance, and miscellaneous expenses appropriate for performing the duties imposed by this section. The expenses in connection with the maintenance of his office shall be paid from the appropriation of the Supreme Court of the United States.

SEC. 5. There is hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this act.

SEC. 6. When used in this act—

(a) The term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia; the term "senior circuit judge" includes the chief justice of the United States Court of Appeals for the District of Columbia; and the term "circuit" includes the District of Columbia.

(b) The term "district court" includes the District Court of the District of Columbia but does not include the district court in any Territory or insular possession.

(c) The term "judge" includes justice and the term "chief justice" shall include the presiding judge of the United States Court of Customs and Patent Appeals.

TITLE II

SECTION 101. Whenever in any court of the United States in any suit or proceeding to which the United States or any agency thereof or any officer or employee thereof, as such officer or employee, is not a party, the constitutionality of any statute of the United States is drawn in question, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General if the court is of opinion that a substantial ground exists for questioning the constitutionality of the statute. The court shall afford the United States an opportunity for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument. In the suit or proceeding the United States shall, subject to the applicable provisions of law, have the same rights as a party to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of the statute and shall have the right to become a party to such proceeding, case, or controversy.

SEC. 102. Whenever any judgment, decree, or order in any suit or proceeding referred to in section 101 is based in whole or in part upon a decision that any statute of the United States is unconstitutional as therein applied, the United States, irrespective of whether or not it had previously presented evidence or argument under the provisions of section 101 shall have the same right to appeal therefrom as any party to the suit or proceeding. Within 60 days after the entry of any such judgment, decree, or order, whether final or interlocutory, the United States may also appeal therefrom directly to the Supreme Court, in which event any appeal or cross-appeal therefrom by any party to the suit or proceeding taken previously or taken within 60 days after notice of the appeal by the United States shall also be treated as taken directly to the Supreme Court. Such appeals to the Supreme Court shall, on motion of the United States, be advanced to a speedy hearing. This section shall not confer upon the United States any right of review by the Supreme Court unless a party to the suit or proceeding also takes an appeal.

SEC. 103. Within 60 days after the entry of any judgment, decree, or order referred to in section 102, the United States, irrespective of whether or not it had previously presented evidence or argument under the provisions of section 101, may appeal therefrom directly to the Supreme Court. Such appeals will lie if no appeal is taken by any party to the suit or proceeding and such appeals shall, on motion of the United States, be advanced to a speedy hearing. If the United States appeals to the Supreme Court under the provisions of section 102, but no appeal is taken by any party to the suit or proceeding, the appeal of the United States shall be regarded as an appeal under this section. If this section, or any provision thereof, is held invalid, the remainder of this act and the other provisions of this section shall not be affected thereby.

SEC. 104. In any suit or proceeding in any court of the United States to which the United States or any agency thereof or any officer or employee thereof, as such officer or employee, is a party, in which the decision is against the constitutionality of any statute of the United States, the United States, within 60 days after the entry of a final or interlocutory judgment, decree, or order, may, in its discretion, in its own name or in the name of such agency, officer, or employee, as the case may be, appeal therefrom directly to the Supreme Court, in which event any appeal or cross appeal by any party to the suit or proceeding taken previously or taken within 60 days after notice of the appeal by the United States shall also be or be treated as taken directly to the Supreme Court. Such appeals shall, on motion of the United States, be advanced to a speedy hearing. This section shall not apply to any judgment, decree, or order of a district court of the United States which may, under existing provisions of law, be appealed directly to the Supreme Court.

SEC. 105. The Attorney General is authorized by himself or by counsel designated by him, to appear and argue in cases described in section 101, and to invoke appellate jurisdiction in cases described in sections 102, 103, and 104.

SEC. 106. As used in this title, the term "court of the United States" means the courts of record of Alaska, Hawaii, and Puerto Rico, the Customs Court, the Court of Customs and Patent Appeals, the Court of Claims, the District Court of the United States for the District of Columbia, any district court of the United States, the United States Court of Appeals for the District of Columbia, any circuit court of appeals, and the Supreme Court.

SEC. 107. If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Mr. ROBINSON. Mr. President, those who have collaborated in the preparation of the substitute amendment, particularly including the Senator from Kentucky [Mr. LOGAN], the Senator from New Mexico [Mr. HATCH], and myself, have had in mind the criticisms which have been directed in public addresses, and in news and magazine articles, against the original bill, presented by the Senator from Arizona [Mr. ASHURST], the chairman of the Committee on the Judiciary, very shortly after the President sent to the Congress his message on this important subject.

As everyone who hears me realizes, there has been great diversity of opinion not only among those who are opposed to any legislation providing for the reorganization of the Federal courts, but also among those who feel that conditions justify, if they do not require, a change in our statutes relating to the questions at issue.

THE SUBSTITUTE

The substitute amendment provides for the appointment of one Justice in each calendar year in relation to such

Justices of the Supreme Court as may be serving after they have reached the age of 75 years. There seems to be widespread if not general or universal sentiment in favor of the retirement of Justices who have attained that age. It is not that all men who reach 75 lose their powers of reasoning or of judgment, but it is that by common acceptance those who have passed beyond 75 usually are in a state of mental and physical decline. Our statutes have recognized the wisdom and the necessity for judges who have the physical vigor to perform the tasks that are assigned to them. Heretofore provision has been made for voluntary retirement at the age of 70 years, and that policy has not only been approved in general public opinion but it has been advocated by some Justices of the Supreme Court who now have passed far beyond 70 years, and who quite naturally are unable to apply to themselves the theory and the doctrine they have sought to apply to other judges.

The statute, as proposed in the pending amendment in the nature of a substitute, permits the appointment by the President of one additional Justice of the Supreme Court in each calendar year where a Justice or Justices are serving beyond the age of 75. I know it has been said by some, and I expect that it will be repeated in the memorable debate that is to follow my statement, that the principle incorporated in this legislation in the particular to which I am now referring is erroneous, that it is disregardful of the spirit of the Federal Constitution, that it tends to give to the President dictatorial powers. Later, during the course of the debate, it may be my privilege to elaborate the arguments which appear to me consistently to refute that contention. It suffices for my purpose on this occasion to say that during the course of this prolonged controversy Senators who lead the opposition to any legislation have introduced constitutional amendments substantially conforming to the provisions of this bill.

No moral or legal reason can be assigned in justification to resorting to the complicated and difficult process of constitutional amendment in preference to the legislative process if it appears that the legislative proposal is itself within the Constitution. I make the declaration now, in order that it may be considered by those who oppose the position I take, that no serious question has been raised by any lawyer, either in this body or in the country at large, that it is within the power of the Congress to enact the legislation contemplated in the proposed substitute; and, if that be true, then the only question left in that particular is one of policy. Manifestly it is neither necessary nor desirable to resort to the slow and difficult process of amending the Constitution if substantially the same ends may be brought about by the enactment of legislation.

Mr. BURKE. Mr. President, does the Senator care to yield at this time just on that point?

Mr. ROBINSON. I shall be glad to yield to the Senator from Nebraska, with the understanding that the Senator wishes to ask a question, and is not engaging in a filibuster. I yield.

Mr. BURKE. I shall have to leave that to the Senator's own judgment.

On the question of power, does the Senator realize any distinction between the power of Congress to increase the size of the Court, say, from 9 to 11, or any other number, and the power to place it within the discretion of an outside party—a member of the Court—as to whether the Court shall or shall not be increased? In other words, is it not true that under this substitute, as under the original bill, it is not Congress that increases the size of the Court at all, but members of the Court, who, by electing to stay on the Court, or retire, or resign, themselves determine whether the membership of the Court shall be increased?

Mr. ROBINSON. Mr. President, in direct answer to the very proper question asked me by the Senator from Nebraska [Mr. BURKE], I say that his question involves not the slightest issue pertaining to the Constitution. No one has ever expressed the thought that by giving judges or Justices the privileges of retirement we were entrusting to them a function that devolves upon the legislative or the executive department.

Mr. LOGAN. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield to the Senator from Kentucky.

Mr. LOGAN. If a Justice should remain on the bench after he has become 75, and if that determines the appointive power, what about the Justice resigning under the present law?

Mr. ROBINSON. That is exactly the point I am discussing. We recognize that throughout the history of American jurisprudence. While under the Constitution judges are appointed for life, we permit them to retire before the end of their lives; and that privilege has been exercised time and time again.

Mr. BURKE. Mr. President——

Mr. ROBINSON. In my judgment, it is an illustration of the desperation of the cause of those who oppose this legislation that they suggest now, for the first time in all this debate, that to give the Justices the privilege of retirement is to violate the Constitution.

I now yield to the Senator from Nebraska.

Mr. BURKE. Mr. President, does not the Senator realize the very clear distinction between filling a vacancy on the Court occurring in the normal way, which certainly is not an exercise of power in Congress to increase the size of the Court, and the other kind of a power, which we are now discussing, to enlarge the Court by adding members to it? Is there not a very open and clear distinction between those two issues?

Mr. ROBINSON. Of course, there is a distinction; but, Mr. President, it is not a legal distinction. It is not a constitutional distinction. It is a distinction in relation to policy.

Mr. SCHWELLENBACH. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield to the Senator from Washington.

Mr. SCHWELLENBACH. I asked the Senator from Arkansas if he would yield in order that I might submit a question to the Senator from Nebraska.

I should like to ask the Senator from Nebraska if we are to understand now that it is the position of the opposition to this measure that their objection is that it gives too much power to the Supreme Court?

Mr. ROBINSON. I shall be very glad to have the Senator from Nebraska answer the question of the Senator from Washington.

Mr. BURKE. I think my question speaks for itself. On a measure of this kind I believe we ought to have some little explanation, and the Senator from Arkansas is doing that very satisfactorily, but he raised the point that no one has questioned in any way the power of Congress to do this thing, and I say there is a serious question about it. It is not a vital point in the case, as will be demonstrated, but it is worthy of consideration.

Mr. ROBINSON. I understand from the last statement of the Senator from Nebraska that he himself has little or no confidence in the position he has taken on this feature of the subject. I do not regard it as even necessary or desirable to prolong the debate on this phase of the issue, but I will say that the Congress having admittedly the broader power to increase to any number that it pleases the total number of Justices composing the Supreme Court, it has by every rule of reason and of law the lesser power to make that increase on condition. Those Members of the Senate who are lawyers may take time in the filibuster that is threatened to answer that argument; but I make the statement that any answer to it will not rise to a dignity which will command approval by a Justice of the Supreme Court.

Mr. BARKLEY. Mr. President——

Mr. ROBINSON. I yield to the Senator from Kentucky.

Mr. BARKLEY. Congress has the same power in this regard over the Supreme Court that it has over the inferior courts. Nearly 20 years ago Congress enacted a law per-

taining to the contingent increase in the number of district and circuit judges, about which no constitutional question was raised at the time, nor has such a question been raised since.

Mr. AUSTIN. Mr. President——

Mr. ROBINSON. I yield to the Senator from Vermont.

Mr. AUSTIN. I should like to ask the Senator in respect to the freedom which each Justice of the Supreme Court has and which the Senator has so clearly recognized and spoken of—Does not the Senator expect, as the actual consequence of the passage of such a bill as this, that any and every Justice who comes within the description of having attained the age of 75 years will exercise that freedom and withdraw from the bench upon the passage of this bill?

Mr. ROBINSON. Has the Senator concluded?

Mr. AUSTIN. Yes; that is the end of the question.

Mr. ROBINSON. Mr. President, my imagination has been described at times by others as vivid, but I respectfully decline to prophesy what a Justice of the Supreme Court may do in connection with retirement under this bill, particularly when he has had the privilege of retirement for 5 or 10 years and has failed to avail himself of it.

Mr. AUSTIN. Mr. President, will the Senator yield for a further question?

Mr. ROBINSON. I should think that we might regard it as an expression of the public opinion of the Nation that one who has reached the age of 75 years had best avail himself of the privilege of retirement. But the Senator from Vermont, whose imagination is quite unbounded, and whose genius for the conception of possibilities is greater than my own, is as entirely able now, as he was before he asked the question, to form his own conclusion.

Mr. AUSTIN. I think these words in the bill are not entirely imaginatory. I refer to the following language on page 3, line 11, contained in the proposed substitute itself:

> Whose continuance in office has occasioned the appointment of an additional judge.

I submit those words to the learned Senator upon the question whether Justices who are over the age of 75 and who remain on the bench when confronted by this bill will not be necessarily excited to withdraw from the bench to save their dignity.

Mr. ROBINSON. I should hope they would.

Mr. AUSTIN. Is not that one purpose of the bill?

Mr. ROBINSON. I should not regard it as a national calamity if any Justice availed himself of the privilege of retirement any more than I have regarded it as a calamity when other Justices have retired at the age of 70.

Mr. AUSTIN. Mr. President, will the Senator yield further?

Mr. LOGAN. Mr. President——

Mr. ROBINSON. I yield to any Senator, but I yield first to the Senator from Kentucky, and then I will yield to the Senator from Vermont.

Mr. LOGAN. The language which the Senator from Vermont has just read has no application at all to the Justices of the Supreme Court. It has to do with judges of the inferior courts. If the Senator from Arkansas will yield further——

Mr. ROBINSON. Yes.

Mr. LOGAN. I will call his attention to the fact, for the information of the distinguished Senator from Nebraska, that we now have a Court of six members. The number of members shall not exceed nine, but six may function. One of the Justices has now resigned. So we have eight members of the Court. According to the opinion of the distinguished Senator from Nebraska, however, the Court is now illegal because the Court itself has fixed the number of Justices.

Mr. AUSTIN. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield to the Senator from Vermont.

Mr. AUSTIN. My question is this: Does not the Senator from Arkansas consider it just as bad, from a legal point of view and from a moral point of view, if the bill by natural effect and consequence terminates the tenure of office at a point less than for life, as it would if it contained a complete and express statement of a tenure that was less than life, fixed by an act of Congress and not by an amendment to the Constitution?

Mr. ROBINSON. The Senator's question answers itself. No lawyer would say that Congress has the power to limit the tenure of a Justice of the Supreme Court to less than life and good behavior, and, therefore, no proposal of that nature is presented. But there is, and there has been for more than 50 years, a feeling in the country among those who constitute its citizenship that men are not always conscious of the time when they have passed the climax of their usefulness. It is well illustrated in politics. One who has served long and well is seldom, if ever, conscious of his failing powers, and he keeps on running for office, running and running and running, until everyone gets tired of him and until some man whom he considers his inferior defeats him for office. [Laughter.]

Mr. BURKE and Mr. MINTON addressed the Chair.

Mr. ROBINSON. I have often thought that politics is not an occupation; it is a disease [laughter]; and, by the Eternal, when it gets in the blood and brain, there is no cure for it. [Laughter.]

Mr. LEWIS. Mr. President——

Mr. ROBINSON. Just a moment. I have seen dozens of men, discredited and rejected by their constituents, sit on the fence and in the exercise of their "imaginatory" powers—I quote now the Senator from Vermont—see strange hands beckoning them out of the darkness and hear mysterious voices calling them back to run for office again.

I now yield to the Senator from Illinois.

Mr. LEWIS. At this point I make the point of order, as it is very necessary to hear the distinguished Senators, that the Chair be so kind as to remind the occupants of the galleries that a different rule prevails in the Senate than in the other House.

Mr. ROBINSON. The occupants of the galleries are not disturbing me in the least; and if the Senator will excuse me, I will withdraw his point of order. [Laughter.]

Mr. LEWIS. As the Senator from Arkansas is not disturbed either by the occupants of the galleries or by the Senator from Indiana or by the Senator from Nebraska, I will sit down, quite content.

Mr. ROBINSON. That is right; that is the way to do it.

Mr. MINTON and Mr. BURKE addressed the Chair.

Mr. ROBINSON. I yield now, first, to the Senator from Indiana.

Mr. MINTON. In connection with the proposition the Senator is so ably discussing, I suppose he would accept a statement from very high authority on that point, namely, the present Chief Justice of the United States. In 1928 Chief Justice Hughes said:

> Some judges have stayed too long on the bench. It is extraordinary how reluctant aged judges are to retire and to give up their accustomed work. I agree that the importance in the Supreme Court of avoiding the risk of having judges who are unable properly to do their work and yet insist on remaining on the bench is too great to permit chances to be taken, and any age selected must be somewhat arbitrary, as the time of the failing in mental power differs widely.

Mr. ROBINSON. My favorite authority on that subject is not Mr. Chief Justice Hughes; it is Mr. Justice McReynolds.

Mr. MINTON. If the Senator will permit me, I will also quote what Mr. Justice McReynolds said.

Mr. ROBINSON. I myself am going to read that. The Senator could probably make this speech much more effectively than I can make it, but I still maintain that, as a Senator, I have some right to talk a little within my own time.

In October 1914, when the Associate Justice, Mr. McReynolds, was Attorney General, he submitted a report which no doubt is in the mind and memory of my good friend the Senator from Indiana [Mr. MINTON]. In the

performance of his duties he sent an urgent recommendation to Congress, and I shall now read it:

> Judges of the United States courts at the age of 70, after having served 10 years, may retire upon full pay. In the past many judges have availed themselves of this privilege. Some, however, have remained upon the bench long beyond the time they are adequately able to discharge their duties, and in consequence the administration of justice has suffered. I suggest an act—

Not a constitutional amendment, I remind the Senator from Nebraska [Mr. BURKE]; just an act—

> I suggest an act providing that when any judge of a Federal court below the Supreme Court fails to avail himself of the privilege of retiring now granted by law, that the President be required, with the advice and consent of the Senate, to appoint another judge who would preside over the affairs of the court and have precedence over the older one. This will insure at all times the presence of a judge sufficiently active to discharge promptly and adequately the duties of the court.

It is true that Mr. Justice McReynolds, then Attorney General, limited his recommendation to the inferior courts, the circuit and district courts of the United States, but there is no difference in principle if the doctrine be applied to the Supreme Court as well as to the inferior courts.

Mr. MINTON. Mr. President, will the Senator yield further?

Mr. ROBINSON. I yield to the Senator from Indiana.

Mr. MINTON. I may fortify the Senator's splendid argument with another high authority, another Chief Justice of the United States Supreme Court. He did not limit it to the lower courts and he did not put the age at 75. I refer to the late Honorable Chief Justice Taft, who said:

> There is no doubt that there are judges at 70 who have ripe judgments, active minds, and much physical vigor, and that they are able to perform their duties in a very satisfactory way. Yet in a majority of cases when men come to be 70 they have lost vigor, their minds are not as active, their senses not as acute, and their willingness to undertake great labor is not so great as in younger men, and as we ought to have in judges who are to perform the enormous task which falls to the lot of Supreme Court Justices.

Mr. BURKE. Mr. President——

Mr. ROBINSON. I yield to the Senator from Nebraska.

Mr. BURKE. Let me submit one further question before we get too far away from the power of Congress to fix the size of the Supreme Court. Does the Senator share the view expressed by the First Assistant Attorney General, that the framers of the Constitution purposefully left to Congress the right to fix the number of Justices on the Supreme Court in order that Congress might have that means of checking the Court and bringing its decisions into line with the congressional will?

Mr. ROBINSON. Mr. President, that is a peculiar question. Did anyone hear anything like it from a lawyer?

Mr. BURKE. Does not the Senator understand the question?

Mr. ROBINSON. I intend to answer the question. I am not sufficiently familiar with the debates, if there were any on that subject, to know just what was in the minds of the framers of the Constitution to understand or to state here what thought prompted them to vest in the Congress the unlimited and unrestricted power to provide the number of Justices composing the Supreme Court. The significant fact to me is that nothing was brought to their attention that prompted them to fix the number of Justices of the Supreme Court, or to deny to the Congress the power, the unlimited power, to say how many shall compose the Supreme Court.

I regret not to be able to say just exactly what it was that prompted the framers of the Constitution to leave that power with the Congress. It is sufficient for my purpose and for all who hear me to say there was nothing that prompted them to limit the power, but that they left the authority in the Congress, and we are now exercising it as the Congress has exercised it in years gone by.

