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NONDISCRIMINATION IN FEDERALLY ASSISTED EDUCATION PROGRAMS

HEARINGS BEFORE THE SELECT SUBCOMMITTEE ON EDUCATION OF THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES EIGHTY-EIGHTH CONGRESS FIRST SESSION ON

H.R. 6938 and similar bills

TO AMEND THE VARIOUS ACTS PROVIDING FEDERAL ASSISTANCE FOR EDUCATION TO INSURE THAT FEDERAL FUNDS WILL NOT BE USED TO ASSIST EDUCATIONAL INSTITUTIONS WHICH PRACTICE RACIAL DISCRIMINATION

HEARINGS HELD IN WASHINGTON, D.C.,
JUNE 26; JULY 8 AND 9, 1963

Printed for the use of the Committee on Education and Labor

ADAM C. POWELL, *Chairman*



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NONDISCRIMINATION IN FEDERALLY ASSISTED EDUCATION PROGRAMS

WEDNESDAY, JUNE 26, 1963

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in the caucus room, Cannon Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Hawkins, Gibbons, Martin, and Snyder.

Also present: Representatives Pucinski, Gill, Quie, and Taft.

Staff members present: Dr. Deborah Partridge Wolfe, education chief; Dr. John C. Muntone, subcommittee director; and Charles Radcliff, minority counsel.

Mr. DENT. Ladies and gentlemen and members of the committee, the Select Subcommittee on Education will now proceed with the hearings on a bill introduced by Mr. Gill and 51 similar bills introduced by other Members of Congress. I will submit for the record the names of the sponsors of this legislation.

(The material referred to follows:)

To provide that the United States shall reimburse the States for that portion of the construction cost of certain schools which is attributable to Negroes and Indians (Mr. Bennett of Florida)—H.R. 296.

To withhold Federal aid from schools which discriminate between students by reason of their race, color, religion, ancestry, or national origin (Mr. Gilbert, Mr. Addabbo)—H.R. 625, H.R. 4147.

To provide a program of technical and financial assistance to communities to help effectuate desegregation of schools (Mr. Halpern)—H.R. 1625.

To provide for the desegregation of public schools, with all deliberate speed, including nationwide first-step compliance by 1964, and for other purposes (Mr. Celler, Mr. Gilbert, Mr. Dent, Mr. Shelley)—H.R. 1766, H.R. 2583, H.R. 3570, H.R. 4628.

To amend the act of August 30, 1890, to eliminate the provisions thereof authorizing Federal contributions for the maintenance of schools of higher education in which racial segregation is practiced (Mrs. Green of Oregon)—H.R. 3510.

To provide for the desegregation of public schools, with all deliberate speed, including nationwide first-step compliance by 1963, and for other purposes (Mr. Joelson, Mr. Rosenthal)—H.R. 3524, H.R. 6119.

To amend Public Laws 815 and 874, 81st Congress, relating to construction and maintenance and operation of public schools in federally impacted areas, to deny payments to school districts which are not in compliance with constitutional requirements that public schools be operated on a racially nondiscriminatory basis (Mr. Joelson)—H.R. 4036.

To provide that no Federal financial or other assistance may be extended to any educational institution which discriminates against students or prospective students on account of race, religion, color, ancestry, or national origin (Mr. Ryan of New York, Mr. Hawkins)—H.R. 4586, H.R. 6328.

To provide for the desegregation of public schools, with all deliberate speed, including nationwide first-step compliance by 1964, and for other purposes (Mr. Ryan)—H.R. 6027.

To facilitate desegregation in public education (Mr. Roosevelt)—H.R. 6345.

To amend the various acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination. (Mr. Gill, Mr. O'Hara of Michigan, Mr. Brademas, Mr. Brown of California, Mr. Sickles, Mr. Daniels, Mr. Carey, Mr. Powell, Mrs. Green of Oregon, Mr. Thompson of New Jersey, Mr. Roosevelt, Mr. Dent, Mr. Ryan of New York, Mr. Diggs, Mr. Vanik, Mr. Leggett, Mr. Farbstein, Mr. Fraser, Mr. Edwards, Mr. Matsunaga, Mr. Roybal, Mr. Rosenthal, Mr. Joelson, Mr. Minish, Mr. Cameron, Mr. Charles H. Wilson)—H.R. 6938, H.R. 6940, H.R. 6941, H.R. 6942, H.R. 6943, H.R. 6944, H.R. 6945, H.R. 6946, H.R. 6947, H.R. 6948, H.R. 6949, H.R. 6950, H.R. 6951, H.R. 6952, H.R. 6953, H.R. 6954, H.R. 6955, H.R. 6956, H.R. 6957, H.R. 6958, H.R. 6959, H.R. 6960, H.R. 6961, H.R. 6962, H.R. 6970, H.R. 6973.

To amend the various acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination. (Mr. Quie, Mr. Taft, Mr. Griffin, Mr. Bell, Mr. Bruce, Mr. Ayres, Mr. Goodell, Mr. Snyder, Mr. Findley)—H.R. 6939, H.R. 6963, H.R. 6964, H.R. 6965, H.R. 6966, H.R. 6967, H.R. 6968, H.R. 6969, H.R. 6971.

To amend the various acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination. (Mr. Hawkins)—H.R. 6972.

Mr. DENT. I might say that I am pleased indeed to initiate these proceedings which I am certain will be most helpful to this committee and to the Congress. We are today witnessing a time of great change. In fact, the events of the day as seen by many are in reality a revolution of the first magnitude.

We cannot fail to marvel at the fact that the movement centers around the demands of American citizens to be extended the rights and also the duties of American citizens. If the movement is new, the paradox underlying it is of long standing.

Even the most casual student of history must be aware that a great war was waged in no small measure to insure that statutory rights be enjoyed by all Americans. No one need be reminded of the devastation suffered by all Americans in the pursuit of equality for all Americans.

It is strange indeed that on the eve of the 100th anniversary of the end of this great conflict struggle for inherent rights continues. It continues with great vigor, in fact with heightened tensions. There are those who would claim that actions from appropriate bodies have been slow in materializing.

In this connection you should be aware that this committee has taken appropriate action within its powers to do so. We have approved a clearly defined nondiscrimination provision in bills which we have pending before the full committee—the impact aid bill and the Library Services Act.

This action, if it is viewed as modest, must necessarily be agreed to be positive and speaks well for the genuine concern of all of the members of this subcommittee.

The legislation before us proposes further steps in that positive direction. Specifically, the bills would amend five existing public laws to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination.

The laws are the National Defense Education Act, Impact Aid, Public Laws 815 and 874, Land Grant College Act, vocational education acts, and the library services.

We have invited representatives in the Department of Health, Education, and Welfare, Justice, the Congress, and national organizations to appear before us and if possible to confine their testimony to factual data gathered by the offices represented.

The bipartisan nature of this approach to the legislation before us is evidenced by the fact that 52 bills have been introduced by both Democrats and Republicans. We are hopeful that in this year of our Lord we may be able to define legislatively certified lines that have been defined before but never clearly spelled out in legislative enactment.

(Text of H.R. 6938 follows:)

[H.R. 6938, 88th Cong., 1st sess.]

A BILL To amend the various Acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AMENDMENTS OF NATIONAL DEFENSE EDUCATION ACT OF 1958

SECTION 1. (a) Section 203 of the National Defense Education Act of 1958 is amended by adding at the end thereof the following new subsection:

"(c) The Commissioner shall make no capital contribution to an institution of higher education under this title until he determines that such institution is being operated, and students admitted thereto, on a racially nondiscriminatory basis, or that it is making progress toward that end with all deliberate speed."

(b) Section 303(a) of such Act is amended by striking out the period at the end of paragraph (5) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following new paragraph:

"(6) provides assurances that no equipment or services financed in whole or in part with assistance under this part will be provided any school which is not operated, and students admitted thereto, on a racially nondiscriminatory basis, or is not making progress toward that end with all deliberate speed."

(c) Section 305 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Loans may be made under the Act only to schools which are operated, and admit students, on a racially nondiscriminatory basis, or are making progress toward that end with all deliberate speed."

(d) Section 403(a) of such Act is amended by striking out "and" at the end of clause (2), by striking out the period at the end of clause (3) and inserting in lieu thereof "; and", and by adding at the end thereof the following new clause:

"(4) that such program is operated, and students admitted thereto, on a racially nondiscriminatory basis, or that progress toward that end is being made with all deliberate speed."

(e) Section 511 of such Act is amended by inserting after the first sentence the following new sentence: "The Commissioner shall require each such institute to be operated on a racially nondiscriminatory basis."

(f) Section 601(a) of such Act is amended by inserting after the second sentence thereof the following: "The Commissioner shall require each such center to be operated on a racially nondiscriminatory basis."

(g) Section 611 of such Act is amended by inserting after the first sentence thereof the following: "The Commissioner shall require each such institute to be operated on a racially nondiscriminatory basis."

AMENDMENT OF VOCATIONAL EDUCATION ACTS

SEC. 2. (a) Section 8 of the Act of February 23, 1917 (relating to vocational education) is amended by inserting "(a)" after "SEC. 8." and by adding at the end thereof the following new subsection:

"(b) Each State plan shall require that any vocational education program assisted with funds appropriated under this Act shall be operated, and students

admitted thereto, on a racially nondiscriminatory basis, or that progress toward that end shall be made with all deliberate speed."

(b) Section 203(a) of the Vocational Education Act of 1946 is amended by striking out "and" at the end of clause (4), by striking out the period at the end of clause (5) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(6) provide that all training programs carried on under the State plan will be operated, and students admitted thereto, on a racially nondiscriminatory basis, or that progress toward that end will be made with all deliberate speed."

AMENDMENTS OF PUBLIC LAWS 815 AND 874, EIGHTY-FIRST CONGRESS

SEC. 3. (a) Section 6 of the Act of September 23, 1950, is amended by adding at the end thereof the following new subsection:

"(d) An application of a local educational agency may be approved under this Act after June 30, 1963, only if the Commissioner determines that it is operating its schools, and admitting students thereto, on a racially nondiscriminatory basis, or that it is making progress toward that end with all deliberate speed."

(b) Section 5 of the Act of September 30, 1950, is amended by adding at the end thereof the following new subsection:

"Nondiscrimination

"(d) (1) Notwithstanding any other provision of this Act, after June 30, 1963, payments may be made under this Act only to a local educational agency which the Commissioner determines is operating its schools, and admitting students thereto, on a racially nondiscriminatory basis, or is making progress toward that end with all deliberate speed."

AMENDMENT OF LIBRARY SERVICES ACT

SEC. 4. Section 5(a) of the Library Services Act is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new paragraph:

"(6) provide that the library services furnished under the plan will be made available on a racially nondiscriminatory basis."

AMENDMENTS OF LAND GRANT COLLEGE ACT

SEC. 5. (a) The first section of the Act of August 30, 1890 (26 Stat. 417; 7 U.S.C. 322, 323), is amended by striking out all that follows "students" in the first proviso and inserting in lieu thereof a period: *Provided*, That any institution which was entitled to receive the benefits of such Act for the fiscal year ending June 30, 1963, shall be entitled to the benefits of such Act and subject to its provisions, as much as it would have been if it had been included under the Act of July 2, 1862.

(b) Sections 2, 3, and 4 of such Act of August 30, 1890 (7 U.S.C. 324-326), are each amended by striking out "or the institution for colored students," "or other institutions", and "or of institutions for colored students," each place those terms appear.

(c) The amendments made by this section shall apply only with respect to appropriations made under the Act of August 30, 1890, for fiscal years which begin after June 30, 1963.

Mr. DENT. At this time I would like to call the first witness, representing the Department of Health, Education, and Welfare, our former colleague in the Congress of the United States, Deputy Secretary, my good friend, and a very worthwhile public servant, Jim Quigley.

Jim, will you come forward? You may have with you whoever you desire.

Mr. QUIGLEY. Mr. Chairman, I wonder if it would be possible for authors of the bill to submit statements which could be placed in the immediate part of the hearings?

Mr. DENT. All authors of the bill are invited to place their statements at any point on the record that they desire.

Mr. QUIE. Then I will ask unanimous consent to place mine at the beginning of the hearing, Mr. Chairman, right after the gentleman from Hawaii, Mr. Gill, I might say, if he would like to do so.

Mr. DENT. It is so ordered.

(The material to be furnished follows:)

STATEMENT OF HON. THOMAS P. GILL, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF HAWAII

Mr. Chairman and members, thank you for the opportunity to make this brief statement for the record. The bills before your subcommittee, H.R. 6938 and similar measures, have broad bipartisan sponsorship. There is little new about the concept they contain. Parts of these bills have appeared many times in the past. What is new is that these parts are here by themselves, in one piece of legislation.

It is not only the great concern which the cosponsors of this legislation have for civil rights, but also an ironic procedural problem which has prompted many of us to push this bill at this time. The history of this House and of the Senate is replete with instances where antidiscrimination provisions similar to portions of this legislation have been tacked onto other bills in committee and on the floor. This action has often been taken with the best of motives; at other times, the motives may have been less than pure. The result or intended result has often been to create new blocs of opposition to the substantive legislation involved and thus kill it.

This unfortunate effect of an antidiscrimination rider on substantive legislation has been as painful to the backers of civil rights legislation as it has been enjoyable to the cynics who would use the rider for ulterior purposes. It is, therefore, not the least effect of the current legislation that it can force the cynics to fish or cut bait. Further, it can be backed by those who are interested in both social legislation and civil rights without fear of by-effects. Naturally, we can hope that with the strong support this legislation apparently has on both sides of the aisle that it will clear not only this committee but the Committee on Rules as well.

Far more important than the tactical considerations which this legislation necessarily raises is the simple and basic principle it embodies: the taxes of all of our citizens should not be used to encourage the denial of the basic civil and human rights of some of us. The practice of racial discrimination and segregation in education is not only a violation of the law of the land but it is also destructive of the rights of man; we should hope that our Federal Government, which was formed and preserved to uphold both, will not be used to damage or destroy either. The Federal dollar is part of the Federal trust; it should not be used to destroy the very basis on which it was contributed in the first place. Federal money which is used in segregated education can hardly help but have this disastrous effect.

Let us move from the general to the specific.

This legislation covers five areas where the Federal Government plays a financial role in the field of education: the National Defense Education Act, vocational education, library aid, impact aid, and the land-grant colleges. In these various areas, the denial of Federal aid to institutions or programs where racial discrimination is practiced is made mandatory on the Federal administrator. However, the administrator is given certain discretion to temper the denial where the local authority or institution is making both a good faith effort and reasonable progress toward the elimination of discrimination.

Thus, you can see this legislation falls between two extremes: it is neither an absolute, inflexible cutoff of funds nor a vague discretionary grant to an administrator.

I suggest this should be the key to this legislation. It should not be punitive. The requirement to withhold funds should be coupled with the ability to encourage or help those who would do the right thing. If a statewide school administration is trying to eliminate discrimination and is succeeding in some areas but not in others, the areas that comply should not be punished for the failure of the others. If a local school board is making reasonable progress against the opposition of State political authorities, that school board should be helped and not punished for the attitude of the larger political unit.

In short, the mandatory nature of the cutoff required under these bills should not only strengthen the hand of the willing administrator but also reduce vacillation on the part of the weak or unsympathetic; the degree of discretion allowed can be used to encourage those areas which are willing to try. I am sure the language of the various bills can be improved, but I hope the committee will see fit to keep both the promise of the "carrot" and the presence of the "stick."

It is commonplace to say that these are crucial times for the American experiment. They are. The troubles of Birmingham, of Cambridge, of Jackson are not limited to those places alone; what injures our brothers injures us all. Neither are the effects of these racial disturbances limited by the shores of our land; they have long since echoed around the world. What we do in this crisis will determine our stature in the world for generations to come.

I am sure this committee joins all Americans of good will in hoping that reasonable men will work to achieve a reasonable solution.

STATEMENT OF HON. ALBERT H. QUIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Recent developments throughout our country have created an increased concern for the progress which the United States is making toward attaining equal rights for all individuals. It is because of my concern that I joined with the gentleman from Hawaii in introducing H.R. 6939 providing for the inclusion of nondiscrimination amendments to programs of Federal assistance to education for which the House Committee on Education and Labor has jurisdiction.

However, I would like to point out at the outset that my interest in this legislation goes back much further than the recent rash of racial friction which has broken out in many parts of the United States. Racial discrimination is wrong and harmful no matter whether it breaks into open racial tension or not. It is wrong to the individual. It is harmful to the moral fiber and economic strength of our country. As a member of the House Education and Labor Committee these last few years, it has become increasingly evident to me that our programs of Federal assistance to education unfortunately all too often indirectly aid the practices of racial discrimination. I coauthored this legislation because it will help to correct the injustices which thousands of Americans now experience, and because it is in the best interests of our country as a whole.

If progress in civil rights cannot be made without force and violence, our Nation will pay a dear price. If such progress is to be made, new and responsible legislation is required. This bill is a specific example of such legislation.

In its simplest form this bill denies the use of Federal funds in any of the aid-to-education programs now on the books if the funds were to be used in institutions or programs practicing racial discrimination. It is inconceivable that the Federal Government support—even though indirectly—programs that are in complete contradiction to the Supreme Court decision of 1954 that declared segregation in public schools unconstitutional.

A report of the House Education and Labor Committee dated May 1962 summarizes Supreme Court rules on equal protection of the laws in public schools and the rules governing implementation of the court rules as follows:

(1) State-imposed racial segregation in public educational facilities creates inequality and therefore constitutes a denial of equal protection of the laws under the Constitution, thereby making racial segregation in public schools under the control of Federal, State, or local governments unconstitutional.

(2) School authorities must assume responsibility for elucidating, assessing, and solving the problems of desegregation to comply with the constitutional provisions.

(3) Wherever possible, immediate general admission of Negro children is recommended.

(4) If such admission of qualified Negro children cannot be begun immediately the progress must point toward desegregation with all deliberate speed.

(5) A public placement law listing factors which are to govern the assignment of pupils without regard to race or color must be developed.

Almost 10 years has passed since the original Supreme Court ruling. Progress has been made in carrying out the court decision. In some cases, progress has been notable; however, large areas of racial discrimination still exist and additional action by the Congress is required.

Strong action by the Federal Government is not the entire answer to the race problem if by the word "answer" we mean a complete solution. All of us are aware that the problem is too complex to be solved in a simple manner.

But strong Federal action is necessary. If the Federal Government will not set its own house in order and if Congress does not clearly establish a national policy opposing discrimination, one can hardly expect State and local governments to make necessary changes in this field. Action by government, Federal, State, and local, is necessary but it won't entirely solve the problem. That will be solved only when individuals recognize the human rights of other individuals of another race and are willing to give them equal opportunity to develop to their greatest potential and to hold jobs commensurate with their ability, even when the law can't watch.

It is an unfortunate reality that racial discrimination does exist in America. It is also a sad fact that Federal funds are being used in some education programs which practice racial discrimination. Until this situation is corrected, a nondiscrimination amendment should be attached to every bill that deals with Federal assistance. However, in an effort to get at present laws providing Federal assistance to any and all forms of education, we have to meet the situation head on. This bill would do just that. It deals with all programs of Federal assistance to education which come under the jurisdiction of the Education and Labor Committee. The bill would deny the use of Federal funds under such programs wherever racial discrimination is practiced. The existing laws affected include: National Defense Education Act, vocational education, aid to federally impacted areas, Library Services Act, and the Land Grant College Act.

Let me cite a few examples of how Federal funds are used in these programs to indirectly aid policies of segregation and thereby racial discrimination. I want to call the attention of the committee to the report of the ad hoc subcommittee of the Education and Labor Committee, May 1962, pages 66-81. First, consider Federal funds for school maintenance and operation in federally impacted areas. The following statistics apply to southern and border States. In the fiscal year 1961, 36.4 percent of these funds totaling \$3.5 million went to desegregated areas. 63.6 percent or \$6.1 million went to segregated areas. This total of \$9.6 million is based on statistical samples of school districts in southern and border States. The desegregation is as of 1961. Now consider the use of Federal funds for use of school construction in federally impacted areas for fiscal year 1954-61 but using the same statistical sample and basis for desegregated status. Out of a total of \$36.2 million, 16.4 percent or \$5.9 million went to desegregated areas and 83.6 percent or \$30.3 million went to segregated areas.

A brief study of other programs of Federal assistance to education such as the graduate fellowship program shows similar results. Federal grants to institutions located in southern and border States for 1959-63 show that of the public institutions receiving funds 19.4 percent were segregated, of the private institutions, 40.6 percent were segregated and of the church related institutions 44.5 percent were segregated.

Equal opportunity in education certainly lies at the heart of the civil rights question. Such equality of opportunity is basic to the development and finally the continued assurance of equality of opportunity in all other areas of civil rights. Unless all the citizens receive fair and equal consideration in education and vocational training without any presence of racial discrimination, they will never be able to make improvements in the rights they deserve as American citizens. Of equal importance, the less they are allowed to develop capabilities and to hold jobs commensurate with their abilities, the less our country will expand and prosper.

It would be well for us from areas outside the southern areas of the United States to realize that we are not without blame in problems of racial discrimination. Again, let me quote the report of the Subcommittee on Integration in federally assisted public education programs. The report states, "The scope of the subcommittee study is nationwide in the sense that problems in integration are apparent in all areas of the United States. Some of the most pronounced cases in recent months have been found outside the southern region."

The bill provides that the decision to withhold Federal funds in cases of discrimination will be made by the Commissioner of Education. In some cases where the Federal funds are being applied to existing programs, the Commissioner has the discretion to allow payments to continue where he is satisfied that progress toward the end of complete nondiscrimination is being made "with all deliberate speed." I agree with the bills introduced by Mr. Findley and Mr. Hawkins limiting to 1 year the discretion of the Commissioner.

The language of the Supreme Court is used to allow some flexibility to the Commissioner in particular local situations. Recent decisions of the Court indicate that "deliberate speed" in many cases means here and now. Judicial review of the Commissioners' action would be allowed in those statutes where it presently exists.

In closing, let me stress both the rightness and the need of this bill being enacted. The former concerns the right of every individual to equal opportunity without the burden of racial discrimination. The latter concerns the need for the United States to utilize the abilities of all its citizens to their utmost if our country is to continue to grow and prosper.

Mr. DENT. Mr. Quigley, you may proceed in any fashion that you deem best that you may give to this committee the benefit of your testimony.

STATEMENT OF JAMES M. QUIGLEY, ASSISTANT SECRETARY, ACCOMPANIED BY LISLE C. CARTER, JR., DEPUTY ASSISTANT SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. QUIGLEY. Thank you. Mr. Chairman, I have a prepared statement and if it is suitable to the Chair and to the members of the committee I would like to proceed to read it and then attempt to answer whatever questions the statement may or may not suggest or invite.

Needless to say, Mr. Chairman, it is a pleasure for me to appear before this important subcommittee of the House Committee on Education and Labor—a committee of the Congress that has distinguished itself in its efforts to assure equal educational opportunities for all Americans.

It is a pleasure of course, Mr. Chairman, to appear before a subcommittee declared by yourself whose career in the Commonwealth of Pennsylvania has been known and certainly admired by me for many, many years. I am here primarily today, Mr. Chairman, to comment on H.R. 6938 which would undertake to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination.

Let there be no doubt that the Department of Health, Education, and Welfare supports strongly the objective of this legislation. As the President said in his message on civil rights on June 19, 1963:

Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.

Moreover, I think it is safe to say that the assurance of equal opportunity in education is vital to the assurance of equality of opportunity in every other area of endeavor.

Over the past 2 years, mindful of these considerations, we in the Department have been attempting to do whatever we believe we could within our authority, to assure nondiscrimination in our educational assistance programs. I have been given the responsibility under both Secretary Celebrezze and the former Secretary of giving continuing attention to this matter.

Examination of the education assistance acts administered by HEW discloses, as this committee is well aware, a variety of statutory pat-

terns. In some instances, the circumstances in which States or public educational agencies are entitled to assistance are spelled out with such particularity, that no apparent discretion is left the administrator to impose additional conditions.

In other instances, the administrator is given some choice as to the institution that will carry on the Federal programs. In still other cases statutory language has provided a basis, consistent with the statutory purposes, for requiring nondiscrimination. Within this variety of settings we have taken action with regard to some of the educational programs to which the bill before you is addressed.

For example, in December 1961, the Office of Education required the following language in all contracts for fiscal year 1962 establishing counseling and guidance and modern foreign language institutes under the National Defense Education Act:

In selecting individuals for attendance at the institute and in otherwise conducting the institute, the contractor will not discriminate on account of the sex, race, creed, color, or national origin of an applicant or enrollee.

Of 33 institutions of higher learning in Southern States, tentatively selected to hold institutes during fiscal year 1962, only 7 declined. The Office of Education has followed up its award of contracts to determine compliance with the new provision.

Staff members of the Office visited institutions, and questionnaires were mailed out at the conclusion of the 1962 summer institutes. From this survey it was learned that 10 institutions had Negroes in attendance at the institutes for the first time.

There has been every reason to believe that the policy of the Office in regard to its institute program has been broadly accepted by colleges and universities and that they are giving it effect, in practice.

In addition, Mr. Chairman, as you and the members of this committee are aware, in March of last year the Secretary of Health, Education, and Welfare announced before an ad hoc subcommittee of the Education Labor Committee chaired by the distinguished gentleman from New Jersey, the so-called suitability ruling relating to children residing on Federal property.

This ruling was that local public education for such on-base children which is segregated by race is not suitable under the terms of section 6 of Public Law 874 and section 10 of Public Law 815.

Under these provisions of the statutes, if no local educational agency is able to provide suitable free public education for children who reside on Federal property, the Commissioner of Education is to make such arrangements to provide suitable education for these children. These arrangements would usually be the provision of on-base schooling.

In furtherance of this ruling, representatives of the Department have held a number of meetings with State and local school officials to find out whether the school districts concerned would provide a suitable education for on-base children in the fall of 1963.

As a result of such an effort 15 school districts in 4 States have informed the Department that they will begin to provide nonsegregated schooling in keeping with the "suitability" ruling in September of this year. In a number of these districts, the actions will affect not only children residing on Federal property but those re-

siding off base as well. It is estimated that some 250,000 children live and go to school in these 15 school districts.

In eight school districts in Alabama, Georgia, Louisiana, and South Carolina, the Commissioner of Education determined, after taking all the circumstances into account, that he should undertake to arrange an education for children residing on Federal property by the construction of onbase elementary schools.

These schools will begin operation in the fall of 1963 and will have more than 4,000 federally connected children in attendance.

In the March 30, 1962, statement to the committee it was pointed out that the "suitability" ruling could apply only to children residing on Federal property and that, apart from the difficulties of implementing that ruling, the larger problem of federally connected children who resided off base remained unresolved.

While this situation was called to the attention of the Congress for such consideration as it might give, it was reported that this Department was actively exploring with the Department of Justice the maintenance of lawsuits to bring about school desegregation.

Since that time the United States of America has brought five lawsuits involving seven school districts in four States. These lawsuits are based on two independent contentions:

(1) That the United States has a legally enforceable interest that children of Armed Forces personnel not be unconstitutionally discriminated against by local school districts which have received impacted area funds, this interest of the United States arising out of long-settled national policies to provide education for the children of military personnel and to eliminate racial discrimination in connection with the Armed Forces, as well as the interest of the United States in maintaining an effective Military Establishment.

(2) That the school districts in excluding federally connected Negro children from schools in their districts otherwise available to federally connected children are violating an assurance which the districts gave to the United States upon receipt of school construction funds under Public Law 815.

That assurance, required by the statute as part of the application for Public Law 815 funds, is that all school facilities of the district will be available to the federally connected children "on the same terms, in accordance with the laws of the State in which the school district * * * is situated, as they are available" to the nonfederally connected children in the district.

We believe that this assurance requires nonracial assignment of federally connected children, and it is this interpretation which is sought to be enforced in these legal cases. The relief sought in these suits is nonracial assignment to public schools of the federally connected children—both on and off base, it should be emphasized—in the defendant school districts.

I can report further, Mr. Chairman, that to date of the five suits, two of these suits have been dismissed on motions on the grounds that the United States does not have standing to sue. These decisions are on appeal. In a third case, involving Fort Lee in Prince George County, Va., the Federal district court has just ruled, after a full trial, that the United States is entitled to enforce the statutory assurance to which I have referred.

Needless to say, if this ruling is sustained, it will have far-reaching effects, as far as our efforts are concerned, to bring about nonsegregated schooling for federally connected children. For it would mean that not only will all school districts thereafter receiving school construction funds under Public Law 815 have to assign federally connected children on a nonracial basis but that the United States would be in a position to seek such assignments on the part of school districts that have received under Public Law 815 such funds in the past.

In this respect, favorable outcome of the present litigation would have impact beyond the legislation now before the committee.

I would mention one further program—the Library Services Act. This act authorizes payments of Federal funds for the further extension by the States of public library services to rural areas without such services or with inadequate services.

A public library is defined in the act as a library "that serves free all residents of a community, district, or region, and receives its financial support in whole or in part from public funds." States submit, for approval by the Commissioner of Education, plans for the further extension of library services.

Upon receipt of the Civil Rights Commission report which indicated that some public library services provided under the Library Services Act were not available to Negroes, the Library Services Branch of the Office of Education examined the questionnaires on which the Civil Rights Commission report was based.

Since the returns were received by the Commission on a confidential basis, we were not able to identify particular cases involved. For this reason, the Commissioner of Education requested a study on a sample basis of access to libraries receiving funds under the Library Services Act.

This survey was completed in January 1963. It showed that the Library Services Act has resulted in significant improvement in both the quantity and quality of library service offered to all people in the States and project areas studied, but it also disclosed some cases in which library service may not have been provided in accordance with the provisions of the Library Services Act.

These cases are now being reviewed in detail, and all necessary and appropriate administrative actions will be taken on them if it is determined that services were not provided in accordance with the act.

As a further result of this survey, the Office of Education is taking the following steps to insure that the services supported under the program are in fact available to all as required by the act:

(a) States will be reminded of the requirement in the act and told to review the programs submitted to the Office of Education to make certain that they do not include support of library services which are not accessible and available to all residents.

(b) Members of the Library Services Branch of the Office of Education will visit projects supported under the program, within the limitations of the staff available, and, where services are found which are not open to all residents, the proper authorities will be urged to make such library services open and available to all, failing which there will be disallowances of expenditures or other appropriate action as provided for in the act.

These are some of the actions that have been taken by the Department. I think they should make clear that we have had for some time a serious awareness of and concern for the vital necessity of ending discrimination in education.

We believe that a special obligation devolves upon all of us in the Federal Government when federally assisted programs are involved. It is clear however, that any authority that we might have to act in furtherance of this end becomes more doubtful as the Congress spells out the duties of the Secretary or the Commissioner of Education with greater particularity.

As the President said in his recent message on civil rights:

Many statutes providing Federal financial assistance * * * define with such precision both the administrator's role and the condition upon which specified amounts shall be given to designated recipients that the amount of administrative discretion remaining—which might be used to withhold funds if discrimination were not ended—is at best questionable. No administrator has the unlimited authority to invoke the Constitution in opposition to the mandate of the Congress.

Thus, Mr. Chairman, the need for congressional clarification in this area is plain.

As I said at the outset, the Department supports strongly the objectives of the bill that is before you. We specifically endorse section 5 which would eliminate the "separate but equal" language in the Land-Grant College Act.

The continuance of this language in a Federal statute is not only contrary to the Constitution and our declared national policy but is also a perpetual affront and indignity to all American citizens.

We support the approach of the administration in section 601 of the proposed Civil Rights Act of 1963 rather than that of the present bill. Section 601 would make clear that neither the Secretary nor the Commissioner are limited by any statutory language from taking steps to assure nondiscrimination in the Federal programs.

The Administrator, however, would have flexibility in dealing with the problem on a program-by-program basis. It is true that the bill before you attempts to do this also, but it makes the decision on a priority basis which, we submit on the basis of our experience, would be better left to the Administrator.

Much of what I have cited in my testimony by way of accomplishment has been achieved only with the full support of the members of this committee. In the future, just as in the past, I am confident that our Department and your committee shall continue to work for what is in the best interest of American education and of America itself.

To paraphrase the President, in his recent message, the time has come to make it clear that race has no place in American life or law. Let us move forward, Mr. Chairman, to the early accomplishment and achievement of that end.

Mr. DENT. The Chair, on behalf of the committee, thanks you for your testimony and for placing the problem squarely before us with the recommendations of the Secretary of Health, Education, and Welfare. There might be some question in the minds of some as to the meaning of the language on page 8.

If I read it correctly, where you are quoting the President you are not saying that there is any question in the mind of the Department

as to the advisability of congressional action, but are rather emphasizing it because there is a question as to the power of the Department and that, as I see it there, the Department recommends that this legislation be enacted in order that any specific restrictions in any of the five acts would be set aside by the mandate of this legislation. Am I correct in my interpretation?

Mr. QUIGLEY. I don't think there is any question, Mr. Chairman, that it is the view of our Department, and has been the view of our Department and is the view of this administration, that there is need for congressional action in this area.

I think, if you will recall, Mr. Ribicoff testified before the Daniels subcommittee in March of last year and he indicated that it was the policy and the procedure of our Department to do what we could under our authority to achieve desegregation of these programs, but he made clear, and I would reemphasize, despite the things that we have done, that we do have under a variety of statutes limited authority, more authority in some than others, so I think there isn't any question, as the President pointed out and his legislative recommendations make clear, there is need, from the point of view of the Administrator, for some kind of congressional action which would make it clear that we have the authority to take appropriate steps to eliminate discrimination in the operation of these federally aided and federally subsidized programs.

Mr. DENT. If my memory serves me correctly, when the question first came up about the mandatory action by the Congress the then Secretary of HEW requested and received a stay period in which he planned to put into effect a voluntary agreement appropriation with the various schools in submitting plans to the Department.

How effective has this program been in working out desegregation on a planned voluntary basis with the segregated schools?

Mr. QUIGLEY. I think you are referring of course again to the testimony of the former Secretary, Mr. Ribicoff, before the Daniels subcommittee.

Mr. DENT. Right.

Mr. QUIGLEY. As I indicated in my general testimony, as a result of Mr. Ribicoff's "suitability" ruling he said, with September of this coming year as the target date, we would endeavor to achieve desegregation of the local schools as far as the onbase military children were concerned.

Carrying out the so-called "suitability" ruling policy, our Department has achieved by voluntary agreement desegregation of at least 15 school districts in Southern States affecting as many as a quarter of million children, both onbase and offbase. This is the positive accomplishment that flowed from it, as a result of negotiated agreement.

