5-18-1971

A Memo from Harry Swegle in Regards to Judicial Disqualification Act of 1971 and Omnibus Disclosure Act With Enclosed Copy of Senator Birch Bayh's *Congressional Record - Senate's Article*

Harry Swegle

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May 18, 1971

For Your Information

Senator Bayh has introduced two bills that may be of interest to you; 1--the Judicial Disqualification Act of 1971; and 2--the Omnibus Disclosure Act. His remarks and text on these bills are attached.

Harry Swegle
S 7010

CONGRESSIONAL RECORD — SENATE
May 17, 1971

By Mr. BAYH:

S. 1885. A bill to require periodic financial disclosure by officers and certain employees of the Federal Government, and for other purposes. Referred to the Committee on Government Operations; and

S. 1866. A bill to improve judicial machinery by amending title 28, United States Code, to broaden and clarify the grounds for judicial disqualification, and for other purposes. Referred to the Committee on the Judiciary.

Mr. BAYH. Mr. President, in recent times the Senate has been involved in difficult and troubling controversies over the qualifications of Supreme Court Justices. These difficult and unfortunate disputes are now behind us, and I for one see no purpose to be served by a lengthy post mortem. Or perhaps we have learned a valuable lesson in ethics in the course of these debates. And I believe we have established new standards of conduct for all public officials. Today I introduce legislation designed to write into these statutes and these higher standards into the law of the land.

The legislation is based on the standards of judicial conduct demanded by the American people. These people have improved substantially in recent times. Some Federal judges, intentionally isolated from the need to face the voters, have not been consistent in adhering to this new, more rigorous, sense of propriety. Particularly where financial interests are involved, we need a major retraction in current statutory provisions governing judicial disqualification.

I do not suggest that the great majority of our Federal judges overlook the need to exercise infinite care in exercising judicial, and judicial recusal. Most of our judges lean over backward to try to avoid not only impropriety, but also the appearance of impropriety.

Second, even more important than articulating standards of conduct is the need to assure an effective check on official impropriety. No mechanism better provides for personal awareness and self policing: no mechanism offers the public more evidence of the impartiality of judicial action, than complete public disclosure of financial interests and activities.

Third, such measures must not be limited to Federal judges alone. All of us who do the public's business—judicial, legislative, and executive—must also recognize the public's legitimate interest in our own personal financial conflicts.

It is not only difficult, it is patently unfair for us to suggest that one individual, one branch of the Government, or one group of individuals be given minute scrutiny, while others need not live up to the same standards.

Out of these principles, I have formulated two bills which I introduce today:

the Judicial Disqualification Act of 1971 and the Omnibus Disclosure Act. These bills are similar to legislation I introduced late in the last Congress. They have been refined and improved as a result of the comments I have received from experts in the area.

THE JUDICIAL DISQUALIFICATION ACT OF 1971

The Judicial Disqualification Act amends sections 453 and 144 of title 28 of the United States Code. Both of these sections were reviewed at the testimony of John Frank, one of our foremost authorities on judicial disqualification, at the hearings before the Senate Judiciary Committee. They were drafted and revised with the continuing advice and invaluable assistance of Mr. Frank.

The draft revisions, and last year's bill, were circulated to a number of distinguished lawyers, judges, and professors across the country. Many thoughtful and interesting responses were received and a number of these suggestions have been incorporated into the proposed legislation.

There are a number of defects in section 453. The central provisions of section 455 require a judge to disqualified himself in any case in which he has a "substantial interest," in the words of the Judicial Conference of the American Bar Association. This word, "substantial," according to their standard would include any legal or equitable interest, no matter how small, in a party or thing involved in the litigation or any directional or active participation in any organization involved in the litigation.

The omnibus provision of the Judicial Disqualification Act is section 144 of title 28, dealing with disqualification for bias or prejudice. When a motion is made for disqualification for bias or prejudice is made, a party is often dismayed to learn that under section 144 the judge himself determines whether the allegations are sufficient. Surely litigants who believe that they cannot get a fair trial before a particular judge should not have to convince the very same judge of his bias.

This result disturbs me because it contributes to the lack of confidence in our courts. This lack of confidence does not, in my opinion, reflect some basic defect in our political system or our judicial system; it is the result of not so much conflict of interest, or prejudice, or bias, but one of fundamental injustice as the appearance of injustice. No statute creates more distrust than does the section 144 procedure for disqualification for prejudice.

One possible change in section 144 would require some other judge to rule on the question of a trial judge's alleged bias. However, this still puts undue pressure on courts and on counsel to consider the possibility of embarrassment and tension created when one man must rule on the impartiality of his colleague—and often, his friend.