Mr. BURKE. Mr. President, will the Senator yield again?

Mr. ROBINSON. Very well.

Mr. BURKE. Although the Senator has not directly answered my question with reference to the statement of the First Assistant Attorney General——

Mr. ROBINSON. I do not even know what the Senator from Nebraska has in mind.

Mr. BURKE. Surely the Senator has read the hearings before the Senate Judiciary Committee?

Mr. ROBINSON. I read some of them.

Mr. BURKE. He was one of the chief proponents of the bill.

Mr. ROBINSON. I did not feel it profitable to read some of the hearings. Much of them were mere repetitions of statements I had already read. But I do not know why the Senator persists in pressing me to say whether I think the theory of the Assistant Attorney General as to the motive which prompted the leaving of this power in the Congress be correct. To me it is a matter of indifference. The Senator may reach any conclusion about it that concerns him. It does not concern me at all. We have the power. We have exercised it. We are seeking to exercise it again. The question is whether it is sound public policy to employ that power now.

Mr. BURKE. Mr. President, will the Senator yield further?

Mr. ROBINSON. Certainly.

Mr. BURKE. The Senator has stated his view of the matter, that this is an unlimited power possessed by Congress to make the Court 10 or 15 or 100, if they wish, and for any purpose or motive that may appeal to the Congress. Do I correctly state the Senator's position?

Mr. ROBINSON. Yes. I think there is no limitation in the Constitution on the power of the Congress to prescribe the number of Justices that shall compose the Supreme Court. I would not say it is sound policy to exercise that power for a bad motive, but the power exists, and that is sufficient for this argument.

Mr. BURKE. The Senator feels that there is no merit whatever in the position of those who take the view that the reason why the framers of the Constitution did not say, "We shall have a Supreme Court of a certain number", was that Congress might be free to give us at any time a Court of a size that could promptly and efficiently do the work of the Court, and that Congress has no power within the spirit of the Constitution to add any members to the Court for any other purpose.

Mr. ASHURST. Mr. President——

Mr. ROBINSON. No, Mr. President; I do not make that statement. The Senator knows I declined to pass judgment on the motives which prompted the framers of the Constitution to leave this power in the Congress. It is a very strong argument that the Senator from Nebraska does not question the existence of the power.

I am glad to yield now to the Senator from Arizona.

Mr. ASHURST. Mr. President, when the framers of the Constitution came to create the Supreme Court, they did not by mere accident or inadvertence grant to Congress the power to exercise checks against the overreaching of the liberties of the people by the Court. Many, if not most, of the members of the Convention were scholars; some of them had studied law in the Middle Temple in London, and most, if not all, of the members were familiar with the judicial tyranny which had taken place in England during the troubled period of the Stuarts and other reigns preceding the drafting of the Constitution.

The framers took meticulous care and much pains, scholars and historians as they were, to see to it that the judicial power they granted to the courts should never run so riot as to thwart the will of the American people. Hence, they not only deliberately made Congress the body that should fix the number of the members of the Court, but they even went so far as to deny to the Court the right to fix its own jurisdiction, and the question of jurisdiction of that Court is, within certain limitations, subject to the right and power of Congress to change and modify as and when Congress sees fit.

The framers did not permit the Supreme Court to be the judge of the qualifications of its own members. The

framers required the Court to depend upon the Congress for appropriations for its expenses; yea, even its own bailiff.

Nothing in all the history of the Constitution making is more clear than that the makers deliberately saw to it that no judicial branch should be set up that would overreach the legislative branch or the executive branch.

The makers were wise enough also to repose in Congress the legislative power and to grant the Court the judicial power.

I had not intended to interrupt the able speech of the Senator from Arkansas, but whatever may have been said about this proposed legislation, no lawyer in America has ever said that this bill, if it should become the law, would take any judicial power from the Supreme Court of the United States.

If this bill passes, the courts will possess and exercise the same judicial power they had before, and I venture the assertion that if this bill took any judicial power from the Supreme Court of the United States, there would not be 5 votes for it.

I thank the Senator from Arkansas for yielding to me.

Mr. BURKE. Mr. President, will the Senator from Arkansas yield so that I may ask the Senator from Arizona a question?

Mr. ROBINSON. I think I had better proceed.

Mr. BURKE. I merely wish to ask the chairman of the Judiciary Committee a question.

Mr. ROBINSON. Yes; I will yield. I wish to be a good fellow and yield.

Mr. BURKE. I should like to ask the learned chairman of the Judiciary Committee if it is his opinion, then, that the framers of the Constitution with purpose left fixing the size of the Supreme Court to Congress so that Congress at any time could use that power to check and curb the Court?

Mr. ASHURST. I will say that I believe the framers of the Constitution had in mind that when a judge began to slide into a graceful senility, and refused to resign or retire, Congress at least could give the Court some relief. [Laughter.]

Mr. ROBINSON. Mr. President, I have been entertained and instructed by these interruptions.

Mr. ASHURST. I apologize to the Senator for interrupting him.

Mr. ROBINSON. No; the Senator must not apologize. He has contributed very effectively to my remarks; but I am prompted by the question of the Senator from Nebraska, and by the answer that has been made to that question by the Senator from Arizona, to say that my judgment is that the justification for this legislation lies in large part in the fact that the Supreme Court, according to members of that body and according to great Members of the Senate, have gone outside the sphere of their jurisdiction, which is to interpret and apply the laws, and have entered the realm exclusively ascribed to the Congress by the Constitution—the realm of defining public policies.

I see before me today great Senators, whose names will go down in history among the immortals, who have made that statement on the floor of the Senate of the United States, and who now apparently have forgotten the position they took in days gone by. In another address, on a different occasion, it is my intention to show some of the instances in which the Court went outside the sphere of judicial interpretation, and literally wrote into the statutes words that Congress did not incorporate in them, and changed and gave unnatural meanings to words which had better have been naturally interpreted.

In doing that I do not say that the Supreme Court acted corruptly, or that its members were conscious of trespassing upon the jurisdiction of the legislative department. I do affirm, and believe myself able to prove to a jury of lawyers, that the Court is responsible for many of the troubles against which we are now legislating, because it gave unnatural and illogical definitions to terms employed by the Congress in enacting legislation.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield to the Senator from Nebraska.

Mr. BURKE. Even at the risk of making somewhat of a nuisance of myself——

Mr. ROBINSON. Oh, the Senator cannot do that.

Mr. BURKE. I am afraid he has already done it.

Mr. ROBINSON. The Senator never makes a nuisance of himself. Whenever he is a nuisance, Nature does it for him. [Laughter.]

Mr. BURKE. Very well; but, passing that over, I think it is important that at the start we find out as definitely as we can something of the purpose of this bill. As I understand, the Senator now takes the position that because the Supreme Court, in the opinion of some persons and in his own opinion, has at times gone outside its own function, therefore, it is now proper and legitimate for Congress to make over the Court to some extent in order to see that that does not happen again. Is that the point?

Mr. ROBINSON. That is not a very bad statement of my position. It is not entirely accurate; but the thought does appeal to me that if the judiciary trespasses on the jurisdiction of the legislative department, and undertakes, in interpreting statutes, to say what is sound or unsound public policy, Congress has the right—yea, it may be the duty of the legislative branch of the Government—to exercise such powers as it possesses to prevent that usurpation of authority; and the Senator from Nebraska and any other Senator may make the most of that admission.

Mr. BURKE. Mr. President, if I may ask just one other question——

Mr. ROBINSON. Yes.

Mr. BURKE. Will the Senator, in the course of his remarks—I do not ask him to do it now, but in his own good time—explain to us how he can reconcile the statement he has just made with the principle that we have in this country, and desire to maintain, an independent judiciary?

Mr. ROBINSON. Why, certainly—certainly. Independence of the judiciary does not involve or imply usurpation by the judiciary. If the Senator cannot see that without an elaboration of the argument, I think I had better appeal to other minds. My theory is that the demand for this legislation arises principally—not entirely, but principally—out of the fact that the judiciary, not only in the Supreme Court but even in the lower courts, have from time to time confused the question of power with the issue of policy. Do you get it? They have decided that the exercise of a power by the Congress is unconstitutional in some instances when they disapproved the public policy involved in the legislation. That is wrong; and the efforts to prevent it have no sensible relation to the independence of the judiciary. The judiciary must be independent in the sphere ascribed to it by the Constitution. It must not be an outlaw in any other sphere. The mere fact that there is no appeal from the Supreme Court of the United States gives that Court no right to violate constitutional limitations imposed by law and by reason on its own authority.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield.

Mr. MINTON. If the Supreme Court is doing what the Senator says it is doing—and it is, and has done it times out of number—then it is exercising a legislative function.

Mr. ROBINSON. Certainly.

Mr. MINTON. And if it is exercising a legislative function, there is no place to which to turn for the redress of a legislative function except the legislature.

Mr. ROBINSON. The proposition is self-evident. The Senator has stated it better and more accurately than I could state it.

Mr. BORAH. Mr. President——

Mr. ROBINSON. I yield to the Senator from Idaho.

Mr. BORAH. If the Supreme Court up to the present time has been exercising legislative power, in what respect does this bill prevent it from exercising legislative power in the future?

Mr. ROBINSON. There is not any way by which the Congress can prevent a judge from doing the wrong thing; but the theory of the bill is that it will gradually place on

the bench those who will respect, as a primary consideration, the limitations on their own authority. I do not ask you to take my word. I will ask you to take the word of the Senator from Idaho himself.

In 1930, I think, the Senator from Idaho arose on this floor and made an eloquent appeal against the confirmation of a great Chief Justice, solely on the theory that that Chief Justice was disposed to decide questions of public policy rather than questions of limitation on the power of the law-making body. The Senator from Idaho may take from now until the end of the threatened filibuster to explain his attitude on that occasion; and he was not alone in that attitude. At the same time a dozen other Senators, among them the brightest and the bravest who are opposing this bill, sought to prevent the confirmation of Mr. Chief Justice Hughes on the theory that Mr. Hughes would lead the Court out of the proper sphere of judicial determination into the realm of legislation. They could not say anything against his character other than that. They could not question his personal integrity, but they fought him to the bitter death; and I cabled back from London, where I had gone on a mission for the Government, my vote in support of Mr. Hughes, because I believed him to be an honest and an able man. The issue was acute; it was tense; it was hard fought, and there was a large vote in the Senate. At one time it was thought doubtful whether he would be confirmed. The opposition rested their argument solely on the ground that he would legislate as a judge. That is the issue raised in the Baltimore railway case, spoken of with such eloquence and force by the able Senator from Virginia [Mr. GLASS]. He said in 1930 that he wanted this body to be informed as to his ground of opposition to the confirmation of Mr. Hughes, and it was that in the Baltimore railway case the court, led by Mr. Hughes, had gone outside the sphere of proper judicial consideration and action, and entered the legislative sphere. But of that, another time. I proceed now to a consideration of other features of the bill.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield.

Mr. BARKLEY. Is it not true that in the able address made on that occasion by the Senator from Idaho, when asked by another Member of the Senate whether he would remedy the situation by amending the Constitution, he replied no, he would amend the Court?

Mr. ROBINSON. Oh, yes. The Senator from Idaho did not then have any sympathy with amending the Constitution, because he said the same old judges would read an erroneous interpretation into any amendment which might be made, so he favored amending the Court. He may take the pending bill as in a sense an "amendment of the Court", if he wishes to do so, but when he makes an argument against it on that ground, I reply to him in his own language—well-considered, forceful, and influential.

Mr. STEIWER. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield.

Mr. STEIWER. If the members of the Court are disposed to indulge in legislation, that is to say, to assert their views upon policies rather than their views upon law——

Mr. ROBINSON. Not always; sometimes.

Mr. STEIWER. I say, if that is the case——

Mr. ROBINSON. Has the Senator any doubt that that has been the case?

Mr. STEIWER. I have no doubt about it in my own mind.

Mr. ROBINSON. I am only searching the Senator's mind.

Mr. STEIWER. If that is the case, is not the logical and proper means of reaching that to object to the confirmation of the nomination of the judge and not merely to change the composition of the Court?

Mr. ROBINSON. I think that its caviling. After a judge is confirmed he is on the bench for life, and there is no opportunity of knowing what he is going to decide except to use the method employed by the Senator from Idaho and the Senator from Virginia, and say, "From what he has done heretofore, from the clients he has represented, from the methods used in other matters, I think he will be unfair to the public, unconsciously unfair to the public."

Of course, if one knows about those things at the time confirmation occurs, and has not confidence in the judge, he would do just what these Senators did in opposing Mr. Justice Hughes. I cannot say that their judgment of Mr. Hughes is confirmed by the history of his actions as the Chief Justice. I have great respect for that able lawyer. I regard him as a learned and conscientious man, and do not wish to be construed as giving endorsement to the arguments which were employed against his confirmation. I voted for his confirmation.

I pass now from the main feature in dispute of the bill—namely, the appointment of additional Justices of the Supreme Court in cases where members are serving beyond the age of 75 years—to certain other provisions in the bill, and refer at once to the subject of the necessity for a proctor.

The Supreme Court, in the pending amendment, as in the original bill, is given power to appoint a proctor, whose duty it shall be to obtain information as to the volume, character, and status of litigation in the district courts and circuit courts of appeals, and such other information as the Supreme Court may require. He is also authorized to investigate the need of assigning district and circuit judges to other courts than their own, and to make recommendations thereon to the Chief Justice; to recommend, with the approval of the Chief Justice, to any court of the United States methods for expediting cases pending on its dockets; and to perform such other duties consistent with his office as the court shall direct.

Under the system now existing there is no one officer charged with the function of keeping in constant touch with the district courts and circuit courts of appeals in order to be posted as to the progress of the judicial business in each court, the state of the docket, the existence of arrears, if any, and the need for temporary or permanent assistance, if it exists. True, the conference of senior circuit judges, which is presided over by the Chief Justice, receives and considers reports as to the state of the judicial business in all of the Federal courts. However, the conference meets only once a year and sits for only 2 or 3 days, and has no executive officer to carry out its recommendations, or even to prepare the material for its use.

The Attorney General submits to the conference information relative to the state of the dockets and the condition of the business of the courts, insofar as he is able to obtain it. Again, it is important to bear in mind that the information is submitted by the Attorney General only once a year.

There is urgent need for an official who will devote his entire time to keeping currently posted as to the state of the judicial business and the needs of each Federal court from day to day. Such an official could recommend the temporary assignment of judges to districts that need such assistance when occasion arises. He would be in a position to suggest improvements in the handling of the dockets and the installation of efficient methods in the transaction of business.

While it is true that the Department of Justice, to some extent, is in touch with the needs of the courts and from time to time suggests the temporary assignment of judges to congested districts, this generally occurs in connection with the handling of Government business. The courts themselves are expected to scrutinize and meet the needs of private litigants. They have no official charged with such a duty, however, each district court and each circuit court of appeals being very largely a law unto itself. It is a strange thing that the Federal judicial system, unlike most public and private activities, has no official charged with the duty of administration. The introduction of systematic methods in the transaction of judicial business can do much toward the elimination of unnecessary delays and waste of time on the part of counsel and litigants.

One can well envisage the proctor maintaining continuous contacts by correspondence with the senior circuit judges, the district judges, and the clerks of the various courts, so as to keep his hand on the pulse of Federal judicial business and to be familiar with the needs of the various circuits and districts. He would be in a position to know what dis-

tricts need help and what judges are available for temporary assignment to districts or circuits away from their residence, and to aid the overcrowded districts in getting the assistance they should have. From time to time he could visit the various courts and make suggestions as to improvements that could be introduced in the arrangement, the calling and the disposition of the dockets. He could go into a district in which congestion was reported and endeavor to work out some means to alleviate the condition. In other words, he could do the innumerable things in the improvement of efficiency that one expects of an officer who is in a position to devote his entire time and energy to administration, and who is not burdened with any other duties.

The system has been tried out on a small scale in the city of Cleveland, Ohio, where it has met with great success. In that city, the official corresponding to the proposed proctor is known as the assignment commissioner, who has charge of the docket and the assignment of cases for trial. The systematization of business which has resulted from his work has led to a substantial reduction in law's delays.

Court congestion and law's delays are problems which are encountered not only in this country but also are found abroad. In Great Britain a commission was appointed several years ago "on the dispatch of business at common law." In a report which it submitted in January 1936, suggesting a number of improvements for the purpose of achieving efficiency in the transaction of judicial business, it proposed, among other things, the creation of a well-paid, whole-time officer for the purpose of managing the dockets, such officer to be known as the manager of the lists. The commission stated that the business of the courts should be in the hands of a whole-time administrative expert, responsible, under the direction of the Chief Justice, for its organization (pp. 53–54). The functions and duties of the proposed officer are described, as follows, in the report (p. 56):

1. He should be responsible to the Lord Chief Justice for the organization of the business and the making up of the lists, and for insuring the even and continuous flow of the work.
2. He should be the center of such an organized system of information from all concerned in the conduct of litigation, both in London and on circuit, as will enable him to forecast the future course of business.
3. He should constantly review the organization of the courts, and tender advice upon it from time to time, as may be necessary, to the Lord Chancellor and the Lord Chief Justice. He should also report annually to the Lord Chancellor and the Lord Chief Justice on the working of the organization and the administrative requirements.

There is no doubt that the creation of the office of proctor will be a big step forward in the direction of efficiency in the transaction of judicial business in the Federal courts.

I wish to speak now just a moment on the subject of appointment of judges to serve outside their districts and circuits.

ASSIGNMENT OF JUDGES TO SERVE AWAY FROM THEIR CIRCUITS AND DISTRICTS

The purpose of this provision is obvious. It is to make possible temporary assignments of judges to congested areas in order to relieve crowded conditions.

It has been argued by the opponents of the bill that under the formula governing the appointment of additional judges the new appointments will not necessarily be made in congested areas, but in fact they will frequently be made in circuits or districts which require no additional assistance. This argument completely overlooks the purpose of the provision which has just been summarized. Its objective is to create an element of flexibility in the Federal judicial system so as to make it possible to assign a judge temporarily to serve in a district or circuit other than his own for the purpose of alleviating congestion and aiding in the disposition of a crowded docket.

Congestion is not always a permanent condition. It is frequently a variable and temporary state of affairs. A district that needs help this year will not necessarily need it a year later. On the other hand, a district that may not be in arrears today may find itself confronted at some future date with a rush of a particular class of litigation for which assistance is indispensable if the docket is not to get hopelessly in arrears.

Therefore the fact that under the pending measure some additional judges may be appointed in areas not now in need of assistance is not significant. In fact, it may be desirable. Such judges can be assigned and shifted from one district or circuit to another, where their services will do the most good, so long as they are not required in their home locality. To enumerate in the bill specific circuits and districts in which additional judicial positions should be created is neither practicable nor desirable; first, because congestion is a varying phenomenon; and, second, because an attempt to accomplish the desired result in this manner would lead to interminable disputes and controversies, and very likely to logrolling. Similarly, to endeavor to create a group of judges at large, not appointed for any circuit or district, would be beset with obstacles, such as difficulties of selection, that might prove almost insuperable. The only practicable solution is to establish a formula that would operate automatically—one which would require the appointment of additional judges on the occurrence of certain contingencies. This will be accomplished by the pending measure. Its result will be to create a group of judges available for service anywhere in the United States, as necessities require, on the call of the Chief Justice. Let it be remembered in this connection that the assignment of judges away from their own circuits and districts will be lodged solely in the Chief Justice of the United States. The executive branch of the Government will have no connection with the matter.

The question has been asked why the shifting of circuit judges should be permitted. This element of flexibility is necessary because it not infrequently happens that a particular circuit court of appeals is in arrears, or has a congested docket the disposition of which could be much assisted by the temporary assignment of a judge from another circuit.