We did not, as my testimony makes clear, bat a thousand, and in at least 8 instances we came to the reluctant conclusion we were not going to get anywhere by this September or perhaps sometime well on into the future, so it was determined that the only way we could achieve desegregation of the education for these onbase children would be to provide onbase desegregated schools and we are now in the process of building such schools.

Mr. DENT. At that point, then in these 8 districts in 4 States there are 4,000 onbase children for whom, because of an inability to

arrive at a desegregation agreement, we are now building schools on-base. How many children in the same 8 districts in categories B and C under the impact bill will not be effected so that these districts, unless we withhold funds, will still continue segregation for federally impacted children?

Mr. QUIGLEY. Mr. Chairman, I can and will supply for the record the specific figure in answer to your question. In general, however, I can say that a substantial number, a substantially greater number than 4,000, there would be.

Mr. DENT. That still would be in segregated schools because there is no remedy in the present law?

Mr. QUIGLEY. That is correct.

Mr. DENT. You have no power to enforce the same regulations that you have on the onbase children for the offbase children?

Mr. QUIGLEY. With this important proviso: That if the decision of the court in the Fort Lee case on Tuesday of this week is ultimately sustained, we very definitely would have authority. In other words, if our interpretation which the Justice Department argued to the court and which the court agreed and adopted is ultimately sustained, then there wouldn't be any question that the U.S. Government would have authority to bring suit to achieve desegregation in those school districts where you had federally connected children on or offbase.

Mr. DENT. The two suits that were dismissed on motion on the grounds that the Federal Government had no standing to sue; in which courts were these actions brought?

Mr. QUIGLEY. The one was in Alabama. It was a suit brought in Madison County, which involves the Huntsville area, and the second dismissal came in Mississippi. It involved the Gulfport and Biloxi school district.

Mr. DENT. In local courts?

Mr. QUIGLEY. In local district courts; Federal courts, however.

Mr. DENT. The Federal district and now you are going to the circuit court?

Mr. QUIGLEY. We have had the initial decision in three of the five cases. In two of the cases the district court concluded (1) that we did not have standing to sue. In the third case the court not only concluded that we had standing to sue, but that there was a trial on the merits and the court concluded that we not only had standing to sue, but made out the case and has directed the local school district to accept and assign the federally connected children on a nonsegregated basis.

Mr. DENT. In order to give the rest of the members an opportunity to question I will desist from any more questions after one more that appears to be confusing to me. On page 7 of your testimony you state at the bottom of the page, spelling out the special obligation which evolves upon all of us:

It is clear, however, that any authority that we might have to act in furtherance of this end becomes more doubtful as Congress spells out the duties of the Secretary or the Commissioner of Education with greater particularity.

In effect, does this mean that when we spell out a specific, it might in some way reduce or confuse the authority of the Commissioner?

Mr. QUIGLEY. Not confuse, but restrict very definitely. Again going back to the impact area as an example of the problem we face, Sec-

retary Ribicoff was able to promulgate the so-called suitability ruling and we were able to pursue that ruling over the last year and a half simply because Congress in writing the impact statute provided that the Commissioner of Education had the responsibility to see to it that the on-base children were given a suitable education.

It put the responsibility on the Commissioner to see that they got a suitable education. If the Commissioner of Education concluded, for whatever reason, that a local school district was not capable of providing a suitable education, free public education, for the on-base children, he had the responsibility under the directive of Congress to see that they got it.

Under this broad authority in the act in the past the Commissioner of Education has directed the building of innumerable on-base schools. This was rather broad language and I think Mr. Ribicoff made it clear in his testimony before the Daniel's subcommittee that he recognized that when Congress passed this statute they probably did not have in mind specifically the question of racial segregation or desegregation in the school, but he felt that in the light of the Supreme Court decision it was inconceivable that the Commissioner could go on ruling in effect that education, which was in fact segregated on a racial basis, was, nevertheless, suitable, so it was this rather broad authority that Congress gave to the Commissioner in connection with the on-base children that permitted the suitability ruling to be promulgated and carried out.

When we got to the off-base children, despite the fact that you come up with some rather inconsistent results, it was our conclusion that administratively we could not go any further than we did.

We recognized that there was just as good a reason for doing everything possible for the off-base as there was for the on-base. We attempted to meet that problem by raising the issue before the courts and the one court at least, as I have indicated, has adopted our interpretation of the law, but, as I say, in some of the laws we have rather broad discretionary authority.

The Commissioner of Education can select a grantee for a research grant. He can select a university for a training grant. He has rather broad authority, and where he has this broad authority it is the policy of our Department to exercise it in a way that will not promote or subsidize segregation, but in many other instances the language of the statute is pretty specific.

If conditions A, B, C, and D are met, the Commissioner or the Secretary has no choice but to allocate the money.

MR. DENT. Then as I understand it again, your only recourse now is by individual case action before courts. In your district court cases if a district court denies the right to the Secretary, then, of course, you have the question of appeal in that particular district.

Have you looked over the amendments as proposed by Mr. Gill and many of the other sponsors of this act to the impact legislation and would you say that these amendments would give the Secretary the necessary authority without relying upon individual court action in each case?

MR. QUIGLEY. Yes, I think the answer, Mr. Chairman, is that it would.

MR. DENT. That answers the most important question that I had at this moment and at this time I would yield to the gentleman from

Nebraska, the ranking Republican member of the subcommittee, Mr. Martin.

Mr. MARTIN. Thank you, Mr. Chairman. Under the law as constituted at the present time don't you feel that your Department has the authority to withhold funds from schools who do practice segregation?

Mr. QUIGLEY. You are talking now, sir, about the Federal impact statute?

Mr. MARTIN. Well, all of the education bills that are included in this bill before us.

Mr. QUIGLEY. No, Mr. Chairman, I think the answer to that is that we do not feel that we have the authority. As I tried to indicate in my testimony, from what we have done we think we have authority under some statutes, not under others, that we have authority to go certain distances under some statutes, but not under others. I think there is an inconsistency in our authority.

Mr. MARTIN. Where you have had this authority in certain acts what has been the record of your Department? Have you withheld any funds or not?

Mr. QUIGLEY. I think our desire or our aim, as is the clear intent of Congress, is not to withhold funds. I think our aim and our objective is to achieve desegregation. We don't want to, if we can avoid it, throw out the baby with the bath.

We want these programs to move forward and achieve the objectives the Congress had in mind, but to achieve them for all Americans who Congress, I think, intended to benefit from them.

Mr. MARTIN. In other words, you are throwing the responsibility back upon the Congress?

Mr. QUIGLEY. No. No, sir, I think from the very beginning in Mr. Ribicoff's original testimony before the Daniels' subcommittee the position of our Department has been consistent, that we will go as far as we can under the authority which Congress has given to us, but we feel that there is a responsibility on the Congress in those instances where we do not have authority to broaden it, and this is why we are suggesting that the proposal which the President has incorporated in his Civil Rights Act would give us and all administrators the authority to proceed.

Mr. MARTIN. Do you feel that the recent court decision in Virginia, in, I believe, the first part of this week, strengthens your hand in this regard?

Mr. QUIGLEY. I think if this decision is ultimately sustained, and I am assuming that it will be appealed in the face of the inconsistent decisions in the other districts, if this position is ultimately sustained, it would greatly strengthen our authority in one program, the Federal impact program, but we have, as you are well aware, a variety of programs in our Department that we administer.

Mr. MARTIN. In view of this decision do you plan on changing any of your policies or your actions in regard to the impact program?

Mr. QUIGLEY. In view of this decision we are going to continue to make clear to all applicants for impact construction money that this is our interpretation of the statute. This is what we think the assurance means, that at least one district court has agreed with us, and that when they ask for and accept construction money under the Fed-

eral impact law they should be fully aware that this is the assurance they are giving to us and this is the meaning it has, and that the schools that they are going to build will be required to be operated on a desegregated basis.

Mr. MARTIN. In other words, you are not going to take any positive action? You are just going to call it to the local school boards' attention?

Mr. QUIGLEY. We are not going to take any positive action in the sense that we are not going to stop the program and say that we are not going to construct any more.

Mr. MARTIN. You don't feel that you have that power to do that?

Mr. QUIGLEY. We do not, on the advice of our attorneys. They were of the opinion that an argument could be made for this interpretation, but that it is not the prerogative of the Administrator to force his interpretation on a program unless it is clear that he has such authority, and I think it was clear in the suitability ruling that we had this broad authority, but rather than let the question hang, it was the determination of the administration to raise it squarely before the court and try to get an answer.

This is what we have done, and this is what we are doing under a number of programs. Under the Hospital Construction Act, where there is a question, but an arguable question, about our authority, we are making an effort to have the question raised and resolved by the court.

This is no reason why the Congress couldn't remove any doubt that might plague us by granting us authority and making it clear, because all we are struggling with basically is the extent of our authority under the language of the statutes passed by the Congress.

Mr. MARTIN. I notice in your nine pages of testimony that you indicate in general an agreement with the purposes of H.R. 6972 and other legislation along these lines, but in one sentence on page eight you seem to contradict yourself or at least give us a little doubletalk.

You have one sentence, and I quote here:

We support the approach of the administration in section 601 of the proposed Civil Rights Act of 1963 rather than that of the present bill.

In other words, you are saying here, or at least my interpretation is, that you do not support this legislation; that you are supporting the President's civil rights bill.

Mr. QUIGLEY. We are supporting the recommendation in the President's civil rights bill and for what we consider to be good, valid, and sufficient reason. If the bill that is now before this committee were enacted into law I think we would have clear authority to take appropriate steps to achieve the desegregation in five programs, but our whole program, sir, includes the administrative responsibility for 118 different programs.

Mr. MARTIN. You say you support this rather than this bill here. Are you supporting this bill? Just "yes" or "no" will do. Do you want this bill enacted?

Mr. QUIGLEY. We would prefer—

Mr. MARTIN. Just "yes" or "no." Do you want this bill enacted that your Department recommended?

Mr. QUIGLEY. Our Department is not recommending the enactment of this bill. They are urging the enactment of section 601.

Mr. MARTIN. In other words, you are not recommending this one?
Mr. DENT. Section 601.

Mr. MARTIN. I notice, in section 601, that it gives a great deal of flexibility to the Department in the conduct of these programs in regard to segregation. It doesn't seem to me that it gives you much more authority than you have now and from your answers the Department is reticent to take any positive action in this field, so what are you going to do here?

It looks to me as if you are going to stall this thing off and not take any positive action if section 601 is enacted rather than this bill.

Mr. QUIGLEY. Mr. Martin, I would have to disagree with you (1) that 601 does not contain very broad authority; it does. It is across the board. It effects the five programs referred to in the Gill bill and all other programs of a welfare or a health or educational nature that our Department and any other program that any other department in the Federal Establishment would be responsible for, and I really think that an honest and fair reading of our record and what has been accomplished by our Department in the last 2, two and a half years doesn't indicate a reticence or a hesitancy on our part, but just contrary, that we have moved forward and achieved desegregation in a number of programs where previously no action was taken.

Mr. MARTIN. Let me read you here just one sentence of H.R. 6972:

The Commissioner shall make no capital contribution to an institution of higher education—

and so on, and that wording is used throughout.

The word "shall" is used, which is mandatory on the Department, but under section 601 you have discretion as to whether you want to withhold funds or not from a school district that is practicing segregation, the same thing as you have now and you are not doing anything about it.

Mr. QUIGLEY. Mr. Martin, I would have to disagree with you. The record does not show that we are not doing anything. The record shows, I think, that we are doing quite a bit, and I really believe that it would be wiser, more prudent legislation on the part of the Congress, to adopt 601.

It would give the Administrator the responsibility, but also the authority. Where you adopt mandatory language you require it to be done in every and all circumstances, and I think frankly there would be instances where the national interest could dictate that you might not want to do it.

Mr. SNYDER. You want to operate segregated schools?

Mr. QUIGLEY. I don't think that falls within the kind of example I mean. I have in mind a situation where under one of our grant programs we have, for example, an outstanding researcher in the field of cancer who happens to be at an institution that unfortunately has an administration policy which practices desegregation.

I think there is a real question here whether the Secretary of HEW or the Surgeon General should be required to cut off all research funds to this particular researcher.

I am not so sure that it is not national interest. This is not talking about desegregation of grade schools or high schools. I think the decision is clear here, and we have and we will proceed to do everything we can with whatever authority Congress gives us in whatever form Congress sees fit to give us that authority.

Mr. MARTIN. I would like to ask you another question, Mr. Quigley. It seems to me that you are giving us a little bit of doubletalk in this thing. When I first started questioning you, you said that it was not the intent of the Congress and that your Department did not have the authority to withhold funds from segregated schools, and yet in this bill and companion bills that we are having here, it definitely gives you that authority in mandatory terms because the word "shall" is used, and you come here and testify that you don't want this passed, that you want section 601 of the President's civil rights bill passed, which doesn't give you any more authority really to a certain extent than you have right now.

Mr. QUIGLEY. I just don't agree with you, sir, that it doesn't give us any more authority to a certain extent. It gives us great authority that we do not have now.

Mr. MARTIN. But you are not taking any action. You have authority now but you are not using it.

Mr. QUIGLEY. This, sir, is not true. I would submit if you make that statement you didn't listen to or you didn't understand my testimony. I detailed what we have done in the last 2 years and I submit, sir, it is a considerable amount greater than was accomplished or even attempted in the eight previous.

I think our record is clear. I think it is a record we can be proud of. We have taken positive effective action to achieve desegregation of our federally supported programs where we were persuaded, where our lawyers advised us, that we had authority to do so.

In addition, we have asked the Congress to give us additional authority and in those instances that are doubtful, we are attempting, as I indicated in the hospital cases and in the impact cases, to go into court and get the issue resolved.

All I am saying to you, sir, is that we are saying that the broad approach inherent in the President's recommendation and incorporated in section 601 of the civil rights bill is preferable.

Obviously, this is a decision which the Congress has to make and our opinion, and this is what you want, is that the section 601 across-the-board discretionary authority, but authority and responsibility, is preferable to the limited mandatory authority incorporated in H.R. 6938 and comparable bills.

This is the decision which the Congress has to make. I think it is clear that we believe we need additional authority from the Congress in this area. We are submitting that we need the authority and we are saying that in our judgment the broad discretionary authority is preferable to a limited mandatory authority included in the bills that this committee has before it.

Mr. DENT. Will you yield?

Mr. MARTIN. I yield, Mr. Chairman.

Mr. DENT. As I see it, the main difference in the two approaches is the one written in the act before us by Mr. Gill and others specifically spells out that there shall be no Federal funds given to any segregated school district, and under section 601, in order to put the Department in a position of not being called upon to go into court to prove its rights to withhold funds, the language spells out that it shall not be a requirement to give money to any school district where there is segregation.

It is just giving to the Department, as I understand it, the authority to withhold funds on the basis that the law does not from here on demand that money be given.

Their position now has been, according to their court cases, that certain funds must be given under the law when aid meets certain requirements of the law.

You are now setting aside any such restriction upon the Commissioner to withhold funds, but nothing in section 601 spells out that you must withhold funds, except as the Commissioner sees fit after investigation. Am I right or wrong in my interpretation?

Mr. QUIGLEY. You are right, sir, but I think it needs a further explanation. Keep in mind that section 601 is a broad across-the-board piece of legislation.

Mr. DENT. It deals with other than schools, right?

Mr. QUIGLEY. As I said, we have 118 programs in our Department alone. It would conceivably touch every one of those where you had the question of the benefits not being made available on a desegregated basis, welfare programs, health programs, research programs, education programs, all kinds of programs.

It would also effect programs administered by all the other Departments of the Federal Government. I think it is clear on the basis of the record of the Secretary and the Commissioner in the particular area of schools that if we have the authority to take steps to achieve desegregation of these schools we will exercise that authority.

We have in the past and if Congress will give us added authority, I don't think there is anything in our record of performance to date to indicate that we would hesitate to exercise it.

Mr. DENT. Mr. Quigley, we find that in some States there isn't a single instance where desegregation has taken place. Yet they continue to receive what might be considered sizable sums of Federal money.

For instance, the State of Alabama with 114 school districts has never desegregated a single district and receives approximately \$7 million under the impact legislation alone, not counting what they receive under public libraries or other educational facility bills.

It seems to me that in that particular instance there is a question of whether this section 601 would be sufficiently strong in the hands of a weak administrator. In passing law we must always, as you know as an experienced lawmaker, take into consideration the personalities of the individuals who will be administering the law.

Assuming that our present administrator of the law would be forceful and forthright in demanding desegregation on the basis of the permissive power that he has, then we might arrive at what we are seeking.

However, if we, in turn, get an administrator who would use this permissive power loosely and lightly, isn't it possible that Congress might still have to be called upon to pass positive action to arrive at the results in the educational field? We are not discussing the other areas where the Department has so many obligations to administer.

However, in this particular area which some of us feel is basic, along with fair employment practices, the two basic rights that we believe to be fundamental in all of this issue, isn't it possible that the Department might view this on the basis of the school legislation

alone and allow what it wants to do in section 601 for all the other areas of activities that the Department is in?

Mr. QUIGLEY. Mr. Chairman, I would say that if section 601 were enacted into law and the provisions of the Gill bill or similar legislation were enacted into law, we would exercise our authority under section 601 in all of the programs not affected.

Obviously, if this bill or sections of this bill are enacted into law it not only grants us the authority to take steps, it makes it mandatory.

Mr. DENT. Right.

Mr. MARTIN. Why not have both passed? Why do you object to this one?

Mr. QUIGLEY. Our objection, sir, is that the section 601 approach in our judgment is preferable. You, as a Member of Congress, and the members of this committee may reach a contrary conclusion, but what we are suggesting is section 601 which affects not just five programs, but all of our programs, and which would not make it mandatory in every instance, but discretionary.

We can conceive of situations where it would be in the national interest to move forward in a particular area. If we felt we were on a breakthrough and had the cure for cancer around the corner, as an administrator I frankly would be of a mind probably to continue the grant to this man and I would be willing to take whatever bumps or criticism would come my way for failing to shut off his funds simply because he happened to be doing his research at a university where it had an administration policy which was repulsive to all of us.

This is the kind of decision that I as an administrator would be willing to make if Congress gave us the authority to do it. If Congress in its wisdom decides that it shouldn't, then we, of course, will follow the law as Congress passes it.

As a matter of fact, this has been our basic problem, that we have to follow the law as Congress passes it, whether we like it or agree with it.

Mr. TAFT. Will the gentleman yield?

Mr. MARTIN. I yield, yes.

Mr. TAFT. Mr. Quigley, you are an attorney, are you not?

Mr. QUIGLEY. I am, sir.

Mr. TAFT. As a matter of statutory construction, you raised some interesting questions today, but there is one I don't think you have gotten to at all here and that is that section 601 of the Civil Rights Act as proposed is general legislation and applies only generally to give a permission to an administrator to take action if he wishes to do so.

In fact, it specifically, by its very general terms, is just saying that the Administrator or the President may require. In effect it says, on the other hand, that if he desires to do so he may continue to authorize the expenditure of funds to promote racial discrimination for all practical purposes. But the legislative interpretation question I have is—where you have a general provision of the type of 601 across the board not dealing with a specific program, and you still have on the books specific programs such as the Federal impacted area legislation, which directs payment of money or directs programs to go forward under certain circumstances, don't those statutes, even though they are passed before, still take precedence

insofar as expressing what the intent of Congress is over the general permissive language that would be in section 601?

Mr. QUIGLEY. Congressman Taft, I would say that as a lawyer such an argument could be made to the court. I would say if such an argument were made to the court that it would depend in my judgment to a considerable extent on the legislative record that was made in connection with the consideration of 601, and I have a pretty good idea that the legislative record that is going to be made in connection with that particular phase of the President's civil rights program is going to make it pretty clear that the suggested interpretation that you have said was theoretically possible is not what Congress in 1963 clearly intended.

I think they intend the contrary, and I think, given the temper of our times and the commitment of this administration, that there is little likelihood that if 601 is passed it is going to be interpreted by our Department or any other section of any other department in any other way.

Mr. TAFT. The courts get to the question of legislative history only when they have language which is ambiguous and which they can turn to, but with language such as this, simply saying that no such law shall be interpreted as requiring that financial assistance shall be furnished as in section 601 and saying that the President may prescribe for the purposes of assuring that there shall be no discrimination under certain conditions in contracts and so forth, there is no ambiguity about this language.

It is open, permissive language. He may do it or he may not do it. When you have specific directions and a specific statute in a specific area to go ahead and spend money I say that would still take precedence in the minds of the court in expressing legislative intent.

Mr. QUIGLEY. I would really be forced to disagree with you as one lawyer to another.

One, you say that there is no ambiguity in the language, this is discretionary authority, and there isn't any question that an administrator, a secretary, could or could not carry it out in a given way in a given program, but I suggest to you, sir, that if this language is passed the burden is going to be on any administrator just to justify his failure to take whatever steps are appropriate to achieve desegregation. I think if Congress will pass this kind of authority, speaking for our Department, speaking about the programs with which I am familiar, we would then be in a position where we now know that we have the authority to take the steps that we deem appropriate, and I can assure you, sir, that we would and I can also assure myself that if we fail this committee and similar committees of the Congress would have us back up here demanding that we render an act of our stewardship, and I think they should.

Mr. TAFT. I thank the gentleman.

Mr. MARTIN. That is all, Mr. Chairman.

Mr. DENT. The Chair yields to Congressman Daniels who was chairman of the ad hoc subcommittee that studied this question in the last session of the Congress. Mr. Daniels?

Mr. DANIELS. Mr. Secretary, it is a pleasure to welcome you here today. I listened with great interest to what you had to say. Referring to section 601 about which there has been a great deal of discus-

sion here, the language indeed is quite permissive. This bill states that all contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe.

How then would this bill, if it were enacted into law, change the existing law and what assurance would we have that the desegregation in educational programs that we are interested in, the land-grant colleges, the National Defense Education Act, the impacted areas bill, the Vocational Education and Library Services Act, would be any different than what they are today?

Mr. QUIGLEY. Let me take just one for an example, if section 601 were enacted into law we would have for all practical purposes extended the suitability. We would extend the suitability ruling, not just to the on-base children, but to the federally connected children.

We would be interpreting the statute and carrying it out by administrative action along the lines that we have argued in the courts in Virginia.

In other words, I am suggesting that this broad language, this broad authorization, would allow us to implement by administrative action such an interpretation of the statute.

Mr. DANIELS. I think the President has already interpreted what his authority is and even if this law was enacted there would be no change in the law?

Mr. QUIGLEY. No.

Mr. DANIELS. Why, then, would it not be better to have more specific authority such as is contained in H.R. 6938, the so-called Gill bill?

Mr. QUIGLEY. In my judgment it may be in a particular program more desirable. What I am suggesting is that we need this authority in a variety of programs, not just the five enumerated.

My particular concern when you get to the Gill bill is, one, that it is limited, as it must be before this committee, to education subjects, and, secondly, that it is mandatory, and it has been my experience that there are conceivably situations, as in the 15 instances where we negotiated out a desegregation of the schools in the impacted areas, where it would be better to have it permissive.

I would think that, if following his appearance before your committee, Secretary Ribicoff had cut off all the funds in these instances, assuming he had the authority to do it, we would not have achieved by negotiation the desegregation of schools which may affect as many as a quarter of a million children.

What I am saying is to me as a former Member of the Congress and as a sometime student government, the better way to legislation is to give the administrator the responsibility and the authority, allow him to use discretion, and if he doesn't exercise it to the satisfaction of the Congress, Congress has the right and the duty to call him to task.

I am suggesting that from a point of view of legislation if you give the departments the clear responsibility and the clear authority to carry out that responsibility, then you can and you should hold their feet to the fire and make sure that they exercise it.

Mr. DANIELS. Is it not true, Mr. Quigley, that should the President elect not to do anything, then the status quo remains?

Mr. QUIGLEY. Theoretically I think this is possible, but I suggest as a practical matter with the commitments this President has made it is a theoretical question.

Mr. DANIELS. We don't know who our future Presidents may be, therefore, I don't think enactment of the provision of 601 is going to meet the issue head on. So in that regard I respectfully disagree with your view.

Mr. QUIGLEY. I would hope, sir, that before we have a future President this particular problem will be pretty well behind us.

Mr. DANIELS. Reference has been made by you to the testimony of Secretary Ribicoff when he appeared last year before my ad hoc subcommittee. You will recall that when he first appeared he stated that he did not believe he had any authority whatsoever to make any regulation such as withholding of funds and that subsequently when he appeared he came in with the suitability ruling. Is that correct?

Mr. QUIGLEY. That is correct.

Mr. DANIELS. I would like to bring to your attention the fact that 9 years ago the Supreme Court in the *Brown v. The Board of Education* decision held that separate but equal public school facilities constituted a denial of equal protection of the law and therefore was unconstitutional.

What has the Commissioner done with respect to our land-grant colleges in view of that decision of the Supreme Court?

Mr. QUIGLEY. Mr. Daniels, I would say that the land-grant college is a classic example of the kind of problem that we are faced with in this area. The land-grant college is one of the old statutes. It contains the nondiscrimination clause in big and bold and beautiful language, but it is followed by some fine print in a proviso which says that "separate but equal" takes care of all this responsibility.

Mr. DANIELS. The land-grant college law today contains direct language that equal but separate facilities are permissible and legal.

Mr. QUIGLEY. Right.

Mr. DANIELS. I have introduced a bill to eliminate that language to conform with the 1954 decision, but what I would like to know, though, is what action your Department has taken to withhold funds from land-grant colleges which still practice discrimination?

Mr. QUIGLEY. The answer, Mr. Chairman, is that we have not taken any on the advice of our attorneys that we do not have the authority to do so, that despite the obvious inconsistency between the Supreme Court decision in the school desegregation and the statutory language in the Land Grant College Act, there is a line of Attorney General's opinions going back to the earliest administration which says that it is not the prerogative of a Cabinet officer to read his interpretation of the Constitution into the clear language which Congress has passed.

We have, as I indicated today, and we have previously, gone on record supporting your bill.

Mr. DANIELS. In view of what you have just said, why then is not the Gill bill preferable to the language of section 601 of H.R. 7150?

Mr. QUIGLEY. I think in the instance of the land-grant college it is preferable and I think my testimony has indicated that we would specifically recommend, whether in the form of Gill bill or your bill, that language along that line ought to be written into the statute books.

Mr. SNYDER. Would the gentleman yield?

Mr. DANIELS. Yes.

Mr. SNYDER. Wasn't that just the example that you gave awhile ago as to the reason why we shouldn't enact this legislation, because of this cancer grant to that school?

Mr. QUIGLEY. No.

Mr. SNYDER. That is not a land-grant college.

Mr. QUIGLEY. It could be a land-grant college, but the type of subsidy that we make available under the Morrill Act, under the Land Grant College Act, has nothing to do with our research.

This is the overall subsidization of land-grant colleges that the Federal Government engages in.

Mr. SNYDER. What college is it?

Mr. QUIGLEY. What college?

Mr. SNYDER. Yes; where this cancer research is going on.

Mr. QUIGLEY. I thought I made it clear, and if not I would like to make it clear, that I was using a hypothetical case.

Mr. SNYDER. As a matter of fact, there aren't basically any institutions of higher learning that aren't desegregated since Mississippi and Alabama are desegregated; isn't that true?

Mr. QUIGLEY. There are a number of nonpublic institutions, private colleges, church-related colleges, that still have a policy of racial discrimination.

Mr. SNYDER. I will wait my turn for further questions.

Mr. QUIGLEY. And they do apply and seek grants from our Department under a variety of programs.

Mr. DANIELS. Mr. Secretary, my ad hoc subcommittee made nine specific recommendations which were contained in its report and recommendation No. 7 specifically stated the following:

That a comprehensive study be made of all land-grant colleges by the appropriate executive agency or department in order to simulate wiser utilization of available Federal funds in the education and training of students.

What has been done about this matter by the Department?

Mr. QUIGLEY. Mr. Daniels, I would have to say sitting here this morning I cannot give you a particularly responsive answer. I will check with the Commissioner of Education and will supply for the record a report as to what has been done.

Mr. DANIELS. Also recommendation No. 8 stated:

That Office of Education of the Department of Health, Education, and Welfare immediately institute a clearinghouse on all educational aspects of school desegregation.

We all know the lack of educational opportunities is responsible today for many boys dropping out of school. It results in boys congregating on street corners and getting themselves into trouble, and we have a great juvenile delinquency problem.

It also results in the lack of employment opportunities. What, if anything, has the Department done with respect to this recommendation?

Mr. QUIGLEY. Again, I would supply in depth and detail the steps that have been taken. In general, I have enough familiarity with this to report that following the report of this committee the then Commissioner of Education made a survey as to the feasibility and the practicability of setting up such a clearinghouse.

It was established within his office and a Dr. Ford was put in charge of it. Unfortunately, at that point, the Commissioner elected

to return to the academic world and by the time the present Commissioner, Mr. Keppel, came on board Dr. Ford, who was appointed to be in charge of this clearinghouse, decided that he would take an assignment in Africa, so we are kind of in the situation where we have not yet come up with an adequate replacement for Dr. Ford.

I do know that this is kind of the status of it. I will report to you in depth and in detail, and the Department clearly recognizes the useful purpose that this would serve and I would point out that in addition to these administrative steps that we have taken, the recommendations which the President first sent to the Congress in his civil rights message would broaden this authority, not just to be kind of a clearinghouse, but would provide for authorization for kind of technical assistance on our part to those school districts that were attempting to achieve desegregation.

Mr. DANIELS. I have just one other question, Mr. Secretary. I don't want to monopolize the questioning period here. My colleagues would also like to ask you questions. Unfortunately, it has been 9 years since the Supreme Court handed down its decision and there are still large numbers of schoolchildren attending segregated schools. It has been brought to my attention that only 979 school districts out of a total of 6,197 school districts in the South were desegregated.

This figure reveals that only one-tenth of 1 percent of the number of children were integrated during the past year. That does not look very encouraging and I feel that we should give greater impetus to this program of desegregated schools and therefore I am wholeheartedly in favor of the legislation that we are studying here today, particularly the contents as contained in H.R. 6938, which I have the privilege of cosponsoring.

Mr. QUIGLEY. Mr. Daniels, I am in complete accord with the aims and objectives. It is for Congress in its wisdom to determine whether this aim which we all have in mind can best be achieved by the passage of the Gill bill, or the passage of section 601, or the passage of both.

I am here primarily to give you the benefit of our experience and our thinking as to what would be the better approach, but in the final analysis, as I clearly recognize, this is the decision that rests with Congress. Let me make it clear that we do feel that there is need for additional congressional action in this general area.

This was a point that Mr. Ribicoff made before your committee a year and a half ago. It is a point Mr. Celebrezze has reiterated, and I would like to take the opportunity to say again that we do feel that we need additional authority to act in this area to achieve the results that I think we all have in mind.

Mr. DANIELS. Thank you, Mr. Secretary.

Mr. DENT. Thank you. The Chair yields to the gentleman from Kentucky, Representative Snyder, to take turn in questioning.

Mr. Snyder is a new member of this committee, so I don't know whether you have ever met him. He comes from a city that has done an outstanding job, I believe, in this area.

Mr. SNYDER. Thank you, Mr. Chairman. We are right proud of the record of Louisville in the area of human relations, which is the district that I represent, as a matter of fact, we are proud of the fact that the Department of Education shortly after we got into a desegregation program of our schools called our superintendent of city schools to Washington to find out how he did it.

Mr. QUIGLEY. I think if I may make a back reference to one of the questions that Mr. Daniels put to me, this was one of the purposes behind the Daniels' subcommittee recommendation on the need for and the desirability of a clearinghouse, that if there were someplace where people faced with this problem could go and benefit from the experience of others who had lived through it, this would serve a very useful and constructive purpose.

Mr. SNYDER. Thank you, sir. I am wondering what the Office of Education itself has done in regard to an individual study of the extent of racial segregation in the public school districts. It seems to me in the short time that I have been here that everything that is shown to us by way of figures in this area are based upon someone else's study.

Mr. QUIGLEY. That, sir, I cannot answer. I can tell you this from my observation of the operations of our Department: That the Office of Education makes innumerable studies. How many or if any have been directed to this specific question, I can't answer.

I am a typical administrator. When I want a figure I ask for it, get it, and hope that it is reliable. Who made the survey is a question I almost never ask.

Mr. SNYDER. Would you supply that information for the record, please?

Mr. QUIGLEY. We would be happy to do so.

Mr. SNYDER. There is no question but that your Department would have authority to make such a study, is there, sir?

Mr. QUIGLEY. Again, giving a curbstone opinion, I would not think that we would lack the authority.

Mr. SNYDER. I am wondering whether or not the Office of Education has ever provided technical assistance; that is, consultation services, to school districts that are desegregating?

Mr. QUIGLEY. Has?

Mr. SNYDER. Yes.

Mr. QUIGLEY. I think the answer, and again I may have to correct the record on this, would probably be "No." This, I think, was one of the purposes again that was inherent in the Daniels subcommittee recommendation.

This is the kind of service that the clearinghouse could perform. This is the kind of service that the President had in mind when he recommended earlier this year that we be authorized to provide technical assistance, to consult with, counsel, advise, those school districts that ask for it, who wanted help in meeting this problem.

Mr. SNYDER. Would it be your opinion that the Office of Education does not have that authority now, sir?

Mr. QUIGLEY. I don't know whether they would have the authority. I would be, I think, on firmer ground if I were to suggest that they probably don't have the money to man this kind of operation.

Mr. SNYDER. I am just curious now as to whether or not the money problem is as indefinite in your mind as the authority problem.

Mr. QUIGLEY. Well, I think in the way of making grants directly to school districts to assist them in this particularly difficult period we would lack authority and I think we would have to get this from the Congress.

To provide technical service, counseling, if we were capable of giving it, I think we probably could do this under the general authority of the statute which creates the Office of Education.

Mr. SNYDER. I would think so too. I am not prepared to say that, but it seems to me that you would have this authority and it seems to me that this might be an area where the Department might be extremely effective and helpful and still not leave the impression, that so many people seem to be objecting to—that of actual intervention into the local school systems.

Mr. QUIGLEY. This is, as you pointed out, a very difficult and delicate area. I think the services ought to be available for those who elect to use it, but by the same token, I think we have to be not in the position of peddling it.

Mr. SNYDER. I got into this line of questioning by virtue of a statement which you made on page 6 of your prepared statement where you indicated that upon return of the Civil Rights Commission Report on Education in 1962 some sort of study was made in regard to library services.