The Judicial Disqualification Act of 1971 takes a different approach to changing section 144. It would create a right in a litigant to one peremptory disqualification if the judge assigned to hear his case, adopting a disqualification provision now employed in California and a number of other States. Under such a provision, a party could receive a disqualification.

The bill deliberately avoids any resort to the device of disclosure and waiver, and imposes mandatory disqualification in cases where the provisions of the statute are met. The revision also requires the judge to disqualify for appearance of impropriety, thereby codifying the requirement of section 4 of. Finally, the bill reflects the reality that judges must sit in cases where the judge is not disqualified by the provisions of the statute, and gives him fair latitude to disqualify himself in other cases where "in his opinion, it would be improper for him to sit." This revision of section 455 would be very similar to the judicial disqualification standards recently recommended in a report from the Special Committee on Standards of Judicial Conduct of the American Bar Association. This very distinguished group, chaired by the Honorable Roger Traynor, former chief justice of the California Supreme Court, believed that:

A judge should disqualify himself in any proceeding in his court in which he knows or should know that he, individually or as a trustee, or any member of his family residing in his household, has an interest in the matter in controversy or in the affairs of a party to the proceeding.

An "interest" according to their standards would include any legal or equitable interest, no matter how small, in a party or thing involved in the litigation or any directional or active participation in any organization involved in the litigation.

REVISION OF SECTION 144

The other major provision covered by the Judicial Disqualification Act is section 144 of title 28, dealing with disqualification for bias or prejudice. When a motion is made for disqualification for bias or prejudice is made, a party is often dismayed to learn that under section 144 the judge himself determines whether the allegations are sufficient. Surely litigants who believe that they cannot get a fair trial before a particular judge should not have to convince the very same judge of his bias.

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is left with no option except to determine whether the application has been timely made. The affidavit must be filed before any discretionary matter has been presented to the judge. Each side is required to challenge, in good faith, any abuse in cases where one of the parties simply wants to create delays or to avoid trial altogether.

Mr. President, the other major piece of legislation I introduce today is the Omnibus Disclosure Act. This bill is based in large part upon the recently published study entitled "Congress and the Public Trust," the report of a special committee of the City of New York's Special Committee on Congressional Ethics. The executive director of the committee, and the author of its report, is James C. Kirby, Jr., a former member of the Senate Subcommittee on Constitutional Amendments and now dean of the Ohio State University Law School. The bill also draws upon the pioneering work in the area by my distinguished colleague from New Jersey (Mr. Case).

The disclosure provisions of this bill are based upon the premise that the public's confidence in governmental proceedings depends upon the consent of the governed. This legislation presumes that, if the people are supplied with sufficient information about their elected officials and appointees, the people themselves will fashion enforceable standards of conduct in the voting booth.

At this time it is impossible for the public to gain access to this information. A study of congressional, judicial, executive branch, conference resolution, and Executive order compose the present financial disclosure laws. None of the disclosure provisions are sufficiently comprehensive in the type of financial information required to be disclosed or in the individuals required to file reports. Furthermore, none of the provisions allow for significant public disclosure of financial interests. The Federal judiciary is presently subject to a resolution passed by the Judicial Conference of the United States on March 8, 1976. This resolution requires judges from only the most comprehensive public disclosure adopted at the behest of former Chief Justice Warren in June of 1969. The most recent resolution requires all Federal judges, except Supreme Court Justices, to file a confidential financial disclosure report with a special committee of the Judicial Conference, the conference of their circuit, and the clerk of their court. Each judge must list his total income, including extra judicial services such as lecturing, teaching, and serving as executor of an estate. He must itemize sources of income and gifts to him. Each judge must report whether he has knowingly participated in any decision in which he or any member of his household had a financial interest, or if he has engaged in any transaction involving securities or property of a party to a case pending before him. Finally, he must report any positions held in any organization whether or not compensation is received thereby.

Members of Congress are subject to provisions of the House and Senate rules.

Rule 44 of the rules of the House requires Members and officers of the House, their principal assistants, and professional staff members of House committees to file confidential disclosure reports with the Committee on Official Conduct. The reports require an individual to disclose sources of over $5,000; capital gains of over $5,000 from a single source—other than rate of a residence; net government retirement benefits of over $1,000; interest and position in businesses from which he received $1,000 or more and which deal with the Government and are subject to its regulations and the names of professional organizations with which he associated and which account for over $1,000 of his income. The House does provide for limited public disclosure, except that it amounts of professional and service income, and the market value of business interests, reported under the act remain confidential. Furthermore, an individual is informed of each request to examine his financial disclosure reports.