It has been said that the flexible provision is unnecessary, since under existing law there is authority to assign judges to serve away from their home districts. This contention is based upon a misconception of the provisions of existing law. The present law (Judicial Code, sec. 13; U. S. C., title 28, sec. 17) provides:

Whenever any district judge by reason of any disability or necessary absence from his district or the accumulation or urgency of business is unable to perform speedily the work of his district, the senior circuit judge of that circuit, or, in his absence, the circuit justice thereof, may, if in his judgment the public interest requires, designate and assign any district judge of any district court within the same judicial circuit to act as district judge in such district and to discharge all the judicial duties of a judge thereof for such time as the business of the said district court may require. Whenever it is found impracticable to designate and assign another district judge within the same judicial circuit as above provided and a certificate of the needs of any such district is presented by said senior circuit judge or said circuit justice to the Chief Justice of the United States, he, or in his absence the senior Associate Justice, may, if in his judgment the public interest so requires, designate and assign a district judge of an adjoining judicial circuit if practicable, or if not practicable, then of any judicial circuit, to perform the duties of district judge and hold a district court in any such district as above provided: *Provided, however,* That before any such designation or assignment is made the senior circuit judge of the circuit from which the designated or assigned judge is to be taken shall consent thereto.

It will be observed that the scope of the present law in this respect is extremely limited. First, there is no provision for assigning circuit judges for service away from their home circuits. Second, before the Chief Justice can make an assignment of a district judge to another district, outside of the circuit in which said judge is located, it is necessary that a request for such an assignment be made by the senior circuit judge of the circuit to which the district judge is to be assigned, and that it be consented to by the senior circuit judge of the circuit from which the district judge is taken. Third, a practice has grown up not to assign judges away from their home districts except with their own consent, although the statute is silent on this

point. It is proposed now to wipe out these hampering limitations and restrictions. The flexibility provision will apply both to circuit and to district judges. The result will be the establishment of a mobile judicial force, the members of which will be subject to call, at the direction of the Chief Justice, to any place where they can be of assistance in preventing the accumulation of arrears and in keeping the business of the court in a current condition.

It does not seem desirable, in view of the long time I have held the floor, to discuss at length the provisions of the bill which relate to the prompt appeal and the decision of cases involving the constitutionality of statutes. We all remember that in numerous instances during recent years injunctions have been issued on the ground that a statute is claimed to be unconstitutional, and proceedings under the statute have been abated, sometimes for as long as 3 to 5 years. There are provisions in the substitute which would enable the Government to participate in proceedings involving the constitutionality of Federal statutes, to take prompt appeals from adverse decisions after submitting evidence and argument, or without submitting evidence and argument, so that hereafter, if this substitute becomes the law, the question of the constitutionality of a Federal statute may be promptly, or reasonably promptly, determined.

THREATENED FILIBUSTER

In the conclusion of my remarks today I am prompted to make reference to the subject of a threatened filibuster. It would not seem to me appropriate to do so at this time if it were not for the fact that some of my dear friends who are in the opposition have been quoted in the press as saying that they are determined that the Senate shall never be permitted to register its conclusion on this legislation.

Let me say that the right of full debate is recognized by myself and my associates. There is not the slightest disposition to prevent any Senator from saying what is in his mind and heart on this subject. But I have no patience with and no disposition to submit, further than I have to do so, to an effort to deny any Senators representing their constituencies in this body the opportunity to register their views; and I do not believe that a filibuster will find justification in the conscience and judgment of those who believe in democratic institutions.

As one who is charged with some responsibility in this service, I hope that the questions at issue will be fairly and fully discussed, as I know they will be; and, when that has been done, that those who are opposed to the legislation will yield without putting the Senate to the embarrassment and inconvenience of staying here long days and long nights in a test of physical endurance. Much as it might surprise the Members of the Senate, I would probably come out of that kind of a test better than those who are in the opposition, at least some of them. I think I could endure it longer than could the Senator from Montana [Mr. WHEELER]. [Laughter.]

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. ROBINSON. Yes; with pleasure.

Mr. WHEELER. I am in very good physical condition. I have been training for it.

Mr. ROBINSON. Oh, yes; the Senator warns me now——

Mr. WHEELER. No; I do not warn the Senator.

Mr. ROBINSON. That he is in training for a filibuster. Very well. Before he gets through, he will not feel so confident as he feels today.

Mr. WHEELER. Let me say, then——

Mr. ROBINSON. I yield.

Mr. WHEELER. I do not feel "cocky" about it; I never have felt "cocky" about it; and I am not threatening the Senator with a filibuster. I say, however, that the amendment in the nature of a substitute which the Senator is proposing has never been heard or considered by any committee of the Senate of the United States, and, in the natural course of events, it will take considerable time to discuss it.

Mr. ROBINSON. Oh, yes; and do not imagine, my dear friend, that I am going to interfere with that freedom which you so much enjoy of discussing it liberally and fully; but I think I will know when you turn from a debater into a filibusterer, and then, as the old saying goes, it will be "dog eat dog." [Laughter.] We will just have to do the best we can. I hope that these remarks about a filibuster will prove to have been unnecessary. What I am saying now is that those of us who think the American people have the right to have their representatives express their view on this proposed legislation can stay here just as long as can those who are opposed to it.

Mr. BURKE. Mr. President, did the American people have any right to express their will on this proposition at the last election?

Mr. ROBINSON. No; they have never voted on it. A great thought is in the profound mind of my good friend from Nebraska prompting that question. Of course, we have never had a referendum on it, and of course, there has been no vote on the question. I might remind the Senator that there is no provision in the Constitution for a referendum on a Federal statute. Did he not know that? Then why in thunder did he ask me that question? Of course he knows that the Federal Constitution does not authorize a referendum of statutes to popular vote.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. ROBINSON. Yes.

Mr. BURKE. It is not at all necessary for the Senator to shy away from the question that I presented.

Mr. ROBINSON. Oh, no; bless your heart, I am not shying away from anything. [Laughter.]

Mr. BURKE. I made no suggestion about a referendum to the people on this question at all. The Senator from Arkansas stated——

Mr. ROBINSON. I misunderstood the Senator.

Mr. BURKE. That is what I was trying to explain.

Mr. ROBINSON. I am in perfect good faith about it. I thought the Senator asked me if the American people ever voted on this proposed legislation. If I am wrong about it, I will leave it to those who hear me to judge, and if I am wrong I will withdraw my answer.

Mr. BURKE. If the Senator will yield, I will try to set him straight on the matter.

Mr. ROBINSON. Very well; the Senator may take all the time he wants; I have about finished.

Mr. BURKE. I merely desire to ask a question.

Mr. ROBINSON. Very well; what is the question?

Mr. BURKE. Did not the Senator say, in his colloquy with the Senator from Montana, or following it up, that the people of this country have a right to have their will carried out, or something to that effect?

Mr. ROBINSON. Yes.

Mr. BURKE. Then, I asked the Senator the question——

Mr. ROBINSON. No; what I said—the Senator ought not to misquote me either intentionally or carelessly—what I said was that the American people have a right to have their representatives here register or express their opinion on this proposed legislation. I am content when we have had a vote on it to accept the result; but I am not content that my good friends, such as the Senator from Nebraska and others, shall prevent Senators, chosen by the people, expressing their views on this legislation.

Mr. BURKE. The Senator from Arkansas seems to be the only one worrying very much about that at the moment. [Laughter.]

Mr. ROBINSON. Oh, yes; but I know——

Mr. BURKE. The Senator has been reading the newspapers.

Mr. ROBINSON. Yes; I have been reading the newspapers; I have been reading the interviews—the ill-considered, unwise interviews—by my good friend the Senator from Nebraska. If he would talk less and do more, my judgment is we would have a shortening of the debate.

Mr. BURKE. I should like to go back to the question. The Senator has restated what he said, and correctly. The question I asked the Senator was whether the voters of this country at the last election had an opportunity not to vote on the measure itself but in their choice of Senators or

Members of the other House to express their views on this type of legislation?

Mr. ROBINSON. I have answered the Senator.

Mr. BURKE. Was there anything in the Democratic platform about it?

Mr. ROBINSON. There was no issue, so far as I know——

Mr. BURKE. No.

Mr. ROBINSON. In the last election on the subject except such as may be implied from the general principles of the platform. The Senator is entirely welcome to that. But the point I am making is that this is supposed to be a representative government, in which, after maturing opinions, the Members of the legislative body shall be given the opportunity to pass upon legislation presented for their consideration.

I will conclude with the declaration that to me it is an indisputable evidence of certain failure anticipated by the opponents of this bill when they start out by saying they will not permit a vote on the subject.

Mr. BURKE. Mr. President, will the Senator permit one more question?

Mr. ROBINSON. No. I am talking now; give me a little of my own time. If the opponents of the bill had the votes to defeat us, they would take the vote tomorrow. Do you not all know you would?

Mr. WHEELER. Mr. President——

Mr. ROBINSON. Oh, yes; do not answer or you will discredit yourselves; you know you have not the votes, and, therefore, you are starting out with a threatened filibuster.

Mr. BURKE. Would the Senator like to vote on the original bill tomorrow?

Mr. ROBINSON. No; I am not going to take a vote on the original bill at all.

Mr. WHEELER. Of course not; and the reason why you are not going to take a vote on the original bill is that——

Mr. ROBINSON. We do not have the votes to pass it. [Laughter.]

Mr. WHEELER. You do not have the votes to pass it.

Mr. ROBINSON. But we have the votes to pass the amendment in the nature of a substitute; and now you are standing around here talking about a filibuster, which is admission of the fact that you are "licked" to start with.

Mr. WHEELER. No.

Mr. ROBINSON. All right. These things have to come to an end.

Mr. BURKE. Mr. President, will the Senator yield to another question?

Mr. ROBINSON. I yield.

Mr. BURKE. Was it not the Senator from Arkansas who at the opening of the present session declared that the program of the session would be to work out a constitutional amendment on the question of the power of the Congress in connection with this matter and submit it to the people?

Mr. ROBINSON. I did; yes.

Mr. ASHURST. I think the Senator is thinking of the Senator from Arizona.

Mr. ROBINSON. No. I did say that. I thought the Constitution could be amended so as to make certain and definite the power in the Congress to deal with some of the subjects involved in legislation that was being held unconstitutional. I was certain then that some of the decisions were wrong, but I did not know that the Supreme Court itself was going to about face and correct by interpretations what some of us were insisting should be corrected by constitutional amendment. The recent decisions of the Supreme Court, say what you please, have justified the contention that, for the most part questions of interpretation were involved rather than questions of constitutionality, for the Court itself has corrected its errors and has admitted that for 17 years by decisions acts of the Congress were nullified that ought never to have been nullified but ought to have been sustained from the beginning. The Senator from Nebraska is welcome to any consolation or enjoyment he may get out of that condition.

Mr. BARKLEY and Mr. BURKE addressed the Chair.

Mr. ROBINSON. I yield to the Senator from Kentucky.

Mr. BARKLEY. My recollection is——

Mr. BURKE. Will the Senator from Kentucky yield for a moment so that I may finish my question?

Mr. BARKLEY. Yes; I did not know the Senator had not concluded.

Mr. BURKE. I appreciate the Senator's yielding to me. Does the Senator from Arkansas still believe, as he did at the opening of the session, that a constitutional amendment is necessary, or has the change in the attitude of the Court altered his opinion?

Mr. ROBINSON. No. I believe that every provision of the proposed substitute which I assisted in preparing, and to which I have committed myself as forcibly as I am able to do anything, is constitutional, and that for the purposes sought to be accomplished under this bill no constitutional amendment is necessary. I will say, however, that if an opportunity presents itself for an amendment providing for compulsory retirement at the age of 75 I would not be averse to it.

Mr. President, I am very grateful for the very close attention which has been given me by my colleagues and by those who are present on this occasion.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. ROBINSON. I yield.

Mr. BARKLEY. I merely wanted to suggest that it is my recollection that what the Senator from Arkansas said at the beginning of the session about a constitutional amendment had to do with an amendment to clarify and strengthen the power of Congress in matters of legislation, and did not deal with any legislation pertaining itself to the Court.

Mr. ROBINSON. That is true.

Mr. BURKE. Mr. President, just one more question. Does the Senator from Arkansas, then, consider that the proposed substitute, in the preparation of which he collaborated, is a substitute for a constitutional amendment?

Mr. ROBINSON. No; the Senator from Nebraska knows better than to ask me, as one lawyer to another, a question like that. A constitutional amendment would change the Constitution; it would prevent service on the part of a Justice beyond the period fixed by the amendment. The proposed legislation would not do that; it does not seek to do it. It merely authorizes the appointment of additional Justices in cases where Justices are serving beyond the age of 75.

Mr. BURKE. I am not referring to that kind of a constitutional amendment, and that was not the kind the Senator from Arkansas referred to at the opening of the session.

Mr. ROBINSON. How many constitutional amendments has the Senator from Nebraska proposed since this debate began?

Mr. BURKE. Two or three.

Mr. ROBINSON. Does not the Senator know how many?

Mr. BURKE. I do not know.

Mr. ROBINSON. My God, does not the Senator know how many constitutional amendments he has proposed? Is he so indifferent on the subject that he actually cannot count and tell the Senate how many proposals he has made for amending the Constitution? Apparently his mind is in a state of flux on the subject and he did not know and does not know now what to do.

Mr. BURKE. I neither know nor care as to the number, but I should like to ask a question about the constitutional amendment which the Senator from Arkansas had in mind at the beginning of the session. Has he never gotten to the point of introducing it?

Mr. ROBINSON. I have never offered one. There are 50 pending, and I have never been able to find two Senators in favor of any one of them. Each Senator is in favor of his own constitutional amendment. [Laughter.]

Mr. President, I had concluded what I have to say on this occasion. I have not the slightest doubt my good friend from Nebraska will have opportunity and take occasion to express his views on this very important question.

Mr. BURKE. Mr. President, I should like to ask the Senator another question.

Mr. ROBINSON. No; I am through.

Mr. BURKE. No more questions?

Mr. ROBINSON. No more questions today. The Senator may reserve them until next week. Good-bye. [Laughter.]

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the President pro tempore:

H. R. 2901. An act to extend the benefits of the Civil Service Retirement Act of May 29, 1930, as amended, to certain employees in the legislative and judicial branches of the Government;

H. R. 6287. An act to amend Public Act No. 467, Seventy-third Congress, entitled "Federal Credit Union Act"; and

H. R. 6737. An act to amend the stamp provisions of the Bottling in Bond Act.

REORGANIZATION OF FEDERAL JUDICIARY

The Senate resumed the consideration of the bill (S. 1392) to reorganize the judicial branch of the Government.

Mr. HATCH. Mr. President, before we proceed to a consideration of the amendment in the nature of a substitute, I wish to submit a word or two about the original bill and my own views in connection with that measure which was sent to the Senate last February. I think members of the committee know full well what are my views as to that bill.

I am not in accord with some of the views which have been expressed here this morning. It has been my thought that the powers of the Congress relating to the Supreme Court are only implied powers. Nowhere in the Constitution will be found any express grant of authority to the Congress to prescribe the size of the Supreme Court or the number of justices who shall compose it; but when the Constitution authorized the creation of the Supreme Court it was necessarily implied that Congress should have all the power required to set up the Court in such manner and to such extent as that it might exercise the judicial power conferred upon the Court by the Constitution. I agree that is the limit of the power that Congress has; that our efforts must be confined to giving the Court such machinery as may be necessary for it to carry out the judicial powers conferred.

Mr. President, I am in agreement with much that has been said here today about the usurpation of legislative power by the judicial branch of the Government. I believe that the courts of the land throughout a long period of our history have constantly usurped legislative powers and have rendered policy-making decisions, which is something the courts have no right to do. I concede that to be true, and I concede that the Supreme Court has gone further than that. Not only has the Court, in my opinion, invaded the legislative power but in instances it has amended the Constitution of the United States. The Supreme Court of the Nation has usurped the powers reserved to the people of America. I believe that to be the fact.

However, notwithstanding these things, I have believed that Congress was limited in its authority and that judicial usurpation of congressional power was not cured by congressional usurpation of judicial power. That has been my absolute, fundamental objection to the original bill which was sent to us, because I believed that by authorizing the appointment of new Justices in such numbers as that they could be used to control and direct judicial opinion, we would encroach upon judicial power and exercise a power not conferred upon us by the Constitution.

Therefore, Mr. President, I joined the majority of the Judiciary Committee in recommending that the bill should not pass as it was originally drawn, and I believe today just as I voted in the committee on that question.

As to the committee report which was filed in the Senate and in which I concurred and made my own special recommendations, much has been said throughout the country which I do not believe is justified by the report made nor by the intention of the majority of the committee. That of which I speak now is best illustrated by letters which have come to me from over the country generally, complimenting me for signing the majority report. Several of them have contained these exact words: "Now is the time to humiliate the President." "Now is the time to beat Franklin D. Roosevelt."

I want to say here in the opening of this debate that it has never been my intention to humiliate the President of the United States and it has never been my desire to "beat Franklin D. Roosevelt." I am sure when I speak these sentiments I express the sentiments of the majority of the Judiciary Committee which submitted the report.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

The PRESIDENT pro tempore. Does the Senator from New Mexico yield to the Senator from Wyoming?

Mr. HATCH. Certainly.

Mr. O'MAHONEY. The Senator from New Mexico was present at every meeting of the so-called majority of the Committee on the Judiciary which submitted the adverse report now before the Senate. The Senator from New Mexico participated in every conference. I am sure the statement he has now made is absolutely accurate. There was no intention upon the part of any member of the majority, no matter what his political affiliation may have been, to cast any personal reflection upon the President of the United States, and there never was the slightest intention in any such conference of any such purpose.

The report was purely objective. There is not a derogatory adjective in the report. I am sure the Senator from New Mexico and no other Member of the body would have signed the report had it been in any degree an attack upon the President.

Does the Senator agree with that statement?

Mr. HATCH. I agree entirely with that statement.

Mr. WHEELER. Mr. President——

The PRESIDING OFFICER (Mr. MINTON in the chair). Does the Senator from New Mexico yield to the Senator from Montana?

Mr. HATCH. I yield.

Mr. WHEELER. I am glad the Senator from Wyoming made that statement. I noticed in the press the other day a statement that conservative Members of the Democratic Party wanted to destroy the Democratic Party and in effect humiliate the President. I hardly think I would be classified as one of the conservative Members of the Senate. Until the time of the introduction of the Court bill I had always been looked upon as the radical Member of the Senate, or at least one of its radical Members.

I have sat in every conference that has been held by the opposition in the Senate to the pending Court bill. Never once have I heard expressed the slightest intimation that anyone who is opposed to the bill wanted to do anything in the way of humiliating the President of the United States.

I can say to the Senator from New Mexico that I think that up until the time the bill came on the floor of the Senate I was nearly as close to the President as was any other Member of the Senate, and as was the Senator from Wyoming [Mr. O'MAHONEY]. I would be one of the last men in the Senate, as I know the Senator from Wyoming [Mr. O'MAHONEY] would be, as I know the Senator from New Mexico [Mr. HATCH] would be, as I know the Senator from Nevada [Mr. MCCARRAN] would be, as well as every other Member of the Senate on the Democratic side of the Chamber—and probably on the Republican side of the Chamber—to do anything to seek to humiliate the President of the United States, whether he was Franklin D. Roosevelt or whether he was somebody else. Particularly I would not want to do anything to humiliate the President. No one on this side of the Chamber, so far as I know, wants to do anything to split the Democratic Party. All of this talk about it is sheer nonsense, in my judgment.

Mr. O'MAHONEY and Mr. LOGAN addressed the Chair.

The PRESIDING OFFICER. Does the Senator from New Mexico yield; and if so, to whom?

Mr. HATCH. I will yield first to the Senator from Wyoming, and then I shall be glad to yield to the Senator from Kentucky.

Mr. O'MAHONEY. Mr. President, I may add to what I have already said, that it is perfectly obvious to me that since there was no response of any kind or character to the report of the committee from any Member of the Senate, whether in the Judiciary Committee or out of the Judiciary Committee, or from any other person, the effort is now being made to make it appear to the country that that report was a personal attack. It is an old device. When you are unable to answer a question or to meet an issue, change the subject.