We happen to have had hearings on that and, as you probably know, that report states that recently, whatever that might mean, as many as 10 million Negro citizens were denied the right to publicly owned books, and in going into this rather thoroughly with the witness that was then before us, and I don't recall who it was, we found that no study had been made by the Department of Education. The questionnaires that you refer to, the source of which was confidential, were questionnaires that the Civil Rights Commission had themselves accumulated and that is why we weren't able to determine the source of the questionnaires from the Department witness.

Am I wrong in my recollection, or is your statement just a little bit off?

Mr. QUIGLEY. No, I think, sir, if you will go back and review my testimony it is clear, but just in case it isn't let me set the record straight. This point first came to our attention with the civil rights report and the Civil Rights Commission report—I can't give you the figures—reported that they had made a survey which indicated to them that there were numerous instances where Negroes were being deprived of library services that were in effect being sponsored and subsidized by the Federal Government.

Upon return of that report we first contacted the Civil Rights Commission and said in effect if this situation is anywhere near as bad as your report indicates, obviously we have not been doing the kind of job that needed to be done and we want to correct it.

They made available to us the answers to their questionnaires, and they had a broad-scale questionnaire that went out throughout the country and particularly throughout the South. Unfortunately, from our point of view, but certainly understandable from their point of view, they had given assurances to each person who elected to answer the questionnaire that it would remain confidential and anonymous.

This was in an effort by them to get the basic facts. This meant that we could not use this information because it was factual, but not identifiable. Faced with this, the Office of Education then retained the services of a recognized librarian from the State of New Jersey and directed him to go into the Southern States and make a survey.

Now, we recognized that he couldn't cover every library in every rural area of the South, but he made an on-the-spot survey and report and, as I indicated in my testimony, this indicated that the effect of the Library Services Act in the years that it has been on the books has been to greatly expand and extend library services in lots of small towns in the South as it has in all the other States, but it also indicated some instances where the general conclusion of the Civil Rights Commission was sustained or substantiated, and we are now in the process of saying to these States and to these libraries, "This is not in accordance with the Library Services Act."

You must give us assurance that the moneys that we make available to you and are being spent to expand and improve your library services are available to all members of the community.

Mr. SNYDER. I will have to hurry. The chairman tells me our time is running out, but let me comment on that. Racial discrimination is in accordance with the Library Services Act and we need legislation like the Gill legislation to see that it does not continue in the future.

Could I have a quick answer as to whether or not your Office has used any cooperative research funds to study school segregation?

Mr. QUIGLEY. Here again I would have to supply an answer for the record because I couldn't answer it just real quickly.

Mr. SNYDER. All right, sir. As a lawyer I would say that I agree more with Mr. Taft's interpretation as to the generalness of 601 as opposed to the definiteness of the previous legislation in the respective areas, but we might lose.

Mr. QUIGLEY. I won't pursue the debate any further. I would suggest, sir, that if 601 is enacted this is not something that is likely to be argued in court. I think this would give us administrative authority and most of the action that would follow would be administrative.

Mr. SNYDER. If 601 is enacted we go to court. If the Gill bill is enacted we don't go to court.

Mr. DENT. Thank you. The Chair now yields to the gentleman from California, Representative Hawkins.

Mr. HAWKINS. Mr. Quigley, may I address your attention to page 8 of your statement. Apparently the position of the administration is to favor the broad discretionary powers approach rather than a specific obligation to actually do anything.

According to the language that you used in support of your statement you seem to imply that there is some statutory language which limits the authority at the present time and that there are some decisions that need to be left to the administrator on it.

Would you spell out what are limiting features of the present language that would prevent you from administering the act in a non-discriminatory manner at the present time and what decisions, as you say, would be made on an a prior basis in the Gill bill that you feel should not be made?

Mr. QUIGLEY. Well, the basic approach of the Gill bill is to cut off all funds where there is evidence of discriminatory practices. This is a decision which is made in answer and it would be made by the Congress if the bill is enacted. What we are suggesting is that there would be greater wisdom and desirability in giving to the administrator, whether in our instance it is the Secretary of HEW

or the Commissioner of Education, or the Surgeon General, or all the other departments of this Government, clear legislative direction and authority that, despite any language in any other piece of legislation that was passed last year or passed 100 years ago, despite any language such as the language in the Land Grant College Act or in the impacted areas law that could be interpreted or has been interpreted in a way that causes us to continue to make money available to an institution, even though they practice segregation, despite any specific language that has been or could be interpreted that way, it would be a declaration on the part of the Congress, that despite any such language, this is what we intend you to do and this is what we authorize you to do.

The actual implementation, the carrying out of that authority, would be left with the administrator and I think, given the commitment of the Kennedy administration, given the temper of our times, that you would find that in our Department and in all the other departments of the Government this authority would be exercised and exercised vigorously.

I am suggesting that there might be instances where it would not be and if it is not, then I think the Congress could and should call the particular Secretary to task and say, "Why did you not do this?" and then he could spell out, we would hope to your satisfaction, perhaps not, his decision, his failure to exercise his authority in a given program.

Mr. HAWKINS. Do you believe that section 601 which is proposed in the Civil Rights Act is specific enough to give to the administrator the power to do just what you have indicated you would do?

Mr. QUIGLEY. As I read it, sir, it is and as our lawyers have read it it is.

Mr. HAWKINS. Would you also concede that it gives to an individual the authority not to do anything as well?

Mr. QUIGLEY. I concede that, yes. I concede that.

Mr. HAWKINS. Then are you assuming that we rely on the present administration to stay in power in order to make good on its commitments and with the possibility that some future administrator may not agree with you?

Mr. QUIGLEY. I rely only in part on the assumption that the present administration will stay in power and if it does it will act and act vigorously in this area. I suggest, however, that the temper of the times, the increasing demands, the reason why this legislation is not only before the Congress, as it has in the past, but before the Congress with what the so-called experts phrase as a reasonably good chance of being enacted into law, is an indication in my judgment that, if Congress will grant the administrator this authority, you have every reason to hope and expect that it will be carried out with the intent the President had in mind when he recommended and Congress had in mind when it passed it, that is, that we will exercise whatever authority we need to exercise in the ways best calculated to achieve early desegregation of federally subsidized programs of all sorts—welfare, health, education, unemployment, relief, you name it—because the Federal Government assists State and local and private programs in a various variety of ways, not just ways that are touched upon in the Gill bill.

These are good examples, but there are many others.

Mr. HAWKINS. Mr. Quigley, is there one instance of any Federal funds being withheld because of a segregated setup in any of the programs that you have mentioned?

Mr. QUIGLEY. Well, the net result of our decision is in connection with the NDEA institute, as I indicated in my testimony, was seven schools that indicated they were ready to conduct summer institutes last summer said "No thank you."

Mr. HAWKINS. My understanding is in that instance you merely asked them whether or not they would discriminate if they received the funds and they politely turned them down. The funds were not withheld.

They were never given. I am asking in any of the instances of the continued noncompliance with the Supreme Court orders, with policies which have been enumerated by the agency, and the instances that you know of discrimination actually persisting, have you in any instance ever withheld any Federal funds?

Mr. QUIGLEY. I don't know that I can answer that, sir. To the best of my knowledge sitting here I can't cite you instances, given the definition of withholding funds that you have used.

Mr. HAWKINS. Is it not true that there are many tax-supported institutions of higher learning at the present time that still segregate?

Mr. QUIGLEY. I think the answer to that is yes. Was that tax-supported institutions?

Mr. HAWKINS. Tax-supported institutions.

Mr. QUIGLEY. The number is lessening every day, as I think the gentleman indicated.

Mr. HAWKINS. It is lessening, but there are many that still segregate, despite clear-cut Supreme Court decisions that say that prompt administration must be complied with.

Mr. QUIGLEY. Without knowing the numbers, I am willing to concede that there are such institutions. Yes, sir.

Mr. HAWKINS. In no instance have any Federal funds been withheld from these institutions? If there hasn't been a case then—

Mr. QUIGLEY. I honestly don't know. I don't know how many institutions we are talking about.

Mr. HAWKINS. I wonder why, where there is a favorable administration and where there is some discretion given to a particular agency, there is always this hesitancy or reluctance, even under favorable administrators, to do a job that should be done, and now you are asking that we give you that authority to do so in terms of all of the Federal aid programs on the theory that you will exercise authority to withhold Federal funds.

I am simply asking you what have you done with that authority which you already have, but you have now indicated that you can't proceed with militancy or in a positive manner and that there is a fearful attitude on the part of any administrator to do so, perhaps because of congressional action or adverse congressional action. It seems to me, with the approach which is being offered to you in the Gill bill, while perhaps it doesn't go far enough to cover enough programs, the position may be not one or the other, but that you would support both of them.

Mr. QUIGLEY. Mr. Hawkins, may I say that our efforts to date have been to move into those areas and in those programs where we felt we

had authority to act. There isn't any question that we feel that we need additional authority to act in this area.

It is, as it should be, the final decision of the Congress to determine what authority, if any, they are going to give us in this general area.

We have given you, I hope, the benefit of our experience, the benefit of our thinking. I think with very few exceptions, and if there are any we hope to change that in short order, with very few exceptions, if any, it has been the record of our Department in the last 2 years to try to move in those programs where we have authority.

Now, we recognize that there are programs where we don't have authority. We recognize there are programs where our authority to act in this area is limited.

We are suggesting that it ought to be broadened, it ought to be expanded by the Congress, and, as always, how this is done or if it is done is a congressional decision.

Mr. HAWKINS. Mr. Quigley, I want to commend you and the administration for what you have done. I think you have done an excellent job. I think the record is good and I am not in any way trying to reflect on the record that you have made. I think it is excellent as compared certainly with the previous administration.

The only thing I am pointing out to you is that we are trying, in effect, to take you off what I would consider a very hot spot that you are on, and that to give you discretionary power such as this means that the pressures are going to be great on both sides, and until the powers are actually spelled out with specific obligation, only that type of authority, it seems to me, is going to take any administration or the administration of any law and place it in its proper perspective; that is, that the law of the land shall be upheld.

It seems to me that the Gill bill goes in the direction of spelling it out and being specific, and it seems to me this is a much better approach than merely giving broad authority which, as you well admit, can be used both ways.

In the hands of an unfavorable administration it could be used just opposite to what we intend, and certainly we don't intend to write a bill which is going to tend to use it both ways. This is the only thing I wanted to try to clarify with you, and I certainly appreciate the comments that you have made.

Mr. QUIGLEY. Thank you, sir.

Mr. DENT. The Chair now yields to the gentleman from Florida, Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman. Could you give me the names of the seven institutions who turned down any National Defense Education Act funds on the basis of discrimination?

Mr. QUIGLEY. We can supply them for the record, sir. I don't know that I can sit here and enumerate them.

Mr. GIBBONS. My last question then is, Is the administration for or against the Gill bill?

Mr. QUIGLEY. Well, without restating or rehashing everything I have said so far—

Mr. GIBBONS. Are you for it, or against it?

Mr. QUIGLEY. We are for the objectives of the Gill bill. Our recommendation is the enactment of section 601 as the preferable approach. This, I think, is the administration's position.

Mr. GIBBONS. Then, you are not against the Gill bill?

Mr. QUIGLEY. I guess the answer to that is we are not against the Gill bill because we have already indicated to the Congress a number of times that we think we need additional authority in this area.

We think the authority as proposed to be given to us in section 601 is preferable.

Mr. GIBBONS. Thank you.

Mr. DENT. We have with us a Member of Congress who is a member the full Committee on Education and Labor and a very interested and dedicated person in this area of legislation, Mr. Pucinski of Illinois. Would you have some questions?

Mr. PUCINSKI. I just have one question. Mr. Secretary, in your response to Mr. Gibbons you say you are for the objectives of the Gill bill, but you would prefer to have those objectives carried out within formula contained in section 601 of the administration's civil rights bill. Is that correct?

Mr. QUIGLEY. That is correct.

Mr. PUCINSKI. So actually, then, you are not necessarily for the Gill bill per se?

Mr. QUIGLEY. I think that is a correct interpretation.

Mr. PUCINSKI. The formula in 601 certainly could leave any prudent person very confused. On the one hand, it is a very broad authority; it goes to any program. But then you say, "No such law shall be interpreted as requiring." Who is going to interpret it? Who shall not interpret the law as requiring the rendering of financial assistance to a beneficiary of a Federal program that discriminates? Who is going to make that decision?

Mr. QUIGLEY. The administrator who is charged with the responsibility for administering the program.

Mr. PUCINSKI. Supposing that that administrator chooses not to exercise this discretion and this administrator takes the position that there is no bar against using Federal funds.

Is there any kind of relief that you can see in this provision to the aggrieved party? You presume that a beneficiary that would deny funds, a State school, public school, or what have you, has the right to sue the Federal Government, even though he doesn't have that right unless Congress provides that right. What I am trying to find out is how can the aggrieved party find relief where an administrator chooses to hold that Federal funds need not be denied to an institution or an establishment that has been practicing discrimination.

Mr. QUIGLEY. I would think that the relief in such a situation would be through congressional action and I don't necessarily mean legislative action. I mean congressional inquiry as to how this program is being administered, why the administrator elected to interpret this particular program in a particular way.

Mr. PUCINSKI. The preamble of this bill talks about constitutional rights of American citizens, but the civil rights bill and the bill before this committee is to recognize the indignity of second-class citizenship and to correct it. You are suggesting here in the loose language of 601 that if an administrator chooses not to follow the spirit of this act but instead says, "Well, I don't have to deny funds to an institution that segregates," that we should enforce that by congressional intervention and pressuring?

This is the way to get civil rights?

Mr. QUIGLEY. I am suggesting, sir, that in the times in which we now ourselves in the interpretation of authority which would be granted in 601, the narrow, limited, interpretation that you suggest, is possible and I concede that it is.

I say that it is extremely unlikely. We have come before this committee on numerous occasions and said the only reason why we have not acted is because of specific language in legislation which this Congress passed.

If Congress will remove that language, if Congress will take steps and indicate that it is not the congressional interpretation that this specific language precludes you from acting, I think it is clear that this administration is ready, willing, and anxious to act.

Mr. PUCINSKI. Mr. Secretary, certainly this administration has already written a record in the whole field of civil rights and is committed to an even more encouraging record, but I couldn't understand why this administration would not want to come out flatly on four squares behind a proposal that it shall not be discretionary but mandatory to deny Federal funds where there is discrimination practiced.

Why would you take such a strong position on all the other legislation contained in this act and yet take a very nebulous position when it comes to the control of the purse strings of those who might engage in this discrimination. This I can't understand.

Mr. QUIGLEY. I think our position is not only reasonable, I think it is sound. I think the gentleman from Illinois is well aware of the recommendations of the Civil Rights Commission made some weeks ago that funds to the State of Mississippi be cut off.

I understand the frustration, and the motivation, and everything else that caused that recommendation to be made, but I would submit, sir, that if we are to follow that recommendation all the way, if it is mandatory to cut off the funds, I really sincerely submit to you that this is throwing out the baby with the bath because in many States and in many of the programs that we administer the very people that we are interested in helping are the beneficiaries.

We administer multibillion dollar welfare and relief programs. If we just say, "No funds to State X," this means that the people on welfare and the people on relief in that State are on their own completely.

They have no help. To accomplish it we all have in mind I don't think that we have to take such extreme action and I don't think the Congress should make it mandatory that we do.

Mr. PUCINSKI. Yes, but even the Supreme Court in its 1954 decision gave the local communities adequate time to make the adjustment and the Court did not require that they must comply and conform immediately.

As a matter of fact, at this very late date 8 years later the figures that Mr. Daniels read are certainly showing what relatively little progress has been made despite the Supreme Court's admonition, so assuming that the Gill bill passes, and that it now becomes mandatory, not discretionary as is provided in 601, there is, of course, a phaseout here.

Recipients would be given time to make the adjustment. That is the very thrust of this proposal contained in the Gill bill and companion measures before this committee. Isn't that what it is?

Mr. QUIGLEY. I think there is no question that this is the aim of the committee and of the administration. I think the worst thing that could happen would be that we get bogged down over the form in which we are going to seek to accomplish it.

Mr. PUCINSKI. Mr. Secretary, I am aware of your problem here. It is difficult for you to speak for the whole administration. I know you have a very fine State. I think you have done a great job myself.

I congratulate you, but might I suggest that perhaps you might take the transcript of today's proceedings before this committee and might I also suggest that perhaps you and the Department review the proposal before this committee to see whether or not you might not want to make a supplemental statement to the committee at some later date which would clarify your position a little more than it is now, because I think there is some confusion before this committee as to what degree does the Department today actually favor enactment of the legislation before this committee.

You set forth an objective, but you would prefer to see it incorporated along the lines of 601. That would lead me as a prudent man to conclude that you are really not too anxious for the legislation before this committee.

On the other hand, you said that you are for this legislation in land-grant colleges. So I would strongly recommend that you supplement this otherwise fine statement that you have already made with a clarifying statement.

Mr. QUIGLEY. We will be happy to do so, sir. I don't want to confound or confuse the committee as I think you have an important decision to make here.

Mr. DENT. The House has been called to a quorum call and on behalf of the committee I want to thank Secretary Quigley for his very fine presentation of the position as he understands it and his forthright answers to some very probing questions.

The arrangement has already been made, for the benefit of those that are here, for the Department to come back later in the summation because we recognize, as they recognize, that with two pieces of legislation moving simultaneously it is very difficult to come out with a forthright position in either case until hearings have developed more or less the atmosphere in which we will be working.

Therefore, the committee welcomes additional testimony at a later date to be selected by agreement between the committee and the Department.

Again, I want to thank you very kindly, Jim, for coming up.

Mr. QUIGLEY. Thank you, Mr. Chairman. I appreciate the chance to be here.

Mr. DENT. We appreciate it. Dr. Cooke was listed as the next witness and we must apologize to him for the length and duration of our present witness' testimony and the questioning. However, I believe Dr. Cooke, being a very broadminded person, realizes that sometimes these things get into the realm of uncertainty, and that is what happened this morning.

However, with our very sincere thanks, Doctor, for taking the time to come here, we will appreciate, as you have indicated, that you return upon the next date which is at this moment selected as July 8, and we will notify you of the time and place. I assure you that we thank you for coming.

The committee stands in recess until the next hearing date.

(Whereupon, the subcommittee was recessed, subject to the call of the Chair.)

NONDISCRIMINATION IN FEDERALLY ASSISTED EDUCATION PROGRAMS

MONDAY, JULY 8, 1963

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 429, Cannon Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Gibbons, Brown, Bruce, and Findley.
Also present: Representative Gill.

Staff members present: Dr. Deborah Partridge Wolfe, education chief; Dr. John C. Muntone, subcommittee director; and Charles Radcliff, minority counsel.

Mr. DENT. The Select Subcommittee on Education will resume its hearings this morning on H.R. 6939 and other related bills which would amend five federally supported educational programs to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination.

Certainly we are all aware of the struggle for equal rights for all American citizens. In that connection it is the fond hope of this subcommittee that the testimony presented to it and subsequent deliberations thereon will result in reporting intelligent and objective recommendations to the full committee.

In an opening statement on the first day of these hearings I spoke of the paradox underlying the demands of American citizens for the rights, opportunities, and duties of American citizens. Since that time we have seen a number of proposals introduced in the Congress which would ban racial discrimination in a number of areas.

Certainly I would not contend that legislation is more urgently needed in any one of these areas than in the others. However, if it is the intent of these proposals to close the social, economic, and cultural gaps between groups in the Nation, it appears to me that we need to recognize the role of education in establishing a sense of complete participation which is denied to Negroes.

I know full well the importance of congressional action in all areas, but I wish to emphasize that people can participate fully in the activities of the Nation only after they have been prepared for that participation on the same basis as other groups in the Nation.

I know of the public humiliations suffered by our fellow citizens when they are denied access to public accommodations.

I know that voting rights are too often denied to many of our citizens through the evasive acts of local officials. I know of inequities in employment practices.

Legislation in these areas, vital as it is, can be truly effective only when those who currently suffer injustices place their struggle in the proper perspective.

An all-out drive for complete equality in public accommodations misses the mark unless the drive highlights equally the necessity for good, up-to-date scientific and vocational education which, of necessity, underlies any effort to improve one's lot.

What has been gained if in the final analysis the Negro is guaranteed by law access to public accommodations but cannot avail himself of these accommodations because of financial inability to do so? What has been gained if fair employment practices are written into law but those for whom such practices should mean improved economic situations are not adequately prepared for the jobs now available?

I am not at all sure that people will not march for proper education and for jobs with the same enthusiasm with which they sit-in at lunch counters.

If I have not been clear, then, I wish to say that my comments here are in the nature of a suggestion to all concerned, and especially to the Negro leaders, that attention and effort be focused equally on those rights which offer genuine and long-lasting hope for the future of the race.

If Federal action is required to prohibit local laws, policies, customs, and attitudes of exclusion, I think we should understand that such action will flow from the rule of the law, upon which our society is built, not from the passions of men.

It is my sincere wish and fervent prayer that reason will indicate the proper course of action, and that collective effort will serve to implement the solution that all just men seek.

As a final note, I wish to add that I have some personal knowledge of what it is to be a member of a minority group, and that over the course of my lifetime I have acquired some knowledge of how a minority group finds "its place in the sun." I hope to offer, with all humility, my experiences toward finding an intelligent and equitable solution in the matter before us.

At this time the committee will hear from the Attorney General's office through the legal counsel for the Justice Department, Attorney General Norbert Schlei.

Mr. Schlei, you will proceed as you see fit.

STATEMENT OF ASSISTANT ATTORNEY GENERAL NORBERT A. SCHLEI, OFFICE OF LEGAL COUNSEL, JUSTICE DEPARTMENT

Mr. SCHLEI. Thank you very much, Mr. Chairman.

I would like to proceed, if it is agreeable with the chairman and the committee, by reading my statement, which I have with me this morning, and then answering whatever questions the chairman and the committee may have.

Mr. DENT. The gentleman will proceed.

Mr. SCHLEI. Let me first say that I appreciate very much the opportunity to appear before you today during your consideration of H.R. 6938, H.R. 6939, H.R. 6972, and their companion measures.

The general purpose of all these bills is to amend existing laws providing Federal aid to education by requiring the Commissioner

of Education to withhold Federal funds from institutions practicing racial discrimination.

Let me state at the outset that the administration strongly favors the objectives of these bills. As the President stated in his message on civil rights:

The growing and understandable dissatisfaction of Negro citizens with the present pace of desegregation, and their increased determination to secure for themselves the equality of opportunity and treatment to which they are rightfully entitled, have underscored what should already have been clear: the necessity of the Congress enacting this year—not only the measures already proposed—but also additional legislation providing legal remedies for the denial of certain individual rights.

Assistant Attorney General Marshall stated before Congressman Daniels' ad hoc subcommittee last year that congressional action giving effect to the ruling in *Brown v. Board of Education* would be most helpful, if there is to be significant progress in guaranteeing hundreds of thousands of children their constitutional rights.

In the intervening year, the urgency of the need to accelerate the pace of desegregation has increased, as recent events bear witness.

To achieve this purpose, the administration has included in its omnibus civil rights bill, H.R. 7152, provision for Federal assistance to communities to facilitate desegregation and authority for the Attorney General to bring suits to compel school desegregation where he determines that the parties aggrieved are unable to maintain appropriate legal proceedings for relief.

We sincerely believe that enactment of this title III of the proposed Civil Rights Act of 1963 will be a significant forward step in our efforts to secure equal educational opportunities for all our citizens.

It is, of course, appropriate and reasonable that we should have particular concern for educational activities which receive Federal funds. Such funds should not be used to support segregated education.

We believe that the administration has acted decisively in this area, and that it can point to significant achievements within the present legal framework.

Assistant Secretary Quigley has testified before this committee regarding the actions taken by the Department of Health, Education, and Welfare, most notably the ruling that henceforth segregated schools will be considered "unsuitable" for children residing on Federal property, under section 6 of Public Law 874, 20 U.S.C. 241, and section 10 of Public Law 815, 20 U.S.C. 640, the impacted area school legislation.

The Department of Justice has also sought to end the anomalous situation in the impacted area program which finds the Federal Government paying local school boards to discriminate against children of Federal employees.

In the past year the Department has brought six lawsuits to compel the desegregation of schools receiving funds under Public Laws 815 and 874. These suits are based on two theories.

First, we argue that the local school board is bound not to discriminate by the assurance given in connection with its application for construction funds that its school facilities will be available to federally connected children "on the same terms, in accordance with the laws of the State * * * as they are available to other children in such school district," 20 U.S.C. 636(b) (1) (F), and that the United

States, as the recipient of this assurance is entitled to enforce it through suit.

Second, we argue that the discriminatory practices of the local school boards are unconstitutional under the rule of the *Brown* case, and that the United States, because of its interest in the morale and efficiency of its servicemen and employees, its responsibility for their welfare, as well as its contributions of funds, is entitled to maintain suit in its own right to compel these schools to be operated without discrimination.

The first of these suits, *United States v. County School Board of Prince Georges County*, was filed in Federal court in Virginia in September 1962. It involves children of Army personnel at Fort Lee, Va.

In June 1963, Judge Butzner, relying on the first of the Government's two theories, enjoined the defendants from failing to comply with the assurance given by the school board that school facilities will be available to the children for whose education contributions are provided under Public Law 815, on the same terms, in accordance with the laws of Virginia, as they are available to other children in the county.

On January 18, 1963, five other suits were filed. I should like to describe these suits briefly: *United States v. Madison County Board of Education* involves the Huntsville, Ala., area. There are approximately 3,730 military personnel and 18,890 civilians stationed or employed at Redstone Arsenal, the Army Ordnance Missile Support Agency, the Army Guided Missile School, and the George C. Marshall Space Flight Center. Approximately 750 Negro children and 10,250 white children attend schools operated by the county or city.

United States v. Mobile School Board involves the area around Brookley Air Force Base near Mobile, Ala. Approximately 1,000 military personnel and 15,000 civilians are stationed and employed at the base, and more than 14,000 children of these Federal personnel attend segregated schools operated by the Mobile County Board of Education.

United States v. Bossier Parish School Board seeks to protect the federally connected children of Barksdale Air Force Base and Bossier Base in Louisiana. Approximately 4,400 children of 8,000 military and 800 Federal civilian employees, both white and Negro, attend segregated schools maintained by the Bossier School Board.

United States v. Biloxi School Board is a suit brought in Mississippi. Approximately 25,000 military and 2,600 civilian personnel are stationed and employed at Keesler Air Force Base, and a nearby Veterans' Administration hospital. Approximately 3,600 children of these Federal personnel, including 250 Negroes, attend segregated schools maintained by the Biloxi School Board.

United States v. Gulfport School Board is also a Mississippi suit. Approximately 2,000 children of Federal personnel, including 130 Negroes, residing within the Gulfport School District, attend segregated schools maintained by the Gulfport Board.

In the *Biloxi* and *Gulfport* cases, Federal Judge Mize has granted the defendant's motions to dismiss, holding that the Government lacked standing to sue. In the *Huntsville* case, Judge Grooms has likewise granted a motion to dismiss on the same basis.

These rulings conflict with that of Judge Butzner in Virginia, which sustained the Department's authority to bring suit. We expect that appellate courts in the fourth and fifth circuits will be deciding this basic issue this fall. We will certainly make very effort to expedite the hearings.

I do not mean to suggest by this progress report that legislation in these areas is not appropriate. Quite the contrary. The only question is, What is the most desirable legislative approach?

As you know, in the administration omnibus bill, H.R. 7152, there is a title VI, consisting of a single section which reads as follows:

SEC. 601. Notwithstanding any provision to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefiting from the program or activity are discriminated against on the ground of race, color, religion, or national origin or are denied participation or benefits therein on the ground of race, color, religion, or national origin. All contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin.

At present there are some programs for Federal assistance where the authorizing statute defines the conditions of eligibility so precisely that it is rather difficult to justify legally an imposition of additional conditions relating to discrimination.

The purpose of the first sentence of this section 601 of the omnibus bill is simply to make clear that no statute authorizing a program of Federal financial assistance shall be interpreted as denying to the administering agency the authority necessary to see that participation in and the benefits of the program are made available without discrimination.

We anticipate that such authority would be exercised by imposing nondiscrimination conditions on applicants for assistance, as is presently being done under the Executive order on equal opportunity in housing.

Procedures to supervise compliance with such conditions and to impose sanctions for violations would be worked out by the administering agencies.

The second sentence of the section needs little explanation. When there is presently doubt as to the authority of the Executive to impose conditions of nondiscrimination on the recipient of assistance, the doubts carry over to authority to impose on the contractors with whom he deals conditions requiring nondiscrimination in employment.

We are presently examining the extent to which the recently issued Executive Order No. 11114, which extends the authority of the President's Committee on Equal Employment Opportunity to cover construction contracts financed in whole or in part through Federal assistance programs, covers programs in this doubtful area, but the enactment of title VI would resolve these questions.

Title VI of the omnibus bill represents a different approach to the problem of discrimination in federally assisted programs from that taken in the bills presently before this committee. Whereas these

bills, H.R. 6938, H.R. 6939, and H.R. 6972, deal solely with programs for Federal aid to education, title VI would cover all Federal programs.

On the other hand, because of its broad coverage, we regard it as desirable, indeed essential, to make the cutoff authority in title VI discretionary, not mandatory, as it is in the education bills before you.

This discretionary authority is necessary because there may be programs so desirable and beneficial to the Nation, to the local communities, and even to the members of minority groups that assistance cannot be cut off instantly or refused because of discriminatory practices by the recipient State and local agencies. Two examples which immediately come to mind are school lunch programs and some disaster assistance programs.

Mr. Quigley testified before you that his Department regards the discretionary authority provided by title VI as desirable for the educational programs affected by the legislation before you.

I confess that I am not sufficiently familiar with the workings of these programs to assess the impact which a mandatory cutoff provision would have. It does not seem to me improbable that situations, presently unforeseen, might arise in which the lack of flexibility afforded by these bills might present an obstacle to the administration of these programs and to the working out of problems of discrimination through negotiation.

I do believe that if title VI of the omnibus bill is enacted, it would accomplish what is sought by the authors of the bills before you, for I think this administration has made very clear its determination to employ to the utmost the authority of the executive branch to bring an end to racial discrimination.

Furthermore, I think the approach of dealing with problems of racial discrimination in Federal programs through a single statutory provision is preferable to the piecemeal approach of amending each statute, not only because it is simpler, but also because the latter approach too often enables the opponents of the assistance program itself to coalesce with the opponents of civil rights to defeat the whole measure.

Yet, while I prefer the administration's approach for the reasons stated, I recognize that the bills before you are a feasible alternative in the field of education, and one which is basically acceptable to the Department of Justice.

In particular, we have recommended in the past, and we recommend now, section 5 of these bills, which would amend the Land-Grant College Act to eliminate the obsolete provisions for "separate but equal" education.

These provisions are, as Mr. Quigley stated, "a perpetual affront and indignity to all American citizens," and even though we believe that the enactment of title VI would authorize the Secretary of Health, Education, and Welfare to disregard them in his administration of the act, they should be wiped from our statute books.

Whether or not satisfactory civil rights legislation is passed this year, the Department of Justice will continue to seek by litigation the goal of equal opportunity for all in federally supported education.

If, as we fully expect, the Government's position in the impacted area school litigation is upheld in the higher courts, we will broaden

our efforts in this area, for I think we can all agree that the best solution for all concerned is to desegregate these schools, by voluntary compliance, if possible, by court order if necessary, and that the actual cutoff of funds for vitally needed education is at best an alternative to be applied with extreme reluctance.

Mr. DENT. Thank you very kindly, Mr. Schlei.

There is an old song, I think, that says, "You take the high road, and I'll take the low road, and I'll get to Scotland before you." It seems that we are approaching this problem, all seeking the same goal but trying to arrive at it by traveling different routes.

I gather the approach of the testimony this morning, and also of HEW through Mr. Quigley, is that this legislation is desirable, however because of the remedy for the problem that we have today is mandatory rather than optional and discretionary, the administration would rather favor title 6 of House Resolution 7152, with section 601 governing the matter of contributions or payments to any educational facilities in the Nation, public libraries, and so forth, that are covered by this legislation before us.

Am I right in that assumption?

Mr. SCHLEI. That is essentially correct, Mr. Chairman, yes.

I am not personally familiar with the operation of these educational programs, as Mr. Quigley is, and so I am unable to describe the need, as he was, for discretion in the authority to be exercised, but it certainly is easy for me to understand that situations might arise in which it would be preferable to go forward and not make the cutoff of funds mandatory, thus following the pattern of section 601 rather than these bills.

Mr. DENT. The weakness, as I see it—I do not know how the rest of the committee feels about it, but the weakness that I see in section 601, although it is a coverall provision which would take in all laws—is in the discretionary power itself.

There are some who believe that we now have that discretionary power. And the only clarification that I can see in section 601 is where we clear up an adverse court decision, where the lower court has ruled that the Federal Government has no right in suit under the provisions of the law because they say that it is mandatory under the law to give the funds, if they qualify for the funds, on the basis of impact, and that therefore this would clear up that matter by stating in a reverse position of law that it is not necessarily true that funds must be paid.

The decision now says that funds must be paid, and provision 601 would say that it is not necessarily so.

However, Mr. Schlei, as I see the problem before us, the question of discretionary power will no longer solve this situation, and you will note that this legislation that we have before us deals with the fundamental base of education. I know the sponsors' opinion, and that of many others, including my own, is that the basic problem is the segregation in educational facilities, followed then by the No. 2 step, segregation in employment opportunities.

Now, section 601 should be passed. There is no question about it. But this legislation we have before us, as I see it, is not in conflict with section 601, but rather takes the attitude that in the field of education the time has come, 9 years after the Supreme Court deci-

sion, for a halt to be called, a stop to be made, somewhere along the line.

But if 9 years have elapsed, and we still have not found some kind of a solution to the problem because of extenuating circumstances, then giving discretionary power to withhold funds, if those same circumstances persist—would never effect an end to segregation.

For instance, let's look here. We have some districts, some States, in the United States, that have not desegregated one single school district in 9 years. Now, it is not reasonable to assume that all of the school districts within a State have an emergency or a so-called extenuating circumstance that compels that that school be forgiven from any rule of reason on desegregation.

Mr. SCHLEL. I certainly agree with that, Mr. Chairman.

Mr. DENT. So in my opinion, the proper position for this administration to follow, in its obvious seriousness in this effort to desegregate, especially in education, would be support of this legislation as well as 601, which is a coverall and catchall, and eliminates the question of the adverse ruling in court on whether or not a legislative act can determine that moneys must be paid so long as you qualify under one section of the act or under the so-called intent of the act.

But this legislation, with its cutoff date, is as necessary today, in passage, as any piece of legislation before the Congress of the United States.

In the area of education we can no longer quibble. We can no longer equivocate. We can no longer tolerate any delay in this situation, in my humble opinion, because all of the other disturbances that we have, it seems to me, are born in the inequality in the educational setup.