Members of the executive branch are required to file disclosure reports pursuant to Executive Order No. 11229, of May 1965. The order applies to all Federal executive branch employees, and required to report basically the same information as Members and employees of the Senate, except that Federal executives are exempt from reporting on holdings or dealings in real estate. The Executive order and the civil service rules promulgated pursuant thereto also are more relaxed for members of the President's staff and for members of the executive branch of the Government. There is no provision for public disclosure.

**EMENDMENTS OVER EXISTING PRACTICES**

The Omnibus Disclosure Act would correct at least six substantial failings in the existing pattern of regulations.

First, the existing provisions are completely lacking in uniformity. My proposal would bring order to this area. The Congressional Act requires members of all three branches of Government to file the same disclosure report with the Comptroller General by May 1 of each year.

Second, the existing provisions do not require disclosure from all who should be covered. For example, the House rules do not cover candidates. The Judicial Conference rules do not cover Federal judicial employees other than judges, nor do they apply to Supreme Court Justices. The Executive order does not cover the President and Vice President. The legislation I propose covers all of these individuals, including employees of any branch of Government paid more than $15,000 per year and candidates for Congress, the Presidency, and the Vice Presidency.

Third, the problem with existing provisions is that they do not require sufficient information to be presented. For example, the Senate rules require disclosure only of debts of over $5,000 and income over $10,000. The Omnibus Disclosure Act requires disclosure of debts of over $1,000 and creates no exception for residential mortgages or real estate valued at more than $5,000 and goes beyond most of the existing provisions to require disclosure of income over $100. The Act also requires disclosure of any dealings in securities and commodities or transactions in real property, and it requires disclosure of gifts worth more than $100 and any contribution to defray campaign and office expenses.

Fourth, the Omnibus Disclosure Act would eliminate many of the loopholes in existing law by the use of detailed attribution rules. Under existing provisions, an individual can receive benefits through some unknown third party and not be required to disclose. My proposal requires all individuals, except non-individuals who list all law firm clients who paid more than $1,000 in fees. It further requires an explanation of whether the client requested confidentiality or if the individual ever performed Government service. Moreover, the individual must identify any administrative or judicial action in which the United States was a party and the bill or contract represented by that firm. This portion of the act is modeled directly after a recommendation of the Special Committee on Ethics of the Association of the Bar of the City of New York.

Sixth, and most important of all, the Act would require complete public disclosure of all of the above information. No existing provision requires full disclosure to the public, and in this respect the current law is fatally deficient. I propose that the information required by the Act be filed by the Comptroller General and made readily available to the general public.

In conclusion, I believe that passage of this legislation would be a major step toward making our Government more accountable to the people. In a time when the integrity of all of our institutions is under attack, we must be vitally committed to only self-regulation, nor for the suspicions inherent in private disclosure. I hope the Senate will move quickly to consider and then to enact these badly needed reforms.

Mr. President, I ask unanimous consent that the complete text of the Judicial Disclosure Act of 1971 and the Omnibus Disclosure Act be printed in the Record, together with a copy on summary of each bill and a comparison of the provisions of the Financial Disclosure Act with existing laws and regulations.

There being no objection, the bills and material were ordered to be printed in the Record, as follows: S. 1885

A bill to require periodic financial disclosures by officers and employees of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this
Act may be cited as the "Omnibus Disclosure Act."  

DEFINITIONS  

Sec. 2. As used in this Act—  

(1) The term "Federal officer or employee" means any Member of Congress, congressional delegate, or Member of the District of Columbia Council, or other Federal officer or employee, Federal executive employee, Federal financial officer, Federal judicial officer, or Federal judicial employee.  

(2) The term "Federal executive employee" means any person, other than an elected official, who is an elected official of the Senate or House of Representatives, and each Resident Commissioner or Resident Commissioner-elect of the House of Representatives.  

(3) The term "congressional employee" means any individual (other than a Member of the Senate or House of Representatives) who is an elected official of the Senate or House of Representatives, and any member of any committee of the Congress, and who receives compensation disbursed by the Secretary of the Senate or the Clerk of the House of Representatives at the rate of $18,000 or more per annum.  

(4) The term "Federal executive officer" means the President of the United States, the Vice President of the United States, any member of the Senate or of the House of Representatives, or any Federal officer or employee (other than a Federal judicial officer) appointed by the President by and with the advice and consent of the Senate, or a Federal executive employee of the United States authorized to expend Federal funds, and any commissioned officer of any of the Armed Forces serving on active duty for a period of more than one year.  