Every single suggestion that this report constituted an attack upon the President of the United States comes from those who were unwilling to meet the arguments in the report on the material phases of the bill; and the fact that the proponents of the bill come here absolutely deserting the measure as originally proposed is a sufficient declaration that the report was a purely objective report, and not a personal one. If it had been otherwise there would have been a minority report.

Mr. LOGAN. Mr. President——

Mr. HATCH. I yield to the Senator from Kentucky.

Mr. LOGAN. While I do not wish to interrupt the Senator at this time, I hope tomorrow to express my views about the bill. So far as I know, no other Member of the Senate or any one else has said that the majority report of the committee was an attack upon the present administration. I myself said it, and I stick to it, and shall defend that position before the Senate and the country; but I do desire to ask the Senator from New Mexico a question. Whether it was so intended or not, is not that the way the report is accepted throughout the country—as an attack upon the President of the United States?

Mr. HATCH. I will say in reply to the Senator from Kentucky that that is what gave rise to my remarks just now. I have received such letters, charging that we did seek to humiliate the President, and did seek to beat him down; and, more than that, I have letters in my files saying, "Follow that report by impeachment of the President of the United States."

Mr. LOGAN. I may say to the Senator that I had a dozen letters of that kind today, saying that the majority report ought to be used as the basis of an impeachment of the President of the United States. I did not make that report. I shall discuss that report, and I shall answer its arguments, as suggested by the Senator from Wyoming, because it is made up of hypocritical paragraphs of pointless piffle and nothing else; and those who wrote it knew that its arguments were wholly fallacious, and that its conclusions were absolutely false.

Mr. O'MAHONEY. Mr. President, I suggest that the Senator from Kentucky file a formal argument in support of that conclusion.

Mr. LOGAN. I shall do that in a speech which I hope to make tomorrow.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. HATCH. I yield to the Senator from Montana.

Mr. WHEELER. Of course, there are persons in this country who are opposed to the President of the United States; but let me call attention to the fact that when the utility bill was before the Senate a year or two years ago various persons wrote to me and wrote to other Senators who were supporting the bill, suggesting that the Senators ought to be impeached because they were supporting the bill. I never in my life received such vicious letters from anybody as I received during that debate; but anyone who takes seriously such fanatical, crazy letters, whether they come from the power interests or whether they come from anybody else, it seems to me has not much place in a legislative body. In connection with every piece of legislation that comes before us where people are stirred up, either from their economic viewpoint or from their political standpoint or from their moral or religious standpoint, we are bound to get letters of that kind from such persons; but we ought to ignore them.

I agree with the Senator from Wyoming, however, that those who are saying that in the Senate, and whispering it around, are seeking to draw a red herring across the trail. I agree entirely with the statement of the Senator from Wyoming that it was the most unusual thing that has happened in the Senate since I have been here for the proponents of a bill to refuse and neglect to sign their names to a report supporting the bill which they introduced and advocated.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. HATCH. I yield to the Senator from Nebraska.

Mr. BURKE. Since the Senator from New Mexico joined the majority of the Senate Committee on the Judiciary in recommending that this bill do not pass, has he not received letters suggesting—even demanding—that he resign his seat in the United States Senate?

Mr. HATCH. Yes; along with the Senator from Nebraska, I had a letter from his State in which it was requested, first, that the Senator from Nebraska resign, and then that I follow suit by resigning with him.

Mr. BURKE. I have had many of them.

Mr. HATCH. I have had several letters to that effect. The thing I wanted to bring out and to make clear to the Senate of the United States, however, was that the majority of the Senate Judiciary Committee was making no personal attack on the President of the United States; and, so far as I myself am concerned, I desire to make it clear that never at any time have I doubted the purposes or the high patriotic motives of President Franklin D. Roosevelt.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. O'MAHONEY. May I ask the Senator to add to that the statement that he has never for a moment doubted the purposes and the motives of the members of the Judiciary Committee who joined with him in submitting this report?

Mr. HATCH. I am delighted to make that addition, because I think it is fully true of all the members of the committee; and I do not wish to see this debate, today or in the weeks to follow, pitched on any personal grounds against any person. I had my objections to the original bill and I voiced those objections by my vote in the committee after the amendments which I had previously suggested had been defeated. I now approve the pending amendment, and I trust that I may have the opportunity to voice my approval of the amendment by my vote in the Senate, and that I shall not be deprived of that opportunity by those who now oppose the amended bill.

Mr. President, at the very beginning of this controversy, almost when the bill——

Mr. MINTON. Mr. President, before the Senator enters upon a discussion of the amendment, may I interrupt him?

The PRESIDING OFFICER (Mr. POPE in the chair). Does the Senator from New Mexico yield to the Senator from Indiana?

Mr. HATCH. I yield.

Mr. MINTON. The Senator from Montana [Mr. WHEELER] pointed out that it was an unusual situation that the minority of the committee had not filed any report. I do not know whether or not what I read in the papers is true, but it certainly could not be any more unusual than that the majority of the committee should go outside the committee to find someone to lead the fight on the floor of the Senate for the majority report.

Mr. HATCH. Mr. President, as I was saying, when the bill originally came before us, I had faith in the President of the United States; and when in his message he stated certain facts and circumstances, I did not look at his statements with suspicion and distrust. I chose to accept what the President of the United States said, and when he pointed out the necessity for adopting some systematic and orderly plan for adding younger men to the courts of the country in order that the courts might better exercise their judicial powers and functions, I chose to accept at face value what the President of the United States said, though I did not

agree with the plan he suggested, because, first of all, it did not carry out the ideas contained in the message.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. HATCH. Yes.

Mr. WHEELER. The distinguished Senator from Indiana [Mr. MINTON] just made some reference to me that I did not catch—my attention was distracted for the moment—about the Judiciary Committee selecting somebody who was not a member of the committee to lead the fight on the floor of the Senate. I desire to call the Senator's attention, however, to the fact that during the debate a few minutes ago the distinguished leader of the Democratic Party refused to let the Senator from Indiana take the floor away from him and make his speech. The Senator from Arkansas decided that he would make his own speech. Of course, I do not blame him in the slightest degree for doing so.

Mr. MINTON. Mr. President, I may be a little bit dense, but I do not know who took the ball away from whom. [Laughter.]

Mr. WHEELER. The Senator from Indiana tried to take the ball away from the Senator from Arkansas, but the Senator from Arkansas refused to let him do so.

Mr. MINTON. Oh, no; far be it from me to try to take the ball from the Senator from Arkansas or the Senator from Montana, least of all the Senator from Montana.

Mr. HATCH. Mr. President, I thought I was discussing something about the addition of younger blood to the Court. I did not know I had gotten into a football game.

I desire to read the part of the message of the President to which I have referred. The President's message of February 5 contained this language:

> Life tenure of judges, assured by the Constitution, was designed to place the courts beyond temptations or influences which might impair their judgments; it was not intended to create a static judiciary. A constant and systematic addition of younger blood will vitalize the courts and better equip them to recognize and apply the essential concepts of justice in the light of the needs and the facts of an ever-changing world.

Mr. President, those words did not seem to me to be extreme. That seemed to me to be a reasonable statement of a problem and condition which has long afflicted the courts of the United States under the life-tenure clause, a condition which was recognized, not only in the year 1937, but many years ago, and the remedy proposed by the President in his message was exactly the same remedy which was proposed more than a quarter of a century ago.

The Senator from Arkansas this morning read into the RECORD the report of the Attorney General of the United States in the year 1913, the Attorney General then being Mr. McReynolds, now Associate Justice McReynolds, who in 1913 first conceived the plan of appointing an additional judge when the incumbent on the bench had reached the retirment age and had not retired. If there is anything unconstitutional in that plan, if there is any radicalism in it, let Mr. Justice McReynolds bear the brunt of it, for it is his plan and his thought which is now embodied in the pending bill. There has been some talk in the newspapers as to whether or not the present plan was the Hatch plan, or the Logan plan, or the Robinson plan. I say to Senators that if they desire to correctly designate the plan which we are now considering, they may call it the "McReynolds plan."

Mr. WHEELER. Mr. President, I thought it was the Ashurst plan.

Mr. HATCH. That was the original bill, and the Senator from Arizona also joins in supporting the pending amendment. I am quite sure that the Senator from Arizona is following a consistent and steady course of conduct, as I shall prove before I finish. He has been consistent for more than 20 years in supporting the plan for which he stands today.

Let me read again and emphasize the language of Mr. Justice McReynolds. Referring to the judges, he said:

> Some have remained upon the bench long beyond the time when they were capable of adequately discharging their duties, and in consequence the administration of justice has suffered.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. WHEELER. I am surprised and amazed to find the Senator from New Mexico following the lead of Justice McReynolds. I never thought I would live to see the day when the Senator from New Mexico and the liberal leader from Kentucky, who stepped out a moment ago, would be following Mr. Justice McReynolds.

Mr. HATCH. If the Senator from Montana is surprised at the so-called liberal leader from Kentucky and the present speaker following in the footsteps of Mr. Justice McReynolds, how does the Senator from Montana think we feel when we see some of the company and associates with whom he is now consorting?

Mr. WHEELER. I do not know of any more conservative gentleman than the Justice about whom the Senator is speaking and whom he is quoting at the present time. I might say that I refused to follow Mr. Justice McReynolds when he was Attorney General of the United States, and I have refused to follow his views ever since, even upon this Supreme Court issue.

Mr. O'MAHONEY. Mr. President, may I ask a question?

Mr. HATCH. I yield.

Mr. O'MAHONEY. Am I to infer from the statement of the very able Senator from New Mexico that some of those who are alined with the Senator from Montana should now be driven from the Democratic Party? Is that the inference we are to draw?

Mr. HATCH. The Senator from New Mexico has made no such statement; but I will say that some of the associates of those who oppose this plan will not have to be driven from the Democratic Party, because they have never been in the Democratic Party, and have opposed every Democratic measure that has been offered.

Mr. O'MAHONEY. May I interrupt again?

Mr. HATCH. I yield.

Mr. O'MAHONEY. May I point out to the Senator that even if there had not been a Republican vote cast in the Committee on the Judiciary there would not have been a favorable report upon the bill which has now been abandoned? Without the assistance of a single person who never claimed association with the Democratic Party the bill which has now been deserted was repudiated.

Mr. HATCH. I have not sought to bring the political issue into this controversy. In fact, I have sought to avoid it from the very beginning. But if the Senator is interested in the political issue, I have on my desk here references and citations which will show that when other bills of similar nature were presented under Democratic leadership to a Democratic Congress and a Democratic Senate, the opposition to those bills was led by Senators on the opposite side of the Chamber, and the Democrats in those days rallied to the support of the Democratic leadership.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. MINTON. Now, as we see Senators from the other side come over and hover around Senators on this side, are we not reminded of that passage in Scripture to this effect: "And Joab took Amasa by the beard with the right hand to kiss him. But Amasa took no heed to the sword that was in Joab's hand." [Laughter.]

Mr. WHEELER. Mr. President, will the Senator from New Mexico yield?

Mr. HATCH. I yield.

Mr. WHEELER. The Senator from Indiana has not been in the Senate very long, but if he had been a member of this body during the Hoover administration he would have found that some of his colleagues who are with him now were leading the battles for Mr. Hoover, a Republican President, at that time. Not only that, but when we are talking about Republicans I am reminded of the fact that some of the Republicans who are opposed to the pending bill left the Republican Party and came over and supported the present President of the United States. If we are to spurn everyone who is a Republican, let us say so now. The Senator would find that in a great many States there would not be many votes for a Democratic administration if we did not get some Republican votes.

Mr. HATCH. Mr. President, I think the question was directed to the Senator from Indiana. I was trying to collect my thoughts at the moment. If the Senator from Indiana does not desire to reply, I shall continue my observations on the proposed amendment to the bill. Recurring to the recommendations made by Mr. Justice McReynolds, I am in earnest when I say that the present plan was sponsored and originated by the then Attorney General of the United States, the present Associate Justice McReynolds, and in his report on the plan which he sponsored as a cure and as a corrective of the evils attending our judicial system because of the life-tenure clause he recommended that the President of the United States be required—note the word "required"—to appoint for all the courts of the United States inferior to the Supreme Court an additional judge in cases where the incumbent on the bench had reached the age of retirement and had not availed himself of the retirement privilege.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. BURKE. When Attorney General McReynolds made the suggestion which the Senator has quoted, did that follow months of criticism of the Supreme Court because of decisions which they had rendered, so that it could be properly said at that time that the purpose of the suggestion was to add members to the Court in order to secure a different line of decisions?

Mr. HATCH. I do not believe that exact charge was made, but the charge of packing the Court was made in those days, just as it is made today, as I shall presently show. It was said of the measures which were afterward introduced in the Senate and in the House that they were Democratic measures designed—they did not use the word "pack" then—to pad the judiciary.

Mr. BURKE. Mr. President, will the Senator yield again?

Mr. HATCH. I yield.

Mr. BURKE. Is not the Senator willing to say that the two situations were altogether different, that in the one case there was a long-range program, without the Federal judiciary being at the time under particular attack, and a proposal was made to bring some new blood into the Court from time to time, as contrasted with the situation where a bill is now presented following many months of the most acute criticism of decisions of the Supreme Court? So that it must be clear to any man who reads that the purpose even of the substitute is to enlarge the Supreme Court so as to have some effect upon the decisions of the Court?

Mr. HATCH. First, I want to say to the Senator from Nebraska [Mr. BURKE] that he has just asked a question in the same manner that he did in the committee, by starting with a question and answering it himself. I do not resent that, but I should prefer that when the Senator wants to ask himself a question and wants to answer it, he do so in his own time. However, I do want to say to the Senator in frankness and in honesty that I apprehend the very difficulties which the Senator points out in the present proposal, and I say that the only legitimate argument against the pending amendment is the fact that possibly due to its state of mind the public will not be able to recognize the bill for what it really is.

Mr. BURKE. Does not the Senator really think that is a very serious objection to the pending amendment?

Mr. HATCH. It is an objection which shall not deter me from my course, and I will say in that regard to the Senator from Nebraska that he knows, as I know, that the suggestion we now debate and argue I made months and months ago, in the very early part of this year, after the bill came to the Senate. I then pointed out that if the power contained in the so-called President's bill could be limited and restricted in the manner now proposed, so that not more than one Justice could be appointed in 1 year, I believed it would accomplish a permanent and worth-while reform. I was about to divulge a statement made by the Senator from Nebraska in the committee room, which I will not do. Does the Senator object to my saying that even he——

Mr. BURKE. I have not the slightest objection.

Mr. HATCH. Even the Senator from Nebraska saw the merit in the proposal at that time.

Mr. BURKE. Yes; and if I may refer further to what the Senator from New Mexico said, very early after the submission of this proposal on the 5th of February the Senator from New Mexico did point out the very things he has pointed out today, and made it clear in the committee that his support of his amendment extended only to the point where he remained convinced that he would not be a party to a proposal to add members to the Court for the sake of influencing the decisions of the Court, and I went along with the Senator quite a way. I agree fully with the statement that there is merit in the Senator's proposal as a long-range measure. However, I am using the Senator's time again.

Mr. HATCH. That is all right. I was just joking.

Mr. BURKE. I know no reason why we should be very touchy about the matter, as time, all eternity, stretches out in front of us.

As I said, I went along with the Senator up to the point where I became convinced that under the conditions as they now exist, and with what has gone before, we could not give consideration to this long-range measure of the Senator's in safety at this time, although under other circumstances it might be brought up and thoroughly considered.

Mr. HATCH. I appreciate the attitude of the Senator from Nebraska; and I feel quite confident that if he and I could get away from the clamor and the din and the noise and the confusion and the criticism and the distrust and the suspicion and all those things, we could work out a statute along the lines we are now trying to work out which would provide a permanent reform.

Where the Senator from Nebraska and I differ is that he is willing to let the noise and the confusion, the suspicion and the distrust, the question of motives and purposes, deter him from enacting what may be just, right, sound, and good legislation. I know that all our motives will be misconstrued, and when we say one thing people will say we mean something else. I realize that all that is true. I said early last spring, however, that this plan was a good plan. I said it then in opposition to the President of the United States, and to limit his power and authority. If it was a good plan then, when I thought and everyone else thought there was a substantial majority for the President's plan, it is good now, when the situation has changed, and there is a majority against the plan.

So I stand today where I stood in the early part of the year and in the committee. I shall not let the noise and the confusion and the criticism and the distrust and the suspicion deter me from doing what I believe to be right and sound and good.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. WHEELER. Eliminating President Roosevelt from the consideration of this particular question, does the Senator think any President should be given the discretion—because that is what this bill gives him—to say, with respect to two men upon the Supreme Court, 75 years of age, or five men of that age, "I do not like the way your decisions are going; consequently"——

Mr. HATCH. The Senator from Montana knows I do not agree to that.

Mr. WHEELER. Let me finish my question.

Mr. HATCH. All right.

Mr. WHEELER. Does the Senator think the President should be given the right to say, "I do not like the way you are acting on the Supreme Court. I can appoint a man in your place; consequently, I will appoint a man in your place"? Or let us suppose he likes the decisions of another Justice. Does the Senator believe the President should be able to say, "I like your decisions, and, therefore, I will not appoint a man in your place, even though you are 75 years of age"?

Does the Senator believe that ought to be permitted by any legislation?

Mr. HATCH. No, sir; not at all.

Mr. WHEELER. Does not the Senator's plan do just that?

Mr. HATCH. No.

Mr. WHEELER. I beg to differ with the Senator in that respect. The Senator will find that instead of the plan being mandatory, the President is granted permission to name one man to the Court today, and another man to the Court tomorrow. He does not have to do it, even though Justices on the bench may be over 75 years of age.

Mr. HATCH. If that is true, Mr. President, it is an error in draftsmanship; and if the Senator from Montana will propose an amendment to make it mandatory and compulsory, I will vote for it. I will not vote to give the President of the United States discretionary power such as is now contained in the statutes of the United States.

Mr. WHEELER. Let me call the Senator's attention to the language of the proposed legislation. It is illustrative of the difficulties of writing legislation on the floor of the Senate:

The Supreme Court of the United States shall consist of a Chief Justice and eight Associate Justices, any six of whom shall constitute a quorum: *Provided, however,* The number of Justices may be increased by the appointment of an additional Justice in the manner now provided for the appointment of Justices, for each Justice, including the Chief Justice, who at the time of the nomination has reached the age of 75 years.

Mr. HATCH. That is a matter of judicial interpretation and construction.

Mr. WHEELER. Oh, no!

Mr. HATCH. Right now I wish to give my interpretation and construction of the word "may" as used in the provision that has been read. The word "may" should be construed as mandatory, as the Supreme Court of the United States and every other court in the United States has frequently construed the word "may." I mean it to be mandatory, and I want that statement in the RECORD. It is my purpose that it shall be mandatory. If the Senator prefers the word "shall", so far as I am concerned, we will make it "shall."

Mr. WHEELER. Of course when we write the word "may" into a statute, it is ordinarily construed as being permissive, as giving discretionary power. I say, therefore, that under the proposed legislation the President is granted the power to say to one Justice who is over 75 years of age, "I will appoint a man in your place", and to say in the case of another Justice over 75 years of age, "I will not appoint a man in your place."

Mr. HATCH. Let us put the matter in this way, Mr. President: Let us go back to the father of the legislation. Let us take the language of Mr. Justice McReynolds and say, "shall be required."

Mr. WHEELER. I do not want to go back to the father of any legislation who has made such a suggestion as that.

Mr. HATCH. Is there a doubt in the Senator's mind?

Mr. WHEELER. There must be a doubt in the mind of the Senator from New Mexico. He is a good lawyer, and he knows that when the word "may" is used in a statute it is usually regarded as being permissive; but when the rest of the language used in the statute is such that it is clear that the Congress meant "shall", the Court has construed it to mean "shall." I submit, however, that there is nothing in this bill which makes it mandatory in the slightest degree.