I am rather disappointed in the testimony to date, and I say this advisedly, which in simple terms would appear to those in the public, listening to the testimony, that although this legislation is desirable, it is not wanted at this time.

I think that any approach except the Gill bill or similar legislation is not only a halfway measure, but is practically useless in the face of history and in the face of the many thousands and thousands of decisions that can be made under a voluntary or a discretionary setup.

We have today a very forthright spokesman for civil rights in the person of the Attorney General. But who knows what tomorrow may bring? We would like, I believe, this to be a matter of law, and not a matter of individual discretion.

Under 601, the Attorney General becomes, in fact, a czar over the entire matter of desegregation or segregation in every phase of Federal legislation.

In this regard, it is worthy to pass it as part of the omnibus bill; but in my humble opinion, if we are to really do what we say we want to do, the Gill bill is a necessity.

I am very disappointed, as I said before. And unless we get a clarification of this situation, I may advisedly say to my committee that if the legislation is to be opposed, as such, then it is rather time consuming and wasteful on the part of the very busy Members of Congress to continue to hold hearings in this area. All of us, I am sure, are mighty interested in the passage of the omnibus bill, but we feel that this is separate and apart from the omnibus approach, and

therefore ought to be supported, as such. I see no controversy between this and the proposal under section 601 of title VI of the omnibus bill.

If you would care to comment, it is all right with me.

Mr. SCHLEI. Yes, Mr. Chairman.

I certainly agree with a great many things that you have said, but I would like to clarify a couple of points.

First let me say that I think we would all agree that our objective is not to cut off funds to schools around the country, or to get those schools closed or make them inadequate. Our objective is to desegregate those schools so that they can go on to provide educational facilities of high quality.

Mr. DENT. May I interrupt for 1 minute?

There seems to be a misunderstanding about this whole problem. This money that we give under Federal acts is not essential to the opening or the building of schools, but is rather a gratis grant from the Federal Government over and above local effort, and therefore any school that desires to remain segregated can very well do without these funds. These funds are not public funds given out to all of the school districts in the United States, but only to selected school districts.

Therefore, if there is a qualification written into the law on the acceptance of that Federal money, certainly it will not close the schools. It will not have anything whatsoever to do with the operation of the local schools, because only due to the impact of these children, under the impact legislation, do they receive these funds.

If they decide not to take those students, they are not compelled to take them. They can take them on the basis of their local desires, if they want, but not with the help of Federal funds.

In public libraries, the same situation exists. We only have public library funds in communities of less than 10,000 population. And if they want Federal funds for these public libraries, they ought to abide by the law and by the Constitution of the United States.

There is nothing being denied to any district. This will not close any single school in the United States, because this is not the sole source of funds for these school purposes.

You see what I mean? It is a different situation.

Mr. SCHLEI. Well, I do understand that, Mr. Chairman, but it certainly does seem to me that if these funds are refused, out of a desire on the part of the local school board, perhaps being coerced by the State authorities—if these funds are cut off, it certainly would affect the quality, I would think, of the education in the area.

And I think that our preferred objective—of course, we do not want Federal funds to be used to promote segregation or discrimination, but our preferred objective would be to continue the Federal program and have the schools desegregate immediately or as soon as possible.

The best objective, the best way to accomplish what we want, is to win all these lawsuits, so that the school board would be compelled to desegregate, and the program could go on, and the funds could assist the quality of the local education.

The educational benefits would go on, but the discrimination would stop. We would like to achieve I think both those objectives.

Mr. DENT. As I said, we are taking both the high road and the low road. But let's analyze what you just said.

If you win these suits, you compel the school to desegregate. But they can still refuse the Federal funds, because they have to apply for these funds. Therefore the decision would have nothing to do with the school itself. If they do not want the funds, and want to remain segregated, they can do so by not applying for the funds.

There is no difference in what you are trying to do and what we are trying to do. We say they must be desegregated to accept Federal funds. You say they will have to do it by court action to accept Federal funds. I see no difference in it.

We do it by law, and you want to do it by court. And you would have to go into every court in every school district, as you well know. You cannot get an overall decision on every school in the country.

Mr. SCHLEI. Well, we have done well on the impacted area schools, as I understand it.

Mr. DENT. I agree with you.

Mr. SCHLEI. But let's just take a look at Mississippi, Mr. Chairman, and perhaps I can explain to you where it seems to me—

Mr. DENT. In Mississippi they have no desegregated schools, out of 150 school districts.

Mr. SCHLEI. I appreciate that, sir, and I deplore the situation the same as you do.

But it does seem to me that if we conditioned the use of Federal funds mandatorily on the desegregation of schools in Mississippi, it certainly is possible that the funds would not be accepted, and that segregated schools would continue to be operated there.

Mr. DENT. Would that not be the same result if you win a court order?

Mr. SCHLEI. No. If we win a court order—

Mr. DENT. Then what happens?

Mr. SCHLEI. The desegregation of the schools will be compelled by the court order, enforced by the Federal Government, and then the aid will continue to be available to enhance the quality of the education there, whereas, if there is not a court order, but simply the refusal of funds, it is possible—I do not say that this necessarily will happen, or that it should be decisive, but it seems to me at least possible—that these schools would refuse to accept the Federal funds and remain segregated, thus resulting, in the end, in a lower quality of education in that area.

Mr. DENT. But, Mr. Schlei, is it not true that if you do get a court order they still have to apply for the funds? And even if the court order says that the school must be desegregated, it is to be desegregated only if it accepts Federal funds?

You cannot win any other kind of a decision. You cannot win a decision in court forcing them to take funds when it is a voluntary law. You cannot win a decision saying that Mississippi has to take money under these laws.

Mr. SCHLEI. Of course not.

Mr. DENT. You cannot do that?

Mr. SCHLEI. No.

Mr. DENT. All right, then. What is the difference between doing it by law and doing it by court order?

Mr. SCHLEI. Well, Mr. Chairman, the Federal Government, in my opinion, has standing to sue in these areas because of its interest in the welfare of its servicemen, regardless of whether the local area sees fit to accept Federal funds.

Mr. DENT. We agree.

Mr. SCHLEI. And I would like to clarify an ambiguity about these court decisions, Mr. Chairman.

The decisions do not deal with the question whether the Federal Government has power to deny funds where segregation exists. The decisions are on a different point. The decisions are on the question whether the Federal Government has standing to sue to compel desegregation. And they only involve secondarily the fact that funds are being given to these schools by the Federal Government.

In the case where we have prevailed, in Virginia, the court's theory was that when the school accepted funds, its undertaking to provide education to federally connected personnel on an equal basis required it to offer a desegregated education.

Now, I think that standing to sue exists, and it will be so held by the Fourth and Fifth Circuit Courts of Appeals, in all of the cases that we have brought.

That question does not necessarily depend on the acceptance of Federal funds. We would still be bringing these lawsuits, I am confident, regardless of whether the school districts involved accepted Federal funds. But the decisions do not deal with the power of the Federal Government, under these statutes, by Executive action, to withhold funds.

Mr. DENT. Then what is the purpose of the language in 601, which as I understand it goes right to the meat of that very important point, and I would like to quote:

Notwithstanding any provision to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefiting from the program or activity are discriminated against on the ground of race, color, religion, or national origin or are denied participation or benefits therein on the ground of race, color, religion, or national origin. All contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin.

Now, the whole tenet of 601, the first part of the section, is to the point that no law will be presumed to require that funds be paid.

And as I understand the case in Virginia, not knowing the citation at the moment, you had an adverse ruling to the effect that you were required to furnish funds under the impact legislation, and that you could not deny it, and that is where 601 was born; the idea for 601.

Mr. SCHLEI. No, Mr. Chairman, that is not quite right.

Mr. DENT. That is what Mr. Quigley's testimony is, as I understand it.

Mr. SCHLEI. There are legal doubts, but they do not exist because of those decisions. We have not determined, to my knowledge, positively, that the Federal Government lacks power, that the executive

branch lacks power, to require nondiscrimination as a condition of receiving assistance under any Federal statute.

There has been no irrevocable or final decision under any statute. But it is obvious from the language used in several of these statutes that legal problems exist in maintaining that position.

We would like to sweep away those legal problems, which do not exist because of any decisions, but because of the language of the statutes. We would like to sweep away those doubts, so that it is quite clear that we have this power to proceed by way of executive action to withhold assistance, if there is discrimination, or to condition assistance on an undertaking to refrain from discriminating.

Mr. DENT. There is nothing in this legislation that would in any way hamper the Justice Department in any suits for desegregation in any school, whether they were federally aided or local school districts.

I note that the same logic does not follow through on category A students in the testimony here. In category A, where they run up against a situation where the local community does not desegregate, they build their own school under Public Law 815.

Now, if that is a remedy, then evidently they anticipate that they will be building their own schools, rather than putting into effect the so-called mandate of desegregation.

Therefore we feel, and I am sure that I speak for more than myself when I use the term "we," that this legislation before us is as necessary to the desegregation of schools as any other piece of legislation ever advanced in Congress.

Now, I am not talking about the other laws. I am not talking about the myriad of rules and regulations and laws that are upon the books now that are covered by section 601 of title VI.

I am talking about this particular piece of legislation, dealing with the fundamental right to an equal opportunity to education. And that is all we are dealing with, only in those areas where the Federal Government, on a noncompulsory basis, but on a voluntary basis, provides money and funds from the Federal Treasury.

Nothing in this legislation, if put into full effect tomorrow, would close any single school in the United States. All the money that they would be receiving would be coming from category B, in the impact legislation, and right now there is a question whether or not there is a valid need for category B funds to go to any school district in the United States.

It has been overworked. It has been abused. It has become a political pork barrel.

Since category A is being taken care of by building your own schools on Government installations, and category B might be eliminated by Congress, anyway, before the next legislation rolls around, this legislation would have little or no effect on any school district or any public library in the United States of America, because they only receive voluntary funds under its provisions.

It is not as if we are saying, "In order to open your school with the money that we provide, you must do this," because we do not provide the bulk of the money. We provide a very small part of the funds.

For instance, here is Mississippi. Mississippi has an educational program of about \$30 million, and we provide about \$1 million under

the impact legislation; in all of this legislation, about \$1 million. If that money were denied, certainly Mississippi would not close its school facilities.

It is just a question of whether or not we are going to put teeth into this legislation at this time, or whether we are going to still allow it to be a rule of an individual rather than a rule of law.

I admire and respect the Attorney General's program and his efforts in this behalf, but we do not know who might be the Attorney General tomorrow. We have had many of them under the same Constitution that we are now operating under, and nothing was done for years.

Mr. SCHLEI. Well, Mr. Chairman, I would like to make a couple of points.

First let me say that I am not here to oppose these bills.

Mr. DENT. All right.

Mr. SCHLEI. We want the effects that are sought by the authors of this legislation. We are in favor of those effects.

I have said simply that I would prefer the administration bill's approach, for two reasons: First, because some very few instances might exist where a discretionary approach in these areas would be better.

And I have said that I rely for that on Mr. Quigley, because I have no experience with the administration of the educational programs.

And secondly, it seems to us that if you go through the programs, the Federal programs, one by one, attaching nondiscrimination provisions, that simply increases the opportunity for people who oppose the program and people who oppose civil rights to coalesce and defeat or impede or cut the appropriations for the particular program, whereas if you proceed on an across-the-board basis and deal with this problem once and for all, as in 601 of the administration bill, that problem is avoided.

Now, I want to emphasize that I do not think the Attorney General would be made a "czar" by the administration's proposed bill. In the first place, the Attorney General does not administer any of these programs. Furthermore, all that is contemplated is that in highly unusual situations, where it is clear that substantially everyone would agree that a cutting off of funds would really defeat the purpose of assisting minority groups, as well as the other purposes of the program, funds would not be cut off.

Funds would be conditioned on nondiscrimination except in the most rare cases, as I understand the contemplated policy. And there would be no broad discretion to cut it off here and not there on some mysterious criteria.

I think that it simply leaves open the possibility that in programs like the school lunch program, and conceivably in the situation that Assistant Secretary Quigley mentioned, where there is a grant to a cancer research program, which is on the brink of making a breakthrough—perhaps in that situation funds would be permitted to continue, although nondiscrimination assurances were not received.

But apart from these very rare situations, the effect of the discretionary program would be the same as the mandatory program across much of the area covered by the legislation that is before you now.

Mr. DENT. Thank you very kindly. I am sorry to take this long, but we have to get on record somewhere along the line whether or not it will pay this committee or the Congress to continue our work.

If this legislation is superfluous, we ought to know it now. We have a great number of witnesses coming from long distances on this legislation, and if it is not needed, it would be foolish for us to continue our efforts with it.

Mr. Bruce?

Mr. BRUCE. Mr. Schlei, as I understand it, you are representing the Justice Department here this morning.

Mr. SCHLEI. That is correct, sir.

Mr. BRUCE. It is my understanding that you, representing the Justice Department, believe that segregated schools are unconstitutional; public schools.

Mr. SCHLEI. Perfectly correct, yes, sir.

Mr. BRUCE. And your position is that the Justice Department should have discretion in whether or not it is going to uphold the Constitution?

Mr. SCHLEI. Well, there are two things about that, sir.

In the first place, the Justice Department does not administer these statutes. It would be the Department of Health, Education, and Welfare.

Mr. BRUCE. But your testimony, here, in relationship to this legislation, is that discretionary power should be held, rather than legislation which would make it mandatory that Federal funds be withheld in the face of unconstitutional practices.

Mr. SCHLEI. Well, let me answer that in this way, sir.

I do not think there has ever been a determination that the fact that Federal funds are granted to an activity makes that activity subject to the Constitution. If that activity is subject to the Constitution, it is so apart from the Federal funds or because of other factors in combination with the Federal funds, and the giving of funds does not necessarily condone segregated practices, discriminatory practices.

In the case of impacted schools, for example, the funds have continued to be advanced, on the theory that Congress has required that. Meanwhile, the Justice Department has proceeded in another way to bring the segregation to an end, and to require adherence to the Constitution.

We do not want to condone violations of the Constitution. We want to bring them to an end as quickly as we can, as effectively as we can.

Mr. BRUCE. Well, as I understood, in your colloquy with the chairman, the position of the Justice Department, through you, this morning, dealing with Mississippi, for example, it was that there was a reluctance at cutting off Federal funds to Mississippi, because of the possible social impact that would follow.

Mr. SCHLEI. Well, that is true in this sense, sir. Let me use as an example the school lunch program. Mississippi maintains segregated schools, separate schools for white students and Negro students. I am inclined to believe it would be most regrettable if we had to cut off the school lunch program to all the students of the State of Mississippi because its Governor and its legislature refused to terminate the segregated educational system there in that State.

I just do not see that we would help the people there by cutting off the children's lunches.

Mr. BRUCE. Well, of course, the point that I am trying to draw here is that we have a witness from the Justice Department coming before this committee, basing its recommendation not upon the Constitution of the United States, but upon a social impact from legislation that we are proposing from this committee.

I think that is a rather strange position for the Justice Department.

Mr. SCHLEI. Well, Congressman Bruce, I think what we are really talking about is a particular technique for compelling adherence to the Constitution.

We think that sometimes one technique is better than another, more effective than another, and it really is only a question of effectiveness.

The objective that we have, as well as the objective I think that you have, is to end violations of the Constitution as quickly and as effectively as possible.

And my only point is that sometimes the cutting off of Federal funds might not achieve the objective, but would result not only in a continuation of the violation of the Constitution, but in harm to the people who are affected.

Mr. DENT. Mr. Gibbons?

Mr. GIBBONS. I would like to hear some of the other witnesses, Mr. Chairman.

Mr. DENT. Mr. Brown?

Mr. BROWN. Following that point up that you were just discussing, Mr. Schlei, I presume, as long as we are discussing techniques, as you pointed out, there would be other techniques that would be used to compel adherence to the Constitution, other than that of withholding Federal funds.

For example, I presume that we could move the Army in and forcibly integrate the schools, as we have in some university cases, and that this would be a more direct approach even than withholding funds.

Is that not correct?

Mr. SCHLEI. Well, certainly, Congressman, if the courts should issue an order requiring desegregation, it would be enforced one way or another, and that would be better, a more immediate ending of the violation of the Constitution, than the withholding of funds would be; more direct.

Mr. BROWN. I want to inquire, here, what we do about the situation where we have States that do not integrate, and, for example, we cut off all the Federal funds and they still do not integrate. We still then have the problem of enforcing the Constitution, do we not?

Mr. SCHLEI. Yes, we do, sir.

Mr. BROWN. Does the Justice Department have status to sue in these cases to compel adherence to the Supreme Court's rulings, independent status, other than the status that might be acquired, for example, if they were to have one of the parents of the children sue, and the Justice Department would come in in that kind of a case? Can you go into a school district and bring suit to compel them to integrate now, lacking a federally impacted situation, or any other situation of that sort?

Mr. SCHLEI. Well, we have made the contention that we do, but so far as I know, that contention has not as yet been upheld. And that is the objective, to remedy that lack, the objective of title III of the administration's bill, to give the executive branch the power to bring suits to end segregation in situations where the logical private parties really are unable to go to the courts and seek a remedy as they normally would.

So the answer is that we are commonly regarded as not having standing to sue in these situations. We have contended, using various arguments, that we do have such standing, but we have not prevailed, and for that reason we are seeking, in title III, the authority to proceed under certain circumstances.

Mr. BROWN. You mean, when you say you have not prevailed, that there has been a case on this matter that has gone up to the Supreme Court, or to some appropriate lower court?

Mr. SCHLEI. I am unable to give you a case on that, Congressman. I do not know whether this argument has ever been advanced in a case. But I know that there are arguments to the effect that the Federal Government has a sufficient interest under various circumstances that it can sue, perhaps only unusual circumstances, to remedy deprivations of constitutional rights.

But I know that there is no decision of importance that upholds that authority.

Mr. BROWN. Well, apparently in the special case of the impacted school districts, there is still some question about whether or not you have a right to sue. Apparently lower court judges have ruled differently.

Mr. SCHLEI. That is correct, sir.

Mr. BROWN. And in the general case where there is no direct Federal contribution, there has been no decision of any sort that you know of with regard to your right to sue?

Mr. SCHLEI. That is right.

Mr. BROWN. I am a little puzzled that we could have a situation where the ruling of the Supreme Court can be violated consistently over wide areas, and there still seems to be no remedy, other than the remedy of a private lawsuit on the part of one of the students who is being discriminated against. But that is the situation. Is that correct?

Mr. SCHLEI. That is right, sir.

Of course, that is the situation as to most rights under the Constitution, that they can be enforced only by the person who is affected. He can bring suit and demand his rights. It is a relatively rare situation where the executive branch of the Government actually participates in that process.

Mr. BROWN. Mr. Chairman, have the statistics with regard to the current situation on segregation and desegregation which we have before us this morning been inserted in the record? And would it be appropriate to request that it be inserted in the record, so that we can show here that there are several States in which there is no public school integration?

Mr. DENT. Do you want to move it now?

Mr. BROWN. I would like to have it inserted in the record.

Mr. DENT. Without objection, it is so ordered.

(Statistics referred to follow:)

Segregation-desegregation status

[Southern School News, June 1963]

	School districts—			Enrollment		In desegregated districts		Negroes in schools with whites	
	Total	With Negroes and whites	Desegregated	White	Negro	White	Negro	Number	Percent ¹
Alabama.....	114	114	0	527,075	280,212	0	0	0	---
Arkansas.....	416	228	12	331,552	117,062	58,993	13,801	247	.211
Delaware.....	87	35	87	73,769	16,962	61,470	11,769	9,498	55.9
District of Columbia.....	1	1	1	22,141	110,759	22,141	110,759	87,749	79.2
Florida.....	67	67	10	956,423	227,291	559,832	104,322	1,551	.673
Georgia.....	198	182	1	662,244	325,141	2 58,418	2 52,212	44	.013
Kentucky.....	205	166	150	2 610,000	2 45,000	2 446,000	2 36,382	24,346	54.1
Louisiana.....	67	67	1	2 458,270	2 301,720	38,538	59,009	107	.035
Maryland.....	24	23	23	3 514,313	3 153,215	2 509,489	2 153,215	60,147	45.1
Mississippi.....	150	150	0	2 300,000	2 290,000	0	0	0	---
Missouri.....	1,607	1 213	1 203	2 797,620	2 90,000	2 255,000	2 80,000	2 35,000	38.8
North Carolina.....	1,173	1 173	18	800,289	341,352	171,311	84,185	879	.287
Oklahoma.....	1,180	1 173	196	2 515,200	2 44,800	2 316,441	2 34,495	2 10,557	23.6
South Carolina.....	108	108	0	2 365,340	2 295,288	0	0	0	---
Tennessee.....	154	141	26	2 670,387	2 159,299	295,656	96,235	1,810	1.1
Texas.....	1,461	919	177	2 1,951,613	2 303,980	2 1,200,000	2 130,000	2 7,000	2.3
Virginia.....	130	128	31	3 704,725	2 229,105	2 360,000	2 105,000	2 1,230	.532
West Virginia.....	55	43	43	2 412,878	2 25,250	412,878	25,250	2 15,500	61.4
Total.....	6,197	3,001	979	10,643,839	3,326,398	4,766,167	1,096,634	264,665	7.9

¹ Proportion of Negroes in schools with whites to total Negro enrollment.

² Estimated.

³ Official total; racial break-down estimated.

Mr. BROWN. One final point.

I was unaware until this morning that there is a provision in the law with regard to land-grant colleges which condones the separate but equal doctrine. That is the case, as I understand it?

Mr. SCHLEI. Yes, it is, sir, and we support the elimination of that provision.

Mr. BROWN. There is nothing in the administration's omnibus bill which would specifically repeal that provision, I gather.

Mr. SCHLEI. That is true. We think that it would enable it to be disregarded, but it would not be wiped off the statute books by 601.

Mr. BROWN. So that it would be desirable, from your point of view, if that portion of this bill in any event were to be enacted, so as to remove that from the statute books at this time?

Mr. SCHLEI. Yes, sir; we would support that.

Mr. DENT. Mr. Gill, the sponsor of this legislation.

Mr. GILL. Mr. Schlei, I understand your basic problem here today, but I do not understand some of the information you have given us.

As an example of the problems you say might be raised by the relatively mandatory cutoff of Federal funds under the bills being considered here, you mention school lunch and disaster assistance.

Can either of the gentlemen at the table point out where in these bills these two programs are mentioned?

Mr. SCHLEI. Nowhere, sir. I only gave those programs as examples of the reasons for the discretionary approach taken in title VI, section 601.

Mr. GILL. In other words, the testimony on that point is not particularly pertinent, because the programs are not touched in these bills we are considering here today.

Mr. SCHLEI. That is right; it was said in support of 601, rather than in opposition to any of the bills before us today.

Mr. GILL. I thought you ought to be informed that we specifically left the school lunch program out of these bills because of the problems that you raise.

Mr. SCHLEI. Yes, sir.

Mr. GILL. I wonder if you could inform me further on the problems that arise under the suits that you have been bringing under the impact legislation. I gather you based those suits on an undertaking that has been entered into by the local school authorities, but which has not been carried out.

Mr. SCHLEI. Well, one of the two theories, Congressman, is the theory that the undertaking given by the recipient school board is not carried out if they afford segregated education. They undertake to provide education to federally impacted or federally connected personnel, the children of federally connected personnel, on the same basis under the laws of the State as they do to residents, ordinary residents, of the area.

Mr. GILL. Is, then, your standing to sue based on an understanding that has been violated, or on the direct language in 815 and 714?

Mr. SCHLEI. I guess as to one of the two theories, the standing is based on the undertaking, and on the receipt of funds pursuant to the undertaking, yes.

Mr. GILL. Supposing they do not enter into such an undertaking. Can you withhold 815 and 714 impact money?

Mr. SCHLEI. Well, the Department of Health, Education, and Welfare has determined that it cannot.

Mr. GILL. Cannot withhold?

Mr. SCHLEI. Cannot withhold.

Mr. GILL. In other words, if the local school district says, "We don't intend to enter into any such undertaking to desegregate the schools under 816 and 714," you cannot prevent them from getting money under these acts?

Mr. SCHLEI. Well, the terms of the undertaking, Congressman, are in the statute itself, title 20, United States Code, section 636(b) (1) (F). They must provide education to federally connected children "on the same terms in accordance with the laws of the State as they are available to other children in such school district." And there has been a controversy about whether that language can be interpreted as requiring unsegregated education.

The argument is that Congress talked about the laws of the State in order to authorize continuation of the practices that then existed in some of the Southern States, and some border States, of segregating students on the basis of race.

Mr. GILL. In other words, if the laws of the State were to provide for "separate but equal" education, for instance, then you would be bound by the laws of the State, according to this argument?

Mr. SCHLEI. According to that argument, we would.

Now, we have asserted that that is wrong, and we have brought these lawsuits, asserting a contrary theory, and my own opinion is that we would win them all.

Mr. GILL. Eventually. What would you put the time to be?

Mr. SCHLEI. Well, the arguments before the fourth and fifth circuit courts of appeals will be this fall, and I am entirely confident that there will be a final decision before the next school year starts.

Mr. GILL. In those circuit courts of appeals?

Mr. SCHLEI. Yes.

Mr. GILL. In other words, the school year starting this fall will not be affected, but you think it may be affected the year after that?

Mr. SCHLEI. That is right, sir.

Mr. GILL. How about the Supreme Court? Are you not going to have to go that far?

Mr. SCHLEI. Well, I would expect that we will get a decision about the middle of next year, and the Supreme Court will have an opportunity to decide whether or not it wants to review these cases during the balance of the spring.

But if I am correct in my belief that we will win these cases in the circuit courts of appeals, I would be very surprised indeed if the Supreme Court found a difficult question presented that required review there.

So I would expect that certiorari would be denied sometime next spring, and the mandate would issue, and the mandate would go down to the district court and a final injunction would issue before the start of the next school year.

Of course, no one can possibly know exactly what the timing of a piece of litigation will be, but that is my best guess.

Mr. GILL. So there is a possibility that you might achieve some of the objectives in both of these bills, insofar as impact money is concerned, by a year from next September?

Mr. SCHLEI. That is right, sir.

And I would like to point out that actually we would achieve that result regardless of whether any more Federal money is accepted, because these cases, of course, are based on the fact that Federal money was in the past accepted, and they well go on, and the injunction will be issued, hopefully, without regard to whether funds are declined.

Mr. GILL. Could I ask a further question, then?

Impact is one of the five parts in the bills under consideration. Have there been or are there any suits contemplated under the Land Grant College Act, under the Library Services Act, under the National Defense Education Act, or under the Vocational Education Act?

Mr. SCHLEI. I do not believe there are, sir. I think that we contemplate dealing with those problems pursuant to the administration legislation.

As I have said, we favor that legislation. We favor the desegregation of those facilities. And we think that the administration bill would be somewhat better than the proposed bills.

Mr. GILL. We understand that position. We have heard quite a bit of testimony on it.

But I merely wanted to nail down at this point the fact that you have no legal handle of any sort under these other four acts.

Mr. SCHLEI. I think that is correct. If I am wrong, I will so advise the committee.

If I may, I will check into the status of plans in that regard and inform you if I am wrong.

Mr. GILL. In any case, there has been no action taken under those other four acts?

Mr. SCHLEI. Not that I am aware of; no, sir.

Mr. GILL. I wonder if you could perhaps take a look at the language in the bills before you and comment on whether you think these are absolute cutoffs, or whether they allow a certain amount of administrative discretion.

For instance, under the impact law, section 3 of 6938, the language is used as follows:

Notwithstanding any other provisions of this Act, payments may be made under this Act only to a local educational agency which the Commissioner determines is operating its schools and admitting students thereto on a racially nondiscriminatory basis, or is making progress toward that end with all deliberate speed.

Is that an absolute cutoff, or does this allow a certain amount of administrative discretion?

Mr. SCHLEI. Well, I suppose that there would necessarily be a little administrative discretion in determining the "all deliberate speed" point, but in light of the Supreme Court's recent decision, the speed would have to be apparent, and it would be a factual determination, I would think, that would not allow a great deal of room to maneuver.

Mr. GILL. One of the problems that was aimed at in this type of language was not to disturb those school districts where they actually had a plan and were moving forward with some reasonable effectiveness, such as I believe in parts of Tennessee, if I am informed correctly, where they have a plan of integrating grade by grade and had been doing so over the last several years.

You certainly would not want to upset that, if it is working well in that community. Do you believe this type of language would upset that?

Mr. SCHLEI. Well, it might, because there is a recent decision, as I recall, holding that the grade by grade plan is inadequate. The Supreme Court has held that that is not "all deliberate speed."

Mr. GILL. Does that decision hold that this plan is inadequate where it has actually been in operation, or only where it has been talked about and not put in operation? Perhaps we had better get that decision straight in the mind of the committee.

Mr. GIBBONS. I think what that decision held was that where it gave an opportunity to not go to the school that you were assigned to, but to go to any other school, that part was held unconstitutional. It did not hold the grade by grade part unconstitutional.

Mr. GILL. Perhaps the Attorney General's office could look into that and give us a more precise definition of the holding, because we were not aiming at knocking out that type of operation, where it is actually being effectuated.

I think you have already answered one question put by Mr. Brown. Nowhere in the administration measure is there any language which would knock out the separate but equal provisions of the Morrill Act or Land Grant College Act. Do you think that would be a worthwhile provision?

Mr. SCHLEI. Yes, I do, sir.

Mr. GILL. I am getting back now to more specific matters here.

Is there any particular reason why the particular requirement set forth in the bills before this subcommittee would conflict with the general language found in 601 of the administration measure? Why could not the two go together?

Mr. SCHLEI. I do not see any technical reason why they should not, sir.

Mr. GILL. It would merely mean that in the five laws which are covered by the current legislation before this committee, the Commissioner would have a certain amount of authority that he would not have under 601. Is that not correct?

Mr. SCHLEI. I think that is quite correct.

Mr. FINDLEY. Will the gentleman yield at that point?

Mr. GILL. Surely.

Mr. FINDLEY. In that respect, if this bill, or a bill similar to it, were incorporated in the civil rights program, and the President withheld funds, then the initiative would be on the part of the school district, for example, to sue, and to show proof that it was not in violation of this bill.

Would that not save a lot of litigation and headaches on the part of the Justice Department, to have the role reversed—instead of the Justice Department initiating numerous suits, the responsibility would be on the part of the school districts that were determined to be in violation?

Mr. SCHLEI. Well, I would believe, Congressman, that there would be no or substantially no suits of that kind, because I do not think funds would be withheld except if there actually were discrimination.

And on the other hand, if any showing were made to us that discrimination had been ended, were made to the Secretary of Health,

Education, and Welfare, I think he would go ahead and issue the funds as provided by the statute. And it would not be necessary for them to sue him.

It certainly would not do them any good to sue him, if this bill were enacted, or 601 were enacted, because it would be clear that he has the power to withhold funds under either statute if there is discrimination.

Mr. FINDLEY. Do I understand correctly that you have just said that if the Gill bill or something similar to it is enacted, you do not anticipate that funds will be withheld?

Mr. SCHLEI. I do anticipate that funds will be withheld if there is discrimination. But if there is not, I do not suppose there would be.

What I am saying is that I do not think there will be a great many controversies as to whether discrimination has been ended or not in particular school districts.

Mr. FINDLEY. Then you have pretty well answered my question, because if we take this route, then we probably will not have much legislation, and there will be a lot less litigative headaches for the Justice Department and for the school districts.

Mr. SCHLEI. The only thing that I would fear would be that the funds would be withheld and the segregation would continue, so that we would be defeated in our ultimate objective of eliminating the segregation and also keeping up the quality of education offered to federally connected personnel and their children.

Mr. GILL. If I may pick it up at that point, Mr. Findley:

Assuming that the provisions of 6938 were included in the omnibus package, and you also had in there not only the general language of 601, to include all other programs, but also the language of your title III, which allows the Attorney General to assist in desegregation and also allows the Commissioner, if I read it correctly, to make technical and financial assistance grants available to those school districts which are attempting to meet the requirements—supposing all these things were put together, is there anything inconsistent about the approach?

Mr. SCHLEI. There is nothing that would prevent the bills from working together. It is just a question of policy.

Mr. GILL. Then the fact that funds were cut off under this particular approach would not prevent the Attorney General from going in and attempting a suit to desegregate the schools that refuse to desegregate?

Mr. SCHLEI. Well, that is true, except that he would have to proceed in accordance with the criteria of title III, which permit him to sue only where a prospective plaintiff shows that he is unable to sue.

Mr. GILL. Surely; but assuming there would be such prospective plaintiffs, as I imagine there would be, there is nothing in this bill that, combined with the omnibus bill, would prevent the Attorney General from proceeding as he would under the legislation you propose?

Mr. SCHLEI. That is true, sir.

Mr. GILL. Would it not also be of some assistance to certain local school districts to be faced with a situation such as 6938 would pose? That is that their funds would be cut off and that the Commissioner would have relatively little discretion here, providing they did not meet the requirements set forth in the court decision?

And on the other hand, if they did attempt to meet those requirements, they would get assistance under title III? Would it not strengthen the hand of some of these local school districts that may want to move ahead in the area of desegregation but are prevented from doing so by some of the local political authorities?

Mr. SCHLEI. Well, it sounds to me as if that would be true.

Mr. GILL. In other words, the local school authorities would have a pretty strong argument, saying: "We are going to lose our Federal funds; however, if we go ahead with desegregation and get our Federal funds we can also get assistance under title III." There is more reason to believe that under these conditions they might move ahead. Is that not correct?

Mr. SCHLEI. Probably some, Congressman. I would think, though, that the discretion afforded under section 301 would not really give any hope except in the most unusual situation. And I think that the legislative history would make that clear, and would minimize the difference of the impact of the two approaches in this particular field.

Mr. GILL. All we are talking about here is getting together a series of carrots and sticks which will move us down the path we all believe we ought to travel.

Mr. SCHLEI. Yes, sir.

Mr. GILL. And we agree with the carrots. We just want a little bigger stick.

I wonder if you could give us some legal information on another point that affects both 601 and the specific bill that we have before us.

What is the situation in the case of a subsequent amendment to a law that is covered? For instance, if you were to pass 601 in its current form, and a year hence, as happened in the past, we again extend the impact legislation, and it becomes in effect new law added on after 601 has been enacted into law, do you think that the general provisions of 601 would carry forward prospectively into the new legislation under all conditions?

Mr. SCHLEI. Well, I am sure it would, unless Congress specifically said that the new legislation was to be interpreted as authorizing segregation. Unless that were made explicit, the general rule of interpretation stated by 601 would apply across the board.