(5) The term "Federal financial officer" means any individual who is an elected official of the Senate or House of Representatives, and any member of any committee of the Congress, and who receives compensation disbursed by the Secretary of the Senate or the Clerk of the House of Representatives at the rate of $18,000 or more per annum.  

(6) The term "Federal financial employee" means any individual who has voluntarily qualified as a candidate in any primary election to be conducted within any State for nomination as a candidate for election as a Member of the Senate or Director of the United States, or as a Member of Congress, or who has qualified as a candidate in any general election to be conducted within any State for any such position.  

(7) The term "Federal judicial officer" means any Judge of the Supreme Court of the United States (as defined by section 610, title 28, United States Code), the Tax Court of the United States, the United States Court of Military Appeals, the United States District Court and Court of the Canal Zone, the District Court of the Virgin Islands, or the District Court of Guam, and any full-time United States magistrate.  

(8) The term "Federal judicial employee" means any officer or employee of any court named in paragraph (7) other than a justice or judge of that court, and any officer or employee of the Administrative Office of the United States Courts, which receives from appropriated funds of the United States compensation at the rate of $18,000 or more per annum.  

(9) The term "income" means each item of income, including interest, and any payment received by a court of any money or property not taken into account for purposes of computing the tax imposed by chapter 1 of the Internal Revenue Code of 1954.  

(10) The term "security" means any security as defined in section 2 of the Securities Act of 1933, as amended (7 U.S.C. 77b).  

(11) The term "commodity" means any commodity as defined in section 2 of the Commodity Exchange Act, as amended (7 U.S.C. 1a).  

(12) The term "dealing in securities or commodities" means any acquisition, holding, offering for purchase, sale, or other transaction involving any security or commodity.  

(13) The term "political campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value, made for the purpose of influencing the selection of a candidate for election, or election, of any candidate.  

(14) The term "congressional office expense" means any expense incurred by such person or his office other than a candidate, paid to any nonprofit organization, on behalf of the person or his office, or any political party, or any political committee, or any political organization, or any political action committee, or any political action organization, or any political action fund.  

FINANCIAL DISCLOSURE REQUIREMENT  

Sec. 3. (a) On or before May 1 of each calendar year, any individual who has served at any time during the preceding calendar year as a Federal officer or employee other than a candidate shall file with the Comptroller General a financial disclosure report, conforming to the requirements of this Act, for such preceding year.  

(b) Within thirty days after the date on which any individual, not otherwise a Federal officer or employee, becomes a candidate, the individual or the individual's employer shall file with the Comptroller General a financial disclosure report, conforming to the requirements of this Act, for the calendar year in which such individual became a candidate.  

(c) Service rendered by an individual as a congressional employee, Federal executive employee, or Federal judicial employee for a period not exceeding thirty days in the aggregate during any calendar year shall not be considered in determining any requirement for any calendar year for the purposes of this section.  

(d) No individual shall be required by this section to file more than one financial disclosure report for any calendar year.  

CONTENTS OF REPORT  

Sec. 4. (a) Each financial disclosure report required to be filed by any individual under this Act for any calendar year shall contain a full and complete statement of—  

(1) the identity and value of each interest in real or personal property having a value in excess of $5,000 of which such individual was the owner at any time during that year;  

(2) the identity of each creditor to whom such individual at any time during that year owed or was to owe Federal credit obligations aggregating $1,000 or more;  

(3) the identity and source of each item of income, including honoraria, and each item of reimbursement for expenditure other than the expense of transportation exceeding $500 in value received by such individual during that year;  

(4) each purchase and sale of securities or commodities by such individual during that year;  

(5) the nature, source, and value of each gift of money or property received by such individual during that year from each source, other than his parents, spouse, and children;  

(6) the source and amount of each contribution received during that year by him, or to his knowledge by any other individual, political committee, political organization, or any political action committee, on his behalf or for his account, to defray any political campaign expense or any congressional office expense of such individual; and  

(7) the identity of each client who, during that year and while such individual was a Federal officer or employee other than a candidate, paid to any law firm of which such individual is or then was a partner, or with which such individual is or then was associated professionally, one or more fees in an aggregate amount exceeding $1,000: provided, that such fees shall not apply to any individual who is a Federal officer or employee solely by virtue of being a candidate.  