Mr. HATCH. Let me say to the Senator from Montana, before we get off the subject, that as concerns the draftsmanship the Senator from New Mexico must confess that his part in drafting this measure was concerned with limiting the appointment of Justices to not more than one in any one calendar year. Those were the words on which I insisted; and it was my intention and my understanding that the bill required the appointment to be made. If it does not require it, then, as the Senator from Nebraska pointed out, with eternity as the limit, we shall have ample opportunity to write in just as strong language as the Senator from Montana may desire or I may desire.

Mr. WHEELER. But in the first Court bill which came to the Senate, and which the Senator from New Mexico rejected, language was contained which was just as offensive. In this amendment, as a matter of fact, is contained the permissive feature, so that the President can say to one Justice who is over 75, "I shall appoint an additional Justice because you are over 75", and to another Justice on the bench he may say, "I shall not appoint an additional Justice even though you are over 75 years." Such a provision in the bill is not only offensive but, in my judgment, it likewise makes the legislation unconstitutional.

Mr. HATCH. I have some very good authority on its constitutionality.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. BURKE. The original bill read as follows on this particular point:

attained the age of 70 years * * * and within 6 months thereafter has neither resigned nor retired, the President, for each such judge who has not so resigned or retired, shall nominate—

And then along comes an amendment to the bill which says:

may nominate.

In view of that fact, is there any doubt in the Senator's mind that a court, if the matter ever reached the court, would say that the word "may" in this case is clearly permissive?

Mr. HATCH. It is a doubt about which I am not at all worried, because, as I have said, if there is any question about it, let us settle it by the necessary correction. So far as I am concerned, it should be mandatory; I think everyone agrees it should be mandatory; everyone connected with the administration, so far as I know, agrees it should be mandatory; and there is no difference or dispute between us on that point.

Mr. WHEELER. We suggest that the Senator perfect it.

Mr. HATCH. I will be glad to do so.

Mr. BARKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from New Mexico yield to the Senator from Kentucky?

Mr. HATCH. I will yield in a moment.

I should like to say that I am sort of a free lance here and I speak for no one but myself. I now yield to the Senator from Kentucky.

Mr. BARKLEY. Aside from the question of the use of the word "may" or the word "shall", as I understand the bill, it does not require the President to designate any particular judge over 75 for whom he may appoint a substitute.

Mr. HATCH. That is correct.

Mr. BARKLEY. If there is one such Justice, he may appoint an additional Justice in any year; if there are two, three, four, or five such Justices, he may appoint only one.

Mr. HATCH. Yes; in any particular year, and he is not required to say on whose account the appointment of the additional Justice is made.

Mr. BARKLEY. That is a very important point.

Mr. O'MAHONEY. Mr. President, may I interrupt at that point?

The PRESIDING OFFICER. Does the Senator from New Mexico yield to the Senator from Wyoming?

Mr. HATCH. I yield.

Mr. O'MAHONEY. I apologize to the Senator from New Mexico, but the suggestion made by the Senator from Kentucky amazes me. If it is essential there should be one Justice appointed for any Justice who is 75 years of age, and there happened to be four or five who had reached 75 years of age, why should there not be one appointed for each of them? Why have one and only one when there are four or five over the age limit?

Mr. BARKLEY. That was the very provision in the bill originally introduced to which the Senator from Wyoming objected.

Mr. O'MAHONEY. And that is the provision that the proponents of the bill have abandoned. They have abandoned that, and now come in with a puny provision for the appointment of but one additional Justice.

Mr. BARKLEY. The statement was made here awhile ago by the Senator from Montana that the President, under

the discretion given him, had to choose for which Justice the new appointee was a substitute. My suggestion is that, regardless of the number of the Justices who are 75 years of age, and who are eligible for retirement, the President may appoint only one in any year, and he is not required to designate any one of the Justices for whom he is making the appointment. He makes the appointment and the appointee takes his place on the Supreme Court like any of the other Justices.

Mr. WHEELER. Of course that is true.

Mr. SCHWELLENBACH. Mr. President——

The PRESIDING OFFICER. Will the Senator from Montana please obtain permission before interrupting the Senator having the floor. Does the Senator from New Mexico yield; and if so, to whom?

Mr. HATCH. I yield first to the Senator from Montana, after which I will yield to the Senator from Washington.

Mr. WHEELER. This is not merely temporary legislation; it is permanent legislation. Assuming that only one Justice of the Court this year is 75 years of age, and the President of the United States, under this bill, says, "I do not have to appoint a Justice to your place", and next year there is another Justice who reaches the age of 75, and the President says, "I am going to appoint a new Justice this year", what is the implication? When the second Justice becomes 75 the President is going to appoint a Justice to take his place, but he does not appoint a Justice to take the first Justice's place. Under those circumstances, one cannot come to any other conclusion than that it would be humiliating in the greatest degree, and I assume that the Senator from New Mexico does not want to humiliate any Justice who sits upon the Supreme Bench of the United States.

Mr. HATCH. I will endeavor to make myself clear on that point, if I may be allowed to occupy the floor.

Mr. WHEELER. Take Mr. Justice Brandeis, who has served this country and the liberal cause for 50 years, who is one of the greatest liberals in this country, a liberal a long time before some of the officeholding pseudo-liberals who are now hanging onto the coattails of the President of the United States were; does the Senator from New Mexico want to humiliate him by saying to him, "Because you are 80 years of age there is going to be appointed a wet nurse for you?"

Mr. HATCH. The Senator from New Mexico has no idea of appointing a "wet nurse" for Mr. Justice Brandeis or any other Justice of the Supreme Court and he has no idea of humiliating any member of any court.

I wish to say to the Senator from Montana that the argument he has just made as to humiliating judges is not new at all. It was raised in 1915, in 1916, and in 1918 in the House of Representatives and the Senate in connection with measures which were then being considered and which were afterward enacted into law. The old cry of humiliation was raised then just as it is being raised now; and if I can get the opportunity, I will read to the Senate some of the things that were then said.

The reason, however, I like this plan better than the other plan is that it recognizes a fact that is as old as the human race, that with passing years the average man does decline and decay physically and mentally. That is the general rule. But the plan also recognizes that there are exceptions to the rule; that there are men such as the late Justice Holmes and Justice Brandeis and other noted examples in the judicial branch of the Government and in our own body today, who have retained their vigor, who have retained their strength of intellect. This plan takes care of such situations. If an old Justice, following the natural law, has declined and decayed mentally and physically, surely the Senator from Montana and no other Member of this body would say that such a Justice should have power over the vast litigation that comes before the Supreme Court, and that the Government of the United States should suffer by reason of such a condition, as the history of the country shows it has suffered by reason of such men being on the bench.

The amendment now proposed, however, also recognizes the other Justices whom the Senator from Montana has mentioned, and it says to them, "We appreciate your services; we appreciate your intellect; and just so long as you are willing to remain on the Supreme Court of the United States and to give to the country the benefit of your wisdom and your experience, under this plan you may remain." I say to the Senator from Montana that, to my mind, is the finest thing about the plan.

Mr. BORAH and Mr. MINTON addressed the Chair.

The PRESIDING OFFICER. Does the Senator from New Mexico yield; and if so, to whom?

Mr. HATCH. I promised to yield to the Senator from Washington, but I yield now to the Senator from Indiana.

Mr. MINTON. I think the Senator from Idaho rose before I did.

The PRESIDING OFFICER. To whom does the Senator from New Mexico yield?

Mr. HATCH. I yield to the Senator from Idaho.

Mr. BORAH. I have been associated with the Senator from New Mexico on the Judiciary Committee in working out these measures. While there is a difference of opinion as between the Senator from New Mexico and myself on some of these matters, I have to say that no one has worked more earnestly and sincerely to perfect a plan than has the Senator from New Mexico. I think he has been entirely free from any other purpose than to bring about a practicable plan.

I wish to ask the Senator, in view of the statement which he has just made, whether or not this bill takes care of this situation which he has just described? Suppose there is upon the Supreme Court Bench a Justice who, confessedly, has reached the point where he is not able to discharge his duty, a Justice who is 75 or 76 years of age, and suppose there is another Justice on the Supreme Court Bench who is 76 or 77, and who is a very capable man. By what process, under the terms of this bill, would it be possible to get the incapable Justice off the bench and enable the capable man to remain on the bench?

Mr. HATCH. Of course, the Senator from Idaho knows that we cannot do that under the Constitution. There is no method by legislative action by which the retirement of a Justice can be compelled. Compulsory retirement, perhaps, would answer the Senator's question. The proposed substitute, of itself, does not provide a complete remedy. That is a defect. We can only safeguard our institutions, of course, as best we can, and in the proposed substitute we are safeguarding them by providing for the appointment of an additional judge when an aged Justice has reached the prescribed age. It is not a complete answer to the situation presented by the Senator from Idaho, but it is the best we can do.

Mr. BORAH. For practical purposes it might leave on the bench a Justice who was subject to all the objections which may now exist; it might leave on the bench men whom we think have reached a point when they should retire.

Mr. HATCH. This plan would have the advantage, when it eventually works out, of insuring that the entire Court shall finally reach a membership composed of nine Justices under the age of 75. That is the best we can do, in view of the Constitution.

The situation which the question of the Senator from Idaho suggests has arisen before in the history of the country, and we have found ourselves absolutely powerless to act or correct it. Had there been in the law such a provision as the substitute amendment proposes—and I am sure we are thinking of the same incident—it could have been corrected. We have had two different occasions in the history of the country when if some such law as is now proposed had been on the statute books the cruel humiliation of two Justices of the Supreme Court would have been avoided, and they would have been spared the shame which came to them.

Mr. STEIWER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New Mexico yield to the Senator from Oregon?

Mr. HATCH. I yield.

Mr. STEIWER. Did I correctly understand the Senator from New Mexico to say that under the terms of the substitute the time would finally be reached when there would be but nine members upon the Supreme Court?

Mr. HATCH. That is the direction toward which the substitute is intended to go, and I think eventually it would reach that point. That is its purpose, to keep always a court of nine members under 75 years of age. There could be other members in excess of that age.

Mr. STEIWER. I understood the Senator to say the time would be reached when there would be but nine members upon the Court. I now understand him to say he hopes that time will be reached.

Mr. HATCH. The Senator knows full well why I say that. We do not know what Justice will die nor what the age of the Justice would be who would be appointed, nor with what mathematical certainty it could be worked out. The proposal, however, tends to bring about the result I have indicated, and I believe eventually it will do so.

Mr. STEIWER. Is it not a possibility, if not a probability, that the four members of the Court who are now more than 75 years of age would refrain from retiring, resulting in the appointment of four younger men under the proposed substitute?

Mr. HATCH. Yes.

Mr. STEIWER. Suppose by the time all the older Justices die or retire or resign the other members of the Court, as the Court is now constituted, should have reached the age of 75. In that event, other additional Justices would have been appointed.

Mr. HATCH. Provided they had lived and had not resigned or retired.

Mr. STEIWER. How long would that process continue until we would finally reach a membership of nine Justices on the Court?

Mr. HATCH. In order to answer the question of the Senator with mathematical certainty, I should have to inquire of some of the experts in the departments who have made some remarkable calculations, because we have to take into consideration factors which none of us can foresee.

Mr. STEIWER. I quite agree with that.

Mr. HATCH. We do not know what Justice will live or what Justice will probably retire. We do not know who will be appointed, nor the age of the man to be appointed. The only thing we can do is to legislate in the best possible manner we can to reach and attain the desired results.

Mr. STEIWER. I know the Senator will be ready to concede that under some circumstances many years might elapse before the Court would reach a membership of nine.

Mr. HATCH. That could be so.

Mr. STEIWER. May I ask the Senator another question on the same point? I ask it because he is one of the authors of the proposal.

Mr. HATCH. Just one part of it, one line.

Mr. STEIWER. I notice in the substitute it is provided that the number of appointments to the Court shall not increase the total number of Justices "by more than two-thirds of the permanent membership of the Court." Can the Senator enlighten me as to what is meant by the phrase "permanent membership of the Court"?

Mr. HATCH. That means the whole Court, the nine Justices, and any additional Justices who may have been appointed. Two-thirds of the present Court would be 6, which would make a maximum of 15.

Mr. STEIWER. If "permanent membership of the Court" means nine——

Mr. HATCH. The permanent membership of the Court is nine members.

Mr. STEIWER. What makes it so in the proposed substitute?

Mr. HATCH. The language of the substitute itself. The language is "the Supreme Court of the United States shall consist of one Chief Justice and eight Associate Justices." That is the permanent Court.

Mr. BURKE. The other appointments are temporary?

Mr. HATCH. Yes. I struck out the word "temporary." Originally it was included, but I did not like the word "temporary" as applied to a Justice of the Supreme Court. He is in no sense temporary. He is just as much a Justice of the Supreme Court as any other member of the Court. The size of the Court is temporarily increased by the appointment of additional Justices. Perhaps that would be the better way to express it.

Mr. STEIWER. I do not want to be critical of the form of the proposal, but I think more appropriate language could be used to define the permanent as distinguished from the temporary membership of the Court.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. BURKE. The new judges to be appointed would be neither temporary nor permanent.

Mr. HATCH. Oh, no; that is hardly fair. The Senator from Nebraska is placing an interpretation on my remarks, which is not borne out by what I said. I told the Senator from Nebraska that the Court would consist of nine members, one Chief Justice and eight Associate Justices, and such additional members as might be appointed under the provisions of the bill, but that each one of those Justices so appointed would be a permanent Justice of the Supreme Court of the United States and have all the power, all the honor, and all the dignity coming to any other Justice.

Mr. BURKE. If they are permanent members of the Court, I am afraid the Senator is in difficulty on the other point raised by the Senator from Oregon [Mr. STEIWER].

Mr. HATCH. I am not in difficulty at all. On this point there is but one thing in the bill. That is the final objective, the establishment of a permanent long-range program, and there is no use to quibble over "permanent" or "temporary" matters. We all understand perfectly what the amendment means.

Mr. BURKE. To what number does the "two-thirds" refer?

Mr. HATCH. Two-thirds of nine. Two-thirds of nine is six. Six plus nine is fifteen.

Mr. BURKE. But the Senator does not say "two-thirds of nine." He says "two-thirds of the permanent Court."

Mr. HATCH. If the Senator has difficulty in understanding me, it is just my lack of facility in expressing myself in ordinary language.

Mr. BURKE. I do have difficulty in understanding the Senator. May I ask the Senator another question?

Mr. HATCH. I am still glad to yield to my good friend the Senator from Nebraska who now, I think, perceives a chance to answer his own question.

Mr. BURKE. I shall answer it if the Senator from New Mexico is unable to do so. Was the junior Senator from Kentucky [Mr. LOGAN] correct when he stated a few moments ago that in making the additions, permanent or temporary or whatever they are, whatever number is authorized by the bill, it would be necessary for the appointing power to associate the nominee with any existing justiceship on the Court?

Mr. HATCH. It could happen once, just in one instance. If there was just one Justice over the age of 75, then the appointment would necessarily be for that particular Justice. That is the only situation I could think of where that would apply.

Mr. BURKE. Suppose in the second calendar year there was just that same one Justice still over the age of 75. There being a Justice over the age of 75 on the Court, would not the appointing power be able to add a second Justice also?

Mr. HATCH. Oh, no; decidedly no.

Mr. BURKE. Then, the Senator from Kentucky was not correct in saying that under no circumstances is the appointment allocated to an existing Justice?

Mr. HATCH. No; he was not making the kind of technical discussion in which the Senator from Nebraska is now indulging.

Mr. SCHWELLENBACH. Mr. President——

The PRESIDING OFFICER. Does the Senator from New Mexico yield to the Senator from Washington?

Mr. HATCH. I yield.

Mr. SCHWELLENBACH. At this time I wish to assure the Senator from New Mexico, who seems to be rather worried about the question submitted by the Senator from Nebraska——

Mr. HATCH. The Senator from New Mexico has not been worried by the question at all.

Mr. SCHWELLENBACH. The Senator from Nebraska can both read and add. He knows what "nine and six" means. He knows what "permanent" means. He knows all these things, and it is not because of the fact that he cannot read or cannot add that he is asking this and other silly questions.

Mr. HATCH. In the course of my remarks I have mentioned the fact that the plan which we are now discussing originated with a present Justice of the Supreme Court, Mr. Justice McReynolds. I find some quite interesting history following the submission of that plan and that report.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. MINTON. It seems to me the Senator from New Mexico gives too much attention to Justice McReynolds. In 1869 a bill almost identical in terms as the original plan passed the House, but did not receive the approval of the Senate.

Mr. HATCH. That is correct. Such a bill passed the House in 1869. The reason why I single out Justice McReynolds is because his name is the only one I find in connection with this type of legislation. The first name definitely connected and associated with it was that of Attorney General McReynolds, from Tennessee. I also find that in the following year Attorney General Gregory adopted almost word for word the language used by Attorney General McReynolds, and made exactly the same recommendation in the years 1914, 1915, and 1916.

So, first of all, today we find two prominent Democratic Attorneys General of the United States sponsoring the principle for which we contend today—the principle of requiring the appointment of an additional judge whenever a judge on the bench reaches retirement age and has not retired.

Following that, I find several measures introduced in the Congress of the United States carrying into effect the recommendation of the Attorney General. The first was Senate bill 7041, which was almost in the exact language of the recommendation of the Attorney General, and the Judiciary Committee of the United States Senate at that time, in the year 1915 as I recall, reported that bill favorably to the Senate, and there was no dissent, and no minority report. The bill was not passed, however.

Mr. AUSTIN. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New Mexico yield to the Senator from Vermont?

Mr. HATCH. I do.

Mr. AUSTIN. I should like to ask the Senator from New Mexico whether he recognizes as true the characterization which we find in the President's message sending down the bill to which this proposed amendment in the nature of a substitute relates? Does he accept, as properly indicating the purpose of those various statutes and those various recommendations of Democratic Attorneys General, the following language, found on page 26 of the printed copy of the report of the majority of the Committee on the Judiciary, to wit:

> The voluntary retirement law of 1869 provided, therefore, only a partial solution. That law, still in force, has not proved effective in inducing aged judges to retire on a pension.

That is my question.

Mr. HATCH. Mr. President, I am sure I should not take unto myself the credit of asking the distinguished Senator from Vermont to listen to my remarks; but, if he had been listening a few minutes ago, I think he would realize that I made myself perfectly clear as to what I thought about compulsory retirement of judges. I do not think we can provide for it, nor do I think we should do so under the Constitution; but, because of that, I see no objection whatever to recognizing the outstanding facts of age, time, and experience, and taking some step to protect the Government and to protect the judiciary itself against aged men remaining too long on the bench.

Mr. AUSTIN. Mr. President, will the Senator yield further?

The PRESIDING OFFICER. Does the Senator from New Mexico further yield to the Senator from Vermont?

Mr. HATCH. I yield.

Mr. AUSTIN. I do not think the Senator understood my question, for I think the language immediately following in the President's message shows that the President regarded all efforts at legislation similar to this bill as efforts to secure the objective of inducing aged judges to retire on pensions. Thus, the next paragraph reads as follows:

Mr. HATCH. May I answer the Senator's question?

Mr. AUSTIN. I have not quite completed my question.

Mr. HATCH. Very well, go ahead.

Mr. AUSTIN. The next paragraph reads as follows:

> This result had been foreseen in the debates when the measure was being considered. It was then proposed that when a judge refused to retired upon reaching the age of 70, an additional judge should be appointed to assist in the work of the Court. The proposal passed the House but was eliminated in the Senate.
>
> With the opening of the twentieth century, and the great increase of population and commerce, and the growth of a more complex type of litigation, similar proposals were introduced in the Congress. To meet the situation, in 1913, 1914, 1915, and 1916, the Attorneys General then in office recommended to the Congress that when a district or a circuit judge failed to retire at the age of 70, an additional judge be appointed in order that the affairs of the Court might be promptly and adequately discharged.

Therefore, although I agree fully with the principle declared by the Senator from New Mexico that the Congress has no power directly to coerce judges directly to retire when they have arrived at a certain age, I also believe that the Congress has no power to coerce them indirectly; and I claim that that is the fundamental defect of this particular bill and the pending amendment to it.