Mr. GILL. Prospectively?

Mr. SCHLEI. Yes.

Mr. GILL. Supposing the language in 815 and 874 were modified in the press of passing, as sometimes happens, I understand, where the interpretation would be possible that local law again should be considered before determining that the undertaking was proper or improper?

Would you not then be back in court trying to not only interpret the undertaking, but interpret whether 601 applied to the subsequent legislation?

Mr. SCHLEI. Well, I would hope that we could make our intention in 601 quite clear by means of the legislative history. I would hope that the legislative history would make it entirely clear that 601 is intended to prevent, from now on, any interpretation of legislation that would compel the extension of aid to a segregated and discriminatory system, unless Congress should see fit to try to accomplish that result explicitly.

I think that we can make that intention clear in the legislative history on 601, so that there will not be any trouble.

Mr. GILL. It can be done, but whether it will be is another question.

On the other hand, under S. 938, where it specifically amends those two acts, you would have no problem of interpretation, would you?

Mr. SCHLEI. You certainly would not, no.

Mr. GILL. It would be much clearer?

Mr. SCHLEI. Well, whether it would be much clearer, I do not know, sir, but it would be more explicit.

Mr. GILL. I think that is all, Mr. Chairman.

Mr. DENT. Thank you.

Mr. Findley?

Mr. FINDLEY. If this bill is made a part of the civil rights package, the Justice Department would still have the opportunity to initiate suits to end segregation in schools. Right?

Mr. SCHLEI. Yes, it would, sir.

Mr. FINDLEY. And this would not encumber that opportunity one bit?

Mr. SCHLEI. Well, I can imagine a situation where a school district refused further aid, on the premise that it was not going to desegregate, and therefore it would not accept the aid. That would prevent us from suing any more thereafter, on the theory that they were violating their undertaking, because there would not be any undertaking any more.

Mr. FINDLEY. You mean that the Attorney General could not, in that circumstance, invoke the other section of the civil rights package and order them to desegregate?

Mr. SCHLEI. No. He could certainly proceed under title III if it should be enacted and be applicable, but he could not any longer sue under at least one of the two theories that were are now using.

Mr. FINDLEY. But how could this bill possibly be an encumbrance on achieving desegregation, if he would still have the opportunity to initiate suit to end segregation?

Mr. SCHLEI. Well, it might be that the provisions of title III would not be satisfied in that particular school district. There would not be a plaintiff that was unable to sue because of intimidation or some other cause, and the Attorney General would have to proceed on an impacted area theory. That would be his only alternative. And since the school district would no longer be receiving impact area funds—

Mr. FINDLEY. This might not be an impact area school district, though.

Mr. SCHLEI. Yes. In that event, of course, he would have power to sue only if the conditions of title III were satisfied.

Mr. FINDLEY. Then I am beginning to wonder if the title III conditions are sufficient to end segregation.

Mr. SCHLEI. Well, there certainly is a remedy in the courts for disadvantaged persons who are being denied their rights under the Constitution, and title III permits the executive branch to assist any person who is unable, for some reason, to utilize that remedy that is available, and so long as an easy remedy is provided, that it seems to me meets the situation and will result in an end to the undesirable situation that exists now.

Mr. FINDLEY. But in title 3, the option lies with the Executive. Is that correct? In other words, he may, on his own determination, come to the aid of that plaintiff. Is that correct?

Mr. SCHLEI. That is true.

He must have a written application.

Mr. FINDLEY. He is not required to do so, though. Is that correct?

Mr. SCHLEI. It lies within his discretion to determine.

Mr. FINDLEY. Right. It is discretionary, whereas the provisions of the Gill bill and my bill would make it a requirement on the executive department to withhold funds from any school district that was on a segregated basis.

So this is a far stronger remedy to the segregation problem than title 3 is, because it is discretionary on the part of the Attorney General as to whether he comes to the aid of the plaintiff, for example, whereas this would require the Executive to withhold funds from any segregated school.

Mr. SCHLEI. As I have said, I think this bill has to be compared with title VI of the administration's bill, which, although discretionary, would undoubtedly lead to the same result in the vast majority of cases.

In addition to the remedy of withholding funds, we have provided in title III of the administration package a power to assist private plaintiffs in bringing suit, which is another remedy in addition to the withholding of funds. And we think it is a necessary remedy.

This bill really has no impact on title III of the administration package. It simply is analogous to title VI, which also deals with the withholding of funds.

Mr. FINDLEY. Mr. Chairman, I have no further questions, but I cannot see why, if we do not pass up the Negroes when we collect taxes, why we should pass any of them up in providing access to facilities that should be open to all taxpayers.

Mr. DENT. Your observation will be carefully noted in the proceedings.

Mr. SCHLEI. Can the record show, Mr. Chairman, that the witness agreed with that statement?

Mr. DENT. It certainly can.

Go ahead, Mr. Gill.

Mr. GILL. I think that raises a very basic point.

There are many areas in this country where the people pay Federal taxes, and that Federal money is used in these programs, where those people might be denied education if they happen to live in some of the States of this Union. And I think that includes the majority of the people in my State. But that is another point.

I would like to make one request: If the administration, your Department, or Mr. Quigley's department, has any example that they can give us where a vital program would be cut off under the provisions of 6938, would they be so kind as to make it available to us? We have not heard of a specific example yet.

Mr. FINDLEY. Would the gentleman yield?

Would you mind revising that to require an actual example, instead of a hypothetical example?

Mr. GILL. I hope to make it an actual example, some program which is in existence which would be damaged or cut off under the terms of 6938.

Mr. SCHLEI. Very good, sir. I will certainly do my best.

I understand that Assistant Secretary Quigley gave as an example a cancer research program, which was proceeding at a segregated institution, which it was believed was on the point of making a breakthrough in its cancer research.

Mr. DENT. We only want the five bills covered by this act.

Mr. SCHLEI. I believe it was a hypothetical example.

I am not concerned at all with the administration of these programs, and neither is the Department of Justice.

Mr. DENT. In order that there may be a clear understanding, this legislation deals with voluntary programs under the two impact legislative acts, the Libraries Act, all acts in vocational education, the Land-Grant Colleges Act, and the National Defense Education Act. And that is all.

It does not go into the area of any other legislation, whether it is educational or noneducational.

Therefore this legislation is carefully thought out because of the impact upon the whole moral issue at the education base, where we give money on a voluntary basis, without compulsion.

We feel that if the Federal Government compels a district to take funds, then that is an area for other legislative proposals; not this. This is entirely voluntary. It has nothing to do with closing any school program whatsoever.

I think the suggestion by Mr. Gill, the author of the bill, it would be very helpful if we could get from any branch of the Government, any department, a specific issue where the passage of this act would curtail benefits to any person whatsoever in the country, any educational field, under these acts.

Mr. SCHLEI. We will certainly look into that, sir.

Mr. DENT. I want to assure you that it is only because of the nature of this legislation that we have questioned you so thoroughly this morning, and we appreciate your very frank response, and I am sure that the committee is very grateful to you for coming, especially since you are a pinchhitter in the situation, I think you have handled yourselves admirably.

Mr. SCHLEI. Thank you very much, Mr. Chairman. It certainly was a pleasure to be here.

Mr. DENT. At this time we are going to hear from Dr. Paul Cooke, who is the commander of the American Veterans Committee, known as the AVC, and is also the acting dean of the Columbia Teachers College, in Washington, D.C.

Dr. Cooke, would you take the stand?

Incidentally, this committee tomorrow in this room will hear Mr. James Farmer, from the Congress of Racial Equality.

Mr. Cooke, you may proceed in any fashion that you think will give us the most benefit from your testimony.

STATEMENT OF PAUL COOKE, NATIONAL CHAIRMAN, AMERICAN VETERANS COMMITTEE (AVC)

Mr. COOKE. Thank you, Mr. Chairman and members of the committee. The chairman has been kind enough to identify me, so I will not repeat the identification.

But I would like to identify the American Veterans Committee as an organization of veterans of World War I, World War II and the Korean conflict, and dedicated to the position of "Citizens first—veterans second."

Guided by this theme, we have steadily argued that in this country there must be no distinction on account of race, religion, national origin, or class of a person.

AVC numbers among its dues-paying members many persons well known in public life. From the House of Representatives we have many distinguished members, including Congressmen Barrett O'Hara, Charles C. Diggs, William Fitts Ryan, Neil Staebler, and James Roosevelt of this committee.

In the Senate are Jacob Javits and Paul Douglas and the late Senator Neuberger, who was a member of AVC.

In the President's Cabinet are AVC'ers Udall and Freeman, and in other agencies Adam Yarmolinsky, Bill Batt, Ken Birkhead, and many others. Mr. Justice Goldberg continues his membership in the Washington, D.C., chapter. Ralph Bunche and Bishop Sheil continue as honorary members.

These men, along with other distinguished citizens and just fellows like Joe Doakes, make up AVC.

WITHHOLDING FUNDS AND CIVIL RIGHTS

On the issue before the select committee, AVC takes a clear and unequivocal position: Congress must legislate to require agencies to withhold funds from States that discriminate, including segregation, on account of race or religion.

AVC takes a position, therefore, substantially in opposition to the previous select committee witness, the Health, Education, and Welfare spokesman, who said in effect that HEW has not withheld, does not withhold, does not want to be required to withhold, and in some instances would not withhold funds even if racial discrimination, including the exclusion of Negroes, were practiced.

I might add, Mr. Chairman, that our position then would be substantially in opposition to what the representative from the Attorney General's office said this morning, because at least in his prepared statement he has opposed the position taken in the Gill bill, although in his later testimony he seemed to recognize that it might be possible, as you indicated, to do both, that is, to have title VI in 7152 and at the same time adopt the position in the Gill bill.

Our general position on civil rights and our stand on "the power of the purse" now follow.

AVC's position on the subject of civil rights is covered in a resolution approved unanimously at our 20th anniversary convention, held in Washington, D.C., last month. The resolution is entitled "Integration of American Society—AVC's Solidarity With Struggle for Racial Equality."

The text follows:

Twenty years ago, when AVC was founded, the achievement of equality in every aspect of life—legal, cultural, economic, and social—for all Americans regardless of color, race, creed, or national origin became one of the main goals of our organization. In particular, our first platform adopted at Des Moines in 1946, the revision of our platform in 1953 at Atlantic City and numerous

resolutions and actions of AVC have spelled out over more than 15 years the meaning and scope of integration and of the equality of rights guaranteed under our Constitution.

Twenty years have passed and much progress has been made in the attainment of our goal but the progress has been often painfully slow and we cannot in truth say that our goal of an integrated American society which treats equally all of its members without regard to race, creed, color, or national origin has been attained. AVC notes with sympathy the ever increasing intensity, militancy, and scope of the struggle for equal rights and an integrated society. AVC will continue to participate in this struggle and do all within its means to bring about its victorious conclusion. On this its 20th anniversary AVC zealously rededicates itself to the task of integration of American society so that all its members can equally enjoy the life, liberty, and pursuit of happiness which the Constitution promises to all without regard to race, creed, color, or national origin.

Only total integration of our society will overcome the poison of racism and religious prejudice which still threatens injury to the well-being of the American people. AVC sharply condemns the acts of violence which are constantly committed against those seeking to bring about racial integration and equality in our society. It calls upon all citizens and upon the governments of the States, counties, and municipalities to cease their persecution, wherever they exist, whether by the abuse of the police power or of the judicial process. It calls upon the Federal and State Governments to protect the rights of protest and free speech effectively. It calls upon the Federal Government to use its Armed Forces as well as its power over the purse, if and where necessary, to assure the constitutional rights of every American.

THE POWER OVER THE PURSE

Now in the resolution I wish to emphasize especially the phrase "the power over the purse, if and where necessary, to assure the constitutional rights of every American."

AVC believes essentially that the Congress of the United States must "insure that Federal funds will not be used to assist" any activity in which any form of racial discrimination, including any sort of racial exclusion or segregation, is practiced.

I might add, here, that of course we accept the other terms with respect to religion, national origin, too, but the focus here has been on racial discrimination, including segregation, and so we emphasize that particular clause out of the entire gamut of the four in the Gill bill.

We say the Congress must authorize and in fact require withholding when racial segregation or discrimination is practiced.

We have battled this issue out in AVC. We have carefully considered the argument of those who say that depriving a State or locality of Federal funds will deprive the very people we are trying to help of the valuable aid of the Federal Government. We have carefully considered the issue of the States rights. We have also reviewed the constant assertion that any amendment to withhold funds is a death warrant for substantive legislation.

Recently, during my testimony before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, the distinguished Senator from North Carolina, Mr. Ervin, observed that withholding of funds as proposed by the U.S. Civil Rights Commission would mean the State of Mississippi might suffer serious loss in its programs to control cancer, tuberculosis, and other diseases for the preservation of individual and community health.

Similarly, the HEW spokesman, Assistant Secretary Quigley, stated the Department's unwillingness to withhold funds when cancer research, for example, was involved.

These statements appear to be grave objections to legislation to withholding funds. As I said, our organization has constantly sought to examine the arguments of those who oppose withholding funds.

On the other hand, we have steadily viewed the large and rising aid of the Federal Government to racial segregation, and, thus, to racial discrimination. The Federal Government has continued to pour money into all sorts of education programs—impacted aid, school lunch, rural library service, land-grant colleges, vocational schools—when often the service was racially segregated or exclusively for white people.

The Federal Government has continued to aid all kinds of housing just for white people. One clear example is racially segregated housing in the suburban areas. All over the United States we can observe the city housing great numbers of Negroes in contrast to encircling suburbs, almost totally occupied by white people. The Federal Government has given steady aid to this segregation.

The Federal Government has given comfort and aid to Bill Levitt, who built another Levittown in nearby Bowie, Md., solely for white people—aided by FHA mortgages and by Veterans' Administration guaranteed loans.

And, the Federal Government has aided many hospitals, which have been maintained on the basis of race of the patient, and simultaneously have excluded the Negro doctor and nurse. The taxpayer's dollar, which again I note means the Negro's dollar, has gone into hospital construction under the Hill-Burton legislation authorizing segregated hospitals.

And, the Federal Government and Federal funds have aided medical schools and universities which have served only the white medical student. Federal college loans, under the Community Facilities Administration of the HHFA, have built college dormitories, dining halls and refectories, and other college facilities. And, Federal funds under the Morrill Act have aided segregated land-grant colleges and universities.

So we review the arguments against withholding funds arrayed beside the continued grant of Federal funds to support segregated hospitals, to aid impacted area segregated schools, to provide rural library service often denied Negro citizens, and to aid segregated vocational schools.

On balance, the arguments weigh strongly for us toward withholding funds.

We argued this issue thoroughly at our 1957 convention, and we strongly resolved to support then what was known as the Powell amendment. Again at our 1963 convention we reaffirmed our belief in the use of Federal money for States and institutions that do not deny their services to persons on account of their race.

The select committee's action:

Thus, we support a bill such as H.R. 6938, which proposes:

* * * to amend the various acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination.

We strongly urge the select committee to approve a bill embodying such a provision. AVC does not recommend select committee approval of President Kennedy's title VI provisions on withholding funds.

And I add, here: Providing that means that you must substitute title VI for 6938. We see nothing against title VI, provided that something like 6938 is approved, too.

In a civil rights proposal that is otherwise substantially good and favorable to equal opportunity and nondiscrimination, the President has nevertheless recommended simply permissive legislation. The President's proposal would merely make it possible for an administrator to withhold funds from an institution that discriminates on account of race. Such permissive legislation is not enough.

In the view of many persons, including administrators, some authority to withhold already exists.

And I say "some authority" already exists.

The survey and statement of Senator Javits in the Congressional Record, July 2, 1963, pages 11423 ff., shows that some agency heads believe they now have authority. But nobody exercises his authority.

No contract has been canceled by the President's Committee on Equal Employment Opportunity. HEW has canceled no contracts, and contemplates withholding no funds, according to testimony.

Our statement on this subject of permissive and mandatory legislation, AVC hastens to point out, is wholly nonpartisan. The fact is that under Eisenhower and the Republican agency heads, no contracts were canceled and no funds withheld, although on the surface and below the surface racial discrimination existed.

The situation is such that the select committee should approve a bill such as those sponsored by members of the committee themselves—a bill that would require an agency head to withhold funds when racial discrimination exists. The legislation should be mandatory, and not be permissive.

In fact, it seems to me, that Congress has taken considerable abuse with respect to its failure to pass civil rights legislation; the President is now asking only that Congress permit an administrator to withhold funds. This select committee is considering stronger legislation that would require the administrator to withhold under conditions of racial discrimination, that is, the committee would require the agency head to uphold the Constitution and the 14th amendment's equal protection of the law clause.

The administration, as represented by the President's proposal and the HEW testimony—and I might add now by the testimony of the Attorney General—is balking and offering a soft proposal.

Again, we urge you to pass legislation to require an agency to withhold funds from any educational institution that discriminates on account of race.

AVC takes this opportunity to commend the select committee, the several subcommittees, and the full House Education and Labor Committee on its work this Congress. We thank you for this opportunity to present our position.

That concludes our statement, Mr. Chairman.

Mr. DENT. Thank you, Dr. Cooke.

I believe that you have no doubts as to the position of the AVC on the legislation before us.

I note that this statement was made, and I want to know how you feel about this, whether you agreed with it or not: It appears that there has been some discussion on the question of the civil rights legislation, and this legislation, in the public press. James Farmer made this statement:

If Congress adopts civil rights legislation and it is enforced, CORE will switch its main attack from public accommodations to employment and school segregation.

Do you feel that the passage of the civil rights omnibus bill will accomplish as much as the FEPC bill now being considered by the committee, and this legislation on school desegregation?

Mr. COOKE. I believe that the omnibus bill is not sufficient to remedy the civil rights deprivation of the Negro. It is not enough.

In the first place, with respect to housing, there is not adequate attention in the omnibus bill, and in fact the President's own Executive order came well short of what was necessary to stop segregation in housing.

But the answer is: "No, I do not think the omnibus bill is sufficient."

Mr. DENT. For the purpose of education: that is what we are driving at. I am trying to keep it in line with the legislation we have before us.

Do you believe the omnibus bill will accomplish what this bill is trying to accomplish in the way of educational facilities?

Mr. COOKE. You mean the Gill bill?

Mr. DENT. That is right.

Mr. COOKE. I do not think the omnibus bill is satisfactory. I think the provisions in the Gill bill are still necessary.

Of course, I think even with respect to the Gill bill, this committee has got to consider, and apparently it has carefully considered, the five provisions, and whether it ought to be broader than the five provisions.

I think you will have to go back to school lunch and consider whether or not it ought to be included, or whether within the kind of quasi-educational framework—What about the 4-H Club, and the Future Farmers of America, which are under HEW, and presumably therefore are under the purview of your committee, whether that kind of racial segregation should be brought under your bill?

But I think you make such a substantial step that I am not saying that there are distinct weaknesses, but there are other areas in education, of course, that your bill does not cover.

Mr. DENT. You were here when my opening statement was made, and I think you recognize Mr. Gill's very serious approach to this problem, and he was trying to get at the very crux of the whole problem, the basic educational problem in the country. These other matters, of course, are very serious and must be followed up.

Take the school lunch program—remember that in the school lunch program the money is not allocated to the school district as such, to be spent where they so desire, but it is based entirely on the pupils themselves who receive the school lunch, and therefore it is more of a program that is from the Government to the pupil, rather than to the school district, and the children get this money by way of the school lunch.

So there is a question there whether they would ever have to stop that, as the gentlemen this morning here said they would have to, under compulsory legislation.

I have my doubts about that, because school lunch money is given, to private schools. It is given to parochial schools. It is given to all schools. So it is not a question of the school laws within the State, such as impact legislation covers, but really is a Federal grant to the school children. And I think it is a poor example to use in opposition to this bill.

Mr. Findley, you are the only Republican on hand this morning.

Mr. FINDLEY. It is quite an honor to be the ranking Republican, I want you to know, Mr. Chairman.

Mr. DENT. You sure moved up fast today.

Mr. FINDLEY. Mr. Cooke, are you familiar with a similar bill I have introduced? It is H.R. 6971, and it differs from the Gill bill only in that it has a specific cutoff date.

Instead of the more general language in the Gill bill, it states that the facility must be carrying out a plan which will achieve racially nondiscriminatory basis by June 30, 1964. Instead of requiring "all deliberate speed," it fixes a specific cutoff date.

What is your attitude on amending the Gill bill to make specific a cutoff date?

Mr. COOKE. I would favor a cutoff date. I think "all deliberate speed" is a phrase that has caused a great deal of difficulty these 9 years. I would favor a specific cutoff date.

Mr. FINDLEY. Do you think that June 30, 1964, would be a reasonable cutoff date to use?

Mr. COOKE. I think it is. It is 10 years and 1 month after the Supreme Court's decision. That would appear to me to be reasonable time, sir; 9 years after the decree.

Mr. FINDLEY. Mr. Cooke, I am sure that you will agree that the racial situation is explosive. And it is desirable to the greatest degree possible to use noncompulsory approaches. Do you think it possible that if we carried out the intent and spirit of the Gill bill in all types of Federal aid activities, using the power of the purse as extensively as we could at the Federal level—do you think this could possibly meet the problem of segregation?

Mr. COOKE. No. I do not think it would completely meet the problem. Withholding is, after all, a negative approach. It may accomplish a positive good.

I believe that the position in the Gill bill and others ought to be extended to these other areas, like Hill-Burton hospital construction. It ought to be extended to the college facilities under the community facilities administration legislation. It ought to be extended to in law what the President said last November with respect to housing.

But even then, that is not going to solve all the civil rights problems, Mr. Findley. There is going to be more effort necessary besides simply the negative situation of withholding.

Mr. FINDLEY. Do you believe this approach could achieve substantial progress?

Mr. COOKE. Yes.

Mr. FINDLEY. Mr. Cooke, we will be considering other education bills this year and next year and in the future years. Would you recom-

mend that each additional education bill, Federal aid to education bill, incorporate language similar to that embodied in this bill?

Mr. COOKE. Our organization has always taken that position, at least steadily since 1957 on testimony on Federal aid we have taken that position.

We have supported the Powell amendment, in my reference to that particular clause here in the testimony.

In testifying before a committee considering titles V and VI of the omnibus education bill, I think Mr. Gill was here when I testified with respect to that, and vocational education, in the spring. We took the position there that there ought to be that clause inserted in that legislation.

That is our basic position.

Mr. FINDLEY. Mr. Cooke, you mentioned the Executive order on housing, and indicated that it had not been as effective as hoped for. Why has this stroke of the pen that was talked about so much in the last campaign not ended segregation in housing?

Mr. COOKE. I think the stroke of a pen should have covered housing prior to the actual signing of the order. As it is, the order covers only housing built after the Executive order was issued, and it seems to me it should have covered housing built prior to the signing of the order.

And No. 2, it covered only certain housing which was guaranteed by the FHA. I think it should have covered housing guaranteed by commercial banks and savings and loan institutions.

In other words, when the money came from other institutions than FHA and VA, which have been aided by the Federal Government, the order should have covered those institutions and those guarantees of loans as well as FHA and VA.

Of course, I must say this, Mr. Congressman. We must give the order a chance. It has hardly been out a year. It has not been out but 6 months, in fact, since November of 1962. This may be insufficient time to make a judgment.

But I would say those are two clear missing pieces to an effective order.

Mr. DENT. If there are no more questions, I want to thank the gentleman for appearing here this morning and giving us the benefit of his testimony, which I am sure the subcommittee will take under serious consideration when it starts to mark up the bill for submission to the general committee.

I thank you personally, Dr. Cooke, for coming twice and being heard once.

Mr. COOKE. I thank you again, Mr. Chairman.

Mr. DENT. We will meet again tomorrow morning at 10 o'clock in this room.

(Whereupon, at 12:01 p.m., the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, July 9, 1963.)

NONDISCRIMINATION IN FEDERALLY ASSISTED EDUCATION PROGRAMS

TUESDAY, JULY 9, 1963

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON EDUCATION
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to call, in room 429, Cannon Building, Hon. John H. Dent (chairman of the subcommittee) presiding.

Present: Representatives Dent, Daniels, Carey, Gibbons, Brown, Martin, Bruce, Snyder, and Findley.

Also present: Representatives Roosevelt, Gill, and Ayres.

Staff members present: Dr. Deborah Partridge Wolfe, education chief; Dr. John C. Muntone, subcommittee director; Russell C. Dericksen, staff director, House Committee on Education and Labor; and Charles Radcliffe, minority counsel.

Mr. DENT. The Select Subcommittee on Education will now come to order, in order to hold its third day of hearings on H.R. 6938 and other related bills to amend existing Federal aided educational programs, to insure that funds will not be used to assist educational institutions which practice racial discrimination.

During the past 3 days of hearings, we on the subcommittee have attempted to emphasize the importance of the legislation under consideration. I personally have stressed repeatedly the importance of legislation in educational programs that would provide the Negro with the kind of opportunity long denied him. I have stressed repeatedly the belief that sound educational programs available to all on a nondiscriminatory basis would go a long way toward setting the stage for complete participation in the affairs of a nation by all of its citizens, and I wish to state once again that interested parties should view equality in education with at least the same emphasis with which they struggle for equality in other areas, for education and the preparation provided therein is basic to resolving the difficulties which are the common concern of all reasonable men.

This committee this morning is privileged in having as one of its first witnesses the former member of the committee, the colleague, Member of the Congress of the United States from New Jersey, Representative Charles S. Joelson.

STATEMENT OF HON. CHARLES S. JOELSON, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. JOELSON. Thank you, Mr. Dent.

Mr. DENT. Just a moment. The meeting stands recessed for a minute.

(Short recess.)

Mr. DENT. The meeting will come to order, and the gentlemen, I am sure, will excuse us.

Proceed.

Mr. JOELSON. Mr. Chairman, at the outset, I want to state, of course, that I am here to testify in favor of H.R. 6938, and I want to thank you for the diligence you have shown in speeding hearings on this measure, and I think I should acknowledge Mr. Gill for introducing the bill. He comes from an area where we have had tangible proof that integration in the educational system and in society in general is not only feasible, but is desirable and effective.

Last year, Mr. Daniels was the chairman of the subcommittee which heard testimony in this general area, and reported out a bill which I had introduced, cutting off Federal funds to federally impacted areas that did not integrate their educational systems. It passed the full committee unanimously, and it then went to the Rules Committee, where it died a painful, lingering death.

And I would like to point out to this committee that on the Rules Committee, there is a gentleman whose district gets, I believe around a million dollars a year in Federal funds for an impacted area that blatantly practices segregation, and that I believe the chairman of the committee himself comes from such an area. And I think that it is a denial of democracy when this committee unanimously passes out a bill, only to have it die in the Rules Committee, and I certainly hope and trust that that will not—I hope it will not happen; I cannot say I trust that it will not—happen again.

Now, with regard to federally impacted areas, of course these are areas where there are installations of our Armed Forces. The armed services are desegregated, and yet the children of people in our Armed Forces, in too many cases, have to go to segregated schools. Furthermore, in many cases, they come from areas where the children have had the benefit of an integrated education, and therefore, when their parents go into the armed services, these children have to take a very humiliating backward step.

A lot of oratory on my part will be ineffective. I merely want to say in conclusion that I think it is just improper—and that is a weak word—it is immoral, for the Federal Government to subsidize defiance of the law. And whenever we give Federal money to an institution which is flagrantly flouting the law, then we are encouraging lawlessness. I think this law is necessary, is overdue. I am hopeful in view of past experiences that this committee will pass the law, and I hope that the people on the Rules Committee in whose district this type of business is carried on will not be permitted to bottle it up in committee.

I thank the chairman for his courtesy.

Mr. DENT. On behalf of the committee, I wish to thank the gentleman. I believe all of us who have known the gentleman know of

his long and hard fight for legislation in this area, and his contribution toward its passage is certainly recognized by all of us, and in behalf of the committee, I wish to thank him for appearing here this morning.

Are there any questions or any observations?

Mr. FINDLEY. Mr. Chairman?

Mr. DENT. Mr. Findley.

Mr. FINDLEY. Just one question.

I have introduced a bill similar to the Gill bill, but in my bill, I provide a definite cutoff date of June 30, 1964. That replaces the more general language of "all deliberate speed."

Would you favor a definite cutoff date?

Mr. JOELSON. I certainly would. I think that we have had time for all deliberate speed to have translated itself into actuality, and I think that unless we have a cutoff date, we are going to have more of the same delaying and stalling that we have seen in the past, so I would definitely support a cutoff date. Whether it should be, did you say 1964?

Mr. FINDLEY. June 30, 1964.

Mr. JOELSON. Whether the mechanics could be handled by then, I am not in a position to say, but I would support a cutoff date and a cutoff date that is very soon, in the immediate future.

Mr. DENT. Anything further?

Thank you, Charlie.

Mr. JOELSON. Thank you.

Mr. DENT. The next witness is James Farmer, the national director of the Congress of Racial Equality.

Mr. Farmer, will you take the witness stand.

STATEMENT OF JAMES FARMER, NATIONAL DIRECTOR, CONGRESS OF RACIAL EQUALITY

Mr. DENT. I understand that Mr. Farmer, on account of his very busy schedule, was unable to have a prepared statement, and he is at liberty to proceed as he sees fit.

Mr. FARMER. Thank you, Mr. Chairman.

I want to thank the members of the committee for their prompt holding of hearings on these significant bills. I think it goes without saying that segregation in education is probably the most vital form of segregation, because it supports and sustains segregation in other avenues of life.

As one of the leading educationists of our Nation, Dr. Helen Treger, put it in a book, "They learn what they live," and children attending segregated schools learn to live segregated lives, and thus the areas of segregation in places of public accommodation, in transportation, in jobs, in housing, is supported and sustained by the continuation of segregation in the schools.

Now, one of the greatest tragedies of our Nation has been, in my opinion, the slowness to implement court decisions. It is this very slowness which has caused millions of Negroes to question the wisdom of placing their urgent case before the courts, and to lose some faith in the judicial process.

Take, for instance, interstate transportation. It was back in 1946 that the Supreme Court ruled in the *Irene Morgan* court decision

that there should be no segregation in seating on buses. In 1960, it ruled in the *Boynton* case that there could be no discrimination in the use of bus terminal facilities, and yet, it is now a matter of common knowledge, segregation, both in seating and in use of the facilities, continued until the time of the freedom rides, and the freedom rides were, in our judgment, necessary then to spotlight the great and tragic gap that exists between the law on one hand and its implementation on the other.

Take, for example, the school desegregation decision of the Supreme Court, 9 years ago. After 9 years, only about 8 percent of the Negro children in the South are in desegregated schools, and that, Mr. Chairman, is 8 percent of those children who happen to live in biracial districts, and the majority of those are in border areas, rather than in the Deep South.

So we see that it has been a very, very slow process. Less than 1 percent of the Negro children are now favored with desegregation, and thus deliberate speed has become in effect deliberate procrastination.

This is one reason for the fact that the administration's plea to Negroes that they come off the street and go into the courts has fallen on deaf ears, because the courts have been far too slow. You gentlemen have an opportunity to help the process of speeding up implementation of court decisions by acting favorably on the bills that are before you, the bills that would speed up desegregation of the schools, and the bills that would withdraw Federal subsidies from segregated schools.

We take years to get a definitive case before the Supreme Court and get a favorable ruling, and then tragically find that we have won a hollow victory, and that is the reason that these bills before the subcommittee are so important to restore the faith of millions of our citizens in the inviolability of our courts.

I am glad that one of the bills would provide the Department of Justice with the authority to protect those persons who comply with the requirements of the bill by desegregating their schools. One of the bills—I think it was one introduced by Congressman Ryan of New York—would give the Attorney General that power to protect the members of school boards and other persons who desegregate. I think we see the need for that by witnessing what is happening and has been happening for the past few months in some parts of our country. We have seen that many people resort to lawless vigilanteism to try to preserve outmoded practices which have been struck down by the courts.

Now, one reason for the persistence of segregation in the schools obviously is that the Federal Government has been subsidizing such segregation, while taking a position, on the other hand, that such segregation was wrong and immoral and illegal. We have been subsidizing them in a number of ways, some obvious, and some not so obvious, and some not so obvious some more subtle.

One of the more subtle means of subsidization of segregated schools has been through school bonds that are issued by school districts, by municipalities, and by States which have segregated schools. These school bonds are tax exempt. That is, the income from such bonds is

nontaxable, and thus, through that machinery, the Federal Government is providing a subsidy for the building of segregated facilities, the maintenance of segregated facilities, and the continuation of segregation.

Now, the more obvious form of subsidy is the one with which you are confronted in the bills, and that is the giving of grants, of financial aid, to schools which practice segregation. It is a strange anomaly, Mr. Chairman, an anomaly which most Negro citizens cannot understand, that our Federal Government says on one hand that it is opposed to segregation, and that desegregation is the law of the land, and on the other hand continues to subsidize such segregation. It shows an ambivalence, and this ambivalence ought to be brought to an end.

Now, I do not mean to indicate any bad faith on the part of the Federal Government in this. I do not think that is the case. The subsidization of segregated schools has been a hangover from the days prior to the 1954 Supreme Court decision, when desegregation was not the law of the land. But it seems to me that this is the time when we have got to bring an end to that practice. The cry of the hundreds of thousands of people who are in the streets, both Negro and white, protesting segregation, is "freedom now." They are tired of waiting, and I think that all people of good will would agree that we have waited long enough. A hundred years is long enough.

Now, you have the chance to make a historic contribution to the expansion, extension, and perfection of democracy and freedom in our land by withdrawing funds from all schools that practice segregation.

That, Mr. Chairman, is the extent of my statement, and I would be glad to answer any questions which the members of the committee have.

Mr. DENT. Mr. Farmer, from your testimony, I take it that you believe that the basic problem in segregation stems from the inability to provide equal opportunity in education.

Mr. FARMER. Precisely.

Mr. DENT. That is why I believe this committee and Mr. Gill, the sponsor of this particular act which is before us, and the other sponsors, are stressing the area of education more than they are the areas of service and so forth.

Mr. FARMER. Yes, sir.

Mr. DENT. There are questions that this committee must resolve: the question of timing, and the question of whether or not this should be a mandatory act or a discretionary act, leaving in the hands of some agencies of Government the decision as to whether or not the funds should be withheld, or whether the act should be an act with a cutoff date, setting up a mandatory cutoff based upon this law that we have before us, and after that date, no funds would be available.

What would be your opinion there?

Mr. FARMER. I have a strong conviction, Mr. Chairman, that it must be mandatory, and not discretionary in the hands of any agencies whatsoever. There is a moral issue, and if the Federal Government takes its stand on the side of the moral issue, then it must, of necessity, be mandatory. There can be no dillydallying with an issue that is as clear as this.