LAW FIRM AND CONGRESSMEN  

Sec. 5. Whenever any Federal officer or employee other than a candidate reports pursuant to paragraph (8) of section 4(a) with respect to any other individual, the identity of any client of a law firm of which such individual is or then was a partner, or with which he is or then was associated professionally, such report shall—  

(1) state whether the client so identified was a client of that firm before the date on which the individual submitting that report became a Federal officer or employee; and  

(2) identify any legal or administrative action or proceeding commenced by the United States or any department or agency thereof which was an interested party and with regard to which the individual was represented by that firm during that year.  

ATtribution RULES  

Sec. 6. (a) For the purposes of this Act, contributions required to be reported to any individual under this Act shall be reported to the Comptroller General or to any other individual, political committee, political organization, or political action committee, on whose behalf or for whose account any such contribution shall have been received or paid in any aggregate amount exceeding $1,000: provided, that such contributions shall not apply to any individual who is a Federal officer or employee solely by virtue of being a candidate.  

(b) Paragraph (a) and paragraph (6) of subsection (a) shall not require the disclosure by any individual of any information which he does not possess and which he is
precluded by the terms of trust from acquiring.

**FORMS AND REGULATIONS**

Sec. 7. The Comptroller General shall prepare and supply to individuals obligated by this Act to file financial disclosure reports, appropriate forms for such reports, and shall provide by regulation the appropriate classification of such reports. Such regulations shall (1) specify the detail in which each category of information contained shall be supplied; (2) in the case of financial disclosure reports filed under this Act, (3) specify the method by which the value of information contained therein shall be sustained for the purposes of this Act, and (5) contain such other requirements as the Comptroller General may determine to be necessary to carry out the purposes of this Act.

**PUBLIC INSPECTION OF REPORTS**

Sec. 6. (a) Each financial disclosure report filed under this Act shall be placed in a file which shall be established by the General Accounting Office. The Comptroller General shall prepare an appropriate index to that file to facilitate the identification of and access to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file and to all reports filed by or on behalf of each individual which are contained at any time in that file.

(b) Except as otherwise provided by this subsection, each such report so filed by or on behalf of each individual shall be maintained in such file as long as such individual serves consecutively in the same capacity as a Federal officer or employee, and for five years after the end of such service. Each such report filed by or on behalf of each individual shall be maintained in such file for a period of five years after the date on which the report is filed.

(c) Under such reasonable regulations as the Comptroller General shall prescribe, reports or portions of such reports that are of greater than public interest shall be made available for inspection by members of the public during business hours of the General Accounting Office.

(d) The Comptroller General shall furnish to the Attorney General upon request a true and correct copy of any financial disclosure report contained in that file.

**PENALTY**

Sec. 9. Whoever, being an individual required by this Act to file a financial disclosure report, (1) wilfully fails to file such report within the period of time prescribed by this Act; (2) files any such report containing any information false, fictitious, or misleading with knowledge or with reason to believe that such information is false or misleading; or (3) files any such report from which there has been omitted any information required by this Act or by regulations promulgated thereunder to be contained therein, with intent to conceal a material fact, shall be fined not more than $20,000, or imprisoned not more than five years, or both.

**CONGRESSIONAL RULES**

Sec. 10. (a) This section is enacted by the Congress:

(1) As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and this section shall apply to the House of Representatives only to the extent that it is inconsistent therewith; and

(2) With full recognition of the constitutionally mandated duty of the other House to charge the provisions of this section (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Rule XLI V of the Standing Rules of the Senate and rule XLI V of the Rules of the House of Representatives are hereby repealed.
Section 5—Those who list law firm clients under section 4 must state whether the client sought the services of the individual's law firm before or after he entered government. The individual must also list any administrative or judicial action in which the United States was a party and in which the client was represented by that firm.

**ATtribution Rules**

Section 6—This section attributes to any individual required to file under section 3 the facts, facts, and facts, transactions and gifts of (1) any person acting on the individual's behalf, (2) his immediate family, (3) any corporation of which he owns more than an attributable share of the stock, (4) a proportional share of any partnership of which he is a partner, and (5) certain trusts and estates depending on his knowledge and interest.

**Forms and Regulations**

Section 7—The Comptroller General shall supply forms for reports required under the act and shall prescribe regulations governing the preparation of such reports.

**Public Inspection of Reports**

Section 8—The General Accounting Office shall keep a file of financial disclosure reports, open to public inspection, for a period of five years after each individual leaves government service.

**Penalty**

Section 9—Any individual who fails to file a report, files false or misleading information or omits information in subject to a $20,000 fine, or 5 years imprisonment or both.

**Congressional Rules**

Section 10—Congress exercises its rule-making power to repeal inconsistent rules of each house and to explicitly repeal Rule XLII of the Standing Rules of the Senate and Rule XLIV of the Rules of the House of Representatives.