Mr. HATCH. I fully understand the position of the Senator from Vermont, and I repeat that I believe I have made fairly clear my own stand on that subject. I do not believe that by this bill we are asking any judge to retire. The only thing we say in this bill is that when there is on the Supreme Court of the United States a man who has reached the age of 75 years, the President of the United States shall appoint an additional Justice; and, as I said before, if the older Justice has retained all of his faculties, let it be to his glory and to his honor and distinction that he continue to serve his country so long as he will. But by the same token, I say to the Senator from Vermont that the Government of the United States and the judiciary of the United States and the people of the United States should not be threatened and endangered by the continued service of men on the Supreme Court without the addition of younger members when the older ones have reached such an age in life and are in such a condition of mental decay that it is dangerous for them to continue in service without the appointment of younger men.

Mr. WHEELER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New Mexico yield to the Senator from Montana?

Mr. HATCH. I yield.

Mr. WHEELER. Does the Senator contend that there are on the Supreme Bench at the present time any men who are in that mental state?

Mr. HATCH. Let me say to the Senator from Montana——

Mr. WHEELER. That is a simple question.

Mr. HATCH. Let me answer it in my own way and in my own time by saying that I have tried to look at this situation without regard to individuals all throughout this controversy, and I am still looking at it in that way; but, because I do so, I am not blind to outstanding facts which every man alive knows.

Mr. WHEELER. I appreciate that the Senator has looked at the matter absolutely objectively, and I think everyone

else has; but does the Senator think there are upon the Supreme Bench at this time any men whose mental qualifications by reason of age are such that they ought to get off the Supreme Bench?

Mr. HATCH. Let me say to the Senator that in the committee, during the hearings, whenever the question of any individual was raised, I objected. I said, "Let us not take individuals into consideration."

Mr. WHEELER. I am not asking the Senator to give the name of any member of the Supreme Bench.

Mr. HATCH. But we know that there are on the Supreme Bench four men who are over the age of 75 years.

Mr. WHEELER. Yes; we know that there are four men in that category.

Mr. HATCH. And now that the Senator has pressed the point, although he knows what I believe, so far as I know those men are able, physically and mentally, to discharge the duties of their office.

Mr. WHEELER. Why, of course.

Mr. HATCH. I have had no contact with them. I have no intimate knowledge of them. They may be physically unable to carry on the heavy burdens of their office. I do not answer "yea" or "nay" on that proposition, and I refuse to legislate in the light of individuals. No legislation should ever be enacted on such a plane.

Mr. WHEELER. I agree with the Senator. Legislation should not be based on individuals. I am in entire accord with the Senator. I have no personal contact with the members of the Supreme Court; but I am convinced that as a matter of fact there are not upon the Supreme Bench at the present time any men who are not mentally and physically capable of carrying on their work. If the object of this proposed legislation is not to remove from the Supreme Bench men who are not physically and mentally capable of carrying on their work, then it seems to me we should not have this legislation at this particular time as applying to the present members of the Court.

Mr. HATCH. As I say, I am not going to be crowded into the position of legislating for this man or that man. What I want to do is to adopt a long-range program in the light of facts and circumstances which we all know, about which we need no testimony whatever.

Mr. WHEELER. The Senator has been extremely generous in letting us interrupt him, and I know he must be getting rather weary.

Mr. HATCH. I am getting a little tired.

Mr. WHEELER. But in view of the statement of the Attorney General of the United States when he said, "If these men do not like what is proposed by the bill, they can get off the bench"——

Mr. HATCH. That has not been my idea about this matter.

Mr. WHEELER. I am aware of that; but apparently that was the idea of the Attorney General of the United States: "If they do not like what is proposed by this bill, let them get off." In other words, the attempt was to apply force to remove men from the Supreme Bench because they were 75 years of age.

Mr. HATCH. I think the Attorney General of the United States is amply able to take care of himself, and is amply able to make any answer or any argument which he may desire to make on that or any other question. To my mind, though, in view of some of the charges that have been made against the Attorney General of the United States, it would be perfectly natural and perfectly reasonable for him to reply in any manner and in any way that he saw fit; and in those exchanges between, shall I say, Senators and the Attorney General, as warm as they have become at times, I do not censure anyone for what he may have said in the heat of argument or of strife. I prefer again to look at legislation in the light of facts and circumstances which we know, and to keep individuals and personalities out of it; for whenever we put them in we shall get into deep water and shall not be able to legislate at all.

Mr. O'MAHONEY. Mr. President, will the Senator from New Mexico yield?

Mr. HATCH. I yield.

Mr. O'MAHONEY. The Senator from New Mexico desires to have it understood that he is not filibustering, and I think we will all agree that the Senator from New Mexico is not doing that; neither are any other Senators.

Mr. President, in view of what the Senator has said and the nature of the argument he has been making, I ask his permission to insert at this point a provision of the present statutes of the United States. This is to be found in title 28 of the United States Code, section 375, the second part of which reads as follows:

> In the event of any circuit judge, or district judge, having so held a commission or commissions at least 10 years continuously, and having attained the age of 70 years as aforesaid, shall nevertheless remain in office, and not resign or retire as aforesaid, the President, if he finds any such judge unable to discharge efficiently all of the duties of his office by reason of mental or physical disability of permanent character, may, when necessary for the efficient dispatch of business, appoint, by and with the advice and consent of the Senate, an additional circuit judge of the circuit or district judge of the district to which such disabled judge belongs.

Mr. HATCH. To what particular point would the Senator from Wyoming direct my attention? I know it is not just interest in reading a statute into the RECORD that causes the interruption. Does the Senator have in mind a provision of the law which requires a finding of fact that the judge is mentally or physically disabled or incapacitated?

Mr. O'MAHONEY. The President, if he finds that a judge is unable mentally or physically to carry on the duties of his office, may appoint a judge to take his place. That is the law of the land. It may be done. The objection which is raised to the amendment which the Senator brings forward is that, regardless of whether a Justice is mentally or physically able, an additional judge may be appointed.

Mr. HATCH. The Senator from Wyoming raises a question which has been raised before, raised in the debates on the very law to which he has referred, and the language which he has read was offered as an amendment to the original bill introduced by the then Senator from Georgia, Mr. Smith, and it was offered by a Republican Member of the Senate because he did not want to give the President of the United States power, as the bill then provided, to appoint additional judges when the public good might require. It was desired then to put a limitation on a Democratic President of the United States, and a statute was enacted that gave to the President power which no President should ever have.

Talk about humiliation, talk about disgracing a judge and making a court subservient, and threatening the judiciary that it might decide cases the way the Executive wants them decided. Under the law just read the Congress of the United States gave the President power to find as a fact, without a word of testimony, without a witness before him, and without an opportunity for an aged judge to be heard in his own behalf, that he was incapable, mentally or physically, of discharging the duties of his office, and thereupon the President could appoint an additional judge. Would the Senator from Wyoming vote for such a measure?

Mr. O'MAHONEY. Mr. President, if the Senator will yield to me, I shall now read another statute which is on the books. This is section 17 of title 28 of the Judicial Code:

> Whenever any district judge by reason of any disability or necessary absence from his district or the accumulation or urgency of business is unable to perform speedily the work of his district, the senior circuit judge of that circuit, or, in his absence, the circuit justice thereof, may, if in his judgment the public interest requires, designate and assign any district judge of any district court within the same judicial circuit to act as district judge in such district and to discharge all the judicial duties of a judge thereof for such time as the business of the said district court may require.

That was approved on March 4, 1907.

Mr. HATCH. I am thoroughly familiar with the statute the Senator just read, and it does not conflict with anything

we are seeking to do today at all. But I wish to get back to the other statute the Senator read. The Senator did not answer my question, but knowing him as I do, I do not believe he ever would have voted for such a statute as that.

Mr. O'MAHONEY. Mr. President, I will say to the Senator that the power has never been used, much less ever abused.

Mr. HATCH. The Senator from Wyoming has spoken truthfully when he has stated that that section of the statute has never been abused. Let that be a grain of comfort to those who fear the Presidents of the United States, and fear they are going to use power to create subserviency in the courts. The records show—and I say it to the credit of Woodrow Wilson, Harding, Coolidge, Hoover, and Franklin D. Roosevelt—that, although each of those Presidents had the power and held over the head of every aged judge in the United States a sword which could have humiliated, disgraced, and destroyed him, no President has ever used such power for such purpose. But three times in the history of the country, possibly five times, has the power been known to be used, and naturally I do not wish to call the names of the judges. Never more than five times has it been used. Although the law referred to every judge in the United States below the Supreme Court, every circuit judge and every district judge, courts which decide 98 percent of the litigation which reaches the Federal courts and decide it finally—some of them being little supreme courts—no President has sought to make the judiciary subservient to the Executive, and I say that fact stands to the credit of each and every one of these Presidents; and Senators who fear this day to give the present President power may well look to whether or not their fears are justified, or whether they are merely fancied.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. O'MAHONEY. If it be true, as the Senator from New Mexico has implied, that he would not have voted for this statute because it was liable to abuse, then it seems to me to follow with inescapable logic that no Member of the Senate now should vote for another proposed statute that would be equally liable to abuse.

Mr. HATCH. Mr. President, the difference is simply that under the law as it is now written the President has discretion. If he wanted to make a Court subservient he could wave that sword over the head of a timid, shrinking judge, if he so desired. Under the pending bill no such discretion would be given.

Mr. O'MAHONEY. That, Mr. President, would be true if the bill were amended.

Mr. HATCH. That will be so before the bill is passed. I have made myself clear on that point, have I not?

Mr. O'MAHONEY. The Senator certainly has, and I hope the Senator from New Mexico will propose an amendment to change the word "may" to "shall", so that there may be no doubt in the mind of any other person.

Mr. HATCH. Let us eliminate that doubt between us now. That condition shall not exist.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. WHEELER. I understood the Senator to say he did not think the Court had been packed by anyone up to the present time.

Mr. HATCH. Yes; it has been; courts have been packed.

Mr. WHEELER. I mean the Supreme Court of the United States.

Mr. HATCH. I do not wish to become too personal, but I shall prove, if I ever am allowed to finish my argument, that the courts of the Nation have packed themselves against both the legislative and the executive branches of the Government.

Mr. WHEELER. That is quite a different thing.

Mr. HATCH. They have been packed.

Mr. WHEELER. Does the Senator agree with some persons that the Supreme Court has been packed deliberately by a President of the United States?

Mr. HATCH. Does the Senator mean in times past?

Mr. WHEELER. Yes.

Mr. HATCH. There is one instance that looks rather suspicious.

Mr. WHEELER. What instance is that?

Mr. HATCH. The Grant administration; but Grant denied it, though some of the historians look rather suspiciously on that transaction.

Mr. WHEELER. Of course, all of Grant's friends denied that he appointed the judges for the purpose charged.

Mr. HATCH. And circumstances in many respects bear them out.

Mr. WHEELER. His enemies all charged him with doing it for the purpose of packing the Court.

Mr. HATCH. That is true, just as today our friends see good in us, while our enemies see evil.

Mr. WHEELER. The statement has been made repeatedly, with reference to the present Supreme Court, by persons who have been uninformed, that it had been deliberately packed by some interests and some Presidents for the purpose of getting decisions, and that now we are seeking to unpack the Court. I take it from the Senator's statement that he does not subscribe to that viewpoint.

Mr. HATCH. I do not subscribe to the viewpoint of either packing or unpacking.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. MINTON. Speaking about "packing", and without referring to the word in the invidious sense, does the Senator think it is a mere coincidence that the Supreme Court since 1869 has been predominantly Republican?

Mr. HATCH. I think not; but, if I may continue——

Mr. WHEELER. Mr. President——

Mr. HATCH. I should like to continue.

Mr. WHEELER. The mere fact that the Supreme Court may be predominantly Republican or predominantly Democratic does not mean that it has been packed in the interest of some particular crowd.

Mr. HATCH. Not necessarily; but if the situation continues too long, suspicions may be aroused.

Mr. WHEELER. It should be remembered that some of the liberal members of the Court have been appointed by Republican Presidents and some of the reactionary members of the Court have been appointed by Democratic Presidents.

Mr. HATCH. That is entirely true.

Mr. President, I was referring to the bill originally introduced in the year 1915 and favorably reported by the Committee on the Judiciary. By the way, I think the report of the Judiciary Committee was unanimous. The bill proposed that the President should have power to appoint an additional Justice, subject only to the limitation that such appointment should be made only when, in his opinion, the public good required. Giving such discretion to the President was, to my mind, unwise. On that committee were some great outstanding men of America, men as devoted to the Constitution and to the Government as any man who ever occupied a seat in this Chamber. Listen to me, Senators, while I read the names of the three Senators who reported that bill. There was the Senator from Georgia, Mr. Smith. There was the Senator from Florida, Mr. Fletcher. Do Senators doubt the patriotism or the motives of those men? And listen to the name of the third member. He was not a Democrat. The third member of the Senate Judiciary Committee was the Senator from New York, Mr. Root. Do Senators doubt his patriotism? Do Senators doubt his wisdom or his judgment? Do Senators think the Senator from New York, Mr. Root, would approve a plan that was destructive of the Constitution and would make the Court subservient to Executive will? Yet the fact is that the bill then reported, which gave this vast discretionary power to the President, was approved by these three eminent Senators; and the only objection raised by the Senator from New York, Mr. Root, was that the language was not strong enough.

On the floor of the Senate on February 23, 1915, during the debate on the bill to which I have just referred, the Senator from Georgia, Mr. Smith, answered the Senator from Wyoming, Mr. Clark, and expressed the attitude of the Senator from New York, Mr. Root, as to such legislation. I am sorry one of the Senators from Wyoming has left the Chamber.

Senator Clark had charged:

Here we are padding——

"Padding", not "packing"——

Here we are padding the Federal courts with additional judges to take the place of men who are well qualified by years of experience and by their physical vigor to carry on the business of their districts; and we are putting in new men. * * *

Mr. President, it seems to me that it is time, no matter how many offices we may create—let us go into the departmental service and create offices, but for heaven's sake, do not let us make the office of the judge at this time the prey for political appointments.

That was the Senator from Wyoming, Mr. Clark, speaking.

In response to that charge, the Senator from Georgia, Mr. Smith, said:

Mr. President, I do not think the criticism of the Senator from Wyoming that the purpose of the bill is to pad the judiciary, is just. This measure went to a subcommittee composed of the Senator from New York [Mr. Root], the Senator from Florida [Mr. Fletcher], and myself. The bill was perfected by the unanimous action of the subcommittee, the Senator from New York taking as active an interest in it as any other member of the committee and really favoring stronger language.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. O'MAHONEY. I understand from the quotation that the Senator from Wyoming, Mr. Clark, was against padding the Court.

Mr. HATCH. Yes.

Mr. O'MAHONEY. He set a very good example.

Mr. HATCH. He was against a Democratic measure designed to accomplish a needed reform, and his argument against it was that it padded the courts.

Mr. O'MAHONEY. Whether it was a Democratic measure or a Republican measure, if the Senator from Wyoming believed honestly, as I have no doubt he did, that it was a measure to pad the Court, he was justified in being against it. He would never have been true to his oath of office had he been otherwise.

Mr. BURKE. Mr. President, will the Senator yield just at that point?

Mr. HATCH. I yield. Mr. President, I see that I shall not be able to finish my remarks today.

Mr. BURKE. I recur to the question I asked originally. At the time the subcommittee referred to studied the matter and submitted its report, was there any prevalent criticism of decisions of the Court which motivated such action?

Mr. HATCH. I do not know.

Mr. BURKE. The Senator does not know?

Mr. HATCH. I do not know whether any such situation developed.

Mr. BURKE. Did not the Senators who took that action have in mind an altogether different situation than one involving dissatisfaction with Court decisions?

Mr. HATCH. The Senator is putting me in a position where I must say I do not know.

Mr. ASHURST. Mr. President, will the Senator yield to me to ask the date of the CONGRESSIONAL RECORD from which he read?

Mr. HATCH. I read from the RECORD of February 23, 1915.

Mr. BURKE. Mr. President, I am not trying to put the Senator in any position. I am merely trying to get the facts, if he knows them.

Mr. HATCH. If the Senator will pardon me, I should like very much to finish my remarks and surrender the floor, if I may. I think I have yielded fairly, liberally, and consistently.

Mr. BURKE. If the Senator will let me make one more statement, I should like to say that I understand the Senator does agree that the situation is very different where we have a continual course of criticism of the Court's decisions as contrasted with a situation where there has not been such a course of criticism.

Mr. HATCH. I think there is no use of repeating my position.

Mr. BURKE. The Senator agrees to that?

Mr. HATCH. That was my opposition to the original bill; yes, certainly.

Mr. BURKE. Yes.

Mr. HATCH. Again in the CONGRESSIONAL RECORD appears a statement setting forth the cordial support of the measure by the Senator from New York [Mr. ROOT].

I pass on as quickly as I may, Mr. President. I ask unanimous consent to have printed in the RECORD at this point the report of the Committee on the Judiciary of the Senate on proposed legislation at that time and to which I have been referring.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The report is as follows:

The Committee on the Judiciary, to whom was referred the bill (S. 706) to amend section 260 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary", approved March 3, 1911, having considered the same, beg leave to report it back and to recommend that it be passed.

The first recommendation made by Mr. Attorney General McReynolds in his report for 1913 was as follows:

Judges of United States courts, at the age of 70, after having served 10 years, may retire upon full pay. In the past many judges have availed themselves of this privilege. Some, however, have remained upon the bench long beyond the time when they were capable of adequately discharging their duties. The power of Congress to correct this condition is limited by the provision of the Constitution that judges shall hold their offices during good behavior. I suggest an act providing when any judge of a Federal court below the Supreme Court fails to avail himself of the privilege of retiring now granted by law that the President be required, with the advice and consent of the Senate, to appoint another judge, who shall preside over the affairs of the Court and have precedence over the older one. This will insure at all times the presence of a judge sufficiently active to discharge promptly and adequately the duties of the Court.

Mr. Attorney General Gregory, in his report for 1914, renewed the recommendation of his predecessor, adopting his exact language.

We had, therefore, at the last session of Congress, the recommendation of Mr. Attorney General McReynolds, now Mr. Justice McReynolds, that judges were remaining upon the bench after they had passed the age of 70 years and long beyond the time when they were capable of adequately discharging their duties, and in consequence the administration of justice had suffered.

We had, also, his recommendation that the President be required, by and with the advice and consent of the Senate, to appoint another judge, "who shall preside over the affairs of the Court and have precedence over the older one in cases where the judge reached the age of 70, after serving 10 years, and failed to resign."

We had, also, the express endorsement by Mr. Attorney General Gregory of the views of Mr. Attorney General McReynolds on this subject.

A bill to carry out these recommendations was reported favorably by the Judiciary Committee of the Senate at the last session. Mr. Root, the senior Senator at that time, from New York, served upon the subcommittee which reported the bill favorably, and cordially supported the measure.

The report of Mr. Attorney General Gregory for 1915 recommends again this legislation in the following language:

"Judges of United States courts who have attained the age of 70 and have served 10 years may retire upon full pay. In the past many judges have availed themselves of this privilege. Some, however, have remained upon the bench long beyond the time when they were capable of adequately discharging their duties, and in consequence the administration of justice has suffered. The power of Congress to correct this condition is limited by the provision of the Constitution that judges shall hold their offices during good behavior.

"I again renew the suggestion made by my predecessor that Congress pass an act providing that when any judge of a Federal court below the Supreme Court fails to avail himself of the privilege of retiring now granted by law, the President be authorized, with the advice and consent of the Senate, to appoint another judge to preside over the affairs of the court and have precedence over the older one. This will insure at all times the presence of a judge sufficiently active to discharge promptly and adequately the duties of the court."

We have, therefore, three recommendations from the Department of Justice and from two different Attorney Generals, one of whom is now upon the Supreme Court Bench of the United States, recommending this legislation. These recommendations,

of course, cover the opinion of the Department of Justice not only that the legislation is needed and is desirable but that it is constitutional.