Mr. DENT. For the time being I have nothing further.

Mr. Martin.

Mr. MARTIN. Well, I assume, then, Mr. Farmer, that you prefer the approach in this bill and other bills along the same line that have been introduced, rather than the section 601 approach in the civil rights bill.

Mr. FARMER. Exactly. You are correct.

Mr. MARTIN. Because this is mandatory and section 601 is not mandatory.

Mr. FARMER. I think it must be mandatory.

Mr. MARTIN. I noticed you mentioned the fact that bond issues of school districts are not subject to the income tax. By that are you inferring that you would favor legislation that would disallow this?

Mr. FARMER. I would certainly favor such legislation.

Mr. MARTIN. For the school districts that do not integrate?

Mr. FARMER. Yes, Mr. Martin. I would favor such legislation. I am not at this time proposing it before this committee, but I would favor it.

I might say, for the information of the members of the committee, that our organization is through its channels working on this issue. We have held conferences with the attorneys general of seven Northern States in which such bonds are sold, and are seeking to prevent the sale of such bonds, for the very reason that we are, all of us who purchase such bonds—either through our own funds or their insurance companies, or banks, or pension funds—are thereby subsidizing segregation, just as the Federal Government is subsidizing segregation as the issue on which these bills deal.

Mr. MARTIN. Would not that be a difficult problem to enforce? Would not that be a difficult problem to enforce, the school district that does not segregate, that their bonds would not be tax free, the interest on the bonds?

Mr. FARMER. Well, I would be glad to discuss that issue with you, Mr. Martin. I don't think it would be difficult to enforce.

Mr. MARTIN. It seems rather complicated.

Mr. FARMER. No; there are certain school districts—you can draw a map, and there are certain school districts that are clearly segregated, and in which the officials have stated that they intend to keep them that way, and the prospectuses of such bonds do not indicate that the money which is to be raised by the sale of the bonds is to be used for an unconstitutional purpose, and, therefore, we maintain that fraud is involved, but that is beside the point at issue here. The point at issue is withdrawing, withholding Federal funds from segregated schools.

Mr. MARTIN. That is all, Mr. Chairman.

Mr. DENT. Thank you, Mr. Martin.

Mr. Daniels.

Mr. DANIELS. Mr. Farmer, within what period of time would you recommend that the funds be cut off where a school district failed to desegregate?

Mr. FARMER. Mr. Daniels, I would like to see it done by yesterday. Obviously, it cannot be done that way. The machinery cannot be set up. I would therefore approve of the recommendation of Mr. Findley, is it, that the cutoff date be June 30, 1964.

Mr. DANIELS. Well, do you think that that is sufficient time within which all the school boards, the State boards of education, could rearrange their programs to get them underway by the fall of this year?

Mr. FARMER. I think it should be sufficient time. If they are given more time, then they will take more time. If the date is set very early, then they will have to extend themselves in order to meet that deadline.

Mr. DANIELS. I served as chairman of the ad hoc committee which investigated this situation, and last year we submitted a report; we made specific recommendations along this line, so I am wholeheartedly in support of the legislation that is pending now before this committee.

Mr. FARMER. Yes; I understand that.

Mr. DANIELS. But what I am concerned about is whether or not their various school boards which should desegregate would have sufficient time in which to reorganize their programs and get them underway by September of this year. I think it would be rather difficult, especially in those areas which have been the hard core of this problem.

Mr. FARMER. Well, Mr. Daniels, I am not prepared really to argue the feasibility of the date. All that I am insisting upon is as early a date as possible.

Now I would not quarrel with whether it should be June 30 or 2 months later, 3 months later, but that would be an issue for specific lists who are more knowledgeable with the technical problems.

Mr. DANIELS. Suppose a school district indicated its desire to comply with the law, with this suitability ruling. Would you cut off the funds in that event, even though it did not completely desegregate?

Mr. FARMER. If a school district indicated its desire and its intention of complying with the law, and made some initial good faith steps in that direction, then I would not cut off the funds.

Mr. DENT. Would you yield?

Mr. DANIELS. I yield to the chairman.

Mr. DENT. While you were talking there and discussing this problem, a thought struck me that perhaps we could arrive at the compromise cutoff date that might answer the critics who say that this does not give sufficient time, and yet would meet the needs of the day. I would suggest, perhaps, that the committee consider the probability of amending this act to take part of Mr. Findley's suggestion by making it mandatory that all school districts must submit a plan by June 1, 1964, and that after the submission of the plan, funds would not be cut off. However, if the plans were not effective during the year 1964, then 1965 funds would be cut off.

Mr. FARMER. Yes.

Mr. DENT. In other words, you would have a cutoff date at which time they must submit plans for desegregation, and a cutoff date if the plans are not effected. Would that more or less follow in line with what you have in mind?

Mr. FINDLEY. Mr. Chairman, I think you would have to be careful for fear you might open up a big enough loophole for them to crawl through for another 9 years.

Mr. DENT. No; they won't that way, because they are cut off at the end of 1965. What would you think of that, Mr. Farmer? I just want to get the opinion of the witness. I am trying to answer the critics who say we must give longer time.

Mr. FARMER. If there were a brief period of grace, and a brief period of grace with a specific cutoff date at which funds would be withheld, I would have no strong opposition to it.

Mr. DENT. I don't want to usurp your time. One more question: Do you know from your own knowledge of any districts that do not have some sort of a plan for desegregation?

Mr. FARMER. Oh, there are many such districts, Mr. Dent; yes.

Mr. DENT. Then, under this proposal, they would be immediately cut off on June 1, 1964, if they did not have a plan.

Mr. FARMER. Unless they present a plan by that date, yes; and then I assume that by the next year, if they have not desegregated—

Mr. DENT. Then they would be out.

Mr. FARMER. Funds would be cut off.

Mr. DENT. That is just an idea for you.

Mr. DANIELS. The chairman has anticipated my next question. I had intended to ask you whether or not you would be opposed to providing in the law that each school district be required—which has not already desegregated—to submit a plan of desegregation by say, June 1, 1964, and if such a plan had been filed, that they would continue to receive funds, but with a specific cutoff date of June 1965.

Mr. FARMER. If those plans are not workable or are not carried out.

Mr. DANIELS. If they have failed to file a plan, or if they have failed to file a workable and approved plan by June of 1965, then all funds would be cut off by that date.

Mr. FARMER. I would make one qualification, Mr. Daniels, and that is, that the plan for desegregation which they submit must be a workable plan. In other words, it must not, cannot be simply a stall.

Mr. DANIELS. When you say a "workable plan," would you amplify that statement?

Mr. FARMER. It must not, in other words, be a plan which would call for tokenism, and the maintenance of tokenism. One or two or a half dozen Negro students admitted to schools. It must not be a plan which would allow for the possibility of resegregation.

Mr. DANIELS. Are you familiar with the testimony that Secretary Ribicoff gave before my ad hoc committee last year?

Mr. FARMER. I am not familiar with the testimony.

Mr. DANIELS. Would you be opposed to a plan being approved by the Office of Health, Education, and Welfare?

Mr. FARMER. I think that would be the proper agency to approve it.

Mr. DANIELS. Thank you.

Mr. DENT. Thank you, Mr. Daniels.

Mr. Bruce?

Mr. BRUCE. Mr. Farmer, I would say that I completely concur with the presentation you have made. What we are dealing with here is the law of the land. Segregation in public education is unconstitutional. This has already been determined, and I must concur completely with your position that Federal subsidy of unconstitutional process is morally wrong, legally wrong, and wrong in every way.

I think the point you raise of the tax-exempt bonds is a very good point, because can there be any question but what this is a form of subsidy as well? And I think you have opened another avenue for possible study by some members of this committee.

I congratulate you on a very direct, brief, and pointed presentation. Excellent.

Mr. FARMER. Thank you.

Mr. DENT. Thank you, Mr. Bruce.

Mr. BROWN.

Mr. BROWN. Mr. Farmer, on this matter of the school bond situation, it has been my understanding that your position was that the sale of school bonds, per se, for districts which maintained segregation was unconstitutional, not just the tax-exempt feature of them; is that correct?

Mr. FARMER. That is correct.

Mr. BROWN. In other words, you are trying to persuade the bond houses not to even purchase the bonds of segregated school districts.

Mr. FARMER. Precisely; precisely.

Mr. BROWN. We have not brought up the question of how we are going to achieve integration in these districts which, assuming the passage of this law, do not receive Federal subsidies, but elect to go it alone with purely local moneys. I would rather assume that there will be a substantial number of districts throughout the South who, even if the Federal funds were cut off, would proceed to maintain segregated districts just as there have been one or two cases where they have eliminated the schools completely rather than integrate.

In other words, this is not the full and final solution to the problem, is it?

Mr. FARMER. Of course; that is right. You are quite right there, but those school districts that preferred to have their funds drastically cut in order to maintain segregation would be cutting off their noses to spite their faces, and they could redress that situation very simply by abolishing segregation.

I think that this would put a great deal of pressure on them, Mr. Brown, because when you touch the source of funds for maintaining an institutional system such as segregation, you touch it at its most sensitive point.

Mr. BROWN. Well, unfortunately, it's not the persons who make this decision whose noses are getting cut off, it's the students whose noses are getting cut off.

Mr. FARMER. Well, their parents presumably are voters—at least, some percentage of them—and I think they can make their voices heard and their feelings and their sentiments known to their politicians.

Mr. BROWN. You are not recommending that we use this as the only weapon in the arsenal to compel integration, are you? Even in the case of these hypothetical situations, where a district is refused Federal funds, you would, I presume, favor continuing other methods to secure integration.

Mr. FARMER. Absolutely, Mr. Brown, we would have to continue litigation in the courts, and continue the efforts to get Negro parents to apply for transfers of their children, and the filing of school desegregation petitions, and so forth. All of this would have to be carried on, and it is my testimony that it should be carried on at a stepped-up tempo.

Mr. BROWN. Thank you.

Mr. DENT. Thank you, Mr. Brown.

Mr. Snyder?

Mr. SNYDER. No questions.

Mr. DENT. No questions?

Mr. Carey?

Mr. CAREY. Thank you, Mr. Chairman.

Mr. Farmer, I want to welcome, here this morning, the commanding general of the nonviolent marines.

I would certainly agree that the bills before this committee—and I think you will agree with me—are possibly even more vital than the bills before the Judiciary Committee with regard to the achievement of equal rights. We all should desire this end. In this case, however, I will allow myself to be even more extreme than the gentleman from Indiana, Mr. Bruce, by stating that more than a constitutional issue here, is involved, we do have the supreme law, the law of God, and we are dealing with a moral issue.

Mr. FARMER. Yes, sir.

Mr. CAREY. Now, since we can agree on the morality of the issue, my question to you this morning would be this: If we pursue this line of attack, withholding of Federal funds, won't we be accomplishing the very thing we seek to correct? That is, withholding the funds from the very areas where the Negro children are most in need? Most of the funds under these bills go to areas of need such as vocational training. If we leave it to the school districts, won't we be possibly withholding the funds from the areas of greatest need? If these school districts do elect to do the immoral thing and bar themselves from the funds as a matter of selectivity, won't the Negro be the worse sufferer?

Mr. FARMER. Well, Mr. Carey, Negroes have suffered for such a long period of time in this country—

Mr. CAREY. We want an end to that.

Mr. FARMER. That stepping up that suffering for such a brief time in order to bring the suffering to an end seems to me to be wise strategy.

Mr. SNYDER. Will the gentleman yield?

Mr. CAREY. Just a moment.

Mr. FARMER. Incidentally, Negroes are willing to accept such suffering.

Mr. CAREY. I want to see if we can't do it without the suffering.

We are depending pretty much on the good will of the educators, because in the administration of these programs, as I read my own bill, and I am a sponsor of this bill, it will be worked out between the educators at the State level and the district levels, and the Commissioner of Education as to what is a workable or reasonable plan for that particular district, so there could be a great deal of difference in degree between what is achieved district to district, and still be reasonably satisfactory.

Therefore, I think that even our own bill is not strong enough, insofar as requiring the degree of integration necessary, to merit Federal funds. In reading the bill, a great deal of latitude is left to the Commissioner and to the local school board, so that, in this connection, we have a bill which is at once meritorious but full of loopholes.

Discretion in some of the clauses of the bill is given to the Commissioners. In others, it is left to the local school board to achieve some

reasonable result. As a clue to what school boards consider reasonable, I ask you to comment on this: We had before our Committee on General Education last week the president of the Council of Chief State School Officers, Mr. Ford of Arkansas. His approach to integration is that in the theme of Justice Roberts, "It should be left to local administrators to work out as best they can."

Now, that's the kind of reasonableness we are going to get from that chief school officer.

The NEA convention in Detroit looked at the matter of integration and casually looked away. Were you satisfied with the NEA approach to the matter of integration at their convention in Detroit?

Mr. FARMER. Of course not.

Mr. CAREY. Now, these are the people who will be administering these programs, so we can get a clue of what they consider a reasonable approach to integration, from what they have done in Detroit, and what they said before this committee last week.

In the civil rights measure before the Judiciary Committee, I think you are aware of the wording there that the Commissioner "may suspend or terminate"—and this would be the Commissioner of the Human Rights Commission—"may suspend or terminate assistance under this section to any school board which, in his judgment, is failing to comply with good faith with the terms and conditions upon which the assistance was extended."

Would you favor making all of this language stronger, so that we would vest in the Commissioners and in the enforcement powers of the Attorney General the right to make, and the capacity to make, the determination as to whether the Commissioner and the Attorney General are satisfied that their approach is reasonable, and that they are doing all they can?

Mr. FARMER. I would, very definitely. I think that would be much preferable to leaving it in the hands of people who, for various reasons, might choose to be dilatory or to drag their feet.

Mr. CAREY. Would you agree with me that on the basis of testimony before our committee last week, and what happened in Detroit, that they are going to be dilatory?

Mr. FARMER. I do agree with you, and this was the point of my answer to Mr. Daniels.

Mr. CAREY. I ask you to make a comment on this. We have before the committee various bills, about 9 or 10 in number, which would give in terms of assistance for education grants to the parent to let the parent decide on the school which the child is going to attend, and give the parent the capacity to withhold from the school those funds, if he is not satisfied with the kind of education his child is going to get, in integrated education, an equal level of education. This would put the dollar—which is still, I consider, the best admission ticket that I know of to the plane of equality—in the hands of the parent.

Would you care to give me an observation on that kind of legislation, on this kind of approach, put the money in the hands of the parents whose children are suffering inequality?

Mr. FARMER. Mr. Carey, I think it places too heavy a burden upon the individual parent. I don't think that that burden belongs on the individual. That burden belongs on the State. It belongs on the Federal Government. It belongs on the Commissioner.

An individual is subject to so many reprisals, and so many pressures. Those reprisals can be economic, withholding of loans, the foreclosure on mortgages, the denial of crop loans, the loss of jobs, and so forth. I think that in Mississippi and Alabama, for an example, you would be placing far too great a pressure upon the individual parents.

Mr. CAREY. Well, my theory would be that in addition to the legislation fixing the levels of integration we desire, we would also give the funds to the parent, in other words, to fund the parents so the parent has the money to put his child in the right kind of school, according to his judgment. After all, the parent is the one who is best able to make that judgment as to whether his child is getting a good level of education.

Mr. FARMER. But if the parent is called upon to withhold funds if he feels his child is not getting a good education——

Mr. CAREY. Well, it would not be a single parent, because if all the parents had the money, they could all act together. This is the same thing we did in the GI bill, I would remind you, that when the veteran came home from war, we gave him the money, and the veteran selected his school. If he was not satisfied, he went to another school. And I think you will recall the GI bill never had any problems regarding integration, with regard to the Negro GI's who served with me and served with you and came home and got a good education.

Mr. FARMER. Mr. Carey, I certainly agree with the principle involved here, but because of the practical considerations of the situation involved in the South, I would be somewhat leary of it unless the Attorney General were given the powers included in part 3 of the old civil rights bill.

Mr. CAREY. Well, I would certainly favor giving him those powers, but giving the powers and then giving the parents the dollars I think would be a pretty good team of forces here.

Mr. FARMER. That would be a good team, but giving the parents the dollars without giving the Department of Justice that power might again be a hollow victory.

Mr. CAREY. Right. I think we can agree on this, that with all the measures on civil rights you mention, and your own suggestions, because of being impatient with the dilatory practices, all of the Government, at every level, I think that we can agree that with the civil rights legislation we are considering here, with all we are putting into education, until we get more money into education, the Negro is still going to stand on the side of the hill as far as his attempt to get equal status is concerned. Unless we get more money into education, which I think is the key to the door of status he seeks, he is barred and turned away.

Mr. FARMER. The idea is that he will at least have an opportunity to move to the top of the hill with the other people.

Mr. CAREY. Well, we can see that at least he stands on the same plane.

Thank you, Mr. Farmer. I will yield to the gentleman.

Mr. SNYDER. I am just a little bit concerned about the apparent agreement between Mr. Carey and the witness that there might be some increase in hardship as a result of the passage of this legislation. It seems to me that in the areas that would be affected by the legisla-

tion, that the Negro is already being deprived of the education, and that the enactment of this legislation is not going to increase his duress or his peril any more. He stands between the dock and the fire plug, and he is just going to put some other people in there with him, and increase the pressure to get both out. At least, that's the way I see it.

Mr. FARMER. Well, Mr. Snyder, I agree with your sentiment. However, Federal funds go to maintain such segregated institutions as State colleges for Negroes, and State universities, in some of the States. They receive money that builds new dormitories and new administration buildings and new libraries, and so forth.

Presumably, unless the State is willing to forego segregation, some of those funds would not be forthcoming, and there would be a period of intermediate suffering, but my point is that this is necessary. We suffer in the streets, and we suffer with bloody heads, we suffer in jail, so that that kind of suffering as an aid toward achieving the goal of full desegregation and freedom is a small price to pay.

Mr. SNYDER. Since the bill applies to institutions—not States—it was my thinking that you would not be increasing the suffering anywhere, you would just be putting some other people in the same category to see what it's like, and that maybe they will both move out of that position.

Mr. FARMER. Surely.

Mr. CAREY. Would the gentleman yield back to me?

Mr. SNYDER. Surely.

Mr. CAREY. My feeling is simply this, Mr. Farmer: That these bills, if they get to the Rules Committee, or fail to gain enough votes to pass by a two-thirds majority, may conceivably result in cutting off six or seven programs which are directed toward needful areas of education.

Now, if these programs were to pass without the type of wording we have here, and we pass the civil rights bill—and I certainly hope and am optimistic about passing the civil rights bill; I urge that the wording in the civil rights bill itself is more inclusive than any of the wording in this legislation that we have introduced, wherein the Commissioner, I read from the civil rights bill which is now pending:

The Commissioner may suspend or terminate assistance under this section to any school board which in his judgment is failing to comply in good faith with the terms and conditions upon which the assistance was extended—

so the Civil Rights Commission would have overall jurisdiction. We in a sense have here the double-hatching of the same egg.

Mr. FARMER. Yes.

Mr. CAREY. My question is, since we are dealing with civil rights in this committee now, and are dealing with civil rights in the Judiciary Committee, would we be, in attempting to pass this bill risking the defeat of all these measures which are most needful and which would be treated with it in the all-inclusive power of the Commissioner under the civil rights bill?

Mr. FARMER. I am not sure that I follow your question, Mr. Carey. If you elaborate it a bit.

Mr. CAREY. Well, the civil rights bill is inclusive as to what the Commissioner may do. He may suspend or terminate all assistance, including the assistance that is contained in this bill, so if he has that right, and he has the enforcement powers which the bill also gives the Attorney General, it is power so broad that it is broader than all the

powers we are giving to the Commissioner of Education in this bill. Do you follow me?

Mr. FARMER. Yes; I follow you.

Mr. SNYDER. Would the gentleman yield? The Republican bill, if I may refer to it as that, takes that discretion out of the hands of the Commissioner; does it not?

Mr. CAREY. Well, if you take it out of the hands of the Commissioner, you are going to put it right back in the NEA and State school officers again.

Mr. DENT. If the gentleman will yield, I think you have a point, but I think we are following it the wrong way. We are trying to arrive at a destination, and as I said yesterday, it appears that we are going up the high road and the low road at the same time. I believe that the discretionary power might be given after the mandatory power has been invoked. I would suggest that if you give any discretion to any agencies of Government, that it ought to be a discretion to give the funds after they have been taken, rather than to give the discretion of cutting them off.

In other words, the law should be mandatory that the funds be taken from a district that does not desegregate or make a willing move, or reasonable move to desegregate. However, in case there is, as you anticipate, some hardship in a certain area, that then discretionary power be given to the Department to give the money or the funds to that district, but they have to be taken first, or you will defeat the whole purpose of this kind of mandatory legislation, in my opinion.

Mr. CAREY. Well, Mr. Chairman, since we are traveling the high road and low road, as you say yourself, in these two bills, what would happen in a school district, say in the State of New York? We certainly are in as much trouble there with our de facto segregation as Birmingham is with State-sanctioned segregation. What will happen if we pass H.R. 6972 and we have the Commissioner of the Civil Rights Commission, and we have the Commissioner of Education operating in the same field? Let us say that the school district satisfies the Commissioner of Education as to the reasonableness of its plan, and he is willing to remit the funds to that school district. Under companion power, vested in the Commissioner of the Civil Rights Commission, he states that the plan does not achieve his standard of reasonableness. We will have the two Commissioners in direct conflict.

Mr. GILL. Mr. Chairman.

Mr. CAREY. It is a possibility.

Mr. DENT. That is a problem that Mr. Gill anticipated yesterday, and I think Mr. Gill might have some comments on it.

Mr. CAREY. I will yield to my colleague from Hawaii.

Mr. GILL. I think the powers that you are referring to on page 34 are under section 304 of the administration measure, and they deal with special funds that are granted to make it easier to integrate the schools, and these funds may be withdrawn if the plan is not carried out. It does not refer, I believe, to the type of funds that we have in this other bill before us.

Mr. CAREY. Well, I am hopeful that the discretionary powers, when the bill is passed, will be broad enough to include all Government funds. I am looking forward to that.

Mr. FARMER. May I say, Mr. Chairman, that I am not prepared to deal with the technical problems involved in the fashioning of this legislation? That is something that I think the lawyers and legislators will have to deal with. I am here to suggest the principles on which my organization stands, namely, that Federal funds ought to be cut off to segregated schools. How it is done precisely, and what the machinery is, what the coordination may be between various agencies and commissioners is your problem at this time, and not mine at this point.

Mr. DENT. Our problem is greater than yours.

Mr. CAREY. Mr. Farmer, I think you will agree with me that in working out procedures, we are going to have a long, hot summer.

Mr. FARMER. I think you are, and we are going to have a long, hot summer all over the country, in the streets and in the jails.

Mr. DENT. Are you through?

Thank you, Mr. Carey.

Mr. Findley.

Mr. FINDLEY. Thank you, Mr. Chairman.

The words "all deliberate speed" appear frequently in H.R. 6938, which is commonly called the Gill bill. How big a loophole is that phrase, "all deliberate speed"?

Mr. FARMER. Well, it can be a very great loophole, unless it is spelled out in specific terms with cutoff dates. What is "all deliberate speed"? Is it less than 1 percent a year?

Mr. FINDLEY. Would this bill actually speed up desegregation, if that phrase is retained, if there is no further clarification?

Mr. FARMER. If there is no further clarification, I think it might not.

Mr. FINDLEY. It might be a meaningless gesture, like a lot of the words that we have put on the law books, and put out over the airwaves about civil rights. It could be just words and not deeds.

Mr. FARMER. And for that reason, Mr. Findley, I would certainly favor a cutoff date, and a rather rigid one.

Mr. FINDLEY. Well, the bill that I have introduced does provide the cutoff date of—for example, I will read a phrase:

The funds will be withheld from any facility that is not on a racially non-discriminatory basis or is not carrying out a plan which will achieve this racially nondiscriminatory basis by June 30, 1964.

How long do you think a school board or a governing body of the school district would have to take under the most extreme circumstances in order to work out a plan for desegregation?

Mr. FARMER. Well, Mr. Findley, if they really intended to do it, and wanted to speed it up, it could be done in a couple of weeks, the plan could be worked out. I would be willing to be generous, however, and give them months, give them up to 1964, June 30.

Mr. FINDLEY. They now have ample public notice by means of this hearing that we are involved in now that this type of legislation is a possibility, so they are on notice, so to speak, right now, are they not?

Mr. FARMER. They are on notice.

Mr. FINDLEY. Is there any reason why they could not in all cases have a plan for desegregation ready by January 1 of 1964?

Mr. FARMER. I see no reason. Their answer may be that things move more slowly in the South, and we have had abundant evidence of that.

I would like to point out, Mr. Findley, that in at least two Northern States, within the past 2 months, commissioners of education have called upon school boards to present plans for full segregation, that is, an end of de facto segregation, and they have given them, I think, until September 1, and that seems to me adequate time.

Mr. FINDLEY. Under my proposal, the carrying out of the plan of desegregation would not be required until June 30, which is after the end of any school term with which I am familiar, so for all practical purposes, the school districts would not be required to be on a racially nondiscriminatory basis, except those who have summer courses, until the fall of 1964, or more than a year from now.

Mr. FARMER. Yes.

Mr. FINDLEY. Do you see any reason why that is an unreasonable limitation?

Mr. FARMER. You are suggesting, Mr. Findley, that they be required to present a plan by January 1, you say?

Mr. FINDLEY. My bill does not specify January 1. It simply specifies that if they are not already racially desegregated, that they have carried out a plan for desegregation not later than June 30, 1964. As of July 1 of 1964, any school operations would have to be on a racially nondiscriminatory basis, in order to qualify for funds under these programs.

Mr. FARMER. I would certainly approve of that.

Mr. FINDLEY. And there is no discretion on the part of the Commissioner of Education or otherwise in my bill. It is in plain language, and unlike the civil rights proposals which are now before Judiciary, it would not leave the discretion as to whether to take action in the hands of the Attorney General or the Commissioner of Education, or anyone else. This, I think, is a firm example of deeds in respect to civil rights, and not just empty words.

Mr. FARMER. Mr. Findley, I think you are to be congratulated upon the strength of your proposals.

Mr. FINDLEY. You spoke of the possibility of disqualifying from tax-exempt status the bonds of school facilities which are for segregated schools.

Mr. FARMER. Yes.

Mr. FINDLEY. Would you also recommend this same disqualification from contributions which are deductible under income tax? Contributions made to tax-exempt institutions, but institutions which are also operated on a racially discriminatory basis?

There, too, is a pretty clear example of Federal subsidy. Has your organization advocated such an action?

Mr. FARMER. We have not advocated such an action, but we would indeed be in favor of it. We move one step at a time, and the step that we are working on now is the school bonds themselves, but I think your idea is an excellent one.

Mr. FINDLEY. Mr. Farmer, do you think that use of the power of the purse, as the American Veterans' Committee witness expressed it yesterday, using the power of the purse or Federal financial incentive to achieve civil rights is to be preferred over the use of police power?

Mr. FARMER. No; I think it is a good thing, indeed, to reward the people who do good, but it is also necessary to punish those who do bad. I think that it is necessary to provide technical and financial

assistance to schools that are desegregating, but at the same time, we must withhold funds from those which do not desegregate.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. DENT. Mr. Gibbons?

Mr. GIBBONS. Mr. Farmer, of course we are discussing H.R. 6938, and in many of the provisions of H.R. 6938, it provides for the distribution or the cutoff of the distribution of funds where funds are not distributed to schools that are operating on a racially nondiscriminatory basis, and then it provides, "or that is making progress toward that end with all deliberate speed."

I want to ask you a question in regard to what your opinion is of this "all deliberate speed."

Would you say a plan that was working with all deliberate speed was a plan in which—in the South, we are talking about now——

Mr. FARMER. Yes, sir.

Mr. GIBBONS. Had accepted under a court matter a plan in which starting in September 1963, or this September, was going to integrate all of its schools within its district by starting off with integrating the entire first grade, and then next year, integrating first and second, and the next year, and on up like that? Is that a plan that you would think would meet the test of all deliberate speed?

Mr. FARMER. I should not think so, Mr. Gibbons. If my memory serves me correctly, the Supreme Court so decided in one case. It seems to me it was in a Delaware case that this was too slow to be all deliberate speed. I think that by such a process, we would be penalizing 11 years of children, while we are trying to comply with the Supreme Court decision.

I think furthermore, Mr. Gibbons, that by doing it in such stages as that, we are allowing the opposition—that is, those who are opposed to desegregation—to build up forces and build up opposition to the plan of desegregation. I think that the better part of wisdom is to take a firm stand and achieve the desegregation at once, and then state it as a policy, and as a practice, and see that it is enforced.

I believe that the experience of the past 9 years indicates that where that has been done, it has worked out much better.

Mr. GIBBONS. Thank you.

Mr. DENT. Thank you, Mr. Gibbons.

Mr. Gill?

Mr. Ayres, after he is through, if you care to question.

Mr. GILL. Mr. Farmer, I am rather interested in your last comment. In the drafting of H.R. 6938, and the other 50 or so companion bills, we had a great deal of discussion over the test that would be applied to desegregation in the varying different situations that are raised by the five different acts that are covered by these bills.

Mr. FARMER. Yes.

Mr. GILL. And in the case of the impact money, we did put in this phrase "all deliberate speed." It was done with the understanding that we were changing the legal shoe from one foot to the other. This means the Commissioner would be able to cut off funds where there was no desegregation, or where there was no progress with all deliberate speed, and then if the school district felt that it was being cut off unfairly, it could go to court, and try to prove that it was moving with all deliberate speed.

In other words, in view of the late Supreme Court decisions, I suspect that those who are creeping along would have a rather hard time getting their money back after the Commissioner cut it off. This, you see, is a different situation from what you have at the present time where the individual is forced to go in and sue on his own right to force desegregation.

Now, you seem to be in favor of allowing these school districts that are making some reasonable and good faith effort to desegregate to carry out a plan of some sort, and I would gather from what you say that the plans could vary from place to place. Is there any room for flexibility here that the Commissioner can exercise?

Mr. FARMER. I think it would have to be flexible; yes.

Mr. GILL. Then it would be better for the Commissioner to examine the plans, consider the plan of Louisville, alongside of the plan of Augusta, alongside of the plan of Birmingham, and perhaps allow a certain amount of flexibility between those, or should they all be cut to the same pattern?

Mr. FARMER. Well, I don't think they would necessarily be cut from the same pattern. I do think, though, that the use of the phrase "all deliberate speed," may encourage some people to remain dilatory, because of the context which has been built up around that phrase in the past 9 years. Words have a way, you know, of developing new contexts in new eras. A "moderate" used to be a good word, but now a moderate becomes a cuss word in many areas of the country. I think we have to understand that. So you might be well advised to use stronger language, more explicit language.

Mr. GILL. Well, this was a very troublesome area in the drafting of the bill. We are asking for consideration of the problems involved and also suggestions, such as you are giving us at this point.

Mr. FARMER. Yes.

Mr. GILL. I wonder whether, in the context of the most recent Supreme Court decisions interpreting "all deliberate speed," you feel that it still has the same drag on desegregation as it used to have before these decisions?

Mr. FARMER. Well, I think so, on the basis of the fact that history is more compelling than a Supreme Court decision in changing the context of a word or a phrase, and the history of the 9 years has been one of dilatoriness.

Mr. GILL. Well, I would agree with you, and I think that the word carries a very bad stigma at the present time.

Mr. FARMER. That's right.

Mr. GILL. However, you have to realize that these words would be applied now not by the local school districts, but by the Commissioner of Education, and he would be guided, necessarily, by his legal authority's opinion as to what the Supreme Court meant by that term now.

Now, with this new legal context, and with the administration in the hands of the Commissioner, would the words necessarily have the same drag as they have had in the past? This is the problem that faces us.

Mr. FARMER. Yes. Well, I would not want the legislation to gag over the use of words. I would much rather have it gag over the implementation, and the definition of the words.

Mr. GILL. In any case, you would go along with the idea of having the Commissioner be faced with an act which says that if there is no desegregation, or no proper plan, or no reasonable progress, that he shall cut off the funds.

Mr. FARMER. That he cuts it off, yes.

Mr. GILL. But that he have a certain amount of flexibility in dealing with the local situations to insure that they are moving to the best of their ability in a reasonable fashion.

Mr. FARMER. That is correct, that's my view, yes.

Mr. DENT. Would the gentleman yield?

Mr. GILL. Yes, sir.

Mr. DENT. In line with that question, Mr. Farmer, would you approve giving to an agency of Government, either the Commissioner of Civil Rights, HEW, or Justice, whichever one the committee sees fit to place it in, the right to give funds to a district where hardship is proven by the denial of funds, after they have been taken? If the law is mandatory, there is no plan, there is no implementation of a plan already in existence, there is no effectiveness to a plan in existence, and therefore under this law, the money would be cut off. If after the cutoff, there is an emergency hardship created in that particular district by the denial of funds, would you then be in favor of giving to one or more administrative agencies the right to grant the funds in spite of the mandatory cutoff?

Mr. FARMER. I think then, Mr. Dent, you might be taking away the effectiveness of the legislation, of the withholding of funds, if you turn around and say, "We will give you funds if it causes a hardship," because as I see it, the purpose of withholding funds is to place some hardship upon people who want to maintain segregation.

Mr. DENT. Mr. Farmer, this question is not entirely idle, because our testimony yesterday and last week was to the point that hardship would be created in certain districts, and therefore, the mandatory cutoff was opposed and the question resolved by giving discretionary powers to take the funds.

Mr. FARMER. Well, Mr. Dent, what would be the purpose of withholding funds, if not to create certain hardship in the maintaining of segregation?

Mr. DENT. Well, let's put it this way. We are thinking, for instance, of a certain school district that receives an amount well over \$3½ to \$4 million. If one particular school in that whole district, for reasons best known to themselves, or for any purpose whatsoever, does not comply with the plan that the district itself has in effect, would the funds be denied to the whole district?

I am talking now about that human perversity that you hinted at a little while ago, where you can't foresee everything in law, but we must make law so that it can be amenable to all persons in the best fashion that we can, as legislators.

Mr. FARMER. Yes, sir. Well, in answer to your question, I don't know whether it would be possible to withhold funds from one school, while granting funds to the school district of which that school is a part. If that would be feasible and possible, then I should think it would be a good idea.

Mr. DENT. I am trying to overcome the very strong opposition to the mandatory cutoff. We are trying to put into effect a mandatory

cutoff, because I believe most of the members of this committee believe in that principle.