**Effective Date**

Section 11—The act takes effect on the first day of the second calendar year after enactment.

**The Omnibus Disclosure Act Compared with Existing Law and Other Proposed Legislation**

1. **Who Must File and When**

   (a) The Omnibus Disclosure Act

   Members of all branches of government would file a financial disclosure report with the Comptroller General on or before May 1 of each year. The disclosure requirement would apply to all Federal judges and justices, the President and Vice-President and all Members of Congress. The provision also would apply to Federal officers and to those employees of the executive, judiciary, Congress, and Members of Congress who receive more than $20,000 a year and have served for more than 30 days. Candidates for Congress, the presidency and vice-presidency would also be required to file disclosure reports within 30 days of becoming a candidate.

2. **The Omnibus Disclosure Act (Rule XLIV)**

   Members of the House of Representatives (including the Resident Commissioner of Puerto Rico and the Delegate from the District of Columbia) and Senators and officers of the Governmental Operations, Government executed assistants to members and officers and professional staff members of committees must file a financial disclosure report by April 30 of each year with the Committee on Standards of Official Conduct. The provision only applies to the House and does not define "principal assistant," "subordinate assistant," "staff member" or "disclosure requirement does not apply to candidates.

3. **Standing Rules of the Senate (Rule XLI, XLIII, & XLIV)**

   Senate Rule 44 requires Senators, candidates for the Senate and officers and employees of the Senate paid more than $10,000 per year to file financial disclosure reports with the Comptroller General by May 15 of each year. Every Senator who has appointed an assistant to solicit or receive contributions or an individual who owns more than $10,000 in real or personal property worth more than $100, (6) the amount and source of each contribution to defray campaign expenses, and (7) the amount and source of each contribution to defray campaign expenses, and (8) except in the case of non-incumbent candidates, the identity of each person who pays more than $10,000 to a law firm with which an individual obligated under the act.

4. **Rules of the House of Representatives**

   Disclosure reports contain the following information: (1) the name, address, and address of each person who pays more than $10,000 to a law firm with which an individual obligated under the act.

5. **Standing Rules of the Senate**

   Rule 44 requires confidential disclosure reports containing the following information: (1) the amount and source of each contribution to defray campaign expenses, (2) the amount and source of each contribution to defray campaign expenses, and (3) the amount and source of each contribution to defray campaign expenses, and (4) the amount and source of each contribution to defray campaign expenses, and (5) the amount and source of each contribution to defray campaign expenses, and (6) the amount and source of each contribution to defray campaign expenses, and (7) the amount and source of each contribution to defray campaign expenses, and (8) except in the case of non-incumbent candidates, the identity of each person who pays more than $10,000 to a law firm with which an individual obligated under the act.

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8. **Standing Rules of the Senate**

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$10,000 in which he or his immediate family, or (2) with which he is associated had an interest and the value of that interest, and (7) the value and source of each honourarium of more than $500.

IV. ATTESTATION

(a) Omnibus Disclosure Act:
The Act would require any individual required to make a disclosure report, the assets, liabilities, receipts, transactions and gifts of: (1) any person acting on the individual's behalf, (2) the individual's immediate family (3) any corporation of which he owns more than half of the stock (4) a proportionate share of any partnership of which he is a partner and (5) certain trusts depending on his knowledge and interest.

(b) Rules of the House of Representatives:
There are no general attribution rules except that the interest of a spouse or any person constructively controlled by the person reporting is considered the same as the interest of the reporting individual.

(c) Standing Rules of the Senate:
There are no general attribution rules. However, Senate Rule 44, an individual is required to report liabilities over $5,000 owed by him and his wife jointly and the identity of certain trusts or fiduciary relations does not apply to any fiduciary interests he must request the fiduciary to disclose to the Comptroller General.

(d) Executive Order Number 11222 and Civil Service Rules:
Presidential appointees in the Executive Office of the President not subordinate to the head of an agency and each full-time member of a Committee, board or commission appointed by the President shall file a financial disclosure report containing the following information: (a) his interests in real property, other than his personal residence, (2) the names of creditors, except to whom he is individually indebted, not over a personal residence or for current and ordinary household and living expenses and (3) a list of all business organizations (profit and non-profit) and educational or other institutions with which he has a continuing financial interest (through pension plan or by present or prior employment).

V. FORMS AND REGULATIONS

(a) Omnibus Disclosure Act:
The Comptroller General would supply forms for reports required under this act and would prescribe regulations governing the preparation of such reports.

