

UNITED STATES



OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS
FIRST SESSION

VOLUME 115—PART 21

OCTOBER 1, 1969, TO OCTOBER 8, 1969

(PAGES 27859 TO 29312)

popular will has helped strengthen it to protect popular liberties.

A Senator elected by a few hundred thousand votes in Idaho has as much power over national affairs as a man selected by several million citizens of New York. Yet the Senate has often been a more liberal and principled body than the House. Men like the Secretary of Defense, whose power over our lives far exceeds that of most of our earlier Presidents, are appointed and removed by one man.

Our national government is not a pure democracy, nor does anyone suggest that it should be. None of our institutions of governments acts exactly as the Founding Fathers expected. Yet they have managed to evolve some kind of enduring and relatively fruitful harmony.

The system is not perfect, and I believe we need some fundamental changes. But when we are asked to change an institution as basic as the Electoral College, the only relevant questions are practical ones. How is it working? What are its functions? What will be the consequences of change? To act on the basis of rhetoric about pure democracy may have threatening consequences for the future of our actual democracy, and would be in a spirit foreign to the Constitution itself.

For all the influence of mass media and fast planes, we are still a continent, sheltering diverse peoples with very different ways of living. The Electoral College has been one of the institutions tending to strengthen the curious, irrational and frustrating political system which has held us together. Before embarking on the irrevocable course of abolition, we should be sure that we understand and are willing to risk the possible results.

WHOSE LAW, WHOSE ORDER?

Mr. MONDALE. Mr. President, for an administration which rode into office on a wave of law and order rhetoric, the Nixon administration has been behaving very strangely. In practice, it has almost seemed to be a question of "whose law and whose order?"

The most recent example of administration inconsistency in its approach toward law enforcement was the statement of the Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice. Incredible as it may seem, he stated that a Supreme Court decision requiring desegregation of all formerly dual school systems could not be enforced. It appears that this administration prefers to pick and choose the laws it will enforce.

The New York Times and the Washington Post summed up the sad state of affairs in this "law and order" administration in published editorials last week. For the benefit of Senators who may have missed the editorials, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

RETREAT FROM THE LAW

The warning by Jerris Leonard, chief of the Justice Department's Civil Rights Division, that a Supreme Court order to desegregate all Southern schools could not be enforced strikes at the foundation of government by law. It is astonishing at the declared stance of an Administration that, in its rhetoric, has so consistently vowed to uphold law and order.

With every new corkscrew turn of policy, the Nixon Administration demonstrates that its approach to school desegregation is more responsive to the prejudices of Southern politicians than to the legitimate demands to put an end to the illegally maintained dual school systems.

This is why the Justice Department's civil rights lawyers rebelled against the policies they were being asked to pursue. It is why the United States Commission on Civil Rights spoke out against the threat of a major retreat from desegregation. And it spurred the decision of the N.A.A.C.P. Legal Defense and Educational Fund to ask the Supreme Court to redefine "all deliberate speed" to keep that phrase from being perverted into a device for delay.

The plain fact is that the Court spoke fifteen years ago and Congress added in 1964 its mandate for the enforcement of administrative guidelines. For Mr. Leonard, at this late stage, to urge his lawyers to concentrate not on prompt enforcement but on organizing teachers' workshops to smooth the way for desegregation is comparable to asking the Internal Revenue Service to provide courses in ethics and accounting for income-tax evaders.

The Nixon Administration has asked Negroes to accept in good faith its pledges of economic and social justice, but the credibility of such pledges is undermined by the emergence of double standards. The President himself, in opposing "extremism" in school desegregation, equates those who insist on full law compliance with the most stubborn of foot-draggers.

Attorney General Mitchell promises the nation's police chiefs that the Administration will support law enforcement with "all its moral, political and economic power." And on the very same day Assistant Attorney General Leonard scoffs at the thought of enforcing a Supreme Court school desegregation order. Such contradictions can only reinforce Negro suspicions of separate justice for black and white, thus inviting resort to mass disruption as a substitute for the essential faith in justice under a government of law.