The bill which the Judiciary Committee reports favorably follows the recommendations of the Department of Justice, except that, instead of requiring the President to appoint an additional judge when a judge of the circuit or district court who has served 10 years reaches 70 years of age, it authorizes the President to make such appointments "if in his opinion the public good so requires."

The bill as favorably reported permits the President to make the appointments but does not require it. There may be cases in which a judge of unusual vigor is capable of performing the work of his circuit or district without injury to his health and without injury to the service, even though he has reached "the days of our years", which, we have been told, are threescore years and ten.

There are now seven positions upon the circuit court bench where judges have served more than 10 years and have passed 70 years of age. There are also seven positions upon the district court bench where the same situation exists.

In a majority of these cases it is probable that the service would be improved and the health of the judges saved by the immediate appointment of the judges authorized by this bill.

Giving an extreme case, there is a circut court judge now more than 80 years of age who, I am informed, for more than 4 years has been entirely unable to attend sessions of the circuit court of appeals or do any business, and who has no prospect of ever being able to again perform the work of circuit court judge. For a number of years before he ceased to sit upon the circuit court of appeals he was not capable of efficiently performing the full duties of the office, yet he has failed to resign and the work of the court has suffered for the lack of a judge.

This bill will in future relieve the circuit and district court bench from the clogging of business by the lack of a judge of sufficient youth to give it proper attention. It will prevent the necessity for resignation, and thus retain the services of judges who have passed 70 to the extent they are able to do judicial work.

Mr. HATCH. The Senate committee, needless to say, reported the measure favorably.

I should also like to have included in my remarks at this point certain excerpts from statements made in a speech by the Senator from Georgia, Mr. Smith, on March 23, 1916, concerning the wisdom of such legislation. I had desired very much to read many of these worth-while statements and remarks; but, due to the passage of time, I ask instead that they be printed in the RECORD at this point.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The matter referred to is as follows:

Mr. SMITH of Georgia. Mr. President, Senate bill 706 provides a remedy for a trouble which now exists in connection with our circuit and district courts. It is intended to complete a plan for the relief of the Federal, district, and circuit courts. By the terms of the Constitution, the judicial power is vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish, and the judges shall hold their office during good behavior. It was found years ago that some relief must be given against the presence upon the bench of Federal judges advancing in years.

* * * * * * *

Mr. SMITH of Georgia. It was found years ago necessary to protect the administration of justice in the circuit and district courts against the failure of the judges to do their full work owing to advancing years, and for this reason an act of Congress was passed permitting Federal judges to retire at the age of 70 with full pay.

Unquestionably the subject before Congress when that act was passed was the designation of a time after which, probably, the district and circuit court judges would not be in a position to do efficient work. Seventy was named as a time when they could retire with full pay, upon the theory that having reached threescore and ten—the allotted period certainly of active life, if not of life—it was not to be expected that they would be able to continue to fill the offices they held and measure up to the responsibility of those offices.

Later on it has been found that even the provision allowing judges to retire at 70 does not meet the situation.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from California?

Mr. SMITH of Georgia. Yes.

Mr. WORKS. Does not the Senator from Georgia think it would be very much better to make retirement compulsory at 70?

Mr. SMITH of Georgia. I am not sure that it could be done.

Mr. WORKS. It could not under the Constitution undoubtedly; it would be necessary to amend the Constitution; but does not the Senator think that would be much better than conditions as they exist at the present time?

Mr. SMITH of Georgia. I think it would be better than the conditions as they now exist, but I do not think that is preferable to the plan we now lay before the Senate. I believe we have worked out the very best way to handle this subject.

I was stating, Mr. President, that experience has shown that the provision allowing judges to retire at 70 did not fully meet the trouble that caused the act to be passed which allowed them to retire. A number of judges reaching 70 did not retire but retained office and failed to do the full work of their office. The desire to hold office, the desire to have something to do, in many instances, the desire, perhaps, in some cases, to retain the patronage connected with the office, prevented circuit and district judges from retiring at 70. They are now, in a number of instances, holding office to the detriment of the proper discharge of the duties of the offices which they fill, and they are thereby preventing a proper administration of justice.

Mr. President, so necessary was it that relief should be given against the Federal judges who were past 70 that the subject came before the Department of Justice for consideration, and the very first paragraph of the report of the Attorney General in 1913 calls attention to this subject and requests legislation. We all know that Mr. Justice McReynolds, now of the Supreme Court Bench, was then Attorney General, and the first paragraph of his report in 1913 urges this subject upon the attention of Congress and requests legislation.

* * * * * * *

The real necessity for such legislation is the subject to which, first, I wish to address myself. We are admonished it is necessary by the Department of Justice, not only by Mr. Attorney General McReynolds making this report in 1913, but his report was followed with the same language by his successor, Attorney General Gregory, in 1914, and followed in substantially the same language by the Attorney General in 1915.

What does that mean? It means that the Department of Justice, familiar with the work that is being done in the various district and circuit courts of the United States, with the large volume of business for the Government before those courts, feels that it is necessary to relieve the courts against inefficient work by judges past 70 years of age.

But it has been suggested that where a judge past 70 fails to retire and the business of the Court suffers from his age, relief can be given by a special statute authorizing an appointment such as this bill authorizes. Evidently the Department of Justice did not consider such a course was sufficient. Evidently the experience of the Department of Justice was that separate bills have not met the requirements, and it is easy to point out that they have not and do not.

In the fifth circuit there is a circuit court judge who has not been upon the bench in 4 years and who for 4 years before had not been upon the bench half the time the court was in session. For 4 years he has been confined at his home. He is 82 years old. For 12 years he has had the privilege of retiring, and he would not retire. Bill after bill has been introduced to provide an additional judge for the circuit, and it has never gone through Congress. Here is proof of the fact that the individual bill remedy does not meet the situation. That circuit also has another judge 78 years old upon the bench, who today cannot do the work that he did 20 years ago or 10 years ago. Why do they not retire? I believe largely and principally because they dread to have nothing to do.

This bill meets that trouble. It names a new judge to carry the burden of the work and leaves the older judge still with judicial authority and judicial power, subject to assignment for special work. There is ample work to occupy them even if the additional judges are appointed.

A judge past 70 may be unable to stand the fatigue, the labor, the mental and physical strain of the entire work of a district, but he could do work half the time and work well. He could be assigned to some district by the Chief Justice where his work was needed to relieve a crowded docket. If there is need for it, he can help in his own district. He still can be called on to serve his country and do his work to the extent of his physical capacity. This bill will enable the Government to obtain much valuable service from judges who otherwise would retire on full pay.

The recommendation of the Attorney General was brought to my attention by two United States court judges, one a district and the other a circuit judge, each past 70, who did not wish to quit entirely but were anxious that the bill recommended by the Attorney General should pass, and that they might still contribute to the service of their country while they were drawing a salary such work as their country might need from them.

This bill not only makes it certain that there will be an active judge to handle the business of the district and the circuit, thereby insuring to litigants the prompt and efficient attention they are entitled to for their business, thereby insuring to the Government the prompt and efficient trial of Government cases; but it will be a great economy. Where a district court judge is old and slow the cost to the Government in the Government business of its witnesses and the administration of the court far exceeds the mere salary of an additional judge.

The judges themselves, at least a majority of them whom I know and from whom I have heard, are desirous that this bill shall pass. I have a letter from a retired district court judge in Wyoming or Idaho expressing regret that we did not extend the bill so as to allow those who had already retired to do work to the extent of their continuing strength.

Mr. HATCH. At this point, Mr. President, I ask unanimous consent to have printed in the RECORD, and really to call as witnesses, the names of the 33 Members of the Senate of the United States who voted in favor of the passage of that bill.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The matter referred to is as follows:

Senate vote on Senate bill 706, December 7, 1916:

Yeas—33: Messrs. Bankhead, Chamberlain, Fletcher, Gore, Hitchcock, Hughes, Husting, James, Johnson of South Dakota, La Follette, Lane, Lea of Tennessee, Lee of Maryland, Martin of Virginia, Martine of New Jersey, Overman, Owen, Pittman, Pomerene, Reed, Saulsbury, Shafroth, Sheppard, Shields, Simmons, Smith of Arizona, Smith of Georgia, Smith of South Carolina, Stone, Swanson, Tillman, Underwood, and Williams.

Mr. HATCH. The bill went to the House of Representatives, and there a vote was had, but the bill failed of passage in the House. Among the Members of the House who voted for the bill I observe the names of several who now occupy seats in this body. Among the names are those of the Senator from Kentucky [Mr. BARKLEY], the Senator from South Carolina [Mr. BYRNES], the Senator from Texas [Mr. CONNALLY], the Senator from Arizona [Mr. HAYDEN], the Senator from Tennessee [Mr. MCKELLAR], and the Senator from West Virginia [Mr. NEELY]; also the name of Mr. Hull, of Tennessee, now Secretary of State.

Those Members of the House of Representatives, Mr. President, voted in favor of a bill which the minority report of the House committee condemned as unconstitutional, as constituting an invasion of judicial power by the executive branch of the Government; and to those names I want to add the name of another distinguished Member of the House who voted for the bill. If I am not correct in this, I ask the Senator from Kentucky [Mr. BARKLEY] to correct me. I found among those voting "yea" at that time, in favor of the principle of adding a new judge when the incumbent had passed the retirement age—the exact principle for which we this day contend—the name of the Member from Kansas, Mr. Jouett Shouse. If I am not mistaken——

Mr. BARKLEY. Mr. President, I have not looked up the roll call on that bill recently; but, relying purely on my recollection, the Senator from New Mexico is correct.

Mr. HATCH. The name of Mr. Shouse is on the roll call. I wonder if he could happen to be the same man who has held some sort of connection with an institution or organization called the Liberty League.

Mr. BARKLEY. If there is any other Jouett Shouse, I know nothing about him.

Mr. HUGHES. Mr. President, I think I can enlighten the Senator as to that. Mr. Shouse has been residing in my State for some time, and he is the secretary of the Liberty League and the manager of it, though he does not contribute the money; but he draws a salary of $50,000 a year.

Mr. HATCH. He is the same man, then?

Mr. HUGHES. Yes; and he receives $50,000 a year.

Mr. HATCH. Mr. President, I ask to include the complete roll in the RECORD.

The PRESIDENT pro tempore. Without objection, the matter will be printed in the RECORD.

The matter referred to is as follows:

Senate bill 706 was sent to the House of Representatives, and on the 2d day of March 1917 the question of whether the Senate bill should pass was voted on in the House. The measure was defeated by a vote of 192 yeas as against 200 nays.

In the House vote it is interesting to note that certain of those House Members afterward became Members of the Senate. Some of those names appearing as voting for the passage of the bill when they were Members of the House are: Messrs. Barkley, Byrnes of South Carolina, Caraway, Connally, Harrison of Mississippi, Hayden, Hull, McKellar, Neely.

I must not forget to include with those House Members who voted for S. 706 the name of a Democratic Member from the State of Kansas. He also approved the idea of an orderly infusion of new blood. His name was Jouett Shouse. He is so recorded.

The Vice President, then a Member of the House, voted for the principle now involved in the pending measure.

The following Members voted for S. 706 in the House March 2, 1917:

Yeas—192: Abercrombie, Adair, Adamson, Aiken, Alexander, Almon, Ashbrook, Aswell, Ayres, Bailey, Barkley, Barnhart, Bell, Black, Blackmon, Booher, Borland, Buchanan of Illinois, Buchanan of Texas, Burgess, Burke, Burnett, Byrnes of South Caroline, Byrns of Tennessee, Caldwell, Chandler of Mississippi, Cantrill, Caraway, Carlin, Carter of Oklahoma, Casey, Church, Clark of Florida, Cline, Coady, Collier, Connelly, Cox, Crisp, Crosser, Cullop, Dale of New York, Davenport, Decker, Dent, Dewalt, Dickinson, Dies, Dixon, Doolittle, Doremus, Doughton, Dupre, Eagan, Eagle, Edwards, Estopinal, Evans, Ferris, Fields, Fitzgerald, Flood, Foster, Gandy, Gard, Garner, Glass, Godwin of North Carolina, Goodwin of Arkansas, Gordon, Gray of Alabama, Gray of Indiana, Gregg, Hamlin, Hardy, Harrison of Mississippi, Harrison of Virginia, Hastings, Hayden, Heflin, Helm, Helvering, Henry, Hilliard, Holland, Hood, Houston, Howard, Huddleston, Hughes, Hull of Tennessee, Humphreys of Mississippi, Igoe, Jacoway, Johnson of Kentucky, Keating, Key of Ohio, Kincheloe, Kitchin, Konop, Lazaro, Lee, Lesher, Lever, Lewis, Lieb, Linthicum, Littlepage, Lloyd, Lobeck, London, McAndrews, McClintick, McCorkle, McGillicuddy, McKellar, McLemore, Mays, Montague, Moon, Morgan of Louisiana, Morrison, Murray, Neely, Nicholls of South Carolina, Oglesby, Oldfield, Oliver, Olney, O'Shaunessy, Overmyer, Padgett, Page of North Carolina, Park, Patten, Phelan, Pou, Price, Quin, Ragsdale, Rainey, Raker, Randall, Rayburn, Reilly, Riordan, Rouse, Rubey, Rucker of Georgia, Rucker of Missouri, Russell of Missouri, Sabath, Saunders, Sears, Shackleford, Shallenberger, Sherley, Shouse, Sims, Small, Smith of New York, Smith of Texas, Steagall, Stedman, Steele of Iowa, Steele of Pennsylvania, Stephens of Mississippi, Stephens of Nebraska, Stephens of Texas, Stone, Sumners, Taggart, Talbott, Tavenner, Taylor of Arkansas, Taylor of Colorado, Thomas, Thompson, Tillman, Van Dyke, Venable, Vinson, Walker, Watson of Virginia, Webb, Whaley, Williams, W. E., Wilson of Louisiana, Wingo, Wise, Young of Texas, Watkins.

Mr. HATCH. Mr. President, I am about to approach an unpleasant task, but duty compels me to undertake it. I wish to call the attention of the Senate to the fact that on the three measures providing for the same principle as set forth in the President's bill and in the amendment which we are now discussing there was one Member of this honorable body who adopted a steady and consistent course then and now. If I may have the attention of the Senator from Arizona [Mr. ASHURST] I may say that on the roll calls on these various votes since 1915 down to this good day the Senator from Arizona has been found supporting the principle for which he now contends. The Senator from Arizona has been consistent. [Laughter.]

Mr. ASHURST. Mr. President, will the Senator permit me to interrupt him?

Mr. HATCH. I yield.

Mr. ASHURST. That may be a dubious compliment. I just finished a conversation with a friend, and told him that in my service here I never examine to see how I voted in the past. Many Senators—and I respect them for it—when a vote comes, look to see how they voted yesterday or the day before. I never do that. Each problem must be solved by the facts, contingencies, and circumstances that present themselves at the particular time.

I had forgotten the incident; it was an inconspicuous part I played; and will the Senator from New Mexico permit me to thank him—and I think the Senate feels that thanks are due—for the patience, the assiduity, and the diligence with which he has made research into this question. His speech today, whether we agree with him or not, evinces historical investigation.

The able Senator from New Mexico states a fact, and I now remember the bill, although it has been over 22 years ago since the question was raised and discussed. I am glad to have it noted, for what satisfaction it may give, that my action in supporting the pending bill is in no sense in contradiction of the action I took at that time. Much as I have changed my mind, on this question at least I have never changed my mind, and a defense of my position in this respect never occurred to me until just now when I heard it fall from the lips of the able Senator from New Mexico. I do not think I need any defense, but, if I did, he has made a superb one, founded in truth. I am not much for defensive explanations, because, Mr. President, a public man who makes an explanation today will tomorrow be explaining his own explanation. [Laughter.]

Mr. HATCH. Mr. President, in the course of my search of the records concerning these various bills, I found some other

interesting matter. At this point I am about to insert in the RECORD a letter. I regret very much that the Senator from Montana [Mr. WHEELER] is not present at the moment.

Mr. ASHURST. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. ASHURST. The able Senator from Nebraska [Mr. BURKE], who is one of the able lawyers of this body, asked a question, if I heard him aright, as to whether or not when the question was pending in 1915, there was before the country any such excitement or discussion as to the Supreme Court as is now pervading the country.

Mr. HATCH. That is correct.

Mr. ASHURST. Did the Senator from Nebraska ask that question?

Mr. BURKE. Yes.

Mr. ASHURST. It was a natural question; the logical mind of the Senator would prompt it. I wish to say it will be recalled that about in 1910 a tremendous public discussion arose throughout the country with respect to the Federal courts. It was in 1911 that Theodore Roosevelt, speaking in Ohio, urged the recall of judges. It will be remembered that in both the Democratic and Republican national conventions in 1912 one of the most important questions, one of the questions which was at the forefront, was the one affecting judges. It was widely claimed that they had usurped the legislative functions of the Government. It is true that, by 1915, the acuteness of the question had somewhat subsided, but the genesis of the pending legislation was almost in the very spot-center of the tremendous agitation that stirred the public mind at that time regarding the alleged usurpation of legislative power by the Court.

Mr. HATCH. I am grateful to the Senator from Arizona for his contribution on that point.

Mr. BURKE. Mr. President, will the Senator from New Mexico yield in order that I may ask the Senator from Arizona a question?

Mr. HATCH. I yield.

Mr. BURKE. Did the Senator from Arizona support the legislation in 1915 because he wanted to put additional members on the Court in order to curb the activities of the Justices or because he wanted to effect and to secure a different line of decisions?

Mr. ASHURST. Mr. President, that was 22 years ago. I wish to give the able Senator from Nebraska a fair answer. The Senator from Nebraska asked me if I supported the bill then pending for the reason indicated. Call the roll of Senators and let them open the door of the sanctuary which is within the breast of every human being, that monitor that tells them when they are right or wrong, and on their honor they are sometimes unable to say just what particular factors determined them to vote this way or that way. When we look back upon a vote, sometimes within 10 minutes after a vote, it is quite difficult to say just what particular factor caused us to vote this way or that way. That is not easy to do. I may assign one reason and others may assign a different reason.

However, I am asked if my vote in 1915, and if my activity, modest as it was, in the committee at that time were prompted by a desire to secure a different line of decisions.

About that time, or possibly a year or two previously, the then able Senator from Iowa, Mr. Cummins, who is remembered here with affection and respect, submitted to this body from the Committee on the Judiciary a report couched in dignified language, to the effect that the people would never permit the Court to become the legislative power of the country; that they would never permit the Court to invade the legislative branch. It is quite likely, Mr. President, although I am asked to reply quickly, that when I cast that vote in 1915, which was in accordance with my present views, I was impressed with the idea that the Court had invaded the legislative power of the Government.

Mr. President, I was not alone in that view. The able Senator from New Mexico has referred to the late Elihu Root. I refer to Senator Root with affection. As a lawyer

interesting matter. At this point I am about to insert in the Yet Mr. Root had the same view, and took the view that if the courts began to trench upon and to usurp the legislative function the method to obviate it would be to infuse or transfuse new blood into the Court. I do not know that he used that language.

Mr. BURKE. Mr. President, if the Senator will yield to a question, I should like to challenge the Senator from Arizona at this time to produce that language or any language of Senator Elihu Root that bears the remotest resemblance to the statement he has just made.

Mr. ASHURST. The Senator has challenged me. I cannot answer, because Senator Root did not use that exact language.

Mr. BURKE. Nor anything like it.

Mr. ASHURST. But the effect of his argument, the effect of his vote, the effect of the report, the effect of his activity in the committee were that he wanted additional judges to serve on the Federal bench to take the place of those who by reason of extreme debility, had manifested, if any of them had, a willful deliberate desire to take the bit in their teeth and run riot contrary to the wishes of the people of the country and to the genius of our institution. Of course Senator Root would not have stated it in the rather blunt and rough words I have used, but let me say to my friend from Nebraska that Senator Root had that idea in mind or he could not have cast the vote he did.