(b) Rules of the House of Representatives:
The Committee on Standards of Official Conduct administers filing of financial disclosure reports.

(c) Standing Rules of the Senate:
The Comptroller General and the Secretary, Senate, would promulgate interpretation of the rules. They are given no explicit authority to prepare and distribute forms or to prescribe regulations.

(d) Rules of the Judicial Conference:
Each judge files disclosure forms with a special committee of the Judicial Conference, and in the office of the Clerk of the Court of which the judge is a member. The bill would require the disclosure of judicial information to a public committee on judicial conduct.

(e) Executive Order Number 11222 and Civil Service Rules:
The Civil Service Commission administers the general provisions of the executive order and has in turn promulgated general guidelines for disclosure rules leaving discretion in the agency to promulgate specific regulations relating to general and special employees.

(f) Interim Report of the Special Committee on Standards of Judicial Conduct of the American Bar Association: No comparable provisions.

(g) Other Legislative Proposals:
1. Resolution of the House of the Bar of the City of New York. This proposal would attribute to an individual the assets but not the liabilities, receivables, transactions, and gifts of a corporation in which he owns more than half of the stock. A new provision would be added to allow the individual a party to a suit in which there was a relationship between the parties to a suit and the judicial conduct of the judge.

2. S. 343 (Case): There would be no specific attribution rules although several sections would attribute specific types of income and assets to the individual. For example, the bill would attribute to an individual the income, assets, liabilities, securities, and purchases and sales of real property of his spouse and of him and his spouse jointly.

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VI. PUBLIC INSPECTION OF REPORTS

(a) Omnibus Disclosure Act: The General Accounting Office would keep a file of financial disclosure reports, open to public inspection, from the time of filing until five years after the individual leaves government service.

(b) Rules of the House of Representatives: Disclosure reports are available for "reasonable public inquiry" subject to the following exceptions: (1) the value of any income or debts reported under the act or market values of interests in securities or confidential business enterprises; (2) all communications with a member of the public are not required if the member is informed of the public's interest in the matter. The rules do not provide explicit penalties for failing to file or for failing to disclose.

VII. PENALTY

(a) Omnibus Disclosure Act: Any individual who failed to file within the time period, filed false or misleading information, or committed misconduct with respect to a monetary value of $20,000 fine or 5 years imprisonment or both.

(b) Rules of the House of Representatives: The House Committee on Standards of Official Conduct can investigate on the basis of complaints and recommend to the House by resolution other such action as the Committee may deem appropriate in the circumstances and with approval of the House, to report evidence of a violation of the law disclosed in an investigation to federal or state authorities. The Committee can also issue upon request advisory opinions on conflicts of interest.

(c) Standing Rules of the Senate: The confidential financial disclosure report is filed with the Secretary of the Senate. Reports of outside employment or professional activity are not required to be filed with the Secretary.

(d) Rules of the Senate: Confidential and public disclosure reports filed pursuant to Rule 44 can be the subject of action by the Senate Rules Committee and Conduct or by the whole Senate. Reports of outside employment filed pursuant to Rule 41 can be acted upon at any time the activity presents a conflict of interest.

(e) Executive Order Number: No penalty in the present draft.

(f) Other Legislative Proposals: Proposals of the Association of the Bar of the City of New York. This proposal contains no penalty provisions.

ADDITIONAL COSPONSORS OF BILLS

S. 1527

At the request of Mr. Churchill, the Senator from New Hampshire (Mr. McIntyre) was added as a co-sponsor of S. 1527, a bill to protect Medicare patients from Medicare denial of payments for posthospital services.

S. 1664

At the request of Mr. Hansen, for Mr. Scott, the Senator from California (Mr. Turley) was added as a co-sponsor of S. 1664, a bill to authorize appropriations for the Commission on Civil Rights.

SENATE CONCURRENT RESOLUTION 27—SUBMISSION OF A CONCURRENT RESOLUTION ESTABLISHING A JOINT COMMITTEE TO STUDY THE TERMINATION OF THE NATIONAL EMERGENCY

Mr. MATIAS, Mr. President, last year Congress terminated the Gulf of Tonkin resolution of 1964 by a positive act of repeal. It was a first step in the long overdue effort to restore Congress its constitutional stature for questions of war and peace.

In February of this year, the distinguished Senator from New York (Mr. Javits) introduced S. 731, a bill to regulate undeclared war. In the same month the Senator from Iowa (Mr. Church) introduced Senate Joint Resolution 48 to repeal the Formosa resolution of 1955. I was pleased to be a cosponsor of both of these measures.