However, in facing up to the practical question of passing a piece of legislation, we oftentimes, as you know, compromise the essence of law, and therefore, we must try to get some understanding between all parties concerned. If leaders in the movement for desegregation act as reasonable persons, and we act as reasonable persons, we may find some common ground that will expedite that eventual purpose that we are all trying to achieve. You understand what I am trying to say.

Mr. FARMER. Yes, I see your point, Mr. Dent. I think, though, that the mandatory cutoff is so much a matter of principle, if we accept the view that funds, Federal funds should not be used to segregate, to maintain segregation, that to weaken it in any way would tend to destroy the principle. To weaken it at one point, and then you weaken the entire fabric.

Mr. DENT. Well, you know that the one thing we must keep in mind is that there is always, in any movement of great reform, more than one leader, and many times, more than one organization.

Mr. FARMER. Yes.

Mr. DENT. And we find ourselves faced with trying to compromise the differences and get them together in such a way that we get unanimity of opinion behind legislation.

Now, as you know, the position of the NAACP in the past has been one of reticence in applying the direct approach of denial of funds. For instance, in their own pronouncements, they have said in talking of Federal aid:

When the goal of Federal aid to common school education comes into conflict with the goal of equal expenditures for white and Negro education, which should be given priority, to which has been added subsequently another dilemma.

These are the words and the position of the NAACP:

Should the goal of equal educational expenditures precede the goal of elimination of segregation?

Now, are we at that crossroads at this point in this legislative endeavor? Do we at this time take a forthright position that the goal of equal opportunity for education surpasses or precedes the goal of elimination of segregation by the slower process?

Mr. FARMER. Sir, I think that that decision has been made. I think it was made by the Supreme Court in 1954.

Mr. DENT. That we know, but even a Supreme Court decision, must be implemented by forceful law, as we are attempting to do here. If the Supreme Court decision were a dictum that could not be disobeyed, or set aside, we would not need this legislation, because the clarity of the language is there, that there can be no segregation in educational or other facilities. Therefore, we must pass law to implement it. Now, when we pass this law, will we get the support of all those who are in the forefront of the fight for so-called desegregation, or will we get a divided effort?

Mr. FARMER. I think, Mr. Chairman, that you will get united effort, and full support. The NAACP, like CORE, took a position in favor of the U.S. Civil Rights Commission's recommendation that all Federal funds be withheld from the State of Mississippi.

This was several months ago, as you will recall. I think then you will find that all of the major civil rights organizations are in favor of withholding funds from segregated schools.

Mr. DENT. We have invited all of the major organizations, and due to schedules, and other reasons, it has been difficult to get the witnesses here. Again today, we are inviting them to submit their statements to the committee for inclusion in the hearings, but it is the purpose of this committee, at least of the chairman, to call an executive committee meeting immediately upon the completion of today's hearings, to consider the bill as it is now written, with whatever amendments are to be attached thereto by the committee. Therefore, I am trying to clear up through you where I can and where you can speak from your own knowledge as to what you believe to be the position of the other major organizations so that we can record at least in these hearings the opinion of at least one leader of one of the major organizations that it will be a unanimous effort on the part of all the organizations to have mandatory legislation.

Is that your position?

Mr. FARMER. That is my conviction, Mr. Dent, and I think you will find that to be true.

Mr. DENT. Thank you.

Now, Mr. Ayres, a member of the Committee on Education and Labor, has graced us with his attendance here this morning, and we certainly extend him the courtesy of any questions or participation in our hearing.

Mr. AYRES. Thank you, Mr. Chairman, it sounds very good.

Well, Mr. Farmer, I certainly have enjoyed your testimony. I, too, have introduced a bill, H.R. 6967. My question does not deal with the problem in the South, it deals with what can become a problem in the North.

Are you at this point ready to state your position on what is to be done in our northern cities, where due to the number of people living in a certain area, you do have a strictly white or a strictly colored school? Is there a position being taken to break down the school district structure in the cities, so that there will be Negroes in all of the schools, or a certain percentage of them?

Mr. FARMER. Our organization is certainly taking that position. We are demanding that the school boards, where necessary, redistrict the school zones, so as to create integrated, desegregated school zones.

Mr. AYRES. Don't you anticipate a lot of difficulty in that, Mr. Farmer?

Mr. FARMER. Well, sir, we have difficulty in all of our programs, but we pursue them, and we feel that they can be accomplished, and I think this one is no exception.

Mr. AYRES. Well, the school districts were not drawn deliberately to segregate anyone.

Mr. FARMER. In some cases, they were. In some cases, there has been a gerrymandering with the school districts, to coincide with the changing boundaries of ghettos. This has happened in a number of northern cities, and here, I think, it is quite clear that the school zones have been drawn so as to maintain segregation.

In other cases, it has been accidental, you are right, but I think where it has been accidental, the school boards need to take a position

that integration in education is an important educational value in itself, and that some means such as redistricting should be used in order to create that integrated education.

Mr. AYRES. Well, my own town happens to be Akron, Ohio, and we have several schools that are solid white and solid colored.

Mr. FARMER. I know.

Mr. AYRES. But it has not been deliberate at all. It is just that there are a number of people living in a certain area.

Mr. FARMER. This is one of the cases I referred to as accidental.

Mr. AYRES. But I can assure you, Mr. Farmer, I believe there is going to be difficulty if we start taking the children from one area and transporting them across town just so they can be in another school.

Mr. FARMER. Well, transporting is not necessarily the solution.

Sometimes it is. In some cases, you will find that a Negro school is 2 miles from the Negro child's home, while a white school may be 2 blocks from the Negro child's home, but because of the curious shape of the school zone, that child happens to be in the school zone which necessitates his traveling 2 miles. We found this true in a number of cities which we investigated.

So in those cases, it has been suggested that the redistricting could make the school zones run horizontally instead of vertically, and thus create integration.

Another proposal has been that there be sister schools, I believe, or twin schools, as it is called. It seems to me this is the Princeton plan, whereby you unite people in certain grades in certain schools.

So there are various approaches to the problem, and it is not an insoluble one in any way.

Mr. AYRES. Well, far be it from me, Mr. Farmer—I am sympathetic to the cause.

Mr. FARMER. I understand.

Mr. AYRES. And I have a long record in this field, but far be it from me to advise you, but I would hope that you could soft-pedal this particular issue until we get at least a bill through, because I am fearful that you would lose votes. If these local school boards get the idea that someone is going to come in out of Washington and dictate to them how they are to rearrange a school district, you are going to stir up a hornet's nest.

That is all I have.

Mr. DENT. I think the gentleman was discussing one of the problems that this committee has already been discussing, and that is so-called geographic segregation. In our areas where we are considered to be desegregated, it is probably the major source of our entire problem. The so-called geographic isolationism of certain school districts is a problem as we all know, but isn't it true, Mr. Farmer, that the most important item is to see that where you do have a geographic segregation simply because of the nature of the so-called residential district itself, it is most important that that school, wherever it may be, be up to standard? Isn't that another secondary problem; a school not up to standard because it is attended in the main by colored children? Isn't that a major problem?

Mr. FARMER. That is right. I see it as two problems. I see one problem as maintaining or improving the standards of the schools in the ghettos, and another problem being of creating desegregated,

whereby children can have the experience as a part of their education of working with, studying with, and getting along with persons of different racial, cultural, and religious backgrounds, but I do think, Mr. Chairman, that the bills before you are focused specifically on de jure segregation, rather than de facto segregation. That is my feeling. De facto segregation is a serious problem, and we are working on that, but I see the focus of your bills as being de jure.

Mr. DENT. Any other observations or questions?

Mr. CAREY. Mr. Chairman.

Mr. DENT. Yes, Mr. Carey.

Mr. CAREY. I am very surprised you made that observation, Mr. Farmer, in connection with de facto segregation, which I think is the principal problem we have in New York City and New York State.

Mr. FARMER. Yes.

Mr. CAREY. And I say that with purposeful reference to the vocational education acts. Now, this is something we need drastically increased in New York State.

The vocational educational bill as passed out of the committee in which I serve, the subcommittee, actually doubles the funds available for vocational education in New York State from the Federal Government. It is an immensely improved plan. Now, the purpose of that act is aimed at increasing gainful job opportunities for those who are in the most deprived category, those who do not have enough access to a decent job right now, and our studies indicate that in New York City alone, we have about 50,000 out of school and out of work. By reason of the educational opportunities presented, the ratio there is about two and a half Negroes to white.

Now, in increasing educational vocational opportunity for those who are now deprived of it, it will automatically follow, the sequence would be, that we will have in the vocational training school right away that de facto segregation, because we would have the same proportion of those seeking job opportunities in the schools getting gainful employment training, so we would automatically have more than the 50-percent rule, say, in the vocational training school, in order to seek those who need the most help; would not that be true?

Mr. FARMER. I think it would be true. I think it is necessarily true.

Mr. CAREY. This is a case, though, where it would be reasonable to have that many Negroes in the school, because we are seeking to help that category.

Mr. FARMER. Precisely. May I extend that just a moment, Mr. Carey.

Mr. CAREY. Yes.

Mr. FARMER. My view and the view of my organization is that we have to fight on two fronts, now. One is to try to break down segregation, and the other is to try to make the facilities which exist in segregated areas as good as possible.

This is true in the area of schools as well as in the area of housing. Even if forced segregation were eliminated next week, Harlem would still be there. Bedford Stuyvesant would still be there, and a hundred Harlems and Bedford Stuyvesants throughout the country, so while we are opening up areas elsewhere in the city, we still have to work hard on these segregated ghettos, to see that the standards there are elevated.

I would look forward to the day when not only would Negroes seek housing outside of Harlem, but whites would seek housing in Harlem, because it would be that kind of a place, in which one would want to live. I likewise would look forward to the day when not only would Negro children seek to attend schools that are predominantly white, but white children would seek to attend schools which are predominantly Negro.

This is with reference to the northern scene. I see it as a two-way street.

Mr. CAREY. I am also pleased to hear that transportation is not—I would say to paraphrase what you have said, is not—the primary way to attack this. In other words, bussing around the city is not the primary way to achieve this.

As I gather your testimony, it would be on-site improvement of schools as they are now, increased and higher standards in the schools where they are now located—No. 1, better schools in the ghettos than now exist there, because you would have better teachers going in.

Mr. FARMER. Yes.

Mr. CAREY. We can acknowledge the best teachers do not go to the ghetto schools right now. We know that.

Secondly, in rezoning and new school construction, marginal zoning of white and colored, so you would have the maximum distribution from district to district, taking from both sides.

Mr. FARMER. I would accept your interpretation of my views, Mr. Carey, if you don't give a priority to any of those steps, that you understand that we must work on them all simultaneously.

Mr. CAREY. Simultaneously, and that is the way it has got to be done. Just one other curbstone observation, and if you are not prepared to answer this in depth, we will forget the question, but have you ever had much difficulty in achieving integration in private and parochial schools?

Mr. FARMER. We have had a great deal of difficulty in some of the private schools.

Mr. CAREY. In the parochial schools, those church related, particularly?

Mr. FARMER. Less than in the public schools. Less than in the public schools.

Mr. CAREY. Less than in the public schools.

Mr. DENT. But you do have?

Mr. FARMER. Oh, we have had some difficulty, in the South, especially.

Mr. CAREY. Well, as I understand, now, in Louisiana.

Mr. FARMER. In Louisiana, yes; in Louisiana, the parochial schools took the position that they could not lead, and would not lead, but they would not follow far behind. When the public schools desegregated, then they desegregated.

The position I take is that they have a responsibility as moral leaders to lead.

Mr. CAREY. Haven't they also done this in Savannah?

Mr. FARMER. In Savannah, too, yes; and in many other places. I want to make it clear that I think the parochial schools in the South have been far ahead of the public schools generally in their attitude

toward this question. The strategic decisions that they have made, I don't always agree with, but the principles they have followed have been good ones.

Mr. AYRES. Would the gentleman yield?

Mr. CAREY. I will, sir.

Mr. AYRES. Mr. Roosevelt would agree with me on this. We even had difficulty in our own congressional page school getting a Negro on as a page, so he could go to the congressional school, so maybe we could start practicing what we are preaching here, Mr. Farmer, right in our own backyard.

Mr. FARMER. Yes, I think so.

Mr. ROOSEVELT. If the gentleman would yield, for a comment, we did, however, succeed in getting one enrolled.

Mr. AYRES. We found a loophole in the law that said all he had to do was be on the Federal payroll, not as a page.

Mr. CAREY. If you can tell a second-term Congressman how to get a page in the first place, I would be willing to put one in school.

Mr. AYRES. When I control the money for the Congress, I will be glad to help you out.

Mr. DENT. When you get around to the second-termers, look into it for us fifth-termers, too. It is easier to become a U.S. Congressman than it is a page boy.

Mr. Gill?

Mr. GILL. I would like to make two comments as a result of all that has gone on so far. First, I think we have had very strong and vehement bipartisan support for the bill that is being considered. I would assume from that, too, that we will be able to get the bill to and out of the Rules Committee, and if not, to get a discharge petition signed.

Mr. DENT. We shall do our best.

Mr. GILL. The other thing that I would like to do is congratulate the witness on his presentation and his constructive attitude about this whole difficult problem. I think that his attitude today, which organizes the reasonable functions of both the "carrot" and the "stick," is very helpful. I think Mr. Farmer's approach and attitude will help on not only this bill, but others that accompany it. We certainly want to thank you, Mr. Farmer.

Mr. FARMER. Thank you, sir.

Mr. DENT. I think on behalf of committee, we certainly want to thank Mr. Farmer for taking time out of a very hectic and busy schedule to come down to give us the benefit of his opinion on this very serious matter that is facing all of us today. I particularly commend him for his avowed views as I note them in the public proceedings to achieve their goals, which are worthy goals, in a nonviolent manner, pursuing reasonableness as the guide rule at all times. I believe that he is accomplishing a great deal more than some who seem to forget that all of us have within us certain restrictions which sometimes we indulge a little too often, and I believe that the reasonable people in this country are aware of the position he has taken. This committee is very grateful to him for being here this morning, and I wish to thank you on behalf of the committee for appearing.

Mr. FARMER. Thank you, Mr. Chairman, and members of the committee.

Mr. DENT. Thank you, Mr. Farmer.

The next witness at this time is a member of the Committee on Education and Labor, one who has had a long history in this effort which has now become acute in the country, Mr. James Roosevelt from California.

STATEMENT OF HON. JAMES ROOSEVELT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ROOSEVELT. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, I want to thank you very much for the opportunity of testifying this morning. I had not thought that I would be present today, but I came back because we have certain full committee legislation that I think the members of the committee know I am very much interested in which will be considered tomorrow.

I will not be able to be here Friday, and therefore, Mr. Chairman, I am very grateful to you for your kindness in letting me testify today.

I have a prepared statement, Mr. Chairman, which I would ask unanimous consent to be inserted in the record.

Mr. DENT. Without objection, so ordered.

(The statement referred to follows:)

STATEMENT OF HON. JAMES ROOSEVELT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, members of the subcommittee, thank you for the opportunity to offer testimony in support of H.R. 6938 and related bills, including my own, H.R. 6949.

In his recent message to the Congress on civil rights, the President of the United States concluded his statement with the following:

"I therefore ask every Member of Congress to set aside sectional and political ties, and to look at this issue from the viewpoint of the Nation. I ask you to look into your hearts, not in search of charity—for the Negro neither wants nor needs condescension—but for the one plain, proud, and priceless quality that unites us all as Americans: a sense of justice. In this year of the emancipation centennial, justice requires us to insure the blessings of liberty for all Americans and their posterity—not merely for reasons of economic efficiency, world diplomacy, and domestic tranquility—but, above all, because it is right."

The President's words aptly describe my own deep concern for the necessity to provide the Negro—and members of other minority groups—with his inalienable right to a nondiscriminatory education. If this country is to maintain its leadership of the free world, we must be able to demonstrate clearly that we have within our own Nation a system which offers an education to all, regardless of race, color, or creed.

The Honorable Francis Keppel, Commissioner of Education, testified a short time ago before the Senate Committee on Labor and Public Welfare Subcommittee on Education. He stated:

"Educational policy is inexorably linked to equality of opportunity, to full employment, to economic growth, to international trade, to foreign policy. For the Federal Government to neglect the instrument of society best adapted to develop its greatest resource—the intelligence of its people—would be as foolhardy as to neglect its responsibility in national security."

Commissioner Keppel pointed out that nearly 75 percent of the young white population of our country has graduated from high school, compared to only 40 percent of the nonwhite population. Nearly 12 percent of young white adults from the ages of 25 to 29 have completed college, compared to only 5.4 percent of the nonwhite population. While 11 percent of our total population is Negro, Negroes comprise only 3.5 percent of all professional workers.

Unemployment is one of the greatest economic problems facing us today, and is but one crucial consequence of failure to provide all of our citizens with equal educational opportunities.

Aside from the moral issue, there should be little question that there is no legal propriety in denying to any minority group the right to receive the benefits of Federal aid enjoyed by all other citizens. Certainly our tax laws which provide the revenues to finance these projects do not discriminate in any way. In addition, I am confident there is ample evidence to indicate that racial discrimination is unconstitutional in educational institutions assisted by Federal funds. But while I am happy to give full credit to the civil rights progress being made today in many of this Nation's elementary schools, colleges, and universities, it is quite obvious that the problem is far from being totally resolved.

Lastly, I should like to comment on certain language frequently to be inserted in the appropriate acts to be amended. I refer to the phrase, "or that progress toward that end shall be made with all deliberate speed." Although included in my bill, I do not wholeheartedly support such language, for it seems to me that the matter of "all deliberate speed" is all too easily subject to interpretation, and will doubtless only result in additional delays through judicial disputes. However, if the committee report on the bill may in some fashion clarify the intent of the Congress by making clear that "all deliberate speed" means "rapidly," or set a date in the near future for complete compliance, I would withdraw my objection.

The issue is clear, morally and legally. Enactment of this legislation is not only desirable, but imperative. While urging a favorable report, may I also express my sincere desire that action be taken expeditiously in the hope that enactment may be possible during this session.

MR. ROOSEVELT. I would just like the opportunity of adding one particular point, and that is that the legislation which has been introduced and which this committee is considering which does have bipartisan support makes it very clear that this is not a permissive piece of legislation, but that there is a demand that action be taken where these conditions exist.

MR. DENT. Do you endorse that, Mr. Roosevelt?

MR. ROOSEVELT. I endorse that, Mr. Chairman, and I want to emphasize that in my opinion, this is one of the situations where the Executive, as I understand it, has asked only for permissive legislation, where the Congress should make it very clear that it is our intent that the Executive act, and not at the discretion of the Executive, but upon the wishes of the Congress.

And as far as I am concerned, Mr. Chairman, the bulk of my statement in support of this is buttressed and is based upon my feeling that this is a situation in which this committee and this Congress should take a firm stand, and it should not be permissive; it should be mandatory.

Thank you very much.

MR. DENT. Does anybody have any questions of the gentleman?

MR. FINDLEY. Mr. Chairman.

MR. ROOSEVELT, I don't believe you were here during our discussion on a cutoff date question. The language of the bill I have introduced provides a definite cutoff date of June 30, 1964, after which no schools which are racially discriminatory would be eligible for funds. Would you favor such a fixed cutoff date?

MR. ROOSEVELT. I would certainly be in favor of it, Mr. Findley. I feel that the arguments the other way which have been made, which is that this will discriminate against the very people you are trying to help, are not valid, simply because this gives ample time—your suggestions—for the proper steps to be taken to make sure that they would not be discriminated against. I feel that it is up to everybody, working together by that time, certainly, to have created the proper conditions for a cutoff date. Without a cutoff date, we are going to

have another situation of "deliberate speed," and frankly, I am against "deliberate speed" at this point.

Mr. FINDLEY. Well, as a matter of fact, the language of most of the bills before the committee on this subject matter now contains the words "all deliberate speed" and this strikes me as a big enough loop-hole to continue the same sort of dilatory tactics which have been undertaken in the past 9 years.

Mr. ROOSEVELT. I would certainly agree with you. What date do you recommend?

Mr. FINDLEY. June 30, 1964.

Mr. ROOSEVELT. 1964, which would be approximately 1 year. It seems to me that that is reasonable. If somebody wanted to make it December 30, of 1964, I don't suppose I would fight too hard, but I think that a cutoff date is a very important thing.

Mr. FINDLEY. Well, it is in between school terms. It has that virtue.

Mr. ROOSEVELT. Right; I agree with that.

Mr. FINDLEY. Thank you.

Mr. DENT. Thank you, Mr. Roosevelt.

At this time a statement by the gentleman from New Jersey will be added to the record at this point.

(The statement of Congressman Daniels follows:)

STATEMENT OF HON. DOMINICK V. DANIELS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman and fellow members of the subcommittee, it is gratifying for me to testify in behalf of H.R. 6938, of which I am a cosponsor, to prohibit Federal assistance to educational institutions which practice racial discrimination. Over 50 bills have been introduced during this session dealing with these problems, all of them reflecting the general concern for immediate desegregation in the Nation's schools. It is my hope that such legislation will meet with prompt and favorable approval by this committee and by the Congress.

Unfortunately, 9 years after the Supreme Court decision in *Brown v. Board of Education*, there are still large numbers of children attending segregated schools. As reported in the June 1963 issue of the *Southern School News*, only 979 school districts out of the total of 6,197 school districts in 18 southern and border States have been desegregated. To put it another way, only 7.9 percent of the Negro pupils in these States are presently in biracial schools. Only one-tenth of 1 percent of the children in these States have been integrated during the past year.

The results of this situation, as statistics reveal, are undeniably detrimental to our Negro citizens. Here are some of the relevant figures:

(1) In Mississippi, the average size of the classes in an all-Negro school is 39.2 pupils. In contrast, the average size for a white class is 28.2.

(2) While 11.8 percent of young adults 25 to 29 years of age in the white population have completed college, only 5.4 percent of the young adults in the nonwhite population have done so.

(3) The unemployment rate among Negroes is more than double that for whites: 5.9 percent for whites and 12.7 percent for Negroes. Among teenagers, the discrepancy in unemployment rates is even greater: 12.4 percent for whites as against 30 percent for Negroes in the same age bracket.

Thus, when compared with the opportunities opened to white children, the Negro child has one-third as much chance of completing college; one-third as much chance of becoming a professional man; and twice as much chance of becoming unemployed.

In light of the present manpower requirements for our Nation, we see in the above statistics the glaring economic waste produced by the stifling of talent among the Negro population. In recent testimony, Commissioner of Education Francis Keppel stated that:

(1) The fastest growth in our labor force is that of highly trained professional jobs requiring 16 or more years of education.

(2) Technical and semiprofessional jobs requiring 1 to 3 years of post-secondary education are the second fastest growing category in our labor force.

(3) During the past decade, jobs filled by high school graduates rose 30 percent, while jobs for those with no secondary education decreased 25 percent.

In other words, Mr. Chairman, our Nation today greatly needs highly trained, highly educated personnel. By denying one-tenth of our population the opportunity to fulfill these needs, we are fostering a tragic waste of national human resources. But over and above the economic aspects of this problem, segregation in education is morally wrong and constitutionally illegal. As Congressman Joelson said in his testimony earlier this week, the Congress has no right to subsidize illegality. In this context, therefore, it is not surprising that already there have been more than 50 bills introduced in this Congress which are addressed to remedying this disgraceful lack of equality.

Last year I chaired an Ad Hoc Subcommittee on Integration in Federally Assisted Public Education. On the basis of our research and hearings, we made two basic recommendations. First, that the Morrill Act be amended to eliminate provisions authorizing Federal contributions for the maintenance of schools of higher education which practice racial discrimination. Second, that Public Laws 815 and 874 be amended to deny Federal funds granted under these laws to any local agency which, by determination of the Commissioner, is not operating its schools on a racially nondiscriminatory basis, or is not making progress toward that end with all deliberate speed.

The present proposed legislation would go even further. It would call for mandatory withdrawal of Federal funds from racially discriminatory institutions not only under the Morrill Act and Public Laws 815 and 874, but also under the Library Services Act, the National Defense Education Act, and the Vocational Rehabilitation Act. In my opinion, this legislation is highly meritorious. The Federal Government has no business giving aid and comfort to a social practice which has been condemned as evil and unconstitutional. There are those who say that such legislation defeats itself, because it would deny funds to precisely those school districts where the Negro needs better educational facilities. Yet when the average size of a Mississippi class is 33 percent greater for Negroes than it is for whites, there is little evidence to support the argument that the cutting off of funds will appreciably worsen the status of the Negro children in these areas.

This line of reasoning was confirmed by the testimony of James Farmer, the head of CORE and one of the most informed people in such matters. Furthermore, Mr. Chairman, the question as to the tactical soundness of cutting off funds to these areas is largely irrelevant. This is not a question of "black-balling" the southern school districts into accepting integration. The validity of this legislation rests primarily on the grounds that it is a necessary complement to the Supreme Court's decision, a recognition of the unconstitutional status of racial discrimination in the schools. Nor do I think, as some authorities assert, that the passage of this legislation conflicts with passage of title VI of the President's Civil Rights Act. Under title VI, the President would have discretionary authority to remove funds from any Federal project in which racial discrimination is practiced. This bill does not conflict with title VI, but would merely substitute mandatory withdrawal for discretionary withdrawal in the area of education. This is not really a question of prudence. The decisions of the Supreme Court on the subject of education, in my opinion, serve as a mandate to pass this legislation and to uphold the principles embodied in the 14th amendment.

I will not assert that the proposed legislation as it now stands is perfect. I would approve of an amendment establishing a cutoff date such as June 30, 1964, thus eliminating the vagueness and ambiguity of a phrase like "all deliberate speed."

Mr. Chairman, for the good of the Nation the present situation must be corrected without further delay. We cannot afford to be a party to the continuance of segregation in the public schools, contributing to the inequalities of opportunity among our youths and disregarding the law of the land.

We must bridge the present gap between slogans and reality. We must demonstrate concrete, legislative support for the Supreme Court's 1954 decision.

It is my earnest belief that this legislation is a realistic approach to a partial solution of the race problem.

Mr. DENT. We will now hear the statement of our colleague, the Honorable Seymour Halpern of the State of New York.

**STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. HALPERN. Mr. Chairman, I'd like to thank you and the committee for giving me this opportunity today to appear at this hearing on legislation to deny Federal funds for education where discrimination is practiced. I commend the committee for providing a forum at which this vital issue can be fully discussed and evaluated. It is high time that there was action on this matter, which for too long has only come before both bodies of Congress in the form of amendments or riders to other legislation on the floor at the time.

I strongly support H.R. 6938, Mr. Chairman. It reflects the kind of legislation I have stanchly advocated for years.

Our basic commitment in all this legislation is to see that the Negro receives the full rights and equal opportunities guaranteed to all Americans by the Constitution. This commitment cannot be qualified. It extends throughout the sphere of everyday living—education, housing, voting, employment, public accommodations, and so forth.

In my opinion, there is no such thing as “the most important area” in the field of civil rights. It is dangerous to say that to achieve equality in any one area will be sufficient to achieve equality in all. We must act on all fronts and act boldly and decisively. That is why I am so pleased with your quick response to the introduction of H.R. 6938 which clearly sets forth a national policy in the area of education—the realm of your particular committee's activity.

It is this phase of the civil rights struggle I stress today before your committee, in the effort to assure that the Negro truly becomes, in practice as well as on paper, a first-class citizen of the United States. Mr. Chairman, the reason for our concern with educational funds is this: Even if we could, in this room today, enact sweeping legislation that would give the Negro complete equality before the law in every aspect of life, in every city and town of this country, he would still have a long road to follow because of the educational handicap under which he has suffered for much too long.

In a recent address at Morris Brown College in Atlanta, Ga., Harry Golden told the Negro students there:

The first reaction (of the Negro to legal freedom) will be one of disappointment, because entry into open society, as political and economic equals will not automatically bring success or victory.

Commenting that the odds against the Negro have built up in years of handicap and neglect, and will remain enormous, Golden told the students that now they would have to take potluck in America and “the only chance you have to reduce the odds is education.”

The Negro must have an opportunity for a truly equal education. Justice Vinson, himself a southerner, put it most clearly in the *Sweatt* case, which involved integration at the University of Texas Law School. Said Justice Vinson:

[The separate but equal law school for Negroes] excludes from the student body 85 percent of the population of the State which includes most of the future

lawyers, witnesses, jurors, judges, and other officials with whom the petitioner will inevitably be dealing when he becomes a member of the Texas bar.

Separate-but-equal education is not good enough. It is education in a vacuum, without the proper open communication with the full society. In 1954, the Supreme Court banned separate-but-equal education. Yet in 1963, 9 years later, the Civil Rights Commission tells us that only 7 percent of the eligible Negro school children in the South are in integrated schools. In the light of this appalling situation, our task is clear. We must speed up this process without any more of the shilly-shallying, delaying, gradualism and de facto separations that we have witnessed in the past 9 years.

One of the most effective ways to accomplish this is to assure that no Federal funds for education are used for purposes that support segregation. This is just what H.R. 6938 does.

There are several programs under which the Federal Government is supporting and stimulating public education in this country—the National Defense Education Act, the vocational educational programs, and others defined in H.R. 6938. The principle at stake is basic. The issue is clearly defined. It is incumbent on Congress to insure that the tax money of all of its citizens is used for the general welfare of all its citizens.

The bill before us, H.R. 6938, provides us with that insurance. It simply and sweepingly states that "Federal funds will not be used to assist educational institutions which practice racial discrimination." Now, if the Federal Government maintains or expands its aid to education in this country—and I think it should and will—and if this measure passes, true, certain areas of America could disqualify themselves from receiving funds under the Federal programs by continuing to practice racial discrimination in their schools.

There are some who object to this approach because of the so-called punishment principle. However, I am not concerned on this score. As a matter of fact I think that rather than being a weak point, this is a strong aspect of the bill. There is a basic principle of justice involved here that is the overriding issue. It goes much deeper than the determination of certain communities to defy the law of the land. Furthermore, though I may disagree with some of my countrymen on civil rights, I am sure that they are neither monsters nor fools. I strongly doubt whether they will cut themselves off from aid.

Certainly, it must be remembered that if, by chance, a community does lose aid because of this bill, the citizens therein are accepting such a loss voluntarily. They have only to act in accordance with the American tradition of equality to be eligible for aid. On the other hand, if we discard H.R. 6938, the Negro will continue to suffer in many areas, and such suffering is involuntary, to say the least.

It is asking quite a lot of an American citizen to sit back and watch the funds of the Federal Government being used to educate the white child and not the black, or to educate the white and the black in separate schools. To think that this is not the case, that Federal funds are not being abused, is to think in a naive fashion. The history of the use of congressional appropriations to help some portions of the population by the Civil Rights Commission, is a shocking example of the misuse of congressional appropriations to help some portions of the population and not others.

Mr. Chairman, this Nation and this Congress is faced with a vast civil rights problem, and in many areas of this problem questions on private rights and private association come up. Here, before us now, in the field of education, we face no such questions—certainly not in respect to the use of Federal funds. We have the opportunity now to clearly and firmly act, once and for all, to assure that none of our well-meaning programs to aid education in this country are ever turned against us into programs which hurt any American, intentionally or unintentionally.

Aside from the constitutional justification for this bill, I repeat that there is a moral question involved. We might ask ourselves a few questions which get to the core of the moral problem: Do we want the Negro to be able to fulfill the responsibilities as well as the privileges of full freedom? How understanding are we really, of the century of neglect, in which technical emancipation has been the limited freedom of access only to either agrarian or industrial peonage? How much are we aware of the large burden of patience he must still have, as he struggles in a competitive economic order, with an extra handicap? How much do we want his full resources of manpower given to the country, in its own self-interest as well as his?

The test of our understanding will be sharply a test of our actions. Mr. Chairman, I fervently urge this committee approve this legislation and that its action be sustained by this House itself. I honestly feel that, given a chance, it will prevail. As believers in the Constitution of this country, and the basic humaneness which underlies that document—as fighters for the civil rights of all Americans—we can do no less.

Mr. DENT. Congressman Halpern, it has been a pleasure to hear your testimony. Thank you for appearing here today.

And with that, the committee stands adjourned, and I would request that all clear the room in order that we may go into an executive meeting.

(Whereupon, at 11:45 a.m., the hearing in the above-entitled matter was adjourned.)

(The following statements were submitted for the record:)

STATEMENT OF HON. WILLIAM F. RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I appreciate the opportunity to testify in support of legislation which would prohibit the use of Federal funds for educational programs in which racial discrimination is practiced.

I have long advocated that the Federal Government cease to support segregated programs of any nature. I have introduced H.R. 5741, which prohibits Federal aid from being furnished to any program whatsoever which discriminates on the basis of race, religion, color, ancestry, or national origin. This bill is presently pending before the Judiciary Committee. I have also introduced H.R. 4586 which provides that no Federal or other assistance may be extended to any educational institution which discriminates against students or prospective students on account of race, religion, color, ancestry, or national origin.

On June 11, I joined Congressman Gill and others, and introduced H.R. 6951 which is identical to H.R. 6938, the bill under consideration today.

H.R. 6938 covers five Federal programs. In each of these programs, Federal funds have been allocated to institutions and States which operate their part of the programs on a racially discriminatory basis.

In fiscal year 1962, for example, the Federal Government spent \$297,169,905 for school maintenance and construction under the impacted areas program. Of

this total, 36 percent, or \$106,129,107, was allocated to Southern and border States. The Daniels subcommittee of the House Education and Labor Committee issued a report in 1962 which showed that 63.6 percent of the funds allocated to this area went to segregated school districts.

A recent study of the Civil Rights Commission shows that for the 1962-63 school year, schools in military base impacted areas in Alabama, Georgia, South Carolina, and Mississippi are totally segregated. The amount of Federal funds spent in those areas totals \$16,592,733. There is a total of 174,255 children residing both on and off these military bases.

H.R. 6938 covers certain programs supported under the National Defense Education Act. One of these programs is the national defense graduate fellowship program. The Daniels subcommittee report shows that 19.4 percent of the moneys allocated under this program for public institutions in the southern and border States in the years 1959-63 was allocated to segregated institutions. For the same States and the same years, 40.6 percent of the moneys allocated to private institutions under this program were allocated to segregated institutions, while 44.5 percent of the moneys allocated to church related institutions were allocated to segregated institutions. There is also discrimination in the language institute program and the counseling and guidance program, both of which are federally supported under the National Defense Education Act and are covered by this bill. In the language institute program, the Daniels report points out that 3.1 percent or \$67,000 of the funds allocated to institutions located in the southern and border States from the summer 1959 through the academic year 1961-62 was allocated to segregated institutions. In the same period of time and in the same States, 2.9 percent of the moneys allocated under the counseling and guidance program or \$95,000 was allocated to institutions which segregate.