Mr. BURKE. Mr. President——

Mr. HATCH. Mr. President, may I regain the floor in my own right for just for a few minutes?

Mr. BURKE. Mr. President, may I speak just one sentence?

Mr. HATCH. Very well, just one sentence.

Mr. BURKE. I will say to the Senator from Arizona that in my own time I shall set forth very fully the views of Mr. Elihu Root on this subject, and I am sure the Senator from Arizona will then want to strike from the RECORD or qualify anything he may have said today in reference to Senator Root's reason for supporting that piece of legislation.

Mr. ASHURST. We will meet on this common ground, that Senator Root supported in the committee and voted for a bill which, in my judgment, did nothing more or less than this bill proposes to do.

Mr. HATCH. That was a bill applying to the lower courts, however.

Mr. ASHURST. Yes.

Mr. HATCH. The Senator from Nebraska does not contend otherwise than that, does he? He does not contend that Senator Root was not a member of that subcommittee?

Mr. BURKE. Oh, no.

Mr. HATCH. Nor does he deny the statements of former Senator Smith, of Georgia, and Members of the House made through the course of those debates after Senator Root had left the Senate, that he favored the legislation and the bill which the subcommittee was considering when he was a member of it and which contained not the limitation the Senator from Wyoming [Mr. O'MAHONEY] read, but which followed the language almost requested and desired by the then Attorney General, Mr. McReynolds.

Mr. BURKE. What I am saying in reference to Senator Root while he was in the Senate and outside is that he never favored any legislation proposing to add judges to any court for the purpose of influencing the decisions of the court.

Mr. HATCH. No; but the then Senator from New York, Mr. Root, did recognize the evils which come with aged Justices remaining too long on the bench and he sought to find a remedy by which that evil could be overcome. The remedy he suggested and for which he voted as a member of the subcommittee was the same remedy we seek to apply today to the Supreme Court. He was not alone in that.

Mr. WHEELER rose.

Mr. HATCH. Pardon me, but I decline to yield further.

The PRESIDENT pro tempore. The Senator from New Mexico declines to yield further.

Mr. HATCH. I desire to offer for the RECORD another letter, a letter written by another outstanding jurist and statesman who has been quoted time and time again throughout the debate, a man whom Senators admire and respect. It is in the RECORD, a part of the history of Congress. In a letter which he wrote the present Chief Justice of the Supreme Court of the United States approved a plan of appointing an additional judge whenever the incumbent on the bench below the Supreme Court passed the age of retirement and did not retire.

On June 27, 1918, Charles Evans Hughes wrote this letter to Hon. H. J. Steele, House of Representatives, Washington, D. C.:

MY DEAR CONGRESSMAN: I trust that House bill No. 12001 will not fail to pass.

That was the bill which finally became a law, and which contained a limitation restricting it to judges who were mentally and physically disabled, and gave the President of the United States the power to find those questions as a fact. The letter continued:

As I have already written to Congressman Caraway, I regard it as a highly important measure which should be passed in justice to the judges and in the interest of the public. I stated the grounds of this opinion in my letter to Congressman Caraway, and I need not enlarge upon them. I write now to say that I am also in favor of the provisions in House bill no. 12001, relating to the retirement of circuit and district judges. I was not in favor of the provisions embraced in House bill No. 11134, relating to the compulsory retirement of district judges, but these provisions have been eliminated and under House bill 12001 circuit and district judges have been put on the same basis with regard to retirement, and these provisions it seems to me are eminently wise.

Very sincerely yours,

CHARLES E. HUGHES.

I will say, in justice to the present Chief Justice, that he was referring to the provisions of a bill which created additional compensation for judges. The present junior Senator from Texas [Mr. CONNALLY] voted against it in the House, although he had previously voted for the first bill which did not carry the feature of compensation.

Mr. CONNALLY. Mr. President, did the Senator from New Mexico make some reference to the junior Senator from Texas?

Mr. HATCH. Yes; I referred to the junior Senator from Texas. I am sorry he was not here when I did so. In the discussion of the various bills which have been before the House and Senate throughout the years I merely read the record of the votes and showed that a bill embodying this same principle had failed of passage in the House of Representatives, although the present junior Senator from Texas [Mr. CONNALLY] voted in favor of the bill in the House.

Mr. CONNALLY. Mr. President, I challenge the Senator from New Mexico to find any vote or any sentiment ever uttered by the junior Senator from Texas favoring the idea that, because a judge did not decide as he would want him to decide, additional judges ought to be put on the bench. That is the issue here.

Mr. HATCH. I never made any such statement, nor do I recognize that as the issue. I made no such statement as that, I assure the Senator from Texas.

Mr. WHEELER. Mr. President, may I ask the Senator a question?

Mr. HATCH. I am very anxious to conclude, but I yield to the Senator from Montana.

Mr. WHEELER. Does not the Senator think there is a vast difference between increasing the number of Justices on the Supreme Court of the United States by this method and increasing the number of judges of the inferior courts by this method?

Mr. HATCH. I do.

Mr. WHEELER. The proposition as to the inferior courts is vastly different because the Supreme Court is the final arbiter.

Mr. HATCH. I say to the Senator from Montana that the distinction I make is that there is more need for such a law as applied to the Supreme Court than as applied to the inferior courts. I shall not ask the Senator from Montana to take my word for that, because I shall also prove it by the utterances of eminent statesmen and jurists and thus show the truth of the statement.

Mr. WHEELER. Adding to the number of judges when incumbents are 70 or 75 years of age may be packing, even in the case of the lower courts. There is a vast difference between doing such a thing to the lower courts and doing it to the Supreme Court of the United States.

Mr. HATCH. I should like to argue the matter further with the Senator from Montana, but I am anxious to conclude. I am going to deal with that point later and shall submit some evidence which I am sure even he will consider quite conclusive.

Mr. President, the effect of the letter of Chief Justice Hughes, to which I was referring, was disclosed in the debate which took place in the House. The question of whether the bill was constitutional was raised, and Representative Webb said:

Does the gentleman think that so eminent a man as Mr. Justice Hughes would say he regards this provision as eminently wise if he thought it was unconstitutional?

Mr. TOWNER. I think that Judge Hughes never gave the constitutional question any consideration at that time.

Mr. WEBB. Oh, yes; Judge Hughes had this under consideration for quite a while.

Mr. GRAHAM of Pennsylvania. Yes; he did, in the section letter.

Mr. WALSH. There is not a word about the constitutionality of it.

Mr. WEBB. I read from the letter of June 27, 1918, addressed to Hon. H. J. Steele:

"I was not in favor of the provisions embraced in House bill No. 11134, relating to the compulsory retirement of district judges, but these provisions have been eliminated, and under House bill No. 12001 circuit and district judges have been put on the same basis with regard to retirement, and these provisions, it seems to me, are eminently wise."

That is the letter which I just read for the RECORD a moment ago. At that time those Members of the House construed that the present Chief Justice had approved the legislation then proposed.

There is much more of the debate along that line which I will not take the time to present.

That debate took place on December 13, 1918; but, referring to the point raised by the Senator from Wyoming, I will not answer it. Let us get back and see what was said about the matter then—not what some of the proponents of the measure said, but let us see what some of its opponents said.

We find in the CONGRESSIONAL RECORD of March 29, 1916, the following exchange between the then Senator from Iowa, Mr. Cummins, and the then Senator from Utah, Mr. Sutherland. Mr. Cummins said:

The Supreme Court of the United States is constitutionally as vulnerable to the attack made upon the judiciary in the bill as is either the circuit court of appeals or the district court. If a judge, who has passed beyond the age of 70 years and refuses to resign, ought to be retired, and if his judicial power, no matter what may be his physical and mental condition, should be taken away from him, the reason is as potent in its application to the Supreme Court as it is to any other Federal court.

The then Senator from Utah, Mr. Sutherland, said:

Mr. President, may I ask the Senator from Iowa a question?

The Senator from Iowa yielded; and the Senator from Utah, Mr. Sutherland, said:

I ask the Senator from Iowa whether or not the reason in the case which he is supposing would not be stronger as applied to the Supreme Court, because there is a certain degree of flexibility in the circuit court of appeals and in the district court; that is, the judges are to a certain extent interchangeable. If a judge upon the bench of the circuit court of appeals is incapacitated, a district judge may be called to take his place and may sit upon the circuit court of appeals; if a district judge is incapacitated, another district judge may be assigned to take his place; but no such condition exists as to the Supreme Court of the United States. Nobody else can be called into that court. So, if there are degrees in a matter of that kind, I ask the Senator from Iowa whether he does not think the reason would be stronger in favor of such legislation as to the Supreme Court?

Mr. CUMMINS. Undoubtedly, Mr. President, the observation of the Senator from Utah has great weight, and I was about to touch upon that phase of the subject. The remark I had made was that, constitutionally speaking, the Supreme Court of the United States can be dealt with in precisely the same way as the circuit court or the district court can be dealt with. From

the other point of view, that of policy, there is, as the Senator from Utah has stated, a much more persuasive reason for at all times keeping the Supreme Court full of able-bodied men under 70 years of age than exists with regard to the other Federal courts.

Mr. WHEELER. Mr. President, will the Senator further yield?

Mr. HATCH. I yield.

Mr. WHEELER. I am not unmindful of the fact that a man who is on the Supreme Bench, and who reaches the age of 75 years, if he is incompetent, ought to retire; but the difference, it seems to me, is apparent. It seems to me that all this talk about the age of the Justices is beside the question. Let me call attention to the fact that the Assistant Attorney General of the United States, Mr. Keenan, in a public speech at Tulsa, Okla., made the statement that "what we want is six judges whom we can trust." Let me further call attention to the fact that Mr. Keenan is the man who was constantly in attendance on the Judiciary Committee arranging for the appearance of witnesses there, and I am told that he is one of the men who drafted the proposed legislation.

Are we to take the word of the Assistant Attorney General when he said, "What we want is six judges whom we can trust"? And is it not a subterfuge to say that this proposed legislation is based upon the ages of the Justices, simply because there happen to be on the Supreme Bench at the present time some men who are over 75 years of age?

The real issue in this case is not the age of the Justices of the Supreme Court. Nobody connected with this administration wants to get Mr. Justice Brandeis out because he is 75 or 80 years of age. What they want is to have on the Supreme Bench, as Mr. Keenan said, six men whom they can trust. I cannot conceive that all this talk about age is anything but camouflage. We know that is what it is. Why are we not frank and honest about it?

Mr. HATCH. I do not know just what the Senator from Montana means by his last statement, that "all this talk about age is camouflage."

Mr. WHEELER. I do not refer to the Senator from New Mexico. When the office of the Attorney General, who drafted the bill, says, "What we want is six men whom we can trust", then I say for them to come out and put the reason for this legislation on the ground of age is camouflage.

Mr. HATCH. I do not want to get into more of these side debates. I desire to finish the argument.

I will say to the Senator from Montana that I do not know what motives or purposes inspire any man. We are all subject to criticism; but when the President of the United States sent to this body a message in which he said that he believed in the enactment of legislation which would provide a systematic and regular way of adding younger blood to the courts I consider that it was my duty as a member of his party and as a Member of this body to believe the President and try to make the legislation what the President said he wanted. That I have done; and it does not lie in the mouth of the Senator from Montana or any other man to say to me that I have tried to do any other thing.

Mr. WHEELER. But when the President sent that message to Congress, he also sent up a bill; and the Senator from New Mexico sat as a member of the Judiciary Committee and listened for 6 weeks to the testimony given before that committee, and voted against reporting the bill favorably.

Mr. HATCH. I did.

Mr. WHEELER. The Senator not only voted against reporting the bill favorably, but he signed the report of the Judiciary Committee against the bill.

Mr. HATCH. I did.

Mr. WHEELER. Everything that may be said about the original bill providing for the appointment of six additional Justices may be said about the amendment that is proposed to the bill. When the Senator from New Mexico puts his advocacy of the amendment on the basis that he wishes to go along with his party, I remind him that the President of the United States wanted six additional judges just as much as and more than he wants the number provided for in the amendment.

Mr. HATCH. I have not put my advocacy of the amendment on the basis that I want to go along with my party on this measure. I think I demonstrated what I wanted to do when it was sought to make the question a party issue. The Senator from Montana knows how I cast my vote; but I did believe it to be my duty as a Member of this body to take that which I saw to be good in the bill and make it conform to the wishes and desires of the President of the United States as set forth in his message.

Another former distinguished Member of this body, the then Senator from Rhode Island, Mr. Colt, said:

> It may be said that the application of the principle of this bill to the Supreme Court bears a close analogy in its mode of operation and effect to its application to the nine circuit courts of appeal. These courts may be called little supreme courts, since they are courts of last resort in most cases, and they were established for the very purpose of relieving the Supreme Court. Indeed, as pointed out by the Senator from Utah [Mr. Sutherland], there is even more justification for applying this bill to the Supreme Court by reason of the flexibility of the circuit and districts courts, owing to the interchange of the judges in these courts.

Mr. President, many other statements could be read sustaining this proposition.

Mr. O'MAHONEY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New Mexico yield to the Senator from Wyoming?

Mr. HATCH. Yes; I yield.

Mr. O'MAHONEY. I understand that the Senator is drawing to the close of his discussion.

Mr. HATCH. I hope so.

Mr. O'MAHONEY. If the Senator will yield to me, I desire at this point to offer an amendment to the proposed substitute.

Mr. HATCH. Very well.

Mr. O'MAHONEY. On page 2, line 3, after the word "year", I propose to insert the following:

> nor within 12 months after any such appointment has been made.

Mr. HATCH. Mr. President, as I had started to say, I have much other material on my desk which I expect to use later in the progress of the debate. But I shall not detain the Senate longer today, except to say, as I said in the beginning, and as I said in the early part of the hearings on the President's bill, the bill contains a limitation that not more than one Justice shall be appointed in any one year, and also a provision that the Court shall return to its original number of nine, and those two provisions now make of the bill a sound and constructive measure which will bring about a long-needed reform in the judicial system of this country.

HOUR OF MEETING AND ORDER FOR RECESS TOMORROW

Mr. ROBINSON. Mr. President, I ask unanimous consent that when the Senate completes its labors today it take a recess until 10 o'clock tomorrow morning, and that at the hour of 1 o'clock p. m. tomorrow it take a recess until 12 o'clock noon the following day.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

EXECUTIVE SESSION

Mr. ROBINSON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nomination of William J. Hughes to be postmaster at Loris, S. C., in place of W. J. Hughes.

Mr. WALSH, from the Committee on Naval Affairs, reported favorably the nominations of sundry officers for promotion in the Navy.

The PRESIDENT pro tempore. The reports will be placed on the Executive Calendar.

If there be no further reports of committees, the nomination on the calendar will be stated.

POSTMASTER

The legislative clerk read the nomination of Chester A. Brown to be postmaster at Idaho Springs, Colo.

The PRESIDENT pro tempore. Without objection, the nomination is confirmed.

That completes the Executive Calendar.

RECESS

The Senate resumed legislative session.

Mr. ROBINSON. I move that the Senate take a recess, pursuant to the order heretofore entered.

The motion was agreed to; and (at 4 o'clock and 35 minutes p. m.) the Senate took a recess, the recess being, under the order previously entered, until tomorrow, July 7, 1937, at 10 o'clock a. m.

NOMINATIONS

Executive nominations received by the Senate July 6, 1937

DIPLOMATIC AND FOREIGN SERVICE

Grenville T. Emmet, of New York, now Envoy Extraordinary and Minister Plenipotentiary to the Netherlands, to be Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Austria, vice George S. Messersmith.

Ray Atherton, of Illinois, now a Foreign Service officer of class 1 and counselor of Embassy at London, England, to be Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Bulgaria, vice Frederick A. Sterling.

APPOINTMENTS AND PROMOTIONS IN THE NAVY

MARINE CORPS

Lt. Col. Jeter R. Horton, assistant quartermaster, to be an assistant quartermaster in the Marine Corps with the rank of colonel from the 1st day of July 1937.

Lt. Col. Sydney S. Lee to be a colonel in the Marine Corps from the 1st day of July 1937.

Maj. Field Harris to be a lieutenant colonel in the Marine Corps from the 30th day of June 1937.

Maj. Roy C. Swink to be a lieutenant colonel in the Marine Corps from the 30th day of June 1937.

The following-named majors to be lieutenant colonels in the Marine Corps from the 1st day of July 1937:

Donald Curtis
Ery M. Spencer
William N. Best

The following-named majors to be majors in the Marine Corps to correct the dates from which they take rank as previously nominated and confirmed:

Edward G. Hagen, from the 1st day of September 1936.
Bailey M. Coffenberg, from the 1st day of November 1936.
Samuel W. Freeny, from the 1st day of December 1936.
Otto E. Bartoe, from the 1st day of January 1937.
John K. Martenstein, from the 3d day of January 1937.
John Kaluf, from the 1st day of February 1937.
Albert W. Paul, from the 1st day of March 1937.
Arthur D. Challacombe, from the 1st day of April 1937.
William F. Brown, from the 22d day of April 1937.

Capt. Ralph W. Culpepper to be a major in the Marine Corps from the 1st day of June 1937.

The following-named captains to be majors in the Marine Corps from the 30th day of June 1937:

Paul R. Cowley	Paul A. Lesser
George D. Hamilton	William D. Bassett
Norman E. True	James D. Waller
Carl W. Meigs	Cyril W. Martyr

Capt. Frank S. Gilman to be a major in the Marine Corps from the 1st day of July 1937.

Capt. Thomas J. Cushman to be a major in the Marine Corps from the 1st day of July 1937.

The following-named first lieutenants to be captains in the Marine Corps from the 30th day of June 1937:

Paul D. Sherman	Francis H. Williams
John Wehle	Paul W. Russell
William P. Battell	Frank M. Reinecke
Cornelius P. Van Ness	John M. Davis
Lewis R. Tyler	Walfried H. Fromhold
Archibald D. Abel	James T. Wilbur
Charles E. Shepard, Jr.	Charles H. Hayes
Peter A. McDonald	Donald M. Weller
Michael M. Mahoney	Samuel S. Yeaton
Frank G. Wagner, Jr.	Edward A. Montgomery
Paul Moret	Edgar O. Price
Harold W. Bauer	Robert E. Hill
William B. McKean	

The following-named first lieutenants to be captains in the Marine Corps from the 1st day of July 1937:

James M. Daly	Wright C. Taylor
Ronald D. Salmon	Marcellus J. Howard
Ernest W. Fry, Jr.	

The following-named citizens to be second lieutenants in the Marine Corps, revocable for 2 years, from the 1st day of July 1937:

Fletcher L. Brown, Jr., a citizen of Florida.
John F. Dunlap, a citizen of Georgia.
Glenn E. Fissel, a citizen of Ohio.
John J. Gormley, a citizen of Maryland.
James D. Hittle, a citizen of Michigan.
Hugh R. Nutter, a citizen of California.
Robert H. Ruud, a citizen of North Dakota.
Joseph L. Stewart, a citizen of Alabama.
Marvin C. Stewart, a citizen of Mississippi.
Tom M. Trotti, a citizen of South Carolina.
Jack F. Warner, a citizen of California.

CONFIRMATION

Executive nomination confirmed by the Senate July 6, 1937

POSTMASTER

COLORADO

Chester A. Brown, Idaho Springs.

HOUSE OF REPRESENTATIVES

TUESDAY, JULY 6, 1937

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Eternal God, our Father upon earth, who has committed unto us the solemn trust of the public service, keep us deeply conscious of our responsibilities. Direct us with Thy most gracious favor and further us with Thy continued help. We pray Thee to give us that due sense of all Thy mercies, that our hearts may be unfeignedly thankful. Day by day enable us to show forth Thy praise in our behavior by walking before Thee in truth and righteousness. We entreat Thee, blessed Lord, at the beginning of these days, that we may free ourselves of irritations, impatience, and worries, and thereby extend our spiritual frontiers and enlarge the boundaries of our understanding. Thou Holy One, our