RUNNING OFF AT THE MOUTH

As defensive case-making goes, we believe the nation may have witnessed a legal breakthrough the other day in the remarks of the Assistant Attorney General for Civil Rights, Jerris Leonard, on the subject of school desegregation. It is not for us to say in what direction the breakthrough was made or even which way it was going when last seen. We heard only the crash and tinkle of forensic glass and knew we were in the presence of innovation. "Take the Mississippi situation out," lawyer Leonard said, "and give me one example where we have not vigorously enforced the civil rights law." Take the Mississippi situation out—the mind leaps to Sherman Adams (take the Goldfine situation out . . .), to Abe Fortas (take the Wolfson situation out . . .), to Lyndon Johnson (take the Vietnam situation out . . .), and to all the others who lost a case because they didn't have the wit to retain Mr. Leonard.

Depending on whether you view the Assistant Attorney General's riposte as a new high or a new low in the technique of self-defense, you will be able to judge whether or not you would want him representing you. But the fact is that he is meant to represent the interests of citizens—mostly black—whose civil rights have been (and are being) trampled upon. How does he view this mission? It is interesting that in the same week in which Attorney General Mitchell was banging the pots and pans for law and order ("I believe the Department of Justice is a law-enforcement agency. I think that persons who break the law ought to be promptly

arrested and tried . . ."), his lieutenant in the Civil Rights Division was setting up a wholly different kind of ruckus. When he was asked about the views of those who make and interpret the laws and who have found themselves at odds with administration policy, he replied: "I don't care if it's judges, lawyers, Legislators or whoever disagrees." He also made plain that these laws were not going to be enforced so long as numerous people found them inconvenient and resisted them. His reply to one reporter at a press conference gave a vivid outline of the limits of law enforcement as understood by Mr. Leonard:

The only thing that changes is the resistance that you run into, and you can't predict that. There is no way of predicting that. There was no way, for instance, of our predicting that 2500 whites were going to storm a school board meeting—and you should have stayed down there with me, Carl, you would have really learned something about this whole process. I mean it. Twenty-five hundred yelling, raging white people standing there in a high school auditorium, one woman with a noose demanding that the school board close the schools. Now I'll tell you something, Mr. Stern, even you would have voted to close the schools under those circumstances.

So much for law enforcement—one wonders: does the principle apply to campus disorders and uprisings in the ghetto as well? The Assistant Attorney General maintained that this special permissiveness was owing to lack of enforcement funds and personnel, not to a lack of devotion. Well, we shall see. Mr. Leonard's remarks were made by way of responding to the publication of a protest by the lawyers in his division against the Department's preventing them from carrying out "clearly defined legal requirements." It had been a very decorous and restrained rebellion, just as the criticism of the administration on this score, made by the Civil Rights Commissioners among others, had been notable for its responsible, more-in-sorrow tone. To this—mention of the Civil Rights Commission's complaints—Mr. Leonard had a reply too: "I think you've got a lot of people who are frankly running off at the mouth who don't know what the facts are." We think someone is running off at the mouth too—but we don't think it's the Civil Rights Commission.

WATER POLLUTION

Mr. NELSON. Mr. President, the Lowell, Mass., Sun recently published a series of articles on water pollution that deserves the attention of the Senate. The series was written by Franz Scholz under the general title of "A Week on the Concord and Merrimack Rivers—With Apologies to Henry David Thoreau." The article describes in vivid and graphic language the terrible consequences of untreated sewage being dumped into rivers.

The first installment, entitled "A Close Look—or Smell—of Rivers," describes the actual condition of the rivers as seen from a boat. The second, entitled "Pollution Menaces Riverside Residents," describes the effects of the pollution on the fish living in the water and the people living along the banks. The third article, entitled "Pollution Costs \$40 Million," scans the loss of potential income due to the state of the rivers.

Dr. Bela Fabuss, director of Lowell Tech's Environmental Pollution Research Division, wrote the last installment, entitled "Pollution of the Merrimack River," which outlines a pollution