In the next several weeks I shall be introducing bills at least similar to the 1967 resolution of 1957, which has very little relationship to current events in this troubled part of the world, and the Cuba resolution of 1962.

Today I rise to present to the Senate a concurrent resolution aimed at terminating the state of national emergency proclaimed by President Truman in December 1950, in the depths of the Korean crisis.

It is a sad paradox that this country has remained officially in a state of emergency since that time. I do not contemplate that the Constitution had been either suspended or forfeited, in any of its prospective functions a permanent state of emergency.

I think it may be useful a point briefly to review how Congress—with barely a whisper but without important parts of its constitutional authority and responsibility to the office of the President.

On May 3, 1931, in a moment of what was probably a genuine emergency during the depression, President Franklin D. Roosevelt convened the Congress and demanded, in effect, that it re- and call the Constitution before midnight. The pur- pose of that return at that moment was, in effect, to make Congress, and consequently the Constitution, optional at the discretion of the President, as the national interest required.

The demand came as part of the Emergency Banking Act, an omnibus bill reorganizing the Nation's then collapsing banking system and retroactively invalidating the President's Bank Holiday proclamation of 3 days before.

It was referred to the Committee on Banking and Currency with instructions that it be reported in an hour. The bill was expedited. It was not available for Senators to read prior to action on the floor of the Senate. The then-Senator from Louisiana, Mr. Long, complained that he did not know what was in the bill. It was not introduced until 2 hours before the clock. Most Senators indicated that they had grave reservations about what they understood to be the bill's provisions and Senator Long protested the extraordinary power it granted to the President. But in the extremity of the crisis at hand, Congress felt it had to act immediately as the President demanded. The bill was passed by both Houses before midnight and the American Constitution has been in its Dampaleo shadow ever since.

The key provision, not much remarked by the Congress at the time, came in an amendment to section 5b of the Trading With the Enemy Act of 1917. As enacted in 1917, section 5b shifted from Congress to the President the power to regulate trade and financial transactions between the United States and wartime enemies. The 1933 amendment to 5b among other powers authorized the President—by the simple expedient of declaring a national emergency—to assume in peace time these extensive war-time emergency powers, which have here-
S. 1866

A bill to improve judicial machinery by amending title 28, United States Code, to broaden and clarify the grounds for judicial disqualification, and for other purposes.

It is enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Disqualification Act of 1970".

Sec. 2. Section 455 of title 28, United States Code, is amended to read as follows:

"144. Interest of justice or judge

"Any justice or judge of the United States shall disqualify himself, and shall not accept waiver of disqualification, (1) in any case in which he has an interest, which shall include any stockholding in a corporate party, any stockholding in a corporation which holds 10 per centum or more of the stock of a corporate party, any stockholding in a corporation of which 10 per centum or more of the stock is held by a corporate party, and the holding of any office of a corporation described in this section; (2) in any case in which he has rendered legal service to a party with respect to any matter or thing in controversy; (3) in any case in which he is or has been a material witness; (4) in any case in which he is so related to or connected with any party or attorney as to create a conflict of interest, or otherwise render it improper for him to sit on the trial, appeal, or other proceedings; (5) in any case in which his participation in the case will create an appearance of impropriety; and (6) in any other case in which, in his opinion, it would be improper for him to sit."

Sec. 3. Section 144 of title 28, United States Code, is amended to read as follows:

"144. Bias or prejudice of judge

"Whenever a party to any proceeding in a district court, either with his own verification or by the verification of his attorney's signature, makes and files a timely affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall be timely if filed (a) twenty or more days before the time first set for trial or (b) within ten days after the filing party is first given notice of the identity of the trial judge or (c) when good cause is shown for failure to file the affidavit within such times. A party may file only one such affidavit in any case, and only one affidavit may be filed on a side. A party waives his right to file an affidavit by participating in a hearing or submission of any motion or other matter requiring the judge to exercise discretion as to any aspect of the case or by beginning trial proceedings before the judge."

Section by Section Summary of the "Judicial Disqualification Act of 1971"

Section 1—The act may be referred to as the Judicial Disqualification Act of 1971.

Section 2—This section revises Section 455 of Title 28 of the United States Code.

Present law: The present section 455 requires a judge to disqualify himself in any case in which he has a "substantial interest." The act adds to the section 455 of the United States Code.

Effective date: Section 11 of the act shall take effect on the first day of the second calendar year beginning after the date of enactment of this Act.

Public Law:

Passed the Senate May 17, 1971

Passed the House May 20, 1971

Approved August 1, 1971