The Department of Health, Education, and Welfare has informed me that in certain States the vocational education programs covered by H.R. 6938 are run on a discriminatory basis. In Alabama, Louisiana, Mississippi, and South Carolina the vocational education programs which are supported by the Federal Government, are conducted on a completely segregated basis. In fiscal year 1963, the Federal Government allocated a total of \$2,987,355 for these programs in these four States.

Let us look at the public library situation, for the Library Services Act is included in H.R. 6938. Libraries are basic to continuing education. They provide materials essential to responsible, democratic government.

According to a report by the Civil Rights Commission, for years it was the practice in 17 Southern States to practice racial segregation in access to public library facilities. And the "separate but equal" fiction was generally ignored. A 1955 estimate found that "two-thirds of the Negro population in 12 Southern States were entirely without library services in 1953."¹

The Library Services Act of 1956 put Federal funds into the support of public libraries. Yet, a recent estimate is that "nearly 10 million Negro citizens of our land are totally or partially denied access to publicly owned books."²

The Commission on Civil Rights has tried to elicit information from libraries participating in Library Services Act funds. In Mississippi, all public libraries refused to answer the Commission's questionnaire. A field survey disclosed, however, that one county library participating directly in Library Services Act funds was operated for whites only. In the two black belt Mississippi counties served by an Library Services Act regional library, no library facilities were available for Negroes.

A 1960 field survey in 21 selected black belt counties in 9 Southern States found 5 of them without a library at all. Twelve counties had libraries only for whites. The rest of the counties had segregated facilities, but the Negro branches had only half as many books and were open fewer hours. Six of these twenty-one counties were serviced by libraries participating in Federal funds. All Federal money here is supporting segregation.

It is difficult to ascertain how much Federal money in the total program is being used to support facilities which discriminate. When a Government agency cannot get a straightforward answer to a straightforward question about operations of institutions financed by Federal funds—but has to send in field investigators to try to find out what is going on—the situation is obviously ridiculous.

¹ Library Services Act hearings before the Select Subcommittee on Education and Labor, House of Representatives, 88th Cong., 1st sess., on H.R. 4879 and similar bills. Pp. 87-89.

² Library Services Act hearings before the Select Subcommittee on Education and Labor, House of Representatives, 88th Cong., 1st sess., on H.R. 4879 and similar bills. P. 87.

Section 5 of H.R. 6938 eliminates the language of the Second Morrill Act which provides for segregated land grant colleges. The Daniels report states that of 32 southern and border States, land grant colleges represented in their study only 18 are desegregated "in fact or in principle." Since the Brown decision in 1954, it is clear that the present language of the Second Morrill Act is unconstitutional and should be eliminated.

Mr. Chairman, the statistics set forth in this testimony are incredible. What has been shown is that 100 years after the Emancipation Proclamation, the Federal Government is still supporting segregated programs. If we are true to the principles upon which this Nation was founded, we must end Federal support for unconstitutional and immoral programs. We cannot profess to believe in the equal rights and dignity of all our citizens and at the same time continue support for segregation. The time has come for Congress to act.

STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for this opportunity to express my full support for the legislation presently pending before this committee to withdraw Federal financial support from schools and school districts which have failed for 9 years to take meaningful steps to respect the law of the land. The school districts which will be most affected by this withdrawal of support, are, of course, the districts which are in direct and obstinate opposition to the rights afforded under the Constitution and the judicial laws governing the people of this land.

Fundamentally, I believe, school integration ought not be thought of primarily as a question of civil rights. We need to look at it in another framework as well. The Nation needs better schools with higher standards that will give every American child a training corresponding to the challenge of our times. This is a matter of vital national interest. That is the problem which the country must face, and in doing so think of the impediment of segregated schools to this challenge. The country has an interest that every one of its youth be educated to the limits of his potential; segregated schools are an indulgence which cannot be afforded, on grounds of education practice, social values, or economy.

Actually we are experiencing the climax of a phase of the continuing social revolution in the United States which began with our Declaration of Independence and our war to throw off colonial rule. Periodically our country has been thrown into convulsions as various groups of the population have taken the initiative in reaffirming their fundamental rights and freedoms. These upsurges have been part of the growth and maturing of our democracy.

Women carried on a struggle for education in the 19th century which was less dramatic but no less determined than that of Negroes for education in the 20th century. Since that time they have contributed much to the technical and scientific progress of this country.

The Japanese were ineligible for citizenship for a considerable period in the embarrassing history of this great democracy; and in my home State of California we deprived these fine American aliens of the privilege of owning real property until the Federal Supreme Court redefined our democracy.

We are a fluid society, and as Gov. Pat Brown said in California the other day, we can no more go backward than we can stand still.

While our forefathers laid the foundation for the greatest democracy and form of government developed by man, and while we cherish that foundation, we are not particularly proud of the fact that poll taxes and other voting qualifications allowed but 10 percent of the white males to vote for those great men who wrote our Constitution.

Likewise, it is embarrassing that slavery was not outlawed in this Union from the outset. A number of compromises were made in 1789 that temporarily pointed us in wrong directions. Our maturing democracy fortunately has chosen the policy of continuous reevaluation of our institutions in light of our constitutional goal of development of a society based on equality of opportunity and freedom.

America developed in an unsophisticated atmosphere of survival of the fittest. During our formative stages it was not critical that present day social

progress be accomplished primarily because our agrarian economy did not present the problems of an urban society.

It is obvious that our civil law has developed parallel. Where no remedy was provided in the 19th century for thousands of civil wrongs, 20th century urban living requires that certain rights be respected.

In the area of economics also we have taken steps in the field of acreage limitation, antitrust, labor laws, fair labor standards, and minimum wage all because in a growing society a "freedom of opportunity" standard required that we keep big industry from gobbling up little industry, management from overreaching labor and vice versa, one economic area of the country marketing unfairly as respects another.

Many feel that civil rights of people is something separate and apart from the historical evolution I have outlined. Many disagree with the progress of the past. While the bigots and reactionaries are distracting, we must not let them deter reasonable people from making plans for a better and greater America tomorrow. We must today embellish the foundation of our forefathers and make plans for the next few decades.

All metropolitan areas now bulging at the seams will double in size during the next 20 years. Employment will double, collegiate students will increase nearly four times, and gross personal income will nearly double (fund for advancement of education, Ford Foundation).

The Negro race, as a group in this great melting pot that our country is, certainly has much to contribute to our progress if their potentials are fully realized and their resources tapped. At present only four-tenths of 1 percent of Negro children are attending desegregated schools in the 11 States of the old Confederacy—a full 9 years after the Supreme Court decision (P. Murray, June 14, 1963, Harvard Univ.).

While we are a long way from perfection in the Northern States, I believe the South is simply out of step with modern day industrial America. The South is simply not contributing to solid foundation upon which America can grow.

The incongruity of American troops in Alabama and Mississippi as opposed to Public Law 874 Federal aid last year to Alabama schools of \$5,349,576, and Mississippi schools of \$1,840,855, stands out as a monument of inconsistency to black and white America.

The record of the assistance of just this one law (Public Law 874) in perpetuating State action of segregation in opposition to the Constitution is as follows:

State	Total number of districts	Federal aid districts			
		Desegregated	Public Law 874 aid	Segregated	Public Law 874 aid
Alabama.....	114	0	0	53	\$5,349,576
Arkansas.....	417	12	\$850,310	54	755,721
Florida.....	67	10	1,984,500	7	4,340,666
Georgia.....	198	1	0	76	5,592,672
Louisiana.....	62	1	0	8	964,454
Mississippi.....	150	0	0	23	1,840,855
North Carolina.....	173	16	1,355,130	11	1,516,194
South Carolina.....	108	0	0	35	3,809,630
Tennessee.....	154	25	1,238,983	31	1,272,060
Texas.....	1,461	174	7,926,030	71	6,055,031
Virginia.....	134	31	13,793,437	16	1,765,949

Summarized, the statistics are as follows for the 11 Southern States:

Total net entitlements, 11 States.....	\$60,123,198
Total net entitlements to desegregated districts.....	27,148,390
Total net entitlements to segregated districts.....	32,974,808
Entitlements to segregated districts as percent of total net entitlements.....	54.8

In conclusion, it is my opinion that responsible Republicans and Democrats should support the subject legislation and give some effect in a meaningful way to our laws.

STATEMENT OF HON. SPARK M. MATSUNAGA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. Chairman, thank you for this opportunity to make a statement in support of H.R. 6938 which is identical to a bill, H.R. 6958, which I have introduced.

Mr. Chairman, the present civil rights movement in the United States to eliminate discrimination based on race in education, in voting, and in the use of public facilities is a part of a larger world movement toward political and social equality. This movement has been in progress for several years, beginning with the emergence as independent nations of some of the former British and Dutch colonies in south Asia, and continuing throughout Asia and Africa.

Racial discrimination is a characteristic of colonialism. It is antidemocratic. In this age when colonialism has been almost completely wiped out in the free world, in this age when the Government of the United States has been urging other great nations to give up their colonies, in this age when the Government of the United States is pointing to its own democratic political system as the ideal one for the ex-colonials to adopt, this vestige of colonialism and blight in our great democracy stands out as though spotlighted in a darkened arena. The glaring disparity between our words and our deeds gives rise to charges of hypocrisy leveled against us by the Communists and unfriendly peoples of the rest of the world.

The universal success of the anticolonial movement and the emergence of colonial peoples as citizens of independent nations make it necessary that we accelerate the process of realizing our American dream of equalitarianism. If we are to maintain our world leadership among the free nations we must practice what we preach. Refusal to lend Federal assistance to institutions of learning which practice racial discrimination is an important step in the right direction.

I am not here saying, however, that the one and only reason for eliminating racial discrimination in our public-supported schools is that such action would aid the United States in its position in world affairs. A greater reason is that it is the right thing to do. To do otherwise would not be in consonance with the American way of life.

American democracy symbolizes equality of opportunity for all men, regardless of race or color, in education as well as in any other field. It demands that a student be able to attend the government-supported elementary or high school nearest his residence if he so chooses and the government-supported institution of higher learning or technical school of his choice, subject only to the same conditions applicable to all others.

Regardless of his parentage, one born on American soil is by virtue of such birth granted the great privilege of living the life of an American citizen. This is a guarantee preserved to us and our posterity by that sacred document, our Federal Constitution. No American child should be subjected to the indignity of being denied admission into a school because and only because he happened to be born of colored parents, a matter in which he had absolutely no choice whatsoever. As an American he should be able to dream the American dream of availing himself of opportunities open to all on an equal basis.

Denial of Federal funds through passage of H.R. 6938 to those who will continue to deny equal opportunity in education to a segment of our citizenry will mean a recognition on the part of Congress that a wrong needs to be corrected.

Mr. Chairman and members of the subcommittee, I urge a favorable report on the bill under consideration.

Thank you very much.

STATEMENT OF HON. JACOB H. GILBERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and members of the Committee on Education and Labor, in January of this year, I reintroduced my bill to withhold Federal aid from schools which discriminate between students by reason of their race, color, religion, ancestry, or national origin; H.R. 625. This bill, and a number of others pertaining to this subject are now before your committee for consideration.

I am gratified to have this opportunity to speak in favor of this legislation, which would be effective in reaching our goal, to assure equal educational opportunities for all Americans, regardless of their color, race, religion, or national origin.

Your committee has heard testimony by representatives of the Department of Justice and the Department of Health, Education, and Welfare; facts and figures have been given you. Our Federal Government is heavily involved in educational programs; the extent of Federal involvement is seen at a glance by these figures—Federal funds are expended on more than 150 programs costing \$2 billion; programs include aid for impacted areas, school lunches, vocational education, adult education, grants under the National Defense Education Act, the Second Morrill Act, the National Science Foundation and various other research grants and contracts. There is legislation pending before various congressional committees now which would greatly increase Federal aid to education, and under present conditions, Negroes and other minority groups would be further cheated out of their rightful share of such benefits.

In a report sent me last year by the Department of Health, Education, and Welfare concerning my bill, it was stated: "There remain a number of States in which there is only token compliance with the U.S. Supreme Court decision, *Brown v. Board of Education*, in a few school districts, and there are three States in which no action of any kind has been taken by a public school agency. Today there are approximately 2,000 school districts in which the public schools are conducted on a completely segregated basis." Nevertheless, they continue to receive the benefits of Federal aid.

It is admitted that progress is being made to end segregation and discrimination in the schools of our Nation. However, Negroes and members of other minority groups have become sick and tired of the procrastinations and the general disregard of their rights, and entitlement to education is one of them. As a result, a revolution is underway in our Nation; the Negro is demanding his rights and he wants them now; the revolution will continue until he has achieved the equal status as an American citizen which has been denied him for a hundred years. The Negro will not be satisfied now, with long drawn out desegregation suits. He wants his children to have the same educational opportunities afforded white children at this time, not 3 or 10 years from now. Generations of Negroes have been denied full educational benefits and their progress has been halted in vocational trades, in industry, and in the professions. Millions of Negro children today are being denied the kind of education which should be the birthright of every American child.

Recently, Secretary of Labor W. Willard Wirtz stated: "Excessive Negro unemployment is due to three things: unequal education, training, and racial discrimination. The disparity has been getting worse instead of better."

The President, in his message on civil rights on June 19, 1963, said that simple justice requires that public funds to which all taxpayers of all races contribute, should not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. The proposed administration bill on civil rights provides that the United States is not required to furnish financial assistance "to any program or activity in which racial discrimination occurs."

I believe that if Federal aid is withheld from schools which discriminate between students by reason of their race, color, religion, ancestry, or national origin, we shall hasten action on the part of States which are now reluctant to desegregate their schools and grant Negroes equal educational opportunities.

The Congress must lose no opportunity to show that it recognizes the present crisis and that the full weight of the Federal Government must be thrown on the side of adaptation of civil rights legislation to the end that the destructive and vicious evils of discrimination based on race, color, religion, will be eliminated wherever they are found in our country. For these reasons, I urge your committee to take favorable action on the legislation before you.

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 10, 1963.

HON. JOHN H. DENT,
Chairman, Subcommittee on Select Education,
Washington, D.C.

DEAR MR. CHAIRMAN: Your subcommittee will shortly be considering H.R. 6938 and other related bills—one of which is authored by myself.

I wish to take this opportunity of stressing my support for these measures and to urge the subcommittee to speedily give favorable passage to the main bill.

It is unthinkable that in 1963 any citizen of the United States should be denied educational opportunities that are readily available to a majority of aspiring students. It is even more unthinkable that this denial of opportunity should be based on race, creed, or color.

There is no question in my mind but that the real key to improving conditions for all our citizens lies in strengthening the educational opportunities available. As the educational level of the Negro citizen rises—the doors to wider social and professional acceptance will open.

Educational equality, then, should be at the heart of our progress in the civil rights field this year. The Subcommittee on Select Education and the full Committee on Education and Labor will perform a great service to the Nation if they can speedily send H.R. 6938 to the floor of the House.

There can be no justification for any institution of learning, supported by Federal funds, discriminating against students on the grounds of color. The American people will not permit their tax moneys to be used to further such practices.

The least our Government can do is to withdraw those funds we are responsible for in any case where they are being used to deny a citizen his basic rights. This, I am convinced, would be an act of simple justice and in keeping with the intent of the Congress and the U.S. Constitution.

For these reasons I support H.R. 6938, and I respectfully request that my remarks be made a part of the official record of the hearing before your subcommittee.

Very truly yours,

CHARLES H. WILSON.

STATEMENT OF HON. EDWARD R. ROYBAL, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

Mr. Chairman and members of the committee, I want to thank you for extending me this opportunity to appear before you and present my views on this vital subject.

As you know, my bill, H.R. 6959, and other similar bills, have as a general purpose to prevent the use of Federal funds for educational purposes under programs or to assist schools practicing racial discrimination.

President Kennedy, in his civil rights message of June 19, stated the case for this legislation well:

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.

"Direct discrimination by Federal, State, or local governments is prohibited by the Constitution.

"But indirect discrimination, through the use of Federal funds is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation."

My bill, H.R. 6959, is similar to the more than 50 measures now pending before your subcommittee, in that it would prohibit Federal aid to segregated schools or racially discriminatory programs under provisions of (1) the National Defense Education Act, (2) the Vocational Education Acts of 1917 and 1946, (3) Public Laws 815 and 874 of the 81st Congress—Federal impacted aid programs, (4) the Library Services Act, and (5) the Land Grant College Act.

I do not believe it should be necessary to explore too deeply the sound reasoning and essential justice behind this proposal. To me, these are obvious on the face of the matter.

When you consider the vast amount of Federal money being spent each year to improve educational opportunities for our young people, it is simply unthinkable that we should extend such aid where benefits are not made available to all citizens alike, regardless of race.

Any reasonable man would agree that the assurance of equal opportunity in education is vital to the assurance of equality of opportunity in every other area of endeavor.

I hope these thoughts will be of assistance to the members of the committee in their consideration of this topic, and I feel confident that you will ultimately select the best proposal of the several before you to accomplish the goal of equal educational opportunity for all Americans, regardless of race.

Thank you.

STATEMENT OF HON. EDITH GREEN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OREGON

Mr. Chairman and members of the subcommittee, it is not easy to speak in support of a bill which would prevent the use of Federal funds in some of our universities and colleges, our elementary and secondary schools. Nevertheless, I do not hesitate, nor do I approach the problem with any reluctance, for the seriousness and magnitude of the practice with which the provisions of H.R. 6938 and other related bills deal overshadow the relative merits of the respective educational programs.

Year after year, we here in the Congress approve new programs and extend existing programs that enable discriminatory practices in all areas of activity to continue—housing, industry, labor, and most unfortunately in education. In some areas Congress has expressed its concern. I refer to section 106 of the Foreign Aid and Related Agencies Appropriation Act, 1963.

"Sec. 106. It is the sense of Congress that any attempt by foreign nations to create distinctions because of their race or religion among American citizens in the granting of personal or commercial access or any other rights otherwise available to United States citizens generally is repugnant to our principles; * * *."

But in the all important area of education, the Federal Government continues to invest sizable amounts in the educational system without regard to the discriminatory action of the recipients of such funds. While we wave a caution flag to the nations of the world we, at the same time, subsidize the very activity we claim is repugnant to our principles.

At the elementary and secondary level where the seeds of bigotry and prejudice find fertile soil, the Federal contribution for operating expenses and construction costs has been significant in a number of the Southern States. In Public Law 815 construction funds alone, \$67,453,039 has been distributed to schools in Virginia, \$21,422,021 in Alabama, and \$8,152,070 in Mississippi from the beginning of the program in 1951 through 1962. In the construction of these classrooms Federal dollars have been expended to build doors that are closed to certain American citizens because of their color. To insure that this does not continue, enactment of H.R. 6938 is imperative at this time.

It also concerns me that we cannot trace the Federal funds distributed under Public Law 874 to the schools which actually share the burden of the federally connected students. Because the funds are distributed to the local educational agency, which might have jurisdiction over a number of schools, we have no guarantee that the Federal dollar is being spent in the appropriate school which actually has enrolled the federally connected students.

In the past, the Federal student loan fund, fellowships, faculty institutes, and equipment grants have been available to all universities and colleges regardless of discriminatory policies in the admission of students. In 1962, Federal funds under the various land-grant acts provided \$40,774,000 to our land-grant colleges. Funds were distributed partially on the basis of equal grants to all States, but mostly on the basis of the State's population in relation to the Nation's total population. In the 16 States in which two land-grant colleges exist, the State determines the division of funds between the two institutions. These 16 additional land-grant colleges were established for Negroes. Of the 32 land-grant colleges located in Southern or border States, 23 are desegregated in fact or in principle. On the basis of available information, it appears that only 9 land-grant colleges remain segregated at the present. Seven of these are all-Negro institutions.

In 1963 two NDEA graduate fellowships in "sociology and rural life" will be supported at Mississippi State University. Fellowships in philosophy, counseling and guidance, elementary education, communications and group influence and southern history have been awarded in other southern universities.

All of these educational programs are of the greatest importance to our Nation. But their importance is lost if the recipient institutions conduct themselves in a manner opposed to our democratic principles. The entire environment of an institution of higher education comes to bear on the development and education of our youth. This academic atmosphere, created and maintained in part with Federal funds, must be free of the intolerance and narrowness associated with race prejudice and bigotry.

A recent study by the staff of my Special Subcommittee on Education revealed that in 1962 approximately \$1.1 billion in Federal funds was expended in direct

support to the educational system of the United States. At the same time, untold Federal sums were expended in support of the work of the Justice Department and other agencies in the battle over civil rights; much of this battle being waged in the broad area of education. The situation reminds me of a father who first warns his son of the dangers of speeding and reckless driving; then buys him equipment to speed up his hotrod; and finally hires a policeman to go out and arrest the boy for speeding. You will agree I think that this would be a foolish father.

STATEMENT OF JOSEPH P. ADDABBO, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW YORK

Mr. Chairman and members of this subcommittee, I appreciate this opportunity to give you my views on H.R. 4147 and similar bills which provide for the withholding of Federal aid from schools which discriminate between students by reason of their race, color, religion, ancestry, or national origin.

Certainly there is no reason that can be advanced today why there should be such discrimination in any school in these United States. The decision of the Supreme Court rendered on May 17, 1954, clearly and concisely stated the case. We know that now, more than 9 years later, discrimination is still a policy in many areas of our Nation. We cannot justify the expenditure of Federal funds to finance this policy which has been clearly defined as unconstitutional.

There are those who argue that the withholding of Federal funds from schools which discriminate will hurt those who are the victims of the discrimination. I am convinced that this shortrun loss will, in the end, be a longrun gain.

I respectfully urge early approval of this much-needed legislation.

STATEMENT OF JOSEPH G. MINISH, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW JERSEY

Mr. Chairman and members of the committee, it is a pleasure to testify in support of legislation to desegregate public schools and more specifically in support of my bill H.R. 6962.

This legislation would amend the various acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial segregation.

Nine years have passed since the original Supreme Court decision on desegregation of the public schools. Eight years have elapsed since the court laid down the "all deliberate speed" formula. On May 27, 1963, it was necessary for the Court to warn against continued delay and evasion. Writing the decision for the unanimous court, Justice Arthur J. Goldberg stated:

"The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelming compelling reason, they are to be promptly fulfilled."

The procrastination and inaction in fulfilling the guaranteed rights of equality of opportunity are unworthy of our principles of justice. That public funds should contribute to this shameful situation is a discredit to our Government. The time is now to put a halt to use of Federal funds for activities in which racial discrimination is practiced and to hasten the fulfillment of the guarantees of the Constitution.

In a space age of science and technology that will demand the highest level of achievement from a widely and well educated populace we cannot afford to have undereducated Americans. Only the trained and educated can successfully compete for jobs in the future. Millions of dollars of public assistance to non-high-school graduates might be saved if educational opportunity is equal for all regardless of race.

Morally and practically we as a nation are committed to ending discrimination in public education. The proposed legislation would peacefully promote this aim by limiting Federal funds available for national defense education, vocational education, federally impacted areas, library service, and land-grant colleges to schools which operate on a racially nondiscriminatory basis or are making reasonable progress toward that end.

In his message on civil rights and job opportunities last month President Kennedy said:

"Indeed, discrimination in education is one basic cause of the other inequities and hardships inflicted upon our Negro citizens. The lack of equal opportunity, restricts his contribution as a citizen and community leader, encourages him to drop out of school and imposes a heavy burden on the effort to eliminate discriminatory practices and prejudices from our national life."

For the benefit of this Nation, for justice to its people, I urge favorable action on the legislation before you.

TESTIMONY OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

Mr. Chairman, the Federal Government has a peculiar obligation to our Negro citizens. The U.S. Constitution recognized the institution of slavery by providing for the importation of slaves until the year 1808. This provision was a condition upon which certain colonies consented to join the Union, and without which the formation of the Union would not have occurred. When the Negro was later freed by what the world knows as history's bloodiest conflict, the Federal Government failed to accept fully its responsibilities to help members of this race; specifically, it did little to assist in the education of the members of this race, who were for the most part inadequately educated.

Fifteen years ago I introduced a bill to reimburse the States for that portion of school construction costs attributable to Negroes and Indians. Since that time I have consistently reintroduced this legislation in every Congress. The Indian part of my original bill has long since been enacted by inclusion in the impact aid legislation; but the Negro in many areas of the country continues to attend incredibly poor schools, whether integrated or segregated. The facts and figures of Negro unemployment are well known, and it has been shown that those on the unemployment and welfare rolls are there largely because they lack the necessary skills and education to obtain a job.

Our Nation is today upon the brink of a racial crisis equaling none other but the Civil War. It is my belief that this crisis could have been avoided had our National Government promptly seen the wisdom of providing for the Negroes' educational development and done something to aid it. Although 100 years have passed, so long as 11 percent of eligible Negro workers are unable to find gainful employment because they lack necessary training and education, it is obvious that the failure to provide adequately for educational facilities for the Negro is still an obstacle in his path. If this country is to meet its civic responsibilities it must provide an educational program adequate to all. Only through education can the Negro better understand and meet his own responsibilities. The bill I have introduced, H.R. 296, is a practical and fair method of furnishing the help needed on a nationwide basis.

The approach of H.R. 6938, is a negative, destructive approach. It says that there will be less educational aid for Negroes and whites, not more education. It puts integration ahead of education; the cart before the horse.

STATEMENT OF JAMES E. BRYAN, PRESIDENT, AMERICAN LIBRARY ASSOCIATION

The American Library Association is a professional, nonprofit organization with more than 25,000 members from the 50 States and elsewhere. Membership in the association, which is voluntary, comprises not only librarians but also citizens serving on library governing bodies and lay persons actively interested in the development, extension, and improvement of library services throughout the Nation.

As president of the American Library Association, I should like to present the position of the association on the question of civil rights for all citizens with particular reference to libraries. In view of the history and previous actions of our organization, we are clearly in sympathy with civil rights.

The policy of the American Library Association in regard to access to libraries is embodied in its "Library Bill of Rights," adopted by the council, the governing body of the association, on June 18, 1948, and amended February 1, 1961. Statement No. 5 reads as follows:

"The rights of an individual to the use of a library shall not be denied or abridged because of his race, religion, national origins, or political views."

We stand firmly behind this statement and are taking action toward making this a reality.

As evidence of the association's continued concern for civil rights, the council of the association approved and the association commissioned a study in depth of access to public libraries in the 50 States. This study by an objective survey firm will help the library profession and the Nation to understand the extent of the problem, give a valid basis for working toward improvement, and also point up the good work in this area that has already been accomplished by many libraries.

Desegregation of libraries started well before the 1954 Supreme Court decision in *Brown v. Board of Education of Topeka*, the case which set the legal precedent for the unconstitutionality of discrimination in public libraries and other public facilities. Library desegregation has proceeded considerably further than the desegregation of other major types of public facilities, such as schools, pools, and buses. The desegregation of libraries has been accomplished largely without protest movements or other disruptions of community life and far more frequently than is the case with other public facilities.

It must be remembered that the American Library Association, as a voluntary membership organization with no regulatory powers, has no authority to act in individual situations to safeguard the rights of library users. It cannot direct its member libraries or librarians, or the governing bodies of these institutions to take any specific actions or to desist from any practices. The association can and does use its persuasion, however, upon all members to meet fully the rights of all citizens in our society.

Further evidence of the association's longstanding policy to further civil rights is its official policy in regard to accommodations for its meetings, adopted by its council in 1936 and reaffirmed by its executive board in 1957. This 1936 policy states: "In all rooms and halls assigned to the American Library Association hereafter for use in connection with its conference or otherwise under its control, all members shall be admitted upon terms of full equality." Our organization has faithfully adhered to this policy for almost three decades.

The American Library Association is in accord with the purposes of the pending legislation which will forward the cause of civil rights, including access to libraries. We would hope that such legislation would allow some flexibility on the part of the Federal administrator in withholding funds from particular projects where evidence of substantial progress clearly exists in the State as a whole under a well defined plan.

Although libraries in all States regardless of region have accomplished and are accomplishing much in making their resources and facilities freely and readily available to all regardless of race, religion, or personal belief, the goal has not been fully achieved. We support, therefore, legislation on civil rights which will bring about this objective.

ACCESS TO PUBLIC LIBRARIES

Highlights of the findings—Prepared for the 1963 Convention of the American Library Association, June 28, 1963

INTRODUCTION

This is a summary of a study of access to public libraries conducted by International Research Associates, Inc., on behalf of the American Library Association. The full study is now in process of publication, and will be made available at the earliest possible date.

The study was conducted with the continuous guidance and assistance of the members of the American Library Association Advisory Committee, consisting of Harold Tucker, chief librarian, Queens Borough Public Library (chairman); Mrs. Augusta Baker, coordinator of children's services, the New York Public Library; Bernard Berelson, director, communications research programs, the Population Council; Jean E. Crabtree, head librarian, Garden City Senior High School; John Hall Jacobs, director, Atlanta Public Library; Richard H. Logsdon, director of libraries, Columbia University; Archie L. McNeal, director of libraries, University of Miami Library; and Alphonse F. Trezza, executive secretary, Library Administration Division (ALA headquarters staff liaison).

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Dorothy Bendix, associate professor, Graduate School of Library Science,
Drexel Institute of Technology, Philadelphia, Pa.

The primary objective of the study has been to broaden understanding of various types of limitations on free and equal access to the resources and services of public libraries. The major focus has been on restrictions to access based on race. Supplementing the study of racial restrictions are special studies of two other forms of limitations: first, the recent proliferation of restrictions on student use of libraries and second, the shortage of foreign-language materials in communities having a substantial proportion of persons with only a limited facility in the English language. Finally, the regional variations in the extent and adequacy of library resources and services are examined in relation to the standards of the American Library Association.

The study of limitations on access based on race focuses on the following areas:

The extent and the pattern of racial segregation of public libraries;

The rate of change toward desegregation;

Factors tending to promote and those tending to retard desegregation;

The role of law in the segregation of public libraries; and

The attitudes of librarians and library boards toward segregation.

The primary instrument of the study was a mail questionnaire sent to all of the library systems of the United States. Responses were received from 1,789 systems, or 22 percent of the total of 8,176 systems. The responses came in approximately equal proportions from all four of the major census regions of the country.

Supplementing the mail survey, experienced staff members and interviewers were sent to the South by INRA to interview those involved with segregation and desegregation of public libraries. They observed and conducted interviews in 12 States of the South, visiting 43 library systems, and interviewing 154 respondents, including librarians (both white and Negro), members of library boards, public officials, community leaders, and members of interested community organizations.

In addition, a study was made of previous surveys, reports, articles, books, and legal materials dealing with library facilities and the question of segregation. The study of legal materials was supplemented by consultation with professors of constitutional law at leading universities and by a detailed memorandum on this topic by Prof. Thomas A. Smedley, director of the Race Relations Law Reporter of Vanderbilt University. This memorandum is included as an appendix to the report.

Finally, a special study was made of the location and resources of branch libraries in 10 cities both in and outside of the South. Each branch was located on the census map of the city and an analysis was made of the variations in the location and resources of the branches according to the proportion of nonwhites in the population, and the levels of income, education, and elementary school enrollment of the neighborhood.

The principal findings of this study with respect to its primary objective—the limitations on access based on race—are summarized below. The complete findings on this topic and the findings with respect to the other topics of the study, are given in the full report that will be published in the near future.

HIGHLIGHTS OF THE FINDINGS

Before stating the findings, it is important to clarify the two general types of discrimination that occur. The most severe form of deprivation occurs when the members of one racial group are completely excluded from enjoying the resources of a particular library, or, alternatively, when utilization of these resources is permitted only within certain limitations that are applied with particular force to that group. This may be called direct discrimination. A library system practices "indirect" discrimination when its branches are so located and the resources of these branches are so differentiated in

terms of quantity and quality, that one group is more limited in its access to the library resources of the community than another.

The principal findings are as follows:

1. Direct discrimination is confined to the 16 States which are classified as constituting the South in the report, while indirect discrimination is found throughout the United States.

2. All forms of direct discrimination by a State, county, or city public library are clearly in violation of the Federal Constitution. The remedy afforded by the law is a suit asking the court to direct the library to provide access to those affected. A separate suit must be filed with respect to each segregated library system.

3. State statutes requiring segregation of all public facilities and those specifically requiring segregation of public libraries, are equally unconstitutional and cannot be asserted as justification for the continuation of segregation. In practice, many libraries in every State in the South have already been integrated, indicating that the statutes are not enforced against libraries by the States themselves.

4. Desegregation of libraries started well before the 1954 Supreme Court decision in *Brown v. Board of Education*, the case which reversed the "separate but equal" precedent in the field of education, and which provided the basis for later decisions extending the holding to other public facilities, including public libraries.

5. Library desegregation has proceeded considerably further than the desegregation of other major public facilities such as schools, swimming pools, and buses. In southern communities responding to the questionnaire, 66 percent of the pools, 54 percent of the schools, and 24 percent of the bus systems—but only 9 percent of the libraries—are still segregated. Far more frequently than has been the case with other public facilities, the desegregation of libraries has been accomplished without protest movements or disruptions of community life.

6. Library segregation is still widespread and severe in the five-State area of the Deep South, one of the three subregions of the South defined and analyzed in detail in the full report. Throughout the entire South, library segregation is far more prevalent in the smaller towns and rural areas than in the more densely populated communities.

7. The process of library integration, particularly in the case where there are overt pressures by the Negro community, involves many elements of the society, including the librarians themselves, the library boards, city officials, white and Negro community leaders, civic and minority organizations, and to some extent, the public at large.

8. The rate of library integration has been increased by the widespread belief of many professional librarians that it is their job to provide service equally to all members of the public. More practically, many librarians take the position that it is more in the interests of the library to integrate prior to the social disturbances that are occasioned by protest movements and lawsuits than to wait for the inevitable change. In many segregated libraries, the librarian who holds either or both of these views is often constrained in his actions by the contrary position held by members of the library board and/or city officials.

9. The rate of library integration is also affected by the generally low priority accorded to it by leaders of the Negro community, as compared to the fields of voting, housing, job opportunities, education, and other public facilities. This low priority is compounded by the difficulty of locating an adequate number of persons—particularly in the smaller communities—who are sufficiently interested in library integration to be willing to act as litigators and to take part in protest movements.

10. Should segregation of library services disappear overnight in the South, the problem would remain that both whites and Negroes would have available to them library resources that are far inferior to those found in each of the other major regions of the United States. In the measurements of expenditures per capita, size of the staff, volumes per library, number of new titles bought in the past year, circulation per capita and volumes per capita, the South is uniformly far below all three other major regions of the United States. These findings are exemplified by the fact that the South contains 30 percent of the total U.S. population, but its libraries report expenditures that amount to only 15 percent of the national